

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held August 26, 1999

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
David W. Rolka
Nora Mead Brownell
Aaron Wilson, Jr.

Joint Petition of Nextlink Pennsylvania, Inc.;
Senator Vincent J. Fumo; Senator Roger Madigan;
Senator Mary Jo White; the city of Philadelphia; The
Pennsylvania Cable & Telecommunications
Association; RCN Telecommunications Services of
Pennsylvania, Inc.; Hyperion telecommunications,
Inc.; ATX Telecommunications; CTSI, Inc.; MCI
Worldcom; and AT&T Communications of
Pennsylvania, Inc. for Adoption of Partial Settlement
Resolving Pending Telecommunications Issues

Docket No.
P-00991648

Joint Petition of Bell Atlantic Pennsylvania, Inc.,
Conectiv Communications, Inc.; Network Access
Solutions; and the Rural Telephone Company
Coalition for Resolution of Global
Telecommunications Proceedings

P-00991649

OPINION AND ORDER

XIII. RATE CAP/RATE CEILINGS

A. BA-PA's Existing Cap

The nature of a "freeze" on protected services¹⁸⁹ is, *inter alia*, in satisfaction of Section 3004(d)(1) of the Public Utility Code, 66 Pa. C.S. §3004(d)(1), whereby this Commission is to evaluate a proposed plan for alternative regulation using as criteria, *inter alia*, that the petition "[e]nsures the continued affordability of protected telephone service." Thus, the General Assembly has determined that the continued affordability of protected services is a fundamental goal of the Chapter 30 legislation. See Re BA-PA, Docket No. P-00930715 (Order entered January 25, 1995).

In BA-PA's Alternative Regulation Order, the Commission implemented a "freeze" on protected services until December 31, 1999. 82 Pa. PUC at 285; BA-PA Chapter 30 Plan Part 1.B.2, p. 9; 66 Pa. C.S. §3002. We subsequently clarified our Order, directing a rate freeze rather than an absolute revenue freeze, indicating that there was no prohibition against revenue neutral rate rebalancing consistent with BA-PA's Chapter 30 Plan. See Re: BA-PA; Docket No. P-00930715, et al. "Bell may propose revenue neutral price changes prior to December 31, 1999, and not in contravention of the "freeze on protected services" . . ." (Order entered October 30, 1995; slip op. at 21).

As noted in the Alternative Regulation Order, the special provisions relating to a cap on protected services rates were originally proposed by BA-PA for consistency and compliance with the directives of Chapter 30 of the Code to "maintain universal

¹⁸⁹ Protected telephone service, unless the Commission determines that the service is competitive, includes the following: (1) Telecommunications service provided to business or residential consumers that is necessary for completing a local exchange call; (2) Touch-tone service; (3) Switched-access service; (4) Special-access service; and (5) Ordering, installation, restoration and disconnection of these services.

telecommunications service at affordable rates." 66 Pa. C.S. §3001; 82 Pa. PUC at 217; also Order entered January 25, 1995, Docket No. P-00930715. At issue herein is our determination to extend the current price level cap for protected services beyond December 31, 1999, until December 31, 2003.

B. The 1648 and 1649 Proposals

The 1649 Petitioners proposed that BA-PA will not seek any increase in rates for protected services through December 31, 2003 - a voluntary extension of the freeze on protected services rates for four (4) years. Also, they proposed that BA-PA will not shift costs between customer classes due to competitive service designations, consistent with Chapter 30. (1649 Petition, at p. 45, ¶137).

The 1648 Petition proposes a similar extension of a rate freeze with certain distinctions. The 1648 Petition proposes that this Commission cap BA-PA's rates for protected services at current levels in effect at the time of Commission approval of the proposed settlement. (Petition, at ¶. 7). The 1648 plan would also explicitly prohibit the assessment of any Subscriber Line Charge (SLC) to offset reductions in access charges. Also, it advocates the establishment of a ceiling on ILEC local exchange rates for dialtone, touchtone and local usage at \$16.00 per month for the life of the agreement. See Senators' M.B., p. 44. The 1648 Petition would further prohibit the shifting of costs between customer classes due to the designation of any of BA-PA's services as "competitive" under 66 Pa.C.S. §3005. (Petition, pp. 9-11). The latter protection "[is] important in providing captive local exchange customers with additional protections against possible cross-subsidization of enhanced or "competitive" services by BA-PA and the other ILECs." (Senators' Stmt. 1 at 25).

The Consumer Parties, the OTS and the OCA generally support the 1648 Petition's position on rate caps. The OCA supports the rate cap proposal and offers the position that the cap should be a "strict" rate cap that would prohibit any increase in any residential or business protected service rates for the term of the order directing the same. (OCA M.B., p. 70). Thus, the OCA requests that BA-PA, and the non-BA-PA ILECs, be unequivocally precluded from raising any protected services rates through rate rebalancing or other methods. (Id. at 71). However, the OCA found the settlement reached with Sprint/United in that ILEC's recent Chapter 30 proceeding, Docket No. P-00981410 (Order entered July 16, 1999), acceptable for implementing the \$16 per month ceiling for basic residential rates. (Id. at 70).

Generally, with regard to ILECs other than BA-PA, the 1648 Petitioners propose that the Commission implement a rate ceiling which would cap residential local rates of each such ILEC, including charges for dial-tone, touchtone, and local usage, at \$16.00 per month for the term of the order. They suggest that if an ILEC's rate is above \$16.00 per month, the revenue associated with the difference between the rate ceiling and the approved rate be recovered from the Universal Service Fund (USF). Id. at ¶s. 7-8; also Senators Stmt. 1, p. 27. This position is espoused by both sets of Petitioners and is in the record as an attachment to the Petitions entitled "Small Company Universal Service Fund Settlement."

The 1648 Petitioners concede that the Commission will, in all likelihood, classify certain of BA-PA's services for business customers as competitive under 66 Pa. C.S. §3005. And, they also acknowledge that this classification will result in the deregulation of rates and earnings for services to those customers. See 66 Pa. C.S. §3009(f). However, they request that BA-PA be required to maintain existing tariffs on file for the affected competitive services and customers to assure that the affected

customers will maintain the ability to purchase services classified as competitive at existing rates. Such tariffs would act as a rate ceiling and would assure that the affected customers get any benefit associated with competitive classification without risking an increase in rates. (1648 Petition, ¶. 11; also Joint Motion to Strike and Answer to BA-PA's Motion to Dismiss . . . , Appendix reference R.A. 17 to Senators' Main Brief).

C. 1649 Petitioners' Position

The 1649 Petition apparently contains some internally inconsistent proposals. At page 3 of the Petition, at ¶5, it refers to a rate cap on residential local exchange services and declares BA-PA's agreement "not to seek rate increases for basic residential local exchange services" until December 31, 2003. However, at ¶137 on page 45 of the Petition, BA-PA proposes a rate cap for "protected services." The position espoused by BA-PA in its Main Brief, pages 49-50 -- that its plan would extend this cap for *residential local exchange services* for an additional four (4) years -- is consistent with that stated in ¶ 137 of its petition. We will therefore assume that this is BA-PA's intended position.

BA-PA attacks the 1648 Petitioner's demand that the cap on BA-PA's rates be extended for all protected services (1648 Petition, ¶7). BA-PA argues that this significant expansion of the protected services cap would require a modification of its Chapter 30 Plan. Also, BA-PA suggests that the ceiling on competitive services, to the extent it is involuntary, would violate the competitive services deregulation language in Chapter 30. See Whelan Supplemental Direct, p. 36, n. 22.

D. Disposition - BA-PA Rate Caps

Based on the positions of the parties, the information in the record, and the arguments of the parties set forth in their briefs, we conclude that the public interest would best be served by directing the following:

(1) BA-PA's rates for protected services, as defined in 66 Pa. C.S. §3002, shall be capped at current levels in effect at the time of the Commission's final order in this matter until December 31, 2003. The rate cap precludes a shifting of costs between customer classes due to the designation of any BA-PA's services as "competitive" under 66 Pa.C.S. §3005 and serves to insure that the rate for protected services remain just and reasonable.

(2) BA-PA will not assess on the bills of any customers, a Subscriber Line Charge (SLC) that is designed to recover revenues associated with the reduction of either switched access rates or toll rates unless and until determined by the Commission in the further investigation. See Section III discussing Access Charges.

(3) There shall be no increases to BA-PA's protected services for the purpose of offsetting or recovering the reduction of switched access or toll rates charged by BA-PA, prior to December 31, 2003.

(4) As will be discussed elsewhere in this Opinion and Order, certain BA-PA services for certain business customers will be classified as competitive under 66 Pa. C.S. §3005, resulting in the rate and earnings deregulation of those services. Until business services are deemed competitive for business customers, without regard to the total billed revenues (TBR) qualification, it is necessary to maintain certain consumer

protections applicable to affected customers to assure that customers are not adversely impacted by the competitive classification. Accordingly, BA-PA shall maintain existing tariffs on file for the affected competitive services and customers and will assure that, at minimum, the affected customers maintain the ability to purchase services classified as competitive at existing rates. Such tariffs will act as a rate ceiling on these services and will assure that the affected customers receive the benefits associated with the competitive classification without risking increases in rates as a result of such classifications.

Our determination with regard to BA-PA's rates for protected services is the same as the provision found in the BA-PA Alternative Regulation Order. See Docket No. P-00930715 Order entered Jan. 23, 1995. As noted, those provisions run until December 31, 1999, when they expire and are replaced by the operation of the price stability mechanism (PSM) which generates the annual price change opportunity (PCO) for BA-PA.¹⁹⁰ Thus, this Order contains the same language and therefore there is no change to the provision that runs until December 31, 1999.

The freeze, which applies only to protected services, a well defined term in the context of Chapter 30, does not preclude, or even require, the application of PCOs to nonprotected services. Therefore, we find that our adoption of the 1649 Petition's freeze on protected services, consistent with the modifications explained, above, does not modify the Alternative Regulation Order on this point. In the event the PSM were to generate positive PCOs for which BA-PA wished to propose changes after December 31,

¹⁹⁰ The implementation of the PSM is subject to the following mechanics: on an annual basis, BA-PA will calculate its cap, i.e., Price Change Opportunity (PCO) under the formula $PCO = \text{Revenue} * (\text{GDP-PI} - 2.93\%)$. If the PCO calculated for the year is positive, Bell may elect to file tariff rate changes for noncompetitive services to recover up to the amount of the PCO for that year or Bell may elect to forgo any or all recovery of the PCO for that year. In the event of a negative PCO, Bell shall file a tariff rate change to reduce its revenues by an amount equal to that year's PCO.

1999, this Commission has retained the authority to review and approve any such proposed changes.

The freeze language limits the rate structure options available to the Commission and BA-PA in the event of a positive PCO after December 31, 1999. It does not, however, deny BA-PA the opportunity to recover a positive PCO. And, we note BA-PA's position on the record with respect to projected PCOs is that they will continue to be negative through 2003, although they will be smaller than current levels due to BA-PA's projections regarding revenue levels to be used in the PSM. Therefore, if the PCOs conform to BA-PA's projections, at least with respect to negative versus positive, there is no issue. If the PCOs do not conform to BA-PA's projections, they should not be expected to be of significant magnitude and could reasonably be absorbed into categories of rates other than "protected services."

We find that the suggestion of BA-PA that such consumer protections regarding the ceiling on business rates below the TBR threshold would contravene Section 3009(f) of the Public Utility Code to be misplaced. Until such time as all business users, i.e. those with less than the required TBR, are able to avail themselves of the competitive services designation granted to BA-PA, such customers should have the protection of the proposed rate ceiling.

For the above reasons, we shall direct a rate freeze on protected services consistent with the above discussion.

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held August 17, 2000

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
Nora Mead Brownell
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

Petition of Focal Communications Corporation of
Pennsylvania For Arbitration Pursuant to Section
252(b) of the Telecommunications Act of 1996 to
Establish an Interconnection Agreement with Bell
Atlantic-Pennsylvania, Inc.

A-310630F0002

OPINION AND ORDER

D. Exceptions/Reply Exceptions – Interconnection Points

1. BA-PA Excepts To The ALJ's Recommendation To Reject Its Modified Proposal For Establishment Of Focal's Interconnection Points

BA-PA excepts to the ALJ's recommendation to reject its modified proposal (please refer to Footnote 8 for a summary of BA-PA's modified proposal) for the establishment of Focal IPs for the three (3) reasons summarized below:

1. The establishment of Focal's IPs is inextricably tied to Focal's practice of offering services to ISPs and large corporations that are based on Focal's unilateral expansion of BA-PA's local calling areas through its calculated misuse of NXX codes. (BA-PA Exc., pp. 19-20);

2. BA-PA's modified proposal establishes a clear, objective, fair, competitively neutral standard for establishing the point at which BA-PA hands over financial responsibility for traffic to Focal and resolves the single concern Focal raised in its Petition about BA-PA's initial proposal by expanding the geographic perimeter in which Focal can Establish its IP from the rate center, or 25-mile around the rate center, to a larger geographic area;⁴² (BA-PA Exc., p. 20), and,

3. The ALJ's rejection of BA-PA's proposal for Focal's IP rests on plain legal error because the ALJ was mistaken in concluding that the legal rules governing BA-PA's obligation to allow Focal to interconnect with, and to deliver traffic from, Focal's network to BA-PA's network at any "technically feasible point" govern the allocation of transport costs

⁴² BA-PA St. No. 1.0 (D'Amico Direct), pp. 4-6.

between Focal and BA-PA or the parties' obligations with respect to delivery of traffic that originates on BA-PA network to Focal's network.⁴³ (BA-PA Exc., p. 20).

In support of its first argument above, BA-PA asserts that Focal avoids paying BA-PA for the use of its transport network by assigning telephone numbers to customers with NXXs that misrepresent the actual locations of those customers. In this way, BA-PA alleges that Focal is able to trick BA-PA's switches into providing those customers toll transport for free because BA-PA does not receive the toll charges intended as compensation for those costs of transport. BA-PA believes that its modified proposal, which is based on the principle of geographic relevancy, or establishing Focal IPs near the rate centers of the NXX codes assigned by Focal to its customers, provides a fair allocation of the costs of transport between BA-PA and Focal. (BA-PA Exc., pp. 19-20).

BA-PA notes that Focal witness Tatak acknowledged that Focal assigns telephone numbers to customers using NXX codes that do not correspond to the rate centers in which the customers' premises are physically located.⁴⁴ (BA-PA Exc., p. 22). BA-PA also notes that Focal's "Virtual Office" product involves the assignment of NXX codes to customers that are not located in the rate center to which the code is assigned. BA-PA contends Focal's practice of misassigning NXX codes harms BA-PA financially because it deliberately expands the geographic scope of BA-PA's local calling area⁴⁵ without the permission of BA-PA or the Commission, and forces BA-PA to provide free

⁴³ See Section 251(c)(B); *In the Matter of Local Competition in the Telecommunications Act of 1996*, FCC Docket No. 96-98, First Report and Order (*Interconnection Order*), released August 19, 1996, p. 209.

⁴⁴ Tr., p. 66-70 (Tatak).

⁴⁵ Tr., p. 69 (Tatak) (agreeing that Focal's Virtual Office product expands the local calling area for a particular BA-PA end user customer).

interexchange transport service to Focal's large corporate customers. BA-PA also argues that although it is forced to carry these calls, which would otherwise be toll calls, across rate centers,⁴⁶ neither Focal nor its customers compensate BA-PA for those additional transport functions.⁴⁷ (BA-PA Exc., pp. 22-23).

BA-PA argues that Focal even admits that it never sought the Commission's permission to expand BA-PA's local calling area⁴⁸ and asserts that Focal's unilateral expansion of BA-PA's local calling areas is a blatant violation of the Commission's directive in *MFS Phase II* that CLECs comply with BA-PA's local calling areas as stated below. BA-PA references page 19 of the *MFS Phase II Order*⁴⁹ which it submitted as Exhibit 3 in this proceeding, and which states, in pertinent part:

After consideration of the positions of the parties, and considering that NXX codes are a scarce yet critical resource for local exchange competition, the most efficient method for assigning these codes must be adopted. We agree with and shall adopt MFS' proposal to use BA-PA's toll rating points as the basis for assigning NXX codes because it is more efficient than BA-PA's. However, each CLEC must comply with BA-PA's local calling areas. This is imperative to avoid customer confusion and to clearly and fairly prescribe the boundaries for the termination of a local call and the

⁴⁶ Rate centers are specific geographic locations used by all carriers for call billing and call routing purposes. BA-PA Exchange Areas each have a specific rate center to which a number is assigned, based on the combination of the area code and the NXX code. In many existing BA-PA Exchange Areas, the rate center is usually at the end office (a switching center that switches calls to and from end users).

⁴⁷ Tr., p. 68 (Tatak) (admitting that Focal does not reimburse BA-PA for lost toll charges).

⁴⁸ Tr., p. 70 (Tatak) (answering "no" when asked whether "Focal has asked the Public Utility Commission for permission to expand Bell Atlantic's local calling area").

⁴⁹ See *Application of MFS Intelenet of Pennsylvania, et al.*, Docket Nos. A-310203F0002, A-310213F0002, A-310236F0002 and A-310258F0002, (MFS II Order), entered July 31, 1996.

incurrence of a transport or termination charge, as opposed to termination of a toll call in which case an access charge would be assessed.

In light of the Commission's directive in the *MFS II Order*, BA-PA contends that the Commission should adopt its modified proposal because it is more efficient and will reduce the burden on BA-PA from Focal's practice of unilaterally expanding BA-PA's local calling area through Focal's misuse of NXX codes. (BA-PA Exc., p. 24). Furthermore, BA-PA notes that other states have investigated CLECs' practice of unilaterally expanding local calling areas through the calculated misassignment of NXX codes and have declared it unlawful.⁵⁰

BA-PA also argues that Focal's current network configuration illustrates the unfairness of requiring BA-PA to subsidize transport costs of Focal's large corporate and ISP customers. BA-PA notes that Focal currently has assigned 50 NXX codes to its switch in Philadelphia⁵¹ and this means that BA-PA must transport all calls from BA-PA customers to Focal's customers, regardless of how far it might be from the BA-PA customer to the Focal IP in Philadelphia. When a BA-PA customer calls any Focal customer that is assigned one (1) of the 50 NXX codes, BA-PA does not receive toll compensation for those calls which would otherwise be assessed toll charges. As such, BA-PA argues that Focal and its customers cause the costs and reap the financial reward while BA-PA bears the cost. (BA-PA Exc., p. 26). Therefore, BA-PA believes that the

⁵⁰ BA-PA specifically references the following examples in Footnote 62 on page 24 of its Exceptions: the *Order of the Maine Public Utilities Commission Disapproving Proposed Service* (issued May 26, 2000) and the *Order of Main Public Utilities Commission Revising Proposed Facts* (issued December 2, 1998). BA-PA notes that in the Maine proceeding, Brooks Fiber did not own, lease, or maintain facilities in locations at which the NXX codes were assigned and that Focal, in its Response to BA-PA Request No. 28, refused to disclose whether it owns, leases, or maintains facilities in the rate centers for which it assigns NXX codes.

⁵¹ Exhibit D to Mr. D'Amico's direct testimony.

Commission should adopt its modified proposal for the establishment of Focal's IPs because, unlike Focal's current practice, it is in compliance with the *MFS Phase II Order* and it mitigates some of the burden caused by Focal's unlawful unilateral expansion of BA-PA's local calling areas. (BA-PA Exc., p. 26).

In response to BA-PA's Exceptions concerning the GRIPS proposals, Focal argues that the ALJ was correct in rejecting BA-PA's proposal as plainly contrary to law and that the ALJ acted reasonably in adopting Focal's compromise plan. (R.Exc., p. 16). Focal believes that BA-PA's accusations that its "Virtual Office" product is unlawful⁵² are made in bad faith because BA-PA provides FX service, which Focal alleges is a product very similar to Virtual Office, to its customers. (R.Exc., p. 17).

Focal contends that BA-PA's Virtual NXX argument has no bearing on the issue in this proceeding because BA-PA's responsibility ends at the IP and the actual location of the switch and of the Focal customer have no effect on BA-PA. Focal is also of the opinion that the alleged transport concerns raised by BA-PA are irrelevant in this proceeding because they are advanced as examples under the existing interconnection agreement between BA-PA and Focal and not under the agreement that is being arbitrated.⁵³ (Focal R.Exc., p. 17).

In support of its second reason, stated above, why it objects to the ALJ's recommendation to reject its modified proposal for the establishment of Focal IPs (*i.e.*, BA-PA's modified proposal is clear, fair, competitively neutral, and resolves the one (1) concern that Focal raised in its Petition), BA-PA states that Focal had agreed to the

⁵² See *Id.*, p. 19.

⁵³ Tatak, Tr., pp. 74-75 (indicating that under Focal's existing interconnection agreement with BA-PA, BA-PA has assumed certain financial responsibilities based upon the network architecture required under that agreement).

concept of geographical relevance for IPs⁵⁴ but objected to BA-PA's initial proposal that would require Focal, at BA-PA's request, to establish an IP within 25 miles of the rate center point of the NXX assigned to the Focal customer. (BA-PA Exc., p. 27). Since this was Focal's only objection to BA-PA's initial proposal,⁵⁵ BA-PA notes that its modified proposal removes the 25-mile radius limitation and significantly expands the geographic area in which Focal could establish its IP while retaining the important concept of geographical relevance. (BA-PA Exc., p. 27). Additionally, BA-PA states that its modified proposal would maintain the same current network configuration except that BA-PA would have the right to ask Focal to move its one (1) IP from its switch to the BA-PA tandem switch in Philadelphia.⁵⁶ In addition, BA-PA would be able to request, but not require, that Focal establish an IP that is in a centralized location to the rate center assigned to the NXX Focal has given its customer. (BA-PA Exc., p. 28).

In response to BA-PA's Exceptions, Focal argues that BA-PA misstates the record by stating that Focal's *only* objection to BA-PA's initial proposal was to the requirement that an IP be placed within 25 miles of the rate center point of the NXX assigned to the Focal customer. Rather, Focal states that it objects to all of BA-PA's proposals because they allow BA-PA to dictate when and where IPs are established, in contravention of the law. As such, Focal argues that the ALJ's Recommended Decision correctly refused to allow this to occur by rejecting BA-PA's "modified" proposal. (Focal R.Exc., p. 18).

In support of its third reason, stated above, why it objects to the ALJ's recommendation to reject its modified proposal for the establishment of Focal IPs (*i.e.*,

⁵⁴ Focal St. 2.0 (Tatak Responsive), p. 5; Tr., pp. 52-54.

⁵⁵ Tr., pp. 55-56 (Tatak) (agreeing that Focal's objection to BA-PA's initial proposal was "the fixed geographic distance.")

⁵⁶ BA-PA states that Focal presently only has one (1) IP in Pennsylvania, which is located at 701 Market Street in Philadelphia.

the ALJ's rejection of BA-PA's modified proposal rests on plain legal error), BA-PA alleges that the ALJ erred as a matter of law in concluding that the rules governing physical interconnection (*i.e.*, Point of Interconnection or POIs)⁵⁷ also govern the allocation of financial responsibility for traffic to another carrier. BA-PA argues that the Recommended Decision is technically and legally incorrect because it accepted Focal's argument that financial responsibility for transport of traffic is the same as physical interconnection. (BA-PA Exc., p. 29).

BA-PA argues that, contrary to the Recommended Decision, a technical distinction exists between IPs and POIs. BA-PA emphasizes that the point at which BA-PA's network physically interconnects with another carrier's network is called a Point of Interconnection and is different from the issues of IPs and financial responsibility. BA-PA notes that the record is clear that the rules governing POIs are not at issue in this arbitration, but that Section 4.2.4 of the proposed Interconnection Agreement that provides language for "geographically relevant" IPs, is at issue.

BA-PA submits that under the current network architecture, Focal has both an IP and a POI at its switch in Philadelphia, which means that Focal's and BA-PA's networks physically interconnect at Focal's switch and that BA-PA is financially responsible for transporting Focal's traffic to that switch. BA-PA notes that under its modified proposal, BA-PA would have the right to move Focal's IP from Focal's switch to BA-PA's tandem switch in Philadelphia so that, even though BA-PA and Focal would still be physically interconnected at the POI, all that would change would be the financial responsibility for transporting the traffic from BA-PA's tandem switch to Focal's switch

⁵⁷ The proposed Interconnection Agreement defines POI in Section 1.55 as "the physical location where an originating party's facilities physically interconnect with a terminating party's facilities for the purpose of exchanging traffic."

and that this financial responsibility would shift from BA-PA to Focal. (BA-PA Exc., p. 31).

In response to BA-PA's Exceptions regarding the alleged distinctions between IPs and POI's, Focal is of the opinion that the introduction of two-way trunking, to which the Parties have agreed, will eliminate BA-PA's purported issues.

Focal notes that it is undisputed that Focal has established 10 IPs – where Focal delivers traffic to BA-PA – on BA-PA's network,⁵⁸ and based on BA-PA's current architecture, BA-PA delivers traffic to Focal at only one (1) interconnection point – Focal's switch in Philadelphia.⁵⁹ Focal argues that under either of BA-PA's proposals, Focal would also be required to pay to extend facilities (*i.e.* create physical POIs) to the additional IPs demanded by BA-PA on its network so that *BA-PA* could have more places to hand off traffic to Focal “without spending a dime.” Focal is of the opinion that this results in a one-sided imposition of costs that would stifle the competitive marketplace and, therefore, should not be sanctioned by the Commission. (Focal R.Exc., p. 20).

Focal asserts that its compromise proposal provides more than BA-PA is entitled to under the law because it extends beyond Focal's duties as a CLEC. Focal points out that its compromise proposal would require that a determination as to what is “geographically relevant” be made by mutual agreement between the Parties based on traffic patterns and reasonable engineering practices.

BA-PA also claims that the ALJ erred, as a matter of law, in concluding that the rules governing physical interconnection govern the allocation of financial responsibility for traffic to another carrier. In support of this claim, BA-PA states that

⁵⁸ See *Redirect of David Tatak , Tr.*, p. 83-84.

⁵⁹ See *Tatak Cross, Tr.*, p. 73.

Section 251(c)(2) of the Telecommunications Act of 1996 (TA-96) and the FCC's implementing regulations at 47 C.F.R. 51.305 require BA-PA to allow Focal to interconnect "at any technically feasible point within [BA-PA's] network." However, BA-PA notes that the FCC's regulations at 47 C.F.R. 51.5 then make clear that "technically feasible" is an operational matter having nothing to do with economics or billing. (BA-PA Exc., p. 31).

BA-PA asserts that the ALJ completely overlooked that the FCC has interpreted Section 251(c) as applying to a CLEC's right to deliver traffic terminating on an ILEC's network at any technically feasible point, but not to the delivery of traffic terminating on the CLEC's network.⁶⁰ Therefore, BA-PA believes that the ALJ's reliance on Paragraph 209 of the FCC's Interconnection Order in rejecting BA-PA's modified proposal for the establishment of Focal's IPs is a clear legal error because Section 251 and its implementing regulations do not speak to the question of financial responsibility.⁶¹

⁶⁰ Bell cites the following pertinent paragraph, Paragraph 209, of the FCC's Interconnection Order in support of this argument:

Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points. Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic.

⁶¹ Paragraph 209 is stated as follows: "We conclude that we should identify a minimum list of technically feasible points of interconnection that are critical to facilitating entry by competing local service providers. Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points. Section 251(c)(2) lowers the barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to

Instead, BA-PA asserts that this is a matter of equity left entirely to the Commission's discretion. (BA-PA Exc., p. 32).

In response, Focal argues that the ALJ found BA-PA's modified proposal invalid because "BA-PA would have the exclusive authority to determine both where the parties establish a point or points of interconnection on BA-PA's network and how many interconnection points the parties are required to establish."⁶² As such, Focal agrees with the ALJ's recommendation not to adopt BA-PA's modified proposal because it violates the law's requirement that CLECs, not ILECs, have the right to choose interconnection points, subject only to the limitation of technical feasibility.⁶³ (Focal R.Exc., p. 18).

Focal further argues that Section 251(c)(2) of the Act "gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points."⁶⁴ Furthermore, Focal notes that the FCC has submitted an *amicus curiae* brief on just this point in an interconnection appeal before the United States District Court for the District of Colorado. In *AT&T Communications of the Mountain States, Inc. v. Robert J. Hix, et al.*, Civil Action No. 97-D-152, Focal quotes the following in support of its argument:

Neither the 1996 Act nor binding FCC regulations allow the incumbent LEC or the PUC to impose interconnection at any particular point in the LEC's network. Provided that such

deliver traffic. Moreover, because the competing carriers must usually compensate incumbent ILECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect." [footnote omitted].

⁶² *Recommended Decision*, p. 15.

⁶³ *See Id.*, p. 15.

⁶⁴ *Id.* (quoting 11 FCC Rcd 15,499, p. 209).

interconnection is technically feasible, only the new entrant has the right to designate where interconnection should take place....⁶⁵

In light of the above, Focal submits that the FCC concluded that it was erroneous to rely on economic considerations to require additional points of interconnection and, accordingly, that it was improper for the Colorado Public Utilities Commission to require MCI to interconnect at each local calling area in which it offers service. As such, Focal objects to BA-PA's initial proposal that would require an IP be placed within 25 miles of the rate center point of the NXX assigned to the Focal customer as well as all other BA-PA proposals that would dictate when and where Focal's IPs are established. (Focal R.Exc., p. 19).

2. BA-PA Objects to the ALJ's Recommendation to Adopt the Language in Mr. Tatak's Direct Testimony For Establishment of Focal IPs

BA-PA strongly objects to the ALJ's recommendation that the Commission adopt the language in Mr. Tatak's direct testimony concerning the location of Focal IPs and other unrelated interconnection issues. (BA-PA Exc., p. 33). BA-PA alleges that the language is ambiguous and was never intended as contract language. BA-PA states that Mr. Tatak's language also covers interconnection issues that were not raised in the arbitration (*e.g.*, the location of BA-PA's IPs), and issues that have already been resolved by the Parties (*e.g.*, two-way trunking). Furthermore, BA-PA alleges that Mr. Tatak's language, in many instances, directly conflicts with language that was negotiated by the Parties and has already been incorporated in the Interconnection Agreement. As such, BA-PA alleges that the language in Mr. Tatak's direct testimony "will cause enormous

⁶⁵ *AT&T Communications of The Mountain States, Inc. v. Robert J. Hix, et al.*, Civil Action No. 97-D-152, Memorandum of the Federal Communications Commission as Amicus Curiae, pp. 14-15, submitted March 3, 1998 (relevant excerpt attached to Focal's Reply Brief as Exhibit A).

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held October 12, 2001

Commissioners Present:

Glen R. Thomas, Chairman
Robert K. Bloom, Vice-Chairman
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

Petition of Sprint Communication
Company, L.P. for an Arbitration
Award of Interconnection Rates, Terms
and Conditions Pursuant to 47 U.S.C.
§252(b) and Related Arrangements With
Verizon Pennsylvania, Inc.

A-310183F0002

OPINION AND ORDER

BY THE COMMISSION:

6. **Issue No. 14 – Geographic Relevant Interconnection Points (GRIP)**

a. **Positions of the Parties**

This issue involves the terms and conditions governing Sprint's points of interconnection to Verizon's network. In Sprint's Petition, it complained that Verizon's GRIP proposal is too burdensome on Sprint.²⁹ Sprint stated:

Verizon's proposed GRIP interconnection requirement would force Sprint to bear a disproportionate share of the costs of carrying traffic between them. Sprint would be subsidizing Verizon, because Sprint would be financially responsible for delivering traffic originated on its network to Interconnection Points at Verizon's end office switches, located within Verizon's network, while Verizon would have not reciprocal obligations for the traffic it delivers to Sprint.

(Sprint Petition, p. 57).

In response, Verizon offered its compromise proposal – Virtual Grip (VGRIP) in its Final Best Offer,³⁰ which is the same proposal contained in its Initial Offer. Under VGRIP, Verizon asks that Sprint establish a collocated Interconnection Point (IP) at a Verizon tandem switch or, in a LATA where Verizon operates only one tandem, at host end offices or other designated locations. Verizon believes that this will help mitigate the concern raised by Sprint under the GRIP proposal (currently offered in Pennsylvania) that requires that Sprint IPs be located within the rate center in which the CLEC assigns telephone numbers and which presumably represents rate centers within which Sprint has facilities and/or customers. The VGRIP compromise scenario, as explained by Verizon, would establish fewer IPs at centralized locations that would cover a larger geographic area than any one rate center. This would enable Sprint

²⁹ Sprint Arbitration Petition, p. 57.

³⁰ See VZ FOR, pp. 48-61.

to set up far fewer IPs accepting traffic from Verizon at more centralized traffic aggregation points in Verizon's network than under the existing GRIPs scenario that requires establishing IPs in each rate center for which Sprint has assigned an NXX. (VZ FO, pp. 48-49)

Sprint has rejected Verizon's VGRIP proposal because: (1) given that Sprint has existing network points close to, but not at, many of Verizon's tandems, Sprint would still incur transportation costs associated with taking traffic to and from the tandem building or Verizon tandem wire center; and (2) it would permit Verizon to dictate where Sprint can and should deploy facilities and provide service. Sprint also believes that any GRIP proposal is unlawful. (R.D., p. 20). Therefore, Sprint has proposed a final offer that would include a provision in the Interconnection Agreement recently included in a settlement entered into between Sprint and Bell South.³¹ The Sprint/Bell South settlement involves nine states in the Bell South territory. Under Sprint's proposal, it agrees to grandfather the existing Verizon/Sprint interconnection locations, but requires that any new Sprint facilities must be established within five miles of Verizon's switching center, either tandem or end office switch. In addition, Sprint is required to establish additional interconnection locations if traffic is greater than 8.9 million minutes per month (the equivalent of Verizon's DS3-type traffic) and greater than twenty miles and not in a local calling area. (R.D., p. 20).

b. ALJ Recommendation

The ALJ recommends that Sprint's proposal be adopted because it is "manifestly reasonable." The ALJ submits that Sprint's proposal would address situations where a CLEC may wish to locate its point of interconnection far from Verizon's switch because in that case, the Interconnection Agreement term would not be

³¹ See Sprint FO, pp. 41-46.

available since Sprint has agreed to grandfather its existing interconnection locations. As such, all new carriers would be required to locate their points of presence (POPs) within five miles of Verizon's switching center.³² Second, the ALJ opines that Sprint's proposal balances two valid concerns – (1) Section 252(c)(2) of the TA-96 unambiguously requires that an ILEC must allow a CLEC to interconnect at any technically feasible point;³³ and (2) the FCC has stated in the *Local Competition Order* at Para. 199, that a CLEC that chooses a technically feasible but expensive interconnection location must bear the costs of that interconnection, pursuant to Section 252(d)(1). Since Sprint's proposal reasonably balances these two concerns, the ALJ recommends adoption of Sprint's compromise proposal. (R.D., pp. 20-21).

c. Exceptions and Replies

Verizon excepts to the ALJ's recommendation because it claims that she applied the incorrect standard in denying Verizon's VGRIP proposal. Verizon asserts that rather than the ALJ basing her decision on standards that are set forth in existing federal and state law, the ALJ based her decision on the standard of "which party has tried to compromise more." Verizon claims that the only analysis of competing proposals made by the ALJ is that "Sprint's final offer is a marked compromise from its initial offer."³⁴ As such, Verizon asserts that the Commission should now consider which party's position is correct from a legal or factual standpoint. (VZ Exc., pp. 36-37).

³² Sprint FO, p. 43.

³³ 47 U.S.C. §252(c)(2), 47 C.F.R. §51.305.

³⁴ R.D., p. 20.

Also, Verizon argues that the ALJ failed to address any of the points it made with regard to recent decisions in North and South Carolina.³⁵ Verizon submits that it did not alter its original position because it believes its position is already eminently reasonable. Verizon emphasizes that it has never argued that it can dictate where CLECs establish their points of interconnections (POIs), as long as the CLECs pay for the added costs that would result if they choose an out-of-the-way or otherwise inefficient location for a POI. Verizon claims that this reasoning is consistent with the recent rulings in North and South Carolina, which this Commission should consider in reaching its final determination on this issue. (VZ Exc., p. 36).

Sprint disagrees that Verizon's arguments in support of its VGRIP proposal are "eminently reasonable." Sprint contends that Verizon raises no new arguments in its Exceptions and that the ALJ's ruling balances the interests of both Verizon and Sprint. It is Sprint's view that the ALJ appropriately based her decision upon the merits of the Sprint/BellSouth Interconnection Agreement that just became public on July 9, 2001. Sprint asserts that the North and South Carolina decisions cited by Verizon, which were issued prior to the Sprint/BellSouth Interconnection Agreement, did not take into consideration the merits of the Sprint/BellSouth Interconnection Agreement. Furthermore, Sprint alleges that the legal arguments and specific facts advanced by AT&T in the North and South Carolina decisions have no relevance to the issues presented in the instant proceeding. (Sprint R.Exc., p. 20).

³⁵ See *Petition of AT&T Communications of the Southern States, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252*, South Carolina Public Service Commission, Docket No. 2000-527-C, Order on Arbitration, Order No. 2001-079, at 19, 22-28 (January 30, 2001); Also See *In the Matter of Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolinas, Inc., and Bell South Telecommunications, Inc., pursuant to the Telecommunications Act of 1996*, Docket Nos. P-140, Sub 7 at 7-15 (N.C.P.S. March 9, 2001).

d. Disposition

On consideration of the positions of the parties, we shall adopt the ALJ's recommendation on this matter. We disagree with Verizon's characterization that the ALJ's decision on this issue was based on the application of an improper standard of review. The ALJ made it clear at the beginning of her Recommended Decision that "[b]ecause of the extremely short time period allowed for the preparation of this Recommended Decision, my discussion is necessarily abbreviated," and "[t]his should not be taken as evidence that any position or argument presented by either of the parties was not fully considered." (R.D., p. 2).

It is clear from the ALJ's Recommended Decision on this issue that, based on the record in this proceeding,³⁶ she took into consideration the various aspects of Verizon's trepidation about the existing interconnection points and the ability of other CLECs to opt into an agreement that is not favorable to Verizon when she appropriately concluded that Sprint's proposal reasonably balanced Verizon's concerns and the legal concerns in complying with federal requirements.³⁷

Sprint's proposal will substantially reduce the transport costs that Verizon incurs under the present interconnection point arrangement. In addition, it will ensure that Verizon does not dictate the specific area where Sprint interconnects its facilities with Verizon because Sprint has the option of locating its POP anywhere within five miles from Verizon's tandem. Furthermore, the grandfathering of Sprint's existing locations would ensure that other CLECs that decide, under the "most favored nation"

³⁶ See Tr., pp. 149 – 171.

³⁷ See 47 U.S.C. §252(c)(2) and 47 C.F.R. §51.305 that allows a CLEC to interconnect at any technically feasible point and the FCC's conclusion in Paragraph 199 of its *Local Competition Order* that CLECs that choose a technically feasible but expensive interconnection point must bear the costs of that interconnection, pursuant to §252(d)(1).

(MFN) clause of TA-96, to opt into the Sprint/Verizon interconnection agreement arrangement would be bound to the five-mile limitation. (See 47 U.S.C. §252(i)). This, in our view, would assist in alleviating the unreasonable transport costs that Verizon must pay today under other interconnection agreements. Furthermore, transport costs to Sprint's existing interconnection points should pose no problem to Verizon in light of the fact that the record shows that most of Sprint's existing interconnection points are located close to Verizon's tandems.³⁸

Therefore, we shall deny Verizon's Exceptions and adopt the ALJ's recommendation on this issue.

7. Additional Issues Not Addressed By The ALJ: Issues Nos. 14(A) -- Transport Distance Sensitive Charges; 14(C) – Termination Blocking Rights; and 14(D) – Bill Dispute Resolution)

a. Position of the Parties

Three sub-issues – Unresolved Issue Nos. 14(A), 14(C) and 14(D) -- were originally raised by Verizon in its Answer to Sprint's Petition and concern, respectively, Transport Distance Sensitive Charges, Termination Blocking Rights and Bill Dispute Resolution. Verizon incorporates by reference to its Best Final Offer³⁹ all of its arguments on these three issues. In light of the fact that the ALJ did not address these issues, Verizon urges the Commission to order the parties to adopt Verizon's proposed language for the reasons stated in its Best Final Offer. (VZ Exc., p. 37).

³⁸ See Tr., pp. 157, 167. On p. 157, Sprint Witness Nelson states: "Before I say that, in many cases I am very close to their [Verizon's] tandems, within a tenth of a mile or third of a mile, within two miles of a building." On p. 167, Verizon Witness D'Amico states: "I would say specifically with Sprint they have location close to our tandems. There are a few that are not close. But yes, we are concerned about MFN [sic] issue where all CLECs would be entitled to --".

³⁹ See Verizon FO, pp. 61-67.

ORDER NO. 97-003

ENTERED JAN 06 1997

This is an electronic copy. Attachments may not be included.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 3

ARB 6

In the Matter of the Petition of AT&T
Communications of the Pacific Northwest,
Inc., for Arbitration of Interconnection Rates,
Terms, and Conditions Pursuant to 47 U.S.C.
Sec. 252(b) of the Telecommunications Act of
1996. (ARB 3)

COMMISSION DECISION

In the Matter of the Petition of MCI Metro
Access Transmission Services, Inc., for
Arbitration of Interconnection Rates, Terms,
and Conditions Pursuant to 47 U.S.C. Sec. 252
(b) of the Telecommunications Act of 1996.
(ARB 6)

Procedural History

On July 29, 1996, AT&T Communications of the Pacific Northwest, Inc. (AT&T), filed a petition with the Public Utility Commission of Oregon (Commission) to arbitrate a contract for network interconnection with U S WEST Communications, Inc. (USWC) pursuant to 47 U.S.C. §§251 and 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (Act). On August 19, 1996, MCI Metro Access Transmission Services, Inc., (MCI) also filed a petition to arbitrate a contract for interconnection with USWC under the Act. Pursuant to an agreement by the parties, the petitions of AT&T and MCI were consolidated.

On October 14 and 15, 1996, Samuel Petrillo, an Administrative Law Judge for the Commission, held an arbitration hearing in this matter in Salem, Oregon. Briefs were filed on November 4, 1996.

On December 6, 1996, the Arbitrator issued his decision. On December 16, 1996, USWC filed exceptions and AT&T/MCI filed joint comments regarding the Arbitrator's decision. Sprint

Communications Company L.P. filed comments supporting the Arbitrator's decision.

Standards for Arbitration

This arbitration was conducted under 47 U.S.C. §252 of the Act. Subsection (c) provides:

Standards for Arbitration--In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall--

- (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission [Federal Communication Commission] pursuant to section 251;
- (2) establish any rates for interconnection, services, or network elements according to subsection (d); and
- (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Commission Review

Section 252 (e)(1) of the Act requires that any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. Section 252 (e)(2)(B) provides that the State commission may reject an agreement (or any portion thereof) adopted by arbitration only "if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section." Section 252 (e)(3) further provides:

Notwithstanding paragraph (2), but subject to section 252, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

On August 8, 1996, the Federal Communications Commission (FCC) issued rules pursuant to §§ 251 and 252 of the Act. (47 C.F.R. § 51.100 *et seq.* FCC Order 96-325). On October 15, 1996, the U. S. Court of Appeals, Eighth Circuit, stayed the operation of the FCC rules relating to pricing and the "pick and choose" provisions. *Iowa Utilities Board v. Federal Communications Commission et al.*, Case Nos. 96-3321 *et seq.* (8th Cir., October 15, 1996) (*Order Granting Stay Pending Judicial Review*). On November 12, 1996, the United States Supreme Court issued a decision declining to set aside the stay.

Commission Conclusion

The Commission has reviewed the Arbitrator's decision and the exceptions and comments under the standards set out above. Except as indicated below, we conclude that the Arbitrator's decision comports with the requirements of the Act, applicable FCC rules, and relevant state law and regulations. We have also provided clarification or additional explanation of the Arbitrator's decision where appropriate.

USWC Exceptions

Reliance on FCC pricing Rules. USWC claims that the Arbitrator erred by placing undue reliance upon FCC pricing rules and proxy rates that have been stayed by the federal court. The Commission finds no basis for this conclusion. The Arbitrator's decision is based on an independent analysis of the evidence presented. Furthermore, it is not error for the Arbitrator to concur with the reasoning set forth in the FCC Order.

Choice of Contract. USWC claims that the Arbitrator erred by adopting the interconnection agreement submitted by AT&T. USWC argues that the AT&T contract contains hundreds of technical provisions for which there is an inadequate evidentiary basis and which (a) impose extraordinary burdens and costs; (b) interfere with USWC management; (c) diverge from contractual provisions agreed to by the parties, and (d) exceed the authority of the Arbitrator. The Commission is not persuaded by USWC's claims. In particular, we note the following:

(a) USWC agreed to a procedure that called for each of the parties to submit a proposed interconnection agreement for possible approval by the Arbitrator. All parties, including USWC, filed contracts that were received into evidence as exhibits in this proceeding. USWC's claim that the AT&T contract cannot now be considered contravenes both the rules of evidence and the procedures USWC agreed to follow in this case.

(b) USWC's claim that it is improper for the Arbitrator to consider certain issues (*e.g.*, service quality standards and dispute resolution procedures) ignores the fact that USWC presented these issues to the Arbitrator for decision. The Arbitrator's decision tracks the Joint Issue Statement that was prepared and submitted by the parties. USWC cannot unilaterally take those issues off the table at this stage in the proceeding.

(c) There is no merit to USWC's claim that the Arbitrator abused his authority by adopting "hundreds of contractual provisions" in the AT&T contract without discussion. As explained above, the AT&T contract is part of the evidentiary record in this case. Second, all parties were on notice that the Arbitrator intended to adopt one of the contracts submitted by the parties. Third, the Arbitrator's obligation was to decide all of the disputed issues identified by the parties. USWC was obligated to identify all provisions in the AT&T and MCI contracts where USWC did not agree.

(d) USWC's claim that the AT&T contract diverges from agreements reached during negotiation has not been substantiated.

Issue 1a--Single Point of Interconnection. The Arbitrator found that AT&T and MCI should be able to designate a single interconnection point in each LATA. This finding is consistent with §251(c) of the Act, which requires that incumbent local exchange carriers (ILECs) must provide interconnection or access to unbundled elements at any technically feasible point within the incumbent's network.

USWC argues that the Commission should revise the Arbitrator's decision to require that AT&T and MCI must establish a point of interconnection (POI) within each local calling area in which they offer facilities-based local exchange service. USWC argues that it may have to route local calls a long distance over toll trunks if AT&T and MCI are permitted to establish only one POI within each LATA. USWC further contends that it may not be adequately compensated under such an arrangement and that its toll facilities may be exhausted prematurely.

The Commission is not persuaded that this issue is ripe for decision. There is no indication that AT&T and MCI intend to establish network interconnections in a manner that will result in the inefficient use of network facilities. We presume that AT&T and MCI will seek interconnection arrangements that enhance, rather than compromise, network capabilities.

The Commission is not prepared to adopt USWC's proposal to require all carriers to interconnect within each local calling area, because we are concerned that such an approach may impair the ability of competing carriers to implement more advanced network architectures. On the other hand, a reasonable argument can be made that additional compensation should be required of a carrier that seeks to interconnect in a manner that is extremely inefficient or exhausts existing network facilities. If USWC believes a particular request for interconnection will impair network facilities or cause it to incur extraordinary costs, it may seek Commission resolution of the matter under the dispute resolution procedures in the contract.

Issue 9--Types of Collocated Equipment. The Arbitrator concluded that AT&T and MCI should be permitted to collocate remote switching modules (RSMs), provided they are not used to avoid switched access charges. USWC agrees that RSMs should not be used to avoid switched access charges, but claims AT&T and MCI will violate this requirement.

Where RSMs are collocated, it is possible for the collocating carrier to avoid payment of switched access charges by misreporting toll/access minutes of use as local minutes (*i.e.*, misreporting PLU factors). However, interexchange carriers such as AT&T and MCI are currently required to distinguish the jurisdiction of toll/access minutes of use under the PIU reporting method. We are unaware that AT&T or MCI are abusing the current method. The Commission has not received any formal complaints on this subject from the LECs, nor are we aware of any PIU audits conducted by the LECs which would show this to be the case. We have no reason to believe that AT&T or MCI would risk possible sanctions by misreporting minutes of use where RSMs are collocated. We therefore agree with the Arbitrator's decision on this issue.

Issue 16--Subloop Unbundling. USWC argues that subloop unbundling should take place through the bona fide request (BFR) process. We agree with the Arbitrator that the BFR process will cause unnecessary delays in obtaining subloop elements. The procedure approved by the Arbitrator is adopted.

Issue 22--Dark Fiber. Notwithstanding USWC's arguments to the contrary, we agree with the Arbitrator that dark fiber is a network element and must be offered to AT&T and MCI on an unbundled basis. *See also*, Order No. 96-188 at 40-41.

Issue 25--Platform. USWC alleges that the Arbitrator's decision violates the Act because it allows AT&T and MCI to purchase all of the unbundled elements necessary to create a finished service, even if it produces a lower price than the wholesale rate available to AT&T and MCI under the resale provisions of the Act. The Commission agrees with Arbitrator. The Act does not place any restrictions on the purchase of unbundled elements. *See also*, Order No. 96-324, Appendix A at 7-8; Order No. 96-325, Appendix A at 12-13.

Issues 31, 32, 35, and 37--Wholesale Discount Rate. USWC claims that the Arbitrator erred by finding that the wholesale rate should be based on reasonably "avoidable" retail costs rather than the retail costs "actually avoided" by USWC. It further claims that the Arbitrator unreasonably relied on

the FCC's pricing rules in concluding that the MCI Avoided Cost Study should be adopted. We agree with the Arbitrator's decision to calculate the wholesale rate based on reasonable avoidable retail costs. It was not error for the Arbitrator to agree with the FCC's reasoning with regard to this issue. We also agree that the wholesale rate produced by the MCI Avoided Cost Study is consistent with the requirements of the Act.

Issue 33--Volume/Term Discounts. The Arbitrator found that a discount price may reflect savings due to operational efficiencies and/or avoided retail costs. He concluded that it is not possible to determine what combination of costs are avoided by an ILEC without analyzing the circumstances surrounding each discount offering. Under these circumstances, the Arbitrator found that the wholesale discount applicable to services already subject to volume or term discounts should equal the greater of 22 percent, or one half of the authorized wholesale rate plus 11 percent. USWC alleges that there is no basis in the record to support this conclusion, and recommends that the Commission apply a zero discount to these services.

We agree with the Arbitrator's findings. Absent a detailed analysis of each discount offering, there is no way to ascertain precisely the retail costs that are avoided by the ILEC. The discount approved by the Arbitrator is a reasonable approach under the circumstances.

Issue 34--Residential Services for Resale. USWC claims that the Arbitrator erred by concluding that residential services should be subject to the 22 percent wholesale discount authorized in this proceeding. USWC argues that the discount for residential service should be zero. The Commission agrees with the Arbitrator's decision on this issue.

Issue 39--Construction and Other Additional Charges. USWC contends that the Arbitrator's decision does not acknowledge USWC's right to recover "all the costs of implementing interconnection." The Arbitrator addresses the recovery of ILEC costs incurred to provide interconnection and access to unbundled elements at several places in his decision. *See e.g.*, Appendix A, Issues 39, 46, 55, 62, 79, and 91. Except for the revision to page 25 of Appendix A noted below, we conclude that the Arbitrator's decision is consistent with the Act and Commission policy regarding this issue.

The discussion of Issue 39 on page 25 of Appendix A of the Arbitrator's decision notes that USWC is entitled to recover its construction costs where it must build new facilities that are not part of USWC's planned construction schedule. The Commission concludes that this reference could generate disputes regarding the sufficiency of USWC's planning and construction schedules. Accordingly, we find that the Arbitrator's decision on this issue should be revised to read as follows:

As a general matter, the costs of providing a network element or service are included in the TELRIC-based price of that element or service. However, where an ILEC incurs additional costs to build or modify facilities for the benefit of a requesting carrier, and those costs are not included in existing rates, the ILEC is entitled to recover such additional costs. The ILEC has the burden of showing that any claimed additional costs are not already recovered through its existing rates.

If an ILEC demonstrates that it is entitled to recover additional costs to provide facilities on behalf of a requesting carrier, it may propose to recover those costs through nonrecurring charges. However, because large up-front charges tend to discourage competition, the Commission will attempt to spread cost recovery over a reasonable

period of time and allocate such costs among all requesting carriers. This approach is consistent with that approved by the FCC in 47 C.F.R. §51.507(e). *See also*, Order No. 96-283 at 13-14, Order No. 96-325, Appendix A at 11; FCC Order at ¶¶682, 743-752.

Issues 41, 44--Electronic Interfaces. USWC disagrees with the electronic interfaces approved by the Arbitrator. The Commission agrees with the Arbitrator's decision on these issues.

Issue 50--Interim Number Portability (INP). The Arbitrator concluded that INP costs should be recovered on a bill and keep basis. Bill and keep is one of four approaches recommended by the FCC for recovery of INP costs. FCC Order 96-285 at ¶140. USWC disagrees with the cost recovery rules adopted by the FCC and advocates that all costs of INP be borne by new entrants. The Commission agrees with the Arbitrator's decision on this issue.

Issue 54--Modification of Facilities. Among other things, USWC claims that the Arbitrator erred by adopting AT&T contract language that has no basis in the record. USWC also alleges that the Arbitrator did not address cost responsibility for increased capacity.

USWC misinterprets the Arbitrator's decision. The Arbitrator found that the AT&T contract should be amended to comply with ¶¶1161-1164 of the FCC Order, which details the responsibilities of utilities and telecommunications carriers regarding the modification of facilities. Cost responsibility is discussed at various places in the Arbitrator's decision. *See* Issue 39, *supra*.

Issues 73-74--Quality Standards. USWC claims that the Arbitrator erred by adopting procedures for collecting data and evaluating service quality improvements. USWC asserts that these procedures will require it to provide AT&T and MCI with higher quality service than USWC provides to itself. USWC maintains that all costs associated with the conditions imposed by the Arbitrator should be borne by AT&T and MCI.

USWC's argument is without merit. The procedures adopted by the Arbitrator provide a reasonable starting point for evaluating the service quality provided to competing telecommunications carriers. Otherwise, the Commission would be forced to rely only on USWC's promise to supply competing carriers with the level of service quality that USWC provides to itself. As the Arbitrator emphasizes, however, there is no way to objectively determine what USWC's service standards are unless procedures are in place to monitor and evaluate existing service quality. For that reason, the Arbitrator's decision requires USWC to submit detailed specifications identifying its internal quality standards. Furthermore, our experience with USWC's numerous service problems causes us to question the level of service quality currently received by USWC's Oregon customers. If USWC's current customers are not receiving satisfactory service, the company certainly has no incentive to provide higher quality service to its competitors.

Issues 75-76--Dispute Resolution/ "Loser Pays" Provisions. USWC claims that the Arbitrator has no authority to resolve these issues. As noted above, however, the parties submitted these issues to the Arbitrator for decision. All three parties included dispute resolution procedures in their contracts. USWC recommended adoption of its dispute resolution process and offered testimony at hearing in opposition to the AT&T/MCI position.

There is nothing in the Act that precludes the Arbitrator from considering these issues. USWC cannot submit issues for arbitration, then withdraw them from consideration because it does not like the result.

Issue 77--Pricing of Unbundled Elements. USWC claims that the prices adopted by the Arbitrator for unbundled elements are confiscatory and not based on substantial evidence. It recommends that the Commission adopt the prices produced by the USWC incremental cost study.

The Commission finds that the Arbitrator correctly concluded that (a) the prices for unbundled elements should be those approved by the Commission in docket UM 351, Order No. 96-283, and; (b) the UM 351 prices should remain in effect until new unbundled element prices are developed based on the revised cost methodology recently approved in docket UM 773, Order No. 96-284.

The Arbitrator's decision recognizes that the unbundled element prices adopted in docket UM 351 are the product of a comprehensive examination of incremental cost pricing and unbundling conducted by the Commission. In contrast, the input assumptions underlying the USWC cost study presented for purposes of this arbitration proceeding have not been tested for reasonableness. As AT&T and MCI point out, the manner in which the USWC cost study has been developed makes it extremely difficult to evaluate USWC's methodology or to determine that it is, in fact, a properly constructed incremental cost analysis. Our review also raises a number of questions regarding critical assumptions incorporated in the USWC cost study. We also question the inordinately high loop cost results produced by the USWC methodology.

Given the degree of uncertainty and potential adverse consequences, we agree with the Arbitrator that the prices produced by the USWC cost study should not be implemented for purposes of this interconnection agreement. We further agree that the only reasonable prices available are those developed by the Commission in docket UM 351.

In the case of network elements for which prices have not been developed, the Arbitrator found that the prices proposed by AT&T should be implemented until the Commission develops new prices based on the revised cost methodology approved in Order No. 96-284. USWC argues that AT&T's proposed prices are too low and will put USWC at a competitive disadvantage. It proposes that the interim AT&T prices be true-up once the Commission implements new unbundled element rates using the revised cost methodology approved in Order No. 96-284.

The Commission concludes the Arbitrator's decision should be amended to require that AT&T prices shall be implemented subject to true-up in the case of network elements that were not priced in UM 351. The true-up shall take place once the Commission approves unbundled element prices using the revised cost method approved in Order No. 96-284, or such later time as the Commission determines. This approach will ensure that no party is disadvantaged while new network element prices are developed.

In addition, there may be unbundled elements for which there are neither UM 351 prices nor prices proposed by AT&T. In that event, USWC shall propose prices which shall apply on an interim basis subject to the same true-up requirements that apply to the interim AT&T prices.

Issues 85-93--Reciprocal Compensation. USWC claims that the Arbitrator erred by concluding that AT&T and MCI switches are tandem switches covering a geographical area comparable to USWC tandem switches. USWC maintains that this decision will result in a "non-reciprocal, unsymmetrical compensation scheme" that is unrelated to cost.

USWC is incorrect. The Arbitrator's decision adopts bill and keep arrangements for the transport and

termination of local and EAS traffic consistent with the Commission's findings in Order No. 96-021 (dockets CP 1, CP 14, and CP 15). Contrary to USWC's claim, the Arbitrator's decision does not state that the AT&T/MCI switches are tandem switches comparable to those used by USWC. Indeed, there is no need to make this finding if bill and keep arrangements are in place. Under bill and keep, each carrier pays its own cost of transporting and terminating local and EAS traffic. Bill and keep does not take into account differences in network architecture and thus does not distinguish between local and tandem switch functionality for purposes of provisioning local and EAS traffic.

Joint Comments of AT&T and MCI

Issue 26--Customized Routing. AT&T and MCI state that page 16, Appendix A of the Arbitrator's decision contains a typographical error. The Arbitrator has sent a letter to the parties and the Commission confirming the error. The Arbitrator indicates that the decision should read: "The parties agree in principle. AT&T contract language is adopted." The Commission adopts this modification.

Issue 27--Services To Be Made Available. AT&T and MCI state that page 17, Appendix A of the Arbitrator's decision contains an unintended error. The Arbitrator has sent a letter to the parties and the Commission confirming that the words "enhanced services and" should not have been included in the decision and should be deleted. The Commission adopts this modification.

Issue 33--Volume/Term Discounts. AT&T and MCI challenge the Arbitrator's decision regarding the wholesale discount for services already subject to term or volume discounts. This issue is discussed above.

Issue 39--Construction and Additional Charges. AT&T and MCI request modification of the Arbitrator's decision relating to the recovery of construction costs. This issue is discussed above.

Issue 52--Reciprocal Access to Poles, Ducts, Conduits, Rights-of-Way. The Arbitrator concluded that the parties should provide reciprocal access to poles, ducts, conduits, and rights-of-way. This decision is contrary to the position taken by the FCC. FCC Order at ¶1231. AT&T/MCI maintain that the Arbitrator's decision violates §252(e)(2)(B) of the Act, which requires State commissions to comply with regulations prescribed by the FCC.

Although the Arbitrator's decision differs from the position taken by the FCC, the Commission is persuaded that §251(b)(4) of the Act mandates reciprocal access for all LECs, not merely incumbent LECs. Although §224(f)(2) contains a limited exception to access requirements, it applies only to electric utilities. *See also*, H.R. Rep. No. 458, 104th Cong., 2d Sess., reprinted in 142 Cong. Rec. 1108 (daily ed. January 31, 1996) (Joint Explanatory Statement of the Committee of Conference at 8).

Issue 73--Quality Standards. The Arbitrator did not adopt the quality standards recommended by AT&T, but acknowledged that development of standards is necessary. As discussed above, the Arbitrator's decision requires USWC "to prepare detailed specifications showing all of its existing service quality and performance standards," in order to provide a benchmark for facilitating resolution of service quality issues.

AT&T argues that its proposed standards should be adopted. However, to the extent the Commission agrees with the Arbitrator on this issue, AT&T/MCI recommend that the Arbitrator's decision be amended to include the following statement:

A paragraph will be inserted in Attachment 11 requiring USWC to provide current written objective measures of quality for 1) billing; 2) operator assistance; 3) preorder, order, provisioning, and maintenance/repair; 4) network quality and; 5) provisioning of interconnection and unbundled elements, within 30 days of the effective date of the agreement.

The amendment proposed by AT&T/MCI is consistent with the steps taken by the Arbitrator to ensure that USWC adequately specifies its service quality standards. Detailed measures of service quality are necessary to ensure that USWC complies the requirement in the Act which mandates that ILECs provide competing carriers with the same level of service quality that the ILEC provides to itself. Attachment 11 of the contract shall be amended as proposed by AT&T/MCI.

The Arbitrator's decision also notes that the Commission has opened docket AR 316 to consider service quality rules applicable to telecommunications utilities. AT&T/MCI emphasize that issues relating to the service quality provided to telecommunications carriers has been deferred. They urge the Commission to open a docket as soon as possible to consider such issues.

On December 20, 1996, the Commission issued Order No. 96-332 in docket AR 316, adopting service quality standards for basic services supplied by telecommunications utilities. Phase II of that docket will address performance standards for services by ILECs to CLECs, and may also encompass service quality for all competitive providers of telecommunications services. The Phase II investigation will commence in early 1997.

Issue 77--Pricing of Unbundled Elements. The Arbitrator's decision adopts the prices established in Order No. 96-283 for unbundled network elements. AT&T/MCI contend that the network access channel (NAC) price adopted in Order No. 96-283 is erroneous, not based on substantial evidence, and inconsistent with the pricing standards in §252(d)(1) of the Act. On December 31, 1996, AT&T and MCI filed a joint application for reconsideration of Order No. 96-283. On the same day, USWC also filed for reconsideration of Order No. 96-283.

AT&T and MCI recommend that the Arbitrator's decision be amended to clarify that, if the NAC price is revised by the Commission on reconsideration or on appeal, the revised price shall be incorporated in the interconnection contract. The Commission finds that the Arbitrator's decision should be amended to provide that any price or contract provision modified as a result of Commission reconsideration or appeal shall be incorporated in the interconnection contract.

Issues 90 and 93--Transport and Termination Charges. The Arbitrator's decision adopts interim bill and keep arrangements for the transport and termination of local and EAS traffic consistent the Commission's findings in Order No. 96-021. AT&T/MCI agree with the Arbitrator regarding these issues, but maintain that the Arbitrator's decision contains language that may cause confusion and should be deleted. Specifically, AT&T/MCI ask the Commission to delete that portion of the Arbitrator's decision which states that transport, tandem switching and end office switching is unbundled and priced pursuant to Commission Order No. 96-283. *See* Appendix A, Issue 90, page 59, second paragraph; Appendix A, Issue 93, page 60, second paragraph.

The Arbitrator has notified the Commission and the parties that the language identified by AT&T and MCI was inadvertently included in the discussion of these issues and should be deleted. The Commission adopts these modifications.

ORDER

IT IS ORDERED that the Arbitrator's decision in this case, attached to this order, is adopted as amended herein.

Made, entered, and effective _____.

Roger Hamilton

Chairman

Ron Eachus

Commissioner

Joan H. Smith

Commissioner

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2000-516-C - ORDER NO. 2001-045

JANUARY 16, 2001

IN RE: Petition of Adelpia Business Solutions of)
South Carolina, Inc. for Arbitration of an)
Interconnection Agreement with BellSouth) ORDER ON
Telecommunications, Inc. Pursuant to Section) ARBITRATION
252(b) of the Communications Act of 1934,)
as Amended by the Telecommunications Act)
of 1996.)

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition for Arbitration of Adelpia Business Solutions of South Carolina, Inc. ("Adelpia") to establish an interconnection agreement with BellSouth Telecommunications, Inc. ("BellSouth") pursuant to Section 252(b) of the Telecommunications Act of 1996 ("1996 Act"). On October 11, 2000¹, Adelpia filed its Petition after Adelpia and BellSouth were unable to reach agreement on all issues despite good faith negotiations between the parties. Adelpia's Petition for Arbitration presented five unresolved issues (Issues No. 1-5). BellSouth filed a Response on November 3, 2000, and by its Response presented one additional issue (Issue No. 6).

¹ By letter dated May 4, 2000, Adelpia made a bona fide request for interconnection, services, or network elements pursuant to Section 252(a) of the 1996 Act. Pursuant to Section 252(b)(1) of the 1996 Act,

Following the institution of this proceeding, the Commission established a schedule and procedure for arbitration.² Pursuant to the scheduling order, the parties filed testimony setting forth the outstanding issues to be arbitrated by the Commission. The parties also submitted lists of suggested examination questions.

A hearing on the issues raised in Adelphia's Petition and BellSouth's Response was scheduled for December 21, 2000. On or about December 20, 2000, the parties advised the Commission that, through negotiations that had continued after the Petition had been filed, five of the six issues initially presented for arbitration had been resolved. With the concurrence of the Commission, the parties agreed to stipulate the pre-filed testimony into the record, waive a hearing, and submit briefs addressing the one remaining issue in this proceeding. Thus, this Commission will only address in this Order the remaining unresolved issue as presented by the parties.³

Adelphia presented the pre-filed direct and rebuttal testimony of Mr. Eugene J. Brown, Director of LEC Relations for Adelphia Business Solutions, LLC, a parent corporation of Adelphia Business Solutions of South Carolina, Inc., and the pre-filed direct and rebuttal testimony of Mr. Timothy J. Gates, Senior Vice President of QSI Consulting, Inc., a consulting firm specializing in the areas of telecommunications policy, econometric analysis and computer aided modeling. BellSouth presented the pre-filed

Adelphia could bring a petition for arbitration of outstanding issues during the period from the 135th day to the 160th day after May 4, 2000.

² See Commission Order No. 2000-884 (October 31, 2000).

³ The Commission "shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3)" and "shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section." 47 U.S.C. Section 252(b)(4)(A) and 47 U.S.C. Section 252(b)(4)(C).

direct and surrebuttal testimony of Mr. John A. Ruscilli, Senior Director for State Regulatory for the nine-state BellSouth region. All testimony has been stipulated into the record by consent of both parties. Briefs were filed by both parties on January 5, 2001.

II. STATEMENT OF ISSUE

The issue before the Commission for determination is set forth in Adelphia's Petition as Issue 2 and is stated as follows:

Issue 2: (A) Should BellSouth be permitted to define its obligation to pay reciprocal compensation to Adelphia based solely upon the physical location of Adelphia's customers? (B) Should BellSouth be able to charge originating access to Adelphia on all calls going to a particular NXX⁴ code based upon the location of any one customer?

III. POSITIONS OF THE PARTIES

Adelphia's Position:

Adelphia proposes that reciprocal compensation should apply to all calls that are "local" to the calling party, regardless of the physical location of the ultimate called party and that BellSouth should be prohibited from billing Adelphia access charges for that traffic. Adelphia contends that this position is consistent with historical practice in the industry of rating a call as local or toll by referring to and comparing the NXX's of the calling and called parties. Adelphia also suggests that compensation for this traffic as local more accurately reflects the costs incurred by both parties, arguing that the costs BellSouth incurs to transport a call destined for an Adelphia customer do not vary with the actual location of the called customer. Finally, Adelphia contends that its proposal

⁴ "NXX codes are the fourth through sixth digits of a ten-digit telephone number. These codes are used as rate center identifiers ..." Direct Prefiled Testimony of Timothy J. Gates (hereafter, "Gates Direct") at 17, ll. 1-2.

regarding reciprocal compensation for calls to customers who use these “virtual NXX” arrangements, among other things, will benefit those businesses, including ISPs, who find it desirable to obtain local numbers in several communities, while maintaining a limited number of physical locations, in order to reach and to serve a broader base of customers. Indeed, Adelphia claims that one benefit of this type of service is that it provides wider, more reasonably priced access to the Internet through the use of local telephone numbers, especially in rural and sparsely populated areas of the state.

BellSouth’s Position:

BellSouth asserts that the actual physical end-points of a call should determine whether it is local or toll, not whether the NXX codes are associated with the same local calling area. Under BellSouth’s position, the parties should be obligated to pay reciprocal compensation for calls to numbers with NXX codes associated with the same local calling area, only if the call actually terminates to the other party’s end users physically located in the same local calling area. BellSouth asserts that when the called party’s physical location is not in the same local calling area as the calling party, then the communications is an intraLATA toll call for which BellSouth is entitled to receive originating access charges.

IV. DISCUSSION

This issue centers on the treatment of a particular type of traffic referred to as “virtual NXX.” “Virtual NXX” allows a customer to obtain a telephone number in a local calling area in which the customer is not physically located.⁵ As far as the person calling

⁵ Gates Direct at 17, II. 1–7 and 19, II. 4–5.

the number is concerned, the call is a local call, but the party answering the call is actually located somewhere else within the LATA. This type of arrangement is referred to as “virtual NXX” because the customer assigned to the telephone number has a “virtual” presence in the associated local calling area.⁶ This presence, however, “is just a virtual presence, not a physical one.”⁷ “Virtual NXX” is similar to foreign exchange (“FX”) service⁸ provided by an ILEC.⁹ However unlike FX service, “virtual NXX” does not use lines dedicated to particular customer for transporting the call between rate centers.¹⁰ “Virtual NXX” also closely parallels 800 service.¹¹

When the North American Numbering Plan Administrator (“NANPA”) gives Adelphia an NPA/NXX code, Adelphia must assign that NPA/NXX code to a rate center.¹² All other carriers use this assignment information to determine whether calls originated by their customers to a number in that NPA/NXX code are local or long

⁶ *Id.* at 17, ll. 5 – 7.

⁷ *Id.* at 22, ll. 8-10.

⁸ Foreign exchange, or FX, service is described by witness Ruscilli as

FX service is exchange service furnished to a subscriber from an exchange other than the one from which the subscriber would normally be served. The service is provisioned over dedicated facilities from the subscriber’s premises to a foreign office. ... it appears to the originating customer that they are making a local call when, in fact, the terminating location is outside the local calling area. Further, because the call to the FX number appears local and the calling and called NPA/NXXs are assigned to the same rate center, the originating end user is not billed for a toll call. Despite the fact that the calls appear to be local to the originating caller, FX service is clearly a long distance service. The reason the originating end user is not billed for a toll call is that the receiving end user has already paid for the charges in the form of dedicated access from the real NPA/NXX office to the FX ... office. There are charges for this function and they are being paid by the customer that is benefiting from the FX service.

Direct Prefiled Testimony of John A. Ruscilli (hereafter Ruscilli Direct) at 13, l.23 – 14, l. 13.

⁹ Gates Direct at 17, ll. 4-5, 20-21.

¹⁰ Ruscilli Direct at 14, ll. 20 – 21.

¹¹ *Id.* at 14, ll. 18.

¹² *Id.* at 10, ll. 21-23.

distance calls.¹³ There is no dispute that when a BellSouth customer located in a given local calling area calls an Adelphia customer located in the same local calling area, BellSouth owes reciprocal compensation to Adelphia for transporting and terminating the call.¹⁴

BellSouth's concerns regarding this issue are explained in the direct testimony of Mr. Ruscilli.¹⁵ As Mr. Ruscilli notes, Adelphia may assign a telephone number that is associated with the Orangeburg, South Carolina local calling area to an Adelphia customer physically located in Columbia, South Carolina.¹⁶ When a BellSouth customer in Orangeburg calls this "virtual NXX" number to reach the Adelphia customer located in Columbia, the end points of the call are in Orangeburg and Columbia, and, therefore, the call is a long distance call.¹⁷ As Mr. Ruscilli notes, "[u]nder Adelphia's proposal, BellSouth would pay reciprocal compensation on those calls from Orangeburg to Columbia ... which are clearly long distance calls and not subject to reciprocal compensation."¹⁸

It is not unlawful for Adelphia or another CLEC to provide "virtual NXXs" to its customers.¹⁹ Adelphia, or another CLEC, may assign an NXX code to a customer who is not physically located in the rate center to which the NXX code has been assigned. The issue which this Commission must decide is whether a call to that "virtual NXX" is a

¹³ *Id.* at 10, l. 23 to 11, l. 1.

¹⁴ *Id.* at 11, l. 19 to 12, l. 6.

¹⁵ See Ruscilli Direct at 11-13.

¹⁶ Ruscilli Direct at 12, ll. 10-12.

¹⁷ *Id.* at 12, ll. 16-17.

¹⁸ *Id.* at 12, l.22 – p.13, l.2.

¹⁹ Gates Direct at 17, ll. 2-4 and 17-20.

local call for which reciprocal compensation must be paid or a toll call on which originating access charges are due.

The FCC's rules provide that reciprocal compensation is due only when traffic originates and terminates within the same local calling area. 47 CFR § 51.701(a) provides that "[t]he provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other communications carriers." "Local telecommunications traffic" is defined as "telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission ..."²⁰ 47 CFR. § 51.701(b)(1).

In resolving this issue, the Commission must give due regard to the FCC rules. The FCC definition of local telecommunications traffic is clear that telecommunications traffic is local only if it originates and terminates within the same local calling area.²¹ Further, it is equally clear under the FCC's rules that reciprocal compensation applies only to local telecommunications traffic.²²

Applying the FCC rules to the factual situation in the record before this Commission regarding this issue of "virtual NXX", this Commission concludes that reciprocal compensation is not due to calls placed to "virtual NXX" numbers as the calls do not terminate within the same local calling area in which the call originated. As noted above, the FCC rules require reciprocal compensation only for the transport and

²⁰ The remainder of this subsection, which defines local telecommunications traffic between a LEC and a CMRS provider, is not relevant to this proceeding.

²¹ See 47 CFR § 51.701(b)(1).

²² See 47 CFR § 51.701(a).

termination of local telecommunications traffic which is defined as traffic that originates and terminates within a local service area established by the state commission.”²³ Typical traffic associated with a “virtual NXX” number does not originate and terminate within the same local calling area. Therefore, traffic associated with a “virtual NXX” number does not meet the definition of local telecommunications traffic and thus cannot be subject to reciprocal compensation.

Adelphia suggests to the Commission that the local nature of a call is determined based upon the NXX of the originating and terminating number, and Adelphia further asserts that this practice should be continued so that calls between an originating and terminating NXX, associated with the same local calling area, should be rated as local.²⁴ The problem with this position as proposed by Adelphia is that it does not give regard to where the call actually terminates. While the NXX code of the terminating point is associated with the same local service area as the originating point, the actual or physical termination point of a typical call to a “virtual NXX” number is not in the same local service area as the originating point of the call. Thus, Adelphia’s position is not consistent with FCC regulation 51.701(b)(1) which defines local telecommunications traffic as “traffic ... that originates and terminates within a local service area established by the state commission.” (emphasis added).

Other state commissions have also reached the conclusion that we reach on this issue. The Illinois Commerce Commission recently considered the same “virtual NXX” issue that is presented in this docket in an arbitration proceeding between Level 3

²³ See 47 CFR § 51.701(a) and § 51.701(b)(1).

Communications and Ameritech Illinois. The Illinois Commission concluded that if a call would not be local but for the assignment of a “virtual NXX” number to the called party, no reciprocal compensation is owed.²⁵ The Illinois Commission explained that:

The FCC’s regulations require reciprocal compensation only for the transport and termination of “local telecommunications traffic,” which is defined as traffic “that originates and terminates within a local service area established by the state commission.” 47 C.F.R. 51.701 (a)-(b)(1). FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation. Whether designated as “virtual NXX,” which Level 3 uses, or as “FX,” which [Ameritech Illinois] prefers, this service works a fiction. It allows a caller to believe that he is making a local call and to be billed accordingly when, in reality, such call is traveling to a distant point that, absent this device, would make the call a toll call. The virtual NXX or FX call is local only from the caller’s perspective and not from any other standpoint. There is no reasonable basis to suggest that calls under this fiction can or should be considered local for purposes of imposing reciprocal compensation. . . . On the basis of the record, the agreement should make clear that if [a Virtual] NXX or FX call would not be local but for this designation, no reciprocal compensation attaches.

Arbitration Decision at 9-10 (emphasis added).

The Maine Public Utilities Commission found that a “virtual NXX” service similar to that described by Adelphia constitutes “an interexchange service, not a local exchange service.”²⁶ The Texas Public Utility Commission determined that when calls to “virtual NXX” numbers do not terminate within a mandatory local calling area, they are

²⁴ Gates Direct at 15, l. 22 - 16, l. 4.

²⁵ Arbitration Decision, *Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Docket No. 00-0332 (August 30, 2000), at 10.

²⁶ Order, *In re: Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber*, Docket No. 98-758 (Me. P.U.C. June 30, 2000), at p. 12.

not subject to reciprocal compensation.²⁷ The Florida Public Service Commission ruled that “[i]f [a CLEC] intends to assign numbers outside of the areas with which they are traditionally associated, [the CLEC] must provide information to other carriers that will enable them to properly rate calls to those numbers.”²⁸ The Florida Commission also ordered that “the parties shall be required to assign numbers within the areas to which they are traditionally associated, until such time when information necessary for the proper rating of calls to numbers assigned outside of those areas can be provided.”²⁹ The Georgia Public Service Commission ruled that a CLEC is allowed “to assign its NPA/NXX codes in accordance with the establishment of its local calling areas, provided that it furnish the necessary information to BellSouth and all other telecommunications carriers so that they may identify local and toll traffic and provide for the proper routing and billing of calls.”³⁰

As this Commission has determined that calls to “virtual NXX” numbers are not local calls for which reciprocal compensation must be paid, we must now consider whether BellSouth should be able to collect originating access on these calls. BellSouth asserts that if its position prevails on this issue that it must be allowed to collect originating access charges on calls to “virtual NXX” numbers that originate in one local calling area and terminate in a different local calling area. Adelphia asserts that the

²⁷ Arbitration Award, *In re: The Federal Telecommunications Act of 1996*, Docket No. 21982 (July 14, 2000), at [WESTLAW *8].

²⁸ Final Order On Arbitration, *In re: Petition of BellSouth Telecommunications, Inc. for Section 252(b) arbitration of interconnection agreement with Intermedia Communications, Inc.*, Docket No. 99-1854-TP, Order No. PSC-00-1519-FOF-TP (August 22, 2000) at 43.

²⁹ *Id.*

imposition of originating access charges is inappropriate. Adelphia argues that since BellSouth and Adelphia provide the same network functions whether the call is to a physical presence or to a virtual presence that the compensation should be the same.³¹ Additionally, Adelphia maintains that BellSouth's access charges are not cost-based.³²

In support of its position, Adelphia cites to the FCC decision in *TRS Wireless v. US West, et al.*³³ Adelphia asserts that the *TRS Order* at paragraph 34 specifically notes that “[t]he Local Competition Order requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation.”³⁴

In the *TRS Order*, the FCC was called upon to address five formal complaints filed by paging carriers against local exchange companies. The complaints alleged that the LECs improperly imposed charges for facilities used to deliver LEC-originated traffic and for Direct Inward Dialing (“DID”) numbers in violation of the 1996 Act and the FCC’s rules. In reaching its decision in the *TRS Order*, the FCC determined that its rules required LECs to deliver, without charge, traffic to CMRS providers anywhere within the local calling area, or Major Trading Area (“MTA”) in the case of CMRSs, in which the call originated. In paragraph 31 of the *TRS Order*, the FCC stated that LECs are required “to deliver, without charge, traffic to CMRS providers anywhere within the MTA in

³⁰ Order, *Petition of BellSouth Telecommunications, Inc. for Arbitration of an Interconnection Agreement with Intermedia Communications, Inc. Pursuant To Section 252(b) of the Telecommunications Act of 1996*, Docket No. 11644-U (July 5, 2000) at 13.

³¹ Gates Direct at 24, ll. 4 - 9.

³² Gates Direct at 26, ll. 1-3.

³³ See *TRS Wireless v. US West, et al.*, Memorandum and Order, FCC 00-194 (rel June 21, 2000). (hereafter *TRS Order*).

³⁴ Gates Direct at 24, ll. 9 – 13, citing *TRS Wireless v. US West, et al.*, Memorandum and Order, FCC 00-194 (rel June 21, 2000).

which the call originated, with the exception of RBOCs, which are generally prohibited from delivering traffic across LATA boundaries.”³⁵ It is important to note that the FCC did not say in the *TRS Order* that LECs were required to deliver calls to CMRS providers to points outside the MTA in which the call originated, but rather only had to deliver that traffic at no charge within the MTA where the call originated.

47 CFR § 51.701(b)(2) defines “local telecommunications traffic” between a LEC and a CMRS provider. While that section is not applicable to the issue before this Commission, the FCC’s application of that section provides guidance to this Commission. Under 47 CFR § 51.701(b)(2), local telecommunications traffic is defined as local if at the beginning of the call, the telecommunications traffic originates and terminates within the same MTA. In the *TRS Order*, the FCC only required LECs to deliver at no charge that traffic which met the definition of local telecommunications traffic under 47 CFR § 51.701(b)(2), that is traffic that terminated within the MTA where the call originated.

The issue before this Commission concerns the definition of local telecommunications traffic contained in 47 CFR § 51.701(b)(1), which provides that “telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission.” Applying the rationale of the *TRS Order* to the issue presently before this Commission involving the definition contained in 47 CFR § 51.701(b)(1), this Commission concludes that BellSouth should be compensated for the “virtual NXX”

³⁵ *TRS Order*, pp. 23 –23, ¶ 31.

traffic. Under the rationale of the *TRS Order*, BellSouth is only required to deliver traffic at no charge within a local service area, and as the typical "virtual NXX" traffic terminates outside the local service area, BellSouth is not required to deliver that "virtual NXX" traffic at no charge.

We further find that imposition of originating access charges for this traffic does not, as alleged by Adelphia, create an economic barrier to any other providers providing service to ISPs and give BellSouth a significant competitive advantage.³⁶ As discussed above, BellSouth is not obligated to carry this traffic at no cost. BellSouth is entitled to compensation for carrying this traffic.

Further, the Commission concludes that originating access charges are the appropriate compensation rate. Without the "virtual NXX" designation, the traffic would be toll traffic. The proposal before this Commission in the context of this arbitration is whether originating access charges are due or no compensation at all. Based upon our conclusion that some compensation is due, we conclude that originating access charges are to be allowed for this traffic.

V. CONCLUSION

For the foregoing reasons, the Commission rejects the position of Adelphia on Issue No. 2 and adopts BellSouth's position on this issue. In adopting BellSouth's position, the Commission adopts the language proposed by BellSouth for inclusion in the interconnection agreement and orders the parties to incorporate the language proposed by BellSouth and set forth below into their interconnection agreement:

³⁶ Gates Direct at 28, ll. 18-20.

6.1.6 The Parties agree that the jurisdiction of a call is determined by its originating and terminating (end to end) points. For the purpose of delivery of BellSouth originating traffic to Adelphia, BellSouth will pay to Adelphia reciprocal compensation for Local Traffic terminating to Adelphia end users physically located in the BellSouth rate center to which the Adelphia end user's NPA/NXX is assigned. If Adelphia assigns NPA/NXXs to specific BellSouth rate centers and assigns numbers from those NPA/NXXs to end users physically located outside of the rate center to which the NPA/NXX is assigned, BellSouth traffic originating from within the BellSouth rate center where the NPA/NXX is assigned and terminating to an Adelphia customer physically located outside of such rate center, and at a location toll to the BellSouth originating rate center, shall not be deemed Local Traffic, and no compensation from BellSouth to Adelphia shall be due therefore. Further, Adelphia agrees to identify such traffic to BellSouth and to compensate BellSouth for such traffic at BellSouth's tariffed switched access rates. In addition, Adelphia should not use NPA/NXXs to collect BellSouth originated local or intraLATA toll traffic for delivery to a point outside the LATA from where the originating NPA/NXX rate center resides.

6.1.6.1 If Adelphia does not identify such traffic to BellSouth, to the best of BellSouth's ability BellSouth will determine which whole Adelphia NPA/NXXs on which to charge the applicable rates for originating intrastate network access service as reflected in BellSouth's Intrastate Access Service Tariff. BellSouth shall make appropriate billing adjustments if Adelphia can provide sufficient information for BellSouth to determine whether said traffic is local or toll.

IT IS THEREFORE ORDERED THAT:

1. The Commission adopts the language proposed by BellSouth for inclusion in the interconnection agreement as set forth above.
2. BellSouth shall not be required to pay reciprocal compensation for any call terminating to a customer who is physically located outside of the local calling area where the call originates.

3. BellSouth shall be allowed to impose originating access charges on all calls going to a “virtual NXX” code where the traffic is delivered to customers located outside the local calling area where the call originates.

4. This Order is enforceable against Adelphia and BellSouth. BellSouth affiliates which are not incumbent local exchange carriers are not bound by this Order. Similarly, Adelphia affiliates are not bound by this Order. This Commission cannot force contractual terms upon a BellSouth or Adelphia affiliate which is not bound by the 1996 Act.

5. This Order shall remain in full force and effect until further Order of this Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2000-527-C - ORDER NO. 2001-079

JANUARY 30, 2001

IN RE: Petition of AT&T Communications of the)
Southern States, Inc. for Arbitration of) ORDER ON
Certain Terms and Conditions of a Proposed) ARBITRATION
Interconnection Agreement with BellSouth)
Telecommunications, Inc. Pursuant to 47)
U.S.C. Section 252.)

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition of AT&T Communications of the Southern States, Inc. ("AT&T") for arbitration of certain terms and conditions of a proposed Interconnection Agreement by and between AT&T and BellSouth Telecommunications, Inc. ("BellSouth"). The Petition was filed pursuant to the provisions of Section 252 of the Telecommunications Act of 1996 ("1996 Act").

On October 18, 2000, AT&T filed its Petition with the Commission requesting the Commission to resolve a number of outstanding issues with BellSouth arising out of the parties' interconnection negotiations. AT&T's Petition set forth twenty-six unresolved issues. On November 13, 2000, BellSouth filed its Response to the Petition. Thereafter the Commission established a schedule and proceeding for arbitration.¹

¹ See Commission Order No. 2000-944, dated November 21, 2000.

services.¹⁷ As the Commission is acting in furtherance of the public interest, specifically to promote and foster the competition envisioned by the 1996 Act, the Commission under the state's police powers may provide for the conversion of the special access under tariffed conditions to combinations.

This Commission will not allow contravention of the clear intent of allowing conversions by the charging of termination penalties. By converting special access services to unbundled network elements, AT&T will be able to serve customers more economically. This in turn should allow AT&T to compete with BellSouth, and with other competitive carriers, in the marketplace.

Therefore, the Commission approves the language proposed by AT&T for inclusion in the Interconnection Agreement.

Issue 7: How should AT&T and BellSouth interconnect their networks in order to originate and complete calls to end users?

AT&T's Position:

The responsibility for originating, transporting, and terminating traffic should be mutual and each party should be financially responsible for transporting its own originating traffic to a comparable point on the terminating party's network. AT&T, and all CLECs, should be permitted to choose the most efficient interconnection point. CLECs should not have to design their networks less efficiently, and their customers should not shoulder the burden of higher costs because BellSouth refuses to transport its own originating traffic.

¹⁷ See 47.U.S.C. § 251(c)(2) and § 251(c)(3).

BellSouth's Position:

BellSouth agrees that AT&T can choose to interconnect with BellSouth's network at any technically feasible point in the LATA. However, BellSouth does not agree that AT&T can impose upon BellSouth the financial burden of delivering BellSouth's originating local traffic to that single point. If AT&T requires BellSouth to haul BellSouth originating traffic from the originating local calling area to a point of interconnection outside the local calling area, AT&T should compensate BellSouth for the additional transport costs.

Discussion:

This issue requires a determination of whether AT&T or BellSouth is going to be financially responsible for certain facilities needed to carry local traffic from a BellSouth local calling area to a distant Point of Interconnection ("POI") established by AT&T. The calls that utilize the facilities in question are calls that originate in one BellSouth local calling area and are intended to be completed in that same local calling area but that have to be routed out of that local calling area because of AT&T's network design.

This issue exists because AT&T and BellSouth have each built and intend to utilize totally separate and different networks for the provision of local service in South Carolina. Each carrier's local networks were designed to be the most efficient and cost-effective for that carrier. BellSouth's system consists of a number of local networks that have developed over time, and each BellSouth local network is generally characterized by the use of multiple local switches and relatively short loops to serve its customers in a given local calling area. AT&T intends to use fewer switches and longer loops to serve its

customers. The result is that, while BellSouth has numerous switches in South Carolina, AT&T has only two switches, both located in Columbia.¹⁸

The record reveals that AT&T intends to have, at most, two points in each LATA where AT&T's networks and BellSouth's networks interconnect with each other. As the testimony demonstrated, BellSouth and AT&T have no dispute when a call originates on BellSouth's network in the local calling area where the POI is located and is destined for an AT&T customer who is also located in the local calling area where the POI is located. The dispute between AT&T and BellSouth arises when a call originates on BellSouth's network in a local calling area outside the local calling area where the POI is located. AT&T and BellSouth cannot agree on who should pay for the facilities necessary to get from BellSouth's customer in one local calling area to AT&T's POI in another local calling area. BellSouth asserts that these facilities are the responsibility of AT&T. Conversely, AT&T maintains that BellSouth is responsible for collecting all of the originating BellSouth local traffic, wherever that may be, and transporting that traffic at no cost to AT&T to AT&T's POI.

There are several matters related to this issue that are undisputed and that should be noted. First, it is undisputed that in order for a customer of one of the parties here, either BellSouth or AT&T, to call a customer of the other, the two networks have to be interconnected. Moreover, it is also undisputed that a CLEC, in this case AT&T, can choose to interconnect with BellSouth's network at any technically feasible point. Section 251(c)(2) of the 1996 Act imposes a duty on ILECs "to provide, for the facilities and

¹⁸ AT&T also has a switch located in Charlotte, North Carolina that it intends to use to serve customers in

equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network ... for the transmission and routing of telephone exchange service and exchange access.”¹⁹ Further, interconnection must be provided “at any technically feasible point within the carrier's network.”²⁰ Thus if AT&T chooses to have a single POI within the LATA, it can do so.

BellSouth also does not dispute that AT&T may determine its own local calling area for its subscribers. AT&T's local calling area is not implicated in this issue. Instead, this issue only involves facilities that are used to carry traffic between BellSouth subscribers in a BellSouth local calling area and AT&T's POI that is located in a different BellSouth local calling area in the LATA. AT&T is free to designate its own local calling area for calls originated by its subscribers. If AT&T wishes to designate the entire Columbia LATA as the local calling area for its customers located in the Columbia area, that is AT&T's prerogative. AT&T can collect calls from its customers in Bamberg, for instance, switch them in Columbia, where AT&T has its switches, and then hand them off to BellSouth at the BellSouth tandem in Columbia for completion anywhere in the LATA. None of this is in dispute. The dispute centers solely on identifying the party that will be financially responsible for the facilities necessary to haul a call to a distant AT&T POI when the call originates with a BellSouth end user and is destined for an AT&T end user located in the same local calling area.

It would be convenient to point to a statute or to an FCC order or rule that resolves this issue, but the matter is not that clear. Both parties agree that, as a matter of

law, AT&T is entitled to interconnect where it wants and to deliver its originated traffic to BellSouth at that point. In fact, AT&T, in its brief and proposed order, cites to numerous decisions which stand for the proposition that a CLEC may interconnect at only a single point in each LATA. In support of its position, BellSouth cites to the FCC's *Local Interconnection Order* where MCI, in a proceeding at the FCC, attempted to get the FCC to declare that both the incumbent local exchange company and the competitive local exchange company had to declare a single point of interconnection on each other's network where its originating traffic would be delivered. See In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, August 8, 1996 (*Local Interconnection Order*) ¶ 214. The FCC refused, leaving it to negotiation and arbitration to resolve the issue. However, neither party has been able to cite to a single decision that addresses the precise issue before this Commission in the instant proceeding. Therefore, this Commission is essentially left to resolve this matter based on the evidence presented and the Commission's own sense of equity and fair play.

AT&T suggests that the Commission resolve this issue by imposing "equivalent interconnection" obligations on both AT&T and BellSouth. While this sounds fair, AT&T also insists that the 1996 Act gives it the exclusive right to determine where and how many times AT&T and BellSouth's networks will be interconnected in a single LATA. Mr. Ruscilli essentially summarizes AT&T's position as requiring the following: (1) each party's interconnection points (i.e., where it receives traffic for termination)

¹⁹ 47 U.S.C § 251(c)(2)(A).

should be situated at the “top” of its network; (2) each party should have an equal number of interconnection points; and (3) each party is responsible for delivering its interconnection traffic to the other party’s interconnection points. AT&T’s support for urging this Commission to adopt these principles revolves around repeated claims that to do so would be “fair and equitable.” AT&T also asserts that its position has been adopted by several state commissions.

The Commission finds, however, that adopting AT&T’s “principles” would be neither fair nor equitable. Presumably, AT&T has chosen the most economical way for it to provide local service in South Carolina. It has a total of three switches “serving” South Carolina, two in Columbia and one in Charlotte, North Carolina. Indeed, while it is not absolutely clear based on Mr. Follensbee’s testimony, it seems that these switches were generally the toll switches AT&T already had in South Carolina and North Carolina which were modified to handle local traffic. AT&T, understandably, has made every effort to minimize its costs to provide local service in South Carolina. AT&T’s network design is a matter best left to AT&T. However, it would be neither equitable nor fair for this Commission to permit AT&T to shift costs to BellSouth as a result of that network design.

The central theme, embedded in AT&T’s principles of “equivalent interconnection,” is that the carrier terminating the traffic gets to determine where the originating carrier will deliver the traffic. This is the practical impact of allowing AT&T

²⁰ 47 U.S.C § 251(c)(2)(B).

to designate the number of points of interconnection and requiring BellSouth to be financially responsible for delivering calls to those points of interconnection.

Our review of the FCC's orders does not suggest that a CLEC is free to transfer the costs incurred by its interconnection choices onto the ILEC. In the *Local Competition Order* the FCC specifically stated that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit."²¹

Part of AT&T's argument is that adopting BellSouth's proposal would force AT&T to build facilities to every BellSouth local calling area, and would waste valuable and limited collocation space. That is absolutely inaccurate. As noted earlier, BellSouth acknowledges that AT&T can establish a physical point of interconnection with BellSouth at any technically feasible point, and if AT&T chooses to have only a single such point in a LATA, that is AT&T's choice. AT&T can, however, lease facilities from BellSouth or any other entity to collect traffic from local calling areas outside of the local calling area in which its POI is found. Nothing in BellSouth's proposed solution to this issue would require AT&T to build facilities devoted to local service in South Carolina beyond that required to establish a single point of interconnection in each LATA that AT&T chooses to serve.

Indeed, when viewing the equities of the situation, it is clear that BellSouth's position that AT&T should be financially responsible for these facilities is the equitable position. AT&T presently interconnects with almost every end office and certainly every

²¹ *Local Competition Order* ¶ 199.

access tandem in BellSouth's territory. Nevertheless, it has elected to build only a single, or at the most two, points of interconnection in each LATA. The result, if AT&T prevails on this issue, is that AT&T will have succeeded in requiring BellSouth to subsidize AT&T's entry into the local exchange market in South Carolina. As additional AT&T traffic is routed over these facilities, then BellSouth is responsible for maintaining sufficient facilities to meet acceptable service quality levels. AT&T should be responsible for its portion of the traffic utilizing the facilities. Requiring AT&T to pay for the costs of its interconnection choices to offset the costs imposed by those interconnection choices on BellSouth is the fair and equitable solution. AT&T's interconnection choices requires the transport of local calls from one local calling area to another local calling area where AT&T's POI is located. As AT&T has contributed to the need and costs of these facilities, AT&T should pay for use of the facilities.

Section 252(d)(1) requires that the incumbent be allowed to recover the added costs created by a CLEC's "expensive interconnection."²² To allow the ILEC to recover these added costs is the only equitable solution. Otherwise, a CLEC could select a POI that is more expensive in the aggregate simply because the CLEC need not take into account the costs that it avoids because the costs are transferred to the ILEC. The fair and equitable solution is to require a CLEC to bear the fair share of the costs of its interconnection choices, and the fair share of costs should take into account all costs resulting from those choices. Such a solution is consistent with the FCC which stated "because competing carriers usually compensate incumbent LECs for the additional costs

²² *Local Competition Order* ¶ 199.

incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect.”²³

AT&T also asserts that the FCC has addressed this issue directly in *TRR Wireless, LLC, et al., v. U.S. West*.²⁴ In this case, several paging carriers alleged that US West and other ILECs had improperly imposed charges for facilities used to deliver LEC-originated traffic. The paging carriers based their complaint on 47 C.F.R. § 51.703(b) and sought an order from the FCC prohibiting the ILECs from charging for dedicated and shared transmission facilities used to deliver LEC-originated traffic. AT&T cites to the FCC Order where the FCC determined that “any LEC efforts to continue charging [the paging carriers] or other carriers for delivery of such [LEC-originated] traffic would be unjust and unreasonable.”²⁵ AT&T also cites to the FCC Order where the FCC concluded that FCC “rules prohibit [the ILECs] from charging for facilities used to deliver LEC-originated traffic [to the paging carriers.]”²⁶ What AT&T omits from its analysis is that portion of the FCC Order where the FCC determined that its rules required LECs to deliver, without charge, traffic to CMRS²⁷ providers anywhere within the local calling area or Major Trading Area (“MTA”) in the case of CMRSs, in which the call originated. The FCC also stated that LECs are required “to deliver, without charge, traffic to CMRS

²³ *Local Competition Order* ¶ 209; see also *Iowa Utilities Board v. FCC*, 120 F.3d 753, 810 (8th Cir. 1997) (“Although economic concerns are not to be considered in determining if a point of interconnection ... is technically feasible, the costs of such interconnection ... will be taken into account when determining the just and reasonable rates, terms, and conditions for these services”), *aff’d in part, rev’d in part sub nom. AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999), *decision on remand, Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir.), *petitions for cert. pending*, Nos. 00-511, 00-555, 00-587, 00-590, & 00-602 (U.S. 2000).

²⁴ *TRR Wireless v. U.S. West, et al.*, Memorandum and Order, FCC 00-194 (Rel. June 21, 2000).

²⁵ *Id.* at ¶ 29.

²⁶ *Id.* at ¶ 25.

²⁷ Commercial Mobile Radio Service.

providers anywhere within the MTA in which the call originated, with the exception of RBOCs, which are generally prohibited from delivering traffic across LATA boundaries.”²⁸ The MTA as discussed in the *TRS Order* is the wireless carrier’s equivalent of a local service area. The FCC did not say in the *TRS Order* that LECs were required to deliver calls to CMRS providers to points outside the MTA in which the call originated, but rather that the LECs only had to deliver that traffic at no charge within the MTA or local calling area where the call originated.

The Commission finds that the *TRS Order* does not stand for the proposition that AT&T asserts. Instead, the Commission believes that a more appropriate application of the reasoning of the *TRS Order* to the present issue is that BellSouth should not be required to deliver free of charge its local traffic outside the local service area in which the call originates. As noted previously, there is no dispute for traffic that originates in the local calling area where AT&T’s POI is located. In that situation, that traffic is not delivered outside the local calling area where the call originated. As was the result in the *TRS Order* where the FCC did not require the LECs to deliver free of charge local traffic to CMRS providers to points outside the MTA, which is the CMRS providers’ local calling area, neither should BellSouth be required to deliver local traffic free of charge to points outside the local calling area where the call originates.

AT&T’s position presents another interesting dilemma that bears some consideration. BellSouth’s position, obviously, is that its network is made up of a number of local networks. AT&T’s position is that once it interconnects with BellSouth

²⁸ *TRS Order*, ¶ 31.

at any point, that is all it needs to do to be able to exchange local traffic anywhere in the LATA. In evaluating AT&T's position, the Commission is mindful of what may happen when BellSouth obtains interLATA relief and the LATA boundaries evaporate. Applying AT&T's proposed principles, AT&T could then assert, since the barrier posed by the LATA boundaries no longer exists, that BellSouth should deliver all of its traffic originating in South Carolina directly to one of AT&T's switches in New York. This is nothing more than a logical extension of the argument AT&T makes here. AT&T could designate a point near one of its switches in New York as the interconnection point for Bamberg local traffic. If AT&T's position were accepted, BellSouth could be required to haul a call from one of its subscribers in Bamberg that is destined to the AT&T subscriber next door all the way to New York, so that AT&T could switch the call and then haul it back to Bamberg. Such a scenario clearly is not equitable. This is particularly true since AT&T presented no evidence that it built any facilities to provide local service in South Carolina. The Commission declines to approve a concept that could result in BellSouth being required to haul local calls hundreds of miles, just because AT&T does not want to make the investment in South Carolina.

AT&T argues that BellSouth has been hauling its originating traffic to a single point in each LATA under the parties' existing contract. However, as Mr. Ruscilli points out in his surrebuttal testimony, the contract that the parties are currently operating under is a "first generation" contract. One of the reasons that this arbitration is taking place is that both AT&T and BellSouth want to change, in different ways, the agreement that controls the way they do business together. At the time the original contract was made,

no one anticipated that AT&T, or the other CLECs would try to serve entire LATAs with a single switch or that they would expect BellSouth to haul its local traffic all over the LATA. The fact that BellSouth has done so under its first contract with AT&T, however, is not justification for continuing that practice, now that the parties have experience in this area and can more fully appreciate the actual ramification caused by CLECs' network designs.

In resolving this issue, the Commission concludes that while AT&T can have a single POI in a LATA if it chooses, AT&T shall remain responsible to pay for the facilities necessary to carry calls from distant local calling areas to that single POI. That is the fair and equitable result.

Accordingly, the Commission adopts the position of BellSouth on this issue and approves the contract language proposed by BellSouth for inclusion in the Interconnection Agreement.

Issue 9: Should AT&T be permitted to charge tandem rate elements when its switch serves a geographic area comparable to that servicing BellSouth's tandem switch?

AT&T's Position:

When AT&T's switches serve a geographic area comparable to that served by BellSouth's tandem switches, then AT&T should be permitted to charge tandem rate elements.

BellSouth's Position:

In order for AT&T to appropriately charge for tandem switching, AT&T must demonstrate to the Commission that (1) its switches serve a comparable geographic area

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2002-66-C – ORDER NO. 2002-450

JUNE 12, 2002

IN RE: Petition of HTC Communications, Inc. for)
Arbitration of an Interconnection Agreement)
with Verizon South Inc.)
_____)

**ORDER
ON ARBITRATION**

I. PROCEDURAL BACKGROUND

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Petition for Arbitration (“Petition”) filed by HTC Communications, Inc. (“HTC”) for arbitration of certain issues pertaining to the terms and conditions of a new interconnection agreement between HTC and Verizon South, Inc., f/k/a GTE South Incorporated (“Verizon”).¹ Pursuant to Section 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (“Act”),² Verizon received HTC’s request to negotiate a new interconnection agreement on September 22, 2001. HTC filed its Petition (Petition), pursuant to the provisions of Section 252 of the Act, on March 1, 2002. HTC’s Petition set forth with particularity thirty-seven (37) unresolved issues between the Parties. Verizon filed a response (“Response”) on March 26, 2002, responding to the same thirty-seven (37) issues raised in the Petition. Both Parties submitted pre-hearing briefs.

A hearing on this Arbitration was held on May 6, 2002, with the Honorable William

¹ HTC and Verizon are sometimes individually referred to herein as a “Party,” or collectively as “Parties.”

² 47 U.S.C. §§ 252(b)(1) and (2).

with Verizon's network. D'Amico Testimony at 5-6 (citing Watkins Testimony at 31:5-7).

When asked about any other problems with HTC's suggested language in § 2.1, Mr. D'Amico advised the Commission:

HTC's proposed section 2.1 does not appear to require either party to do anything – it is just a statement that the Parties agree that trunks between their respective networks are for their mutual benefit in addressing their need to exchange traffic between those networks. This language is confusing and unnecessary, as well as inconsistent with the principle that the party requesting interconnection is in the best position to order the two-way trunks. *Id.* at 6.

For the foregoing reasons, the Commission should order the Parties to include Verizon's proposed § 2.4.2 and exclude HTC's § 2.1 from the final agreement.

Discussion:

We adopt Verizon's proposed Interconnection Attachment, Sections 2.1 and 2.4, without the changes suggested by HTC. Verizon's language recognizes that the Parties will meet to conduct a joint planning meeting prior to HTC ordering any Two-Way Interconnections Trunks from Verizon. Further, Verizon's language indicates that the Parties will 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). Furthermore, Verizon's proposed language also indicates that when the parties have agreed to convert existing One-Way Interconnection Trunks to Two-Way Interconnection Trunks, the Parties will mutually agree on the conversion process and project intervals for conversion of such One-Way Trunks to Two-Way Interconnection Trunks. See Appendix A to the Post-Hearing Brief of Verizon South, Inc. at 63. Verizon's language addresses HTC's concerns regarding mutuality and interconnection trunks.

ISSUE 18. TRANSPORT PAYMENTS. What should the appropriate terms be for payment for transport on each Party's respective trunking facilities?

HTC's Position:

HTC's position is that the provisions for payment for transport should be equitable and mutual. See Petition at 32-34. Verizon's language, which would require HTC to pay Verizon for transport on Verizon's side of the Interconnection Point ("IP") but would not require Verizon to pay HTC for transport on HTC's side of the IP, is simply not fair. Watkins Direct Testimony at 33 (TR. at 81).

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Interconnection Attachment §§ 2.4.16, 7.1, 7.1.1., and 7.1.1.1, without the changes proposed by HTC.

As HTC's witness Steven Watkins apparently now concedes, HTC's Issue 18 raises many of the same issues recently decided by this Commission in Docket No. 2000-527-C ("BellSouth Arbitration"). Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252., Order on Arbitration, Docket No. 2000-527-C (S.C. PSC Jan. 30, 2001) ("BellSouth Order") at Tab 13. See Watkins Testimony at 31-32. In that case, the Commission addressed the issue of "whether AT&T or BellSouth is going to be financially responsible for certain facilities needed to carry local traffic from a BellSouth local calling area to a distant Point of Interconnection ("POI") established by AT&T." Id. at 18. The Commission found that holding the CLEC responsible to pay for facilities necessary to carry calls from distant local calling areas to a single POI was the only "fair and equitable result": Id. at 19.

Our review of the FCC's orders does not suggest that a CLEC is free to transfer costs incurred by its interconnection choices onto the ILEC. In the *Local Competition Order* the FCC specifically stated that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit." Id. at 27-28 (quoting Local Competition Order ¶ 199).

The Commission should reach the same conclusion here, and should order the parties to adopt the language that Verizon has proposed for Interconnection Attachment §§ 7.1, 7.1.1., and 7.1.1.1 -- all of which are consistent with the Commission's ruling.

Mr. Watkins' testimony also demonstrates that HTC's central concern in Issue 18 is with Verizon's proposed Interconnection Attachment § 2.4.16, to which HTC has proposed several revisions. Section 2.4.16 addresses cost apportionment between the Parties where the Parties share two-way trunking facilities. A typical example would be where the Parties have established a two-way trunk between the Verizon IP and the HTC IP. In this scenario, Verizon is responsible for the costs of delivering its traffic to the HTC-IP and HTC is responsible for delivering its traffic to the Verizon-IP. Verizon's proposed § 2.4.16 apportions the costs of the two-way trunk facility between the parties based on a proportionate percentage of use ("PPU") factor that reflects the balance of traffic between the parties. For example, if 70% of the traffic flowed from Verizon to HTC, Verizon would bear 70% of the cost and HTC would bear only 30%. If traffic flows were reversed in equal proportion, HTC would bear 70% of the cost and

Verizon would bear 30%. In neither case is either party responsible for the facility costs of carrying traffic beyond the other's IP.

HTC nevertheless objects to this language apparently on the ground that Verizon should be responsible for costs on HTC's side of HTC's IP. HTC proposes that Verizon pay 50% of non-recurring charges for the portion of the facility on HTC's side of the HTC-IP. Petition at 33. HTC's side of HTC's IP however, is HTC's network. HTC is to recover the cost of terminating calls on its network through reciprocal compensation charges, not additional facility-based charges. HTC's position is contrary to the Agreement's definition of IP. The VZ-IP or the HTC-IP are the points beyond which the other party is *not* responsible for delivering traffic. Just as HTC is not responsible for the cost of facilities on Verizon's side of the VZ-IP, Verizon should not be responsible for the cost of facilities on HTC's side of HTC's IP. Where a two-way trunk group runs between the respective IPs, the Parties are to share the costs of that facility in accordance with the PPU factor.

Although Mr. Watkins asserts that HTC understands these important points, HTC's unexplained changes to the first several paragraphs of Verizon's § 2.4.16 belie that claim. Mr. D'Amico addressed these changes by HTC in his testimony, and explained why Verizon's language should be adopted by the Commission:

For transport charges under § 2.4.16, Verizon proposes that the parties calculate a proportionate percentage of use billing factor, or PPU. The PPU is calculated using the total number of minutes each party sends over a facility on which each two-way interconnection trunk rides. The PPU is used in Verizon's billing system to bill the appropriate portion of the recurring charges for the facility that Verizon provides between the HTC and Verizon Interconnection Points ("IPs"). Based on the PPU, Verizon will bill and HTC should pay Verizon a monthly recurring charge equal to the percentage of use for that facility.

This arrangement is reasonable because HTC is the party placing an order for these facilities with Verizon. It makes no sense for Verizon "to provide equivalent payment to HTC for transport on HTC's side of the IP," as HTC suggests. (Arbitration Petition at 33.) Verizon does not charge HTC for any portion of the facility beyond the [IP]. For example, assume HTC issues an access service request (ASR) to Verizon to install a two-way trunk between the parties. Further assume that Verizon incurs \$1000 in monthly recurring charges to maintain the facility between the Verizon and HTC [IP], and that 5% of the traffic over this trunk, or the PPU, is originated by HTC to Verizon. Thus, Verizon would charge HTC \$50 in monthly recurring charges because the PPU indicates that HTC is only using 5% of the two-way interconnection trunk facility it has ordered from Verizon. Finally, Verizon proposes to use a PPU of only 50%, until the parties can calculate PPU based on actual traffic data. *The PPU only applies to the facility between the HTC and Verizon [IP]. It does not have an impact on the facilities that are used to carry the traffic from the respective Party's IP to the called customer of that Party, so HTC's proposal makes no sense.* D'Amico Testimony at 6-7 (emphasis added).

When asked to provide further explanation in this regard, Mr. D'Amico addressed the question of non-recurring charges -- the charges reflected in HTC's changes to the second paragraph of Verizon's proposed § 2.4.16. Mr. D'Amico stated:

For two-way trunks HTC orders from Verizon, Verizon proposes that HTC should pay half of Verizon's non-recurring charges for the portion of the facilities that those trunks ride on the Verizon side of the [IP]. *Because HTC orders the two-way trunk from Verizon and Verizon must then install this trunk, Verizon as the supplier of this service incurs non-recurring costs for the work it performs, and is entitled to recovery of these costs.* Verizon only charges HTC half of its non-recurring costs, however, because Verizon uses the two-way trunk with HTC. This practice properly ensures that Verizon is compensated for the work that Verizon does on behalf of HTC, but recognizes Verizon's use of the facility.

Accordingly, HTC's changes to the second paragraph of Verizon's proposed § 2.4.16 do not make sense. Since HTC is not installing trunks for Verizon, Verizon should not have to "pay fifty [sic] percent (50%) of the HTC non-recurring charges" as HTC's edits provide.

For all of these reasons, the Commission should order the parties to adopt Verizon's proposed language, without the changes suggested by HTC.

Discussion:

We adopt Verizon's proposed Interconnection Attachment Sections 2.4.16, 7.1, 7.1.1, and 7.1.1.1, without the changes proposed by HTC. We agree with Verizon that its language in Interconnection Attachment Sections 7.1, 7.1.1, and 7.1.1.1 are consistent with the Commission's ruling in Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252 in Docket No. 2000-527-C. We held, in Docket No. 2000-527-C, that "our review of the FCC's orders does not suggest that a CLEC is free to transfer the costs incurred by its interconnection choices onto the ILEC." Id. at 23. Moreover, we also held that the CLEC should be responsible for its portion of the traffic utilizing the facilities and that requiring the CLEC to pay for the costs of its interconnection choices to offset the costs imposed by those interconnection choices on the ILEC is the fair and equitable solution." Id. at 24. Finally, this Commission held that "while AT&T can have a

single POI in a LATA if it chooses, AT&T shall remain responsible to pay for the facilities necessary to carry calls from distant local calling areas to that single POI. - That is the fair and equitable result.” *Id.* at 28. As we have previously ruled that a CLEC is responsible for paying for facilities necessary to carry calls from distant local calling areas to a single POI, the same conclusion should be drawn in this case and Verizon’s language in Sections 7.1, 7.1.1 and 7.1.1.1 should be adopted.

Section 2.4.16 addresses cost apportionment between the Parties where the Parties share two-way trunking facilities. Regarding Section 2.4.16, HTC seeks to have Verizon pay a percentage of HTC’s monthly recurring charges for the facility on which the Two-Way Interconnection Trunks ride equal to Verizon’s percentage of use of HTC’s facility as shown by the Proportionate Percentage of Use. We agree with Verizon’s language in Section 2.4.16 which apportions the costs of the two-way trunk facility between the Parties based on a Proportionate Percentage of Use factor that reflects the balance of traffic between the Parties. As stated by Verizon, “in neither case is either party responsible for the facility costs of carrying traffic beyond the other’s interconnection point.” See Appendix A to Post-Hearing Brief of Verizon South, Inc. at 69. Moreover, we also agree with Verizon that neither Party should be responsible for the cost of facilities beyond either Party’s interconnection point. The proportionate percentage of use factor would apply only in those situations where the Parties share trunk groups. Additionally, HTC should also be responsible for fifty percent (50%) of the non-recurring costs for two-way trunks that are installed by Verizon. It is only appropriate because HTC is the carrier seeking to interconnect and therefore is responsible for installation of the two-way trunks. We agree with Verizon’s language which holds HTC responsible for 50% of

Verizon's non-recurring cost which recognizes that Verizon customers will be using the two-way trunks to terminate calls to HTC customers.

ISSUE 19. NEW IPs. What should the appropriate time period be for the establishment of IPs in another LATA?

HTC's Position:

HTC's position is that Section 4.3 of the Interconnection Attachment should reflect a specific amount of time for the establishment of Interconnection Trunks in another LATA following a request by HTC for such arrangements in another LATA. HTC proposes that sixty (60) days should be set forth explicitly in the Agreement. Petition at 35.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Interconnection Attachment § 4.3, especially in view of the problems inherent in HTC's position. First, HTC's stated Issue 19 ostensibly addresses "IPs," but its discussion of position addresses the establishment of new *Interconnection Trunks* in another LATA. Interconnection Trunks and "IPs" are two entirely different terms and thus HTC's proposal is both unclear and confusing. Second, HTC has failed to explain why an arbitrary deadline for establishment of Interconnection Trunks (HTC has proposed 60 days) is necessary or how, exactly, such a deadline would work.

As to this second point, the process of interconnecting in locations where the Parties are not already interconnected involves a large number of factors, many beyond Verizon's control. Depending on the method of interconnection HTC decides to use, HTC may have to obtain rights of way, purchase or construct facilities, arrange for collocation space, create traffic forecasts, and complete a number of other tasks. An arbitrary deadline imposed by order of the Commission makes no sense for either party when there are so many variables that differ from case to case, and those variables will affect timing. As Mr. D'Amico testified:

For example, HTC may have to obtain rights-of-way, construct new facilities, obtain SS7 certification, deploy its switch, apply for NXX codes from the number administrator, and/or arrange for collocation space. Verizon cannot control the timing of these activities. As such, imposing any arbitrary deadline – 60 or otherwise – is not a workable solution. As Verizon's proposed language states in section 4.3, the interconnection activation date in the new LATA shall be mutually agreed to by the Parties after they discuss all the relevant variables. D'Amico Testimony at 9.

Verizon's proposed language strikes a reasonable balance between the needs of each party. Section 4.1 obligates HTC to provide Verizon written notice when it desires to initiate the interconnection process. Section 4.2 requires the notice to include initial routing points; the HTC points of financial responsibility (HTC-IPs); the intended activation date; a forecast of

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on July 26, 2001

COMMISSIONERS PRESENT:

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

CASE 01-C-0095 - Joint Petition of AT&T Communications of New
York, Inc., TCG New York Inc. and ACC Telecom
Corp. Pursuant to Section 252(b) of the
Telecommunications Act of 1996 for Arbitration
to Establish an Interconnection Agreement with
Verizon New York Inc.

ORDER RESOLVING ARBITRATION ISSUES

(Issued and Effective July 30, 2001)

BY THE COMMISSION:

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
CONTESTED ISSUES	2
Verizon Tariffs	2
Tariff Amendments and Updated Documents	5
Pending Proceedings	6
Change of Law	7
Commercial Arbitration and Alternative Dispute Resolution	8
Definitions In The Agreement	12
GTE/Bell Atlantic Merger Conditions	12

CONTESTED ISSUES

Verizon Tariffs

During the first agreement, AT&T became distressed by the operation of Verizon's intrastate tariffs. In an instance involving a \$19.56 per amp charge for the collocation power carriers use, Verizon attempted to apply the charge on a per feed basis to AT&T's detriment. AT&T filed a complaint which led to Verizon agreeing to amend the tariff to comport with AT&T's and Staff's view of the application of the charge.

In a second instance, also pertaining to collocation power rates, Verizon's tariff included a dispute resolution process AT&T considered to be inferior to the commercial arbitration and alternative dispute resolution provisions discussed below.

In another instance, involving the purchase and use of T1.5 circuits for local traffic usage, AT&T complained about Verizon's application of its tariff in an anti-competitive manner to restrict competitors' use of such circuits.⁴

Finally, AT&T complained about Verizon tariff provisions covering building risers. According to AT&T, Verizon unduly restricted its access to such risers and imposed excessive time and material charges that cost it a contract.

For these and other reasons, AT&T wants an all-inclusive agreement that contains no references to Verizon's tariff and does not rely on tariff provisions for any significant purpose. Further, should there be any tariff changes during the term of the new agreement, AT&T believes they should not alter its agreement with Verizon.

According to AT&T, Verizon should not be able to use its tariff to frustrate the Act's objective that carriers engage in good faith negotiations and enter into commercial agreements.

⁴ AT&T complained specifically about Verizon's efforts to require CLECs to measure the actual amount of the local traffic carried on a T1.5 circuit and to impose restrictions on the commingling of special access circuits and local service circuits. It also complained about Verizon's provision of overly expensive maintenance and repair services.

AT&T opposes reliance on Verizon's tariffs, because they are not the results of the parties' mutual negotiations, and because they are within Verizon's control. According to AT&T, the tariff provisions place an improper burden on it to justify any departures. The company also complains that it does not have the resources necessary to be immersed in the tariff process. Instead, it prefers the facility and definiteness of a self-contained and self-executing agreement.

According to Verizon, there are valid reasons for applying its Tariff Nos. 8 and 916 to AT&T.⁵ It maintains that the tariffs provide equal treatment for all carriers, they comply with all applicable laws, and they were derived from extensive regulatory scrutiny. Verizon considers them superior to any contract provisions the parties could produce here.

Verizon contends that its tariffs provide it no advantage over any other carrier due to the public review process and the Commission requirements that have been imposed on it. It also denies that the tariffs are one-sided, given the airing of public and regulatory concerns in advance of their adoption. Verizon points out that AT&T has commented on various tariffs it has filed and has sought amendments in various instances. Verizon also observes that it provides AT&T notice of all its tariff amendments and claims that no ambush is possible. According to Verizon, the inputs provided by the public, other carriers, and regulators simply do not permit it to have unilateral control of the tariff process.

This issue concerns the essential relationship between Verizon's tariff and the new interconnection agreement to be executed with AT&T. This matter permeates many of the points in dispute between the parties, and it appears to have negatively influenced the course of this proceeding. Rather than find acceptable means to resolve their issues, the parties' negotiations languished, and they remained polarized on matters that should not have defied a consensual resolve.

⁵ Tariff No. 8 contains Verizon's collocation terms and rates for competitive carriers. Tariff No. 916 provides terms and rates for unbundled network elements (UNEs).

While AT&T goes to great lengths to discredit the tariff process, its arguments are not persuasive. We find that the tariff approach is entirely suitable for implementing many of the interconnection and access requirements Verizon should bear under the Act. Not only does the tariff process promote comparable interconnections for competitive carriers and unbundled access on similar terms, the Commission previously approved this approach to assist parties and reduce the matters they must truly negotiate or arbitrate on a case-by-case basis. The tariff process permits ample opportunity for interested persons to participate and seek changes (or even the rejection) of proposed tariffs before they become effective. Moreover, AT&T has made substantial use of this process over the years despite any assertions otherwise.

We also note that the examples AT&T cites to demonstrate the harm it suffered from the tariff process are all instances that were ultimately resolved in AT&T's favor. Moreover, in numerous instances, AT&T states that it would include provisions in the new agreement as they are currently found in the existing tariffs. However, upon review, it appears that AT&T seeks to change the existing tariff provisions in material ways, notwithstanding that many of those provisions were filed in compliance with Commission orders issued after extensive proceedings. AT&T's proposals, in effect, seek to revisit and revise Commission-approved tariffs.

We are persuaded on the record presented that as a general matter the tariff provisions provide a reasonable basis for establishing a commercial relationship. Consequently, we will not adopt AT&T's proposal. Instead, we will conform the new agreement to Verizon's tariff where it is possible to do so. In general, we are requiring that the pertinent provisions of Verizon's tariff be incorporated by reference into the new

agreement. This matter is also addressed below in the discrete contexts in which the parties have raised it.⁶

Tariff Amendments and Updated Documents

Not only does Verizon want the new agreement to rely on its tariffs, it believes the agreement should be subject to tariff changes as implemented. Therefore, it proposes that the references to tariffs (and other documents) refer to them as amended from time to time. It claims this flexibility will help to keep the new agreement current with competitive changes and growth in the telecommunications market.

AT&T is opposed to the agreement changing when Verizon's tariffs are altered. It contends that this practice would destabilize the parties' rights and deprive them of the bargains they reached. AT&T fears Verizon will implement self-serving and parochial tariff revisions, and it will not disclose their purposes nor identify their effects on carriers. It insists Verizon cannot be relied upon to provide adequate notice of detrimental tariff revisions, and it claims not to have the resources necessary to scrutinize the tariff changes.

The Commission finds it is better to allow the new agreement between AT&T and Verizon to absorb tariff amendments and changes that are intended to implement substantial telecommunications policy initiatives than to freeze it at its inception. There are several significant collaborative proceedings pending, and federal developments emerging, that will make alterations for the benefit of competitors and consumers. On the other hand, it is just as likely that the Commission, acting in the public interest, may decide issues contrary to AT&T's liking. Thus, it is not desirable to forestall or preclude the applicability of tariff amendments as AT&T's proposal would do.

⁶ This is not to say that CLECs are prohibited from negotiating terms, conditions and rates that are different from Verizon's tariff where circumstances may require a divergence (i.e., where the tariff does not address the unique needs of a given CLEC).

That having been said, we are mindful that there may be instances in which a tariff filing's generic resolution represents a significant change or does not adequately address specific provisions in interconnection agreements. Therefore, during the tariff review process, for good cause shown, the Commission reserves the right to treat a tariff filing, or discrete portions thereof, as being subject to the change of law provision of the new agreement, allowing the parties to negotiate appropriate terms for the interconnection agreement.

Pending Proceedings

Verizon proposes that the new agreement contain references to pending Commission proceedings to permit them to run their course. Rather than prematurely decide any such matters here and now, Verizon would apply the results of the proceedings to AT&T and itself when they become known. Verizon states this approach was used in the first agreement, and AT&T has agreed to it in other states. It knows of no reason why it should not continue to apply here as well. Its use could avoid discrimination among carriers, save time from examining the same matters twice, and avoid the confusion that any differing results may engender.

AT&T responds specifically to Verizon's proposal as it pertains to digital subscriber line (DSL) issues. It prefers that the new agreement govern all matters, and that no items be left open for future resolution.

The Commission intends to proceed with the various collaborative and other pending proceedings that are certain to produce results for Verizon, AT&T and other carriers. The new agreement shall not preclude, nor forestall, any such results from being implemented at the time the Commission renders its decisions, or when it adopts the results and terms achieved in any such proceeding. The parties are on notice that Commission resolution of the arbitration issues presented to it here does not preclude it from otherwise exercising its regulatory authority.

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-140, SUB 73
DOCKET NO. P-646, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Arbitration of Interconnection Agreement Between)
AT&T Communications of the Southern States, Inc.,) RECOMMENDED
and TCG of the Carolinas, Inc., and BellSouth) ARBITRATION
Telecommunications, Inc., Pursuant to the) ORDER
Telecommunications Act of 1996)

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street,
Raleigh, North Carolina, beginning July 31, 2000 and ending August 2, 2000

BEFORE: Chairman Jo Anne Sanford, Presiding; Commissioners Ralph A. Hunt,
Judy Hunt, William R. Pittman, J. Richard Conder, Robert V. Owens, Jr., and
Sam J. Ervin, IV

APPEARANCES:

FOR AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC. AND TCG
OF THE CAROLINAS, INC.:

Jim Lamoureux, Senior Attorney, and Suzanne Ockleberry, Attorney, AT&T
Communications of the Southern States, Inc., 1200 Peachtree Street,
Atlanta, Georgia 30309

Marsha E. Rule, Senior Attorney, AT&T Communications of the Southern
States, Inc., 101 North Monroe Street, Tallahassee, Florida 32301

Margaret Rhodes, Attorney, McKenna & Cuneo, 1900 K Street, Washington,
DC 20006

FOR BELL SOUTH TELECOMMUNICATIONS, INC.:

Edward L. Rankin, III, General Counsel, BellSouth Telecommunications, Inc.,
Post Office Box 30188, Charlotte, North Carolina 28230

9. BellSouth and AT&T should refer to the CCP the issues raised by AT&T in *Matrix Issue No. 32*, for consideration by the entire CCP forum. Further, the Parties are required to file separate, quarterly status reports beginning on March 31, 2001, on the progress the CCP has had in addressing and resolving each of the issues.

10. BellSouth has failed to demonstrate that it provides AT&T with nondiscriminatory access to its maintenance and repair operations support systems (OSS) capabilities. The Commission is concerned about this lack of parity and expects BellSouth to take appropriate action within a reasonable time frame to ensure that parity is reached in the instances noted in this proceeding. However, the Commission is not inclined at this time to dictate specifically what action BellSouth should take to correct this lack of parity.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

MATRIX ISSUE NO. 9: How should AT&T and BellSouth interconnect their networks in order to originate and complete calls to end-users?

POSITIONS OF PARTIES

AT&T/TCG: AT&T and BellSouth should interconnect on an equitable basis, which is hierarchically equivalent, and should not maintain the imbalance situation where AT&T incurs the expense of connecting throughout BellSouth's network, while BellSouth incurs a much lower cost by connecting at the edge of AT&T's network. AT&T's proposal also avoids use of limited collocation space that is better used for other purposes such as, interconnection to UNE loops and advanced services. AT&T's proposal requires the two Parties to work out a transition plan to "groom" the two networks.

BELLSOUTH: BellSouth offered interconnection in compliance with the requirements of the FCC rules and regulations, as well as with any state statute or regulation. Interconnection can be through delivery of facilities to a collocation or fiber meet-point arrangement or through the lease of facilities. Interconnection for AT&T-originated local traffic must be accomplished through at least one point of interconnection within the BellSouth LATA and may be at an access tandem or local tandem. BellSouth, at its option, may designate one or more POI on its network for the delivery of its originating traffic to AT&T. BellSouth should not be required to incur additional unnecessary costs as a result of the selection of interconnection points by AT&T. If AT&T requires BellSouth to haul BellSouth-originated traffic from the originating local calling area to a POI outside that local calling area, AT&T should be financially responsible for the facilities used for that purpose.

PUBLIC STAFF: AT&T may designate its own POI with BellSouth's network. If the location of the POI is in a different calling area from the local calling area of a

BellSouth-originated local call, BellSouth may charge AT&T for the transport of that call from the boundary of the originating local calling area to the POI.

DISCUSSION

When this arbitration proceeding began, the question of how AT&T and BellSouth should interconnect their networks in order to originate and complete calls to end-users appeared to be the central issue. BellSouth agreed that AT&T can select as many or as few POI as it desires. However, it became apparent that the crux of the interconnection issue is which party will pay the costs of transporting a call when the POI is within the LATA, but outside the local calling area in which the call originates, and vice versa. AT&T acknowledged that facilities and switching requirements for its customers originating calls is its responsibility. When a BellSouth customer in a local calling area originates a call to an AT&T customer within the same local calling area, but the AT&T POI is outside the local calling area of the parties, there remains the question of who incurs the cost of transport facilities.

This issue requires a determination of whether AT&T or BellSouth is going to be financially responsible for certain facilities needed to carry local traffic from a BellSouth local calling area to a distant POI established by AT&T. The calls that utilize the facilities in question are calls that originate in one BellSouth local calling area and are intended to be completed in that same local calling area but that have to be routed out of that local calling area because of AT&T's network design.

This issue exists because AT&T and BellSouth have each built and intend to utilize totally separate and different networks for the provision of local service in North Carolina. Each carrier's local networks were designed to be the most efficient and cost effective for that carrier. BellSouth's system consists of a number of local networks that have developed over time, and each BellSouth local network is generally characterized by the use of multiple local switches and relatively short loops to serve its customers in a given local calling area. AT&T intends to use fewer switches and longer loops to serve its customers. As a result, while BellSouth has numerous switches in North Carolina, AT&T proposes to have one POI per LATA, with each company delivering its traffic to the other carrier for termination. BellSouth does not quibble with AT&T's proposal, except it contends that AT&T should bear the cost for transport of BellSouth's traffic if AT&T's designated POI is outside of the local calling area where the BellSouth traffic originates. The Public Staff supports BellSouth's position.

Section 251(c)(2)(b) of TA96¹ states that it is the duty of every incumbent local exchange carrier "to provide for the facilities and any equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . .

¹ 47 U.S.C. § 251(c)(2)(b)

at any technically feasible point within the carrier's network." In the case at bar, all parties agree that AT&T's proposal to establish one POI per LATA is technically feasible. Pursuant to Paragraph 199 of the Local Competition Order,² the FCC found that "the 1996 Act bars consideration of costs in determining a 'technically feasible' point of interconnection or access." Indeed, there has been no consideration of costs in determining that AT&T's proposed POIs are technically feasible. A Commission might well be reversed if it did consider costs when determining technical feasibility.³ However, in the case at bar, technical feasibility is not even at issue. This approach is consistent with the FCC's decision in its Texas 271 proceeding⁴ where, at Paragraph 78, the FCC determined that a CLEC could choose to interconnect at only one technically feasible point within a LATA.

However, the analysis of this issue cannot end there. Generally, each carrier is responsible for the costs of transporting its originating traffic to the POI.⁵ However, it is possible that the POI might be outside of the local calling area, or even outside of a LATA, as we know it today, or a state. In Paragraph 199 of in the First Interconnection Order, the FCC determined that a "requesting carrier that wishes a 'technically feasible' but expensive interconnection would . . . be required to bear the cost of that interconnection, including a reasonable profit." In this case, AT&T's proposal to establish only one POI per LATA would force BellSouth to incur additional transport costs to deliver local traffic from every exchange in the LATA to AT&T. In effect, this result would require BellSouth to absorb the cost of a significant portion of AT&T's local network at no cost to AT&T.

Paragraph 172 of the First Interconnection Order allows "competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic." However AT&T's choice of POIs also affects BellSouth's costs. The Commission believes it would be inequitable to allow AT&T to choose POIs that minimize its costs while ignoring the effect of such a choice on BellSouth.

² In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Order and Report, FCC 96-325, CC Docket 96-98 (August 8, 1996)

³ US West Communications, Inc. v. MFS Intelnet, Inc., 1998 WL 350588 (W.D.Wash. Jan 07, 1998), aff'd, 193 F.3d 1112, (9th Cir.(Wash.) Oct 08, 1999)

⁴ In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, 2000 WL 870853, 15 F.C.C.R. 18,354, 15 FCC Rcd. 18,354, CC Docket No. 00-65 (Jun 30, 2000)

⁵ 47 C.F.R. § 51.703(b)

This is not to imply that AT&T should be required to establish a POI in every local calling area. AT&T has cited several cases that hold that such a requirement is contrary to TA96 and FCC rules⁶, and we concur in that AT&T has a wide array of choices for the location of its POIs. However, when it chooses the site of the POIs, it must consider the total cost of each alternative, not merely the direct costs, but also those of BellSouth that should properly be assigned to AT&T. While AT&T may avoid the cost of transport entirely by establishing a POI in each BellSouth local calling area, it certainly may choose instead to have one POI per LATA and pay the transport for calls originating in another local calling area than the one where the POI is located.

Because of the importance and complexities of this issue, the Commission requested the parties to provide additional briefing on the POI issue. The parties responded in considerable detail. After careful review, it is apparent that there is a division of authority concerning the transport issue. Much of the AT&T analysis tends to establish that it has nearly absolute discretion in establishing as many or as few POIs as it wishes as long as they are technically feasible; and cost cannot be considered in terms of such feasibility. As noted above, no one disputes this. The real question is, who pays for the transport? It is not appropriate to conflate these issues. Interestingly, AT&T has cited to cases which, when read carefully, more nearly establish the point that the Commission is making in its analysis here.

For example, AT&T cited the FCC Amicus Brief in which the FCC did maintain that cost was irrelevant in assessing a technically feasible POI. However, the FCC added, citing Paragraph 199 of the First Interconnection Order, that US West could obtain additional compensation if a specific request for interconnection warrants it (which the state commission had provided).⁷ The district court reiterated the same point in its decision.⁸

Further, in US West Communications, Inc. v Jennings,⁹ also cited by AT&T, the federal district court of Arizona remanded a decision by the Arizona Commission (ACC) on POIs and gave the Commission several factors to consider. In determining whether a

⁶ US West Communications, Inc. v. Hix, et al., No. C97-D-152, (D. Colo., June 23, 2000); US West Communications, Inc. v. AT&T Communications of the Pacific Northwest, Inc., 31 F.Supp.2d 839 (D. Or. Dec. 10, 1998), rev'd in part, vacated in part on other grounds, US West Communications, Inc. v. Hamilton, 224 F.3d 1049, (9th Cir.(Or.) Sep 13, 2000)

⁷ Memorandum of Federal Communications Commission as Amicus Curiae, US West Communications v. AT&T Communications of the Pacific Northwest, Inc., No. CV 97-1575 JE (D. Or. filed August 16, 2000)

⁸ US West Communications, Inc. v. AT&T Communications of the Pacific Northwest, Inc., 31 F.Supp. 2d. 839,853 (D. Or. 1998), rev'd in part on other grounds, 224 F.3d 1049 (9th Cir. 2000)

⁹ 46 F.Supp. 2d 1004 (D. Ariz. May 4, 1999)

CLEC should establish more than one POI in Arizona, the Court found that the ACC may properly consider relevant factors, including whether a CLEC is purposely structuring its POIs to maximize the cost to the ILEC or to otherwise gain an unfair competitive advantage. The purpose of TA96 is to promote competition, not to favor one class of competitors at the expense of another. As an alternative, the ACC may require a CLEC to compensate US West for costs resulting from an inefficient interconnection. It would be ironic if a law designed to promote a market-driven economy in local telephone service were instead interpreted to prohibit the consideration of cost when making decisions and thereby subsidize and reward inefficient behavior by market participants.

Another example comes from Wisconsin¹⁰ where that Commission held that each party should bear the cost of the transport of traffic it originates to the other parties' end office switching.

On January 30, 2001, AT&T on its own initiative filed a Response to the Public Staff's Brief on Matrix Issue No. 9. AT&T maintained that 47 C.F.R. §§ 51.703(b) and 51.709(b) "unequivocally prohibit" BellSouth from charging AT&T for the cost of transporting BellSouth's traffic to the POI designated by AT&T.¹¹ As additional support, AT&T cited to the recently decided FCC Memorandum and Order, FCC 01-29, Joint Application by SBC Communications, Inc., Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217 (January 22, 2001) (Kansas/Oklahoma Order)

AT&T argued that the FCC in that Order was addressing the same issue that was being presented in this case—that is, the issue of the incumbent effectively denying "a competing carrier the right to elect a single point of interconnection by improperly shifting to competing carriers inflated transport and switching costs associated with such a single point of interconnection arrangement." (Kansas/Oklahoma Order, at ¶ 233). In particular, AT&T noted that the FCC confirmed that its decision to allow a CLEC to designate a single POI did not in any way "change an incumbent LEC's reciprocal compensation obligations under our current rules." (*Id.* at ¶ 235) The FCC specifically cited the rules referenced by

¹⁰Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T Subsidiaries, AT&T Communications of Wisconsin, Inc., and TCG Milwaukee, and Wisconsin Bell, Inc., 05-MA-120, October 12, 2000.

¹¹ 47 C.F.R. § 51.703(b) reads: "(b) A LEC may not assess charges on any other telecommunication carrier for local telecommunications traffic that originates on the LEC's network." 47 C.F.R. § 51.709(b) reads: "The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods."

AT&T (47 C.F.R. §§ 51.703(b) and 51.709(b)) which “preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC’s network.” (*Id.*)

On January 31, 2001, BellSouth filed a Reply to AT&T’s Response. Criticizing AT&T’s filing as untimely, BellSouth went on to argue that AT&T’s brief was substantively without merit. In fact, BellSouth noted, the FCC had expressly declined to decide any dispute like the one here. (*Id.* at ¶ 234) AT&T’s argument is based on inapposite dictum, since among other things, this case presents an interconnection issue not a reciprocal compensation issue. The FCC has recognized that a competitor cannot avoid the financial consequences of its chosen “technically feasible” but expensive interconnection. See First Interconnection Order ¶ 199. AT&T is also incorrect in asserting that the Public Staff’s position would effectively require it to establish a POI in each calling area. If AT&T chooses not to have facilities in a given local calling area, it can simply lease them.

On February 6, 2001, the Public Staff filed its Reply to AT&T’s Response, stating that, after careful review of the Kansas/Oklahoma Order, the Public Staff still believes the FCC has yet to address the central issue in dispute: when a CLP-selected POI requires transport beyond the local calling area, should the CLP bear the cost of transporting the calls beyond the local calling area? The Public Staff argued that AT&T completely sidesteps this central issue and that AT&T is essentially arguing that it may choose a POI which creates costs for BellSouth not normally incurred in the provision of local exchange service and then require BellSouth, and ultimately BellSouth’s ratepayers, to absorb these costs. The Public Staff repeated its position that BellSouth should not be required to be financially responsible for a significant portion of AT&T’s local exchange network.

In the Kansas/Oklahoma Order, the FCC addressed CLPs’ concerns that they are required to pay “inflated transport and switching costs” if they choose a single POI with Southwestern Bell Telephone (SWBT). The FCC determined that since these concerns involve positions merely proposed by SWBT in a technical conference, the issues were hypothetical. In the instant case, AT&T has not alleged that the costs of transport and switching are “inflated.” AT&T is simply unwilling to pay any such costs despite choosing a form of local interconnection that relies heavily upon transport beyond the local calling area.

The FCC did not resolve the issue of POI and associated costs in the Kansas/Oklahoma Order, but rather invited the parties to “file a petition for declaratory ruling or petition for rulemaking.” Although the FCC did attempt to address the issue further in ¶ 235, its words contain little guidance. The FCC again admitted that it had not yet considered how the “choice of interconnection would affect inter-carrier compensation arrangements.” Then, in an attempt to paraphrase its Rule 51.701, the FCC inadvertently mischaracterized the whole reciprocal compensation arrangement, saying, “These rules also require that an incumbent LEC compensate the other carrier for transport and

termination for local traffic that originates on the network facilities of such other carrier."¹² Taken at face value, this sentence would appear to require BellSouth to compensate AT&T for terminating an AT&T-originated call and it is clearly a misstatement. Thus, the FCC did not fully analyze the issue when it addressed SWBT's position in Oklahoma.

The Public Staff also noted that AT&T has provided the Commission with a recommendation from the Georgia Staff. While the Georgia Staff did recommend the adoption of AT&T's position, the underlying evidence and analysis are unclear. On the other hand, BellSouth filed a decision by the South Carolina Public Service Commission (SCPSC)¹³ which adopted BellSouth's position on this issue and which contains a lengthy analysis of the pertinent authority and the equities involved. The Public Staff commended the South Carolina decision to this Commission, especially since it appears that the SCPSC considered virtually the same evidence and arguments as were presented in the instant case.

In conclusion, the Public Staff recommended that, if AT&T interconnects at points within a LATA but outside of BellSouth's local calling area from which traffic originates, AT&T should be required to compensate BellSouth for, or otherwise be responsible for, the transport beyond the local calling area. The Public Staff did not believe that such a holding would violate any FCC rules or case law. Moreover, such a result would be equitable and in the public interest.

As noted by the Public Staff, the South Carolina Public Service Commission (SCPSC) has, in fact, addressed virtually the same issues regarding POIs and financial responsibility for transport as is being addressed here. In a well-reasoned decision, the SCPSC concluded that while AT&T was entitled to have a single POI in a LATA, it should remain responsible to pay for the facilities necessary to carry calls from distant local calling areas to that single POI. The SCPSC stated that this was "the fair and equitable result." Of particular interest in the SCPSC's analysis with respect to TRS Wireless v. US West et al, Memorandum and Order, FCC 00-194 (Rel. June 21, 2000) (TRS Order) cited in this docket by AT&T with approval where the SCPSC explained that the TRS Order did not say that LECs were required to deliver calls to CMRS providers to points outside the MTA (the wireless provider's equivalent to a local service area) but rather that LECs only had to deliver traffic at no charge within the MTA or calling area where the call originated. The more appropriate application of the reasoning of the TRS Order to the issue in this docket

¹² What Rule 51.701(e) actually says is: ". . . a reciprocal compensation arrangement between two carriers is one 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 local telecommunications traffic that originates on the network facilities of the other carrier."

¹³ Petition of AT&T Communications of the Southern States, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc., Pursuant to 47 USC Section 252, Docket No. 2000-527C, Order No. 2001-079, (January 30, 2001) (South Carolina Order)

is that BellSouth should not be required to deliver free of charge its local traffic outside the local service area in which the call originates.

Finally, the Commission wishes specifically to address Rule 51.703(b), which states: "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." It has been suggested that this provision favors AT&T's position because the traffic under consideration should be classified as "local telecommunications traffic that originates on the LEC's network." The Commission, however, is skeptical of this interpretation as it pertains to the network architecture represented here.

In interpreting such a provision, it is well to recall that the provision was drafted in 1996 in the immediate wake of the enactment of the Telecommunications Act where, if anything, the implicit assumption would have been that the carriers' network architectures would have been similar. Indeed, a reasonable interpretation of Rule 51.703(b) is not that it was intended to be determinative as to transport charges no matter how disparate the network architectures, but rather that it was intended to forbid the levying of access charges by carriers. Moreover, the Commission believes that it is fair to say that the FCC has made no unequivocal statements as to the application of Rule 51.703(b) to a fact situation such as is presented here. The latest general reference appears to be in the Kansas/Oklahoma Order, in the sentence in Paragraph 235 preceding the one that the Commission identified as inaccurate, where there was a cryptic reference to Rule 51.703(b) but no further exposition as to its meaning. In fact, read in the context of that paragraph, the FCC seemed unwilling to make much of a positive statement at all. Thus, there is ample reason to doubt that Rule 51.703(b) is dispositive in this case.

In any event, what the Commission finds most troubling is that, if one assumes the premises regarding the applicability of Rule 51.703(b), one is ineluctably lead to a ruinous, if not absurd, result--namely, that there is nothing, in principle, to prevent a CLP from situating its POI anywhere in the ILEC's network and compelling the ILEC to pay the transport. AT&T has attempted to mitigate this specter by saying it would only insist on one POI per LATA, but a concession by grace can be withdrawn at will. There is very little to prevent AT&T or, by extension, any other CLP from making its POI in, say, Miami or New Orleans. Indeed, if the ILECs are picking up the transport tab, there is an incentive to do so, provided it is otherwise technically and economically feasible to place their POIs there--which, given the onward march of technology, it may very well be if it is not already. The Commission believes that this is a result scarcely contemplated by Rule 703(b) and calls into question its viability as applied to a fact situation such as the one here.

One of the problems associated with fashioning an equitable solution to many of the issues we are faced with is to arrive at a solution that is fundamentally fair to both sides. Too often, parties unable or unwilling to compose their differences present and support proposals to the Commission that amount to a zero-sum game for the other party. Legal

principles and argumentation are marshaled forward to seek to compel a result. As we have discussed here, however, clear legal guideposts are scarce and even some that may appear to be so could lead to appalling results. We are therefore compelled to rely more on public policy considerations and on common sense. Such considerations would suggest, for example, that, while the ILEC should not be expected to bear all the transport costs, neither should the CLP. Perhaps, there is a reasonable apportionment that might be arrived at to reflect the true costs involved. Unfortunately, we have not been provided the record that would make this possible for the Commission to decide at this point. Nevertheless, this should not prevent two parties, negotiating in good faith, from arriving at a mutually satisfactory solution. In the meantime, however, the public policy that appears to do the least harm is the one we have adopted here.

Accordingly, the Commission concludes that, despite AT&T's assertions, there is no case or principle that is legally dispositive of the result on this issue. Rather, the law allows, and the greater equity demands, that, if AT&T interconnects at points within the LATA but outside BellSouth's local calling area from which traffic originates, AT&T should be required to compensate BellSouth for, or otherwise be responsible for, transport beyond the local calling area. The Commission further concludes that this holding does not violate any FCC rule or case law and that is more equitable than not and in the greater public interest.

CONCLUSIONS

The Commission concludes that, if AT&T interconnects at points within the LATA but outside of BellSouth's local calling area from which traffic originates, AT&T should be required to compensate BellSouth for, or otherwise be responsible for, transport beyond the local calling area. The Commission further concludes that this holding does not violate any FCC rules or case law and that it is equitable and in the public interest. However, if AT&T should feel aggrieved by the ruling in this Order, the Commission suggests that AT&T may wish to seek a declaratory ruling from the FCC, so that a more definitive statement of this issue may be received from that source.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

MATRIX ISSUE NO. 14: Should AT&T be permitted to charge tandem rate elements when its switch serves a geographic area comparable to that served by BellSouth's tandem switch?

POSITIONS OF PARTIES

AT&T/TCG: Yes. When AT&T's switches serve a geographic area comparable to that served by BellSouth's tandem switch, then AT&T should be permitted to charge tandem rate elements.

DOCKET NO. 21982

PROCEEDING TO EXAMINE § PUBLIC UTILITY COMMISSION
RECIPROCAL COMPENSATION §
PURSUANT TO SECTION 252 OF THE § OF TEXAS
FEDERAL TELECOMMUNICATIONS §
ACT OF 1996 §

REVISED ARBITRATION AWARD
TABLE OF CONTENTS

I.	JURISDICTION.....	2
II.	PROCEDURAL HISTORY	2
III.	RELEVANT STATE AND FEDERAL PROCEEDINGS.....	4
A.	RELEVANT COMMISSION DECISIONS	4
B.	RELEVANT FEDERAL COMMUNICATIONS COMMISSION DECISIONS.....	7
C.	RELEVANT COURT DECISIONS	9
IV.	INTER-CARRIER COMPENSATION RATES	11
V.	DISCUSSION OF DPL ISSUES	12
A.	DPL ISSUE NO. 1: WHAT TRAFFIC SHOULD BE SUBJECT TO RECIPROCAL COMPENSATION?	13
(a)	SWBT's Position.....	13
(b)	CLECs' Position.....	15
(c)	Commission Decision.....	17
B.	DPL ISSUE NO. 2: WHAT METHOD SHOULD BE USED TO DETERMINE INTER-CARRIER COMPENSATION?.....	19
1.	<i>Rate Symmetry Issue</i>	19
(a)	CLECs' Position	19
(b)	SWBT's Position	19
(c)	Commission Decision.....	20
2.	<i>Tandem Issue</i>	20
(a)	SWBT's Position.....	22
(b)	CLECs' Positions.....	25
(c)	Commission Decision.....	29
3.	<i>Rate Structure</i>	30
(a)	Staff Proposal	30
(b)	CLECs' Position	30
(c)	SWBT's Position	34
(d)	Commission Decision.....	36
C.	DPL ISSUE NO. 3 - WHAT RATES SHOULD APPLY?.....	41
1.	<i>Taylor Comm. Cost Study, Request for Carrier-Specific Rates, and Asymmetric Rates</i>	41
(a)	Taylor Comm.'s Position.....	41
(b)	SWBT Position.....	44
(c)	Commission Decision.....	45
2.	<i>Southwestern Bell Cost Study and ISP-Specific Reciprocal Compensation Rates</i>	46
(a)	SWBT Position.....	46
(b)	CLECs' Positions:.....	48
(c)	Commission Decision.....	50
3.	<i>The Bifurcated Rate</i>	51
(a)	Parties' Positions.....	51
(b)	Commission Decision.....	52
D.	DPL ISSUE NO. 4: WHAT IS THE APPROPRIATE METHOD BY WHICH TO BILL FOR THIS TRAFFIC?	53
(a)	The Current Billing System.....	53
(b)	CLECs' Positions.....	55
(c)	SWBT's Position.....	61
(d)	Commission Decision.....	63

DPL Issue No. 3: What is the appropriate rate or rates (e.g., symmetrical/asymmetrical) at which compensation should be made?

DPL Issue No. 4: What is the appropriate method by which to bill for this traffic?

A. DPL ISSUE NO. 1: WHAT TRAFFIC SHOULD BE SUBJECT TO RECIPROCAL COMPENSATION?

(a) SWBT's Position

SWBT asserts that the FCC has determined that the FTA's reciprocal compensation requirement applies to the exchange of local traffic only. It defines "local traffic" as traffic that is either within a single exchange or traffic that is between exchanges subject to mandatory local calling; in either instance, such traffic falls within the "basic/local" retail calling scope of an exchange customer.³² SWBT contends that ISP-bound traffic, however, does not originate and terminate within any such calling scope and is largely interexchange in nature. Consequently, SWBT avers that ISP-bound traffic is not subject to reciprocal compensation. It argues that a call placed to an ISP has end-to-end connectivity to almost anywhere in the world--in other words, such a call is not terminated locally but rather to some point on the World Wide Web.³³ In support of this argument, SWBT relies upon the FCC's declaratory ruling addressing the nature of ISP-bound traffic as it relates to reciprocal compensation.³⁴

SWBT also states that all local traffic originated through unbundled network elements (UNEs) is eligible for reciprocal compensation. SWBT explains that the manner in which a CLEC decides to originate its customers' calls is irrelevant as to whether reciprocal compensation applies to those calls, given that the CLEC's method of doing business does not

³² SWBT Ex. No. 7, Direct Testimony of D. Randy Long at 6.

³³ SWBT Ex. No. 5, Direct Testimony of Robert Jayroe at 5.

³⁴ *In the Matter of the Implementation of Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98, Declaratory Ruling; *Inter-Carrier Compensation of ISP-Bound Traffic*, CC Docket No. 99-68 Notice of Proposed Rulemaking (Feb. 25, 1999).

affect SWBT's cost to terminate the traffic.³⁵ SWBT contends, however, that the following types of traffic are not eligible for reciprocal compensation:

- Traffic terminated through Internet Gateways, which generally are not used to originate traffic, but rather serve to receive traffic for purposes of routing that traffic to an ISP local server: SWBT contends that this type of traffic is not "local" in nature and that the traffic flow is inherently "one-way," *i.e.*, there is no exchange of originating and terminating traffic between the carriers.³⁶
- Transit carriers: SWBT asserts that such a carrier (*i.e.*, the second or intermediate carrier) neither originates nor terminates the call, but simply directs the call to its destination, and is only entitled to recover the cost for transiting the call across its network.³⁷
- FX-type traffic, which is traffic that originates in one local exchange area and is delivered to a telephone number that is assigned to that same local exchange area, although the physical premises for that telephone number and the customer are located in another local exchange area³⁸: SWBT states that, but for the retail FX arrangement, the call would be an interexchange, intraLATA long-distance call.³⁹
- 8YY traffic, which is traffic consisting of those calls which use "800", "877", or "888" as the area code:⁴⁰ SWBT posits that such calls are generally not subject to reciprocal compensation requirements and may be considered "local" for reciprocal compensation purposes only if the call originates and terminates in the same SWBT exchange area or within exchanges that share a common mandatory calling area.⁴¹

³⁵ SWBT Ex. No. 8, Rebuttal Testimony of D. Randy Long at 21.

³⁶ SWBT Ex. No. 7, Direct Testimony of D. Randy Long at 7-9.

³⁷ SWBT Ex. No. 7, Direct Testimony of D. Randy Long at 12.

³⁸ SWBT Ex. No. 7, Direct Testimony of D. Randy Long at 10.

³⁹ SWBT Ex. No. 7, Direct Testimony of D. Randy Long at 10.

⁴⁰ The originating party using one of these area codes is not charged for the call. The carrier terminating the call typically pays for 8YY calls.

⁴¹ SWBT Ex. No. 8, Rebuttal Testimony of D. Randy Long at 22.

(b) *CLECs' Position*

The Coalition argues that all traffic originated by the customer of a carrier that is delivered by a terminating carrier pursuant to the calling party's request should be subject to reciprocal compensation.⁴² The Coalition asserts that the Commission should re-affirm its precedent treating calls to ISPs as local calls subject to reciprocal compensation in accordance with FTA § 251(b)(5). In view of the D.C. Circuit court of appeals' criticism of the FCC's use of an end-to-end analysis to conclude that ISP-bound traffic is interstate in nature,⁴³ the Coalition posits that it is unlikely that the FCC, on remand, will develop a convincing analogy between ISP-bound traffic and long-distance traffic on remand to justify its declaratory ruling.⁴⁴ Even absent the federal appellate court's remand, the Coalition argues that the segregation of ISP traffic for reciprocal compensation purposes is not justified by any cost differences between ISP-bound traffic and other local traffic, given that the two types of calls use the public switched telephone network in identical ways.⁴⁵ Furthermore, the Coalition contends that there is no cost basis for any such differentiation because the cost driver for both types of calls is the same.⁴⁶

The Coalition also asserts that the Commission should reject SWBT's effort to parse out different forms of terminating arrangements for serving ISPs by exempting certain arrangements such as "virtual FX" and "Internet Gateways" from reciprocal compensation. First, the Coalition argues that SWBT's effort to carve out such exemptions is unfounded, both as a matter of technology and as a matter of economic policy.⁴⁷ With respect to the so-called Internet Gateway issue, the Coalition contends that the Commission's determination of when reciprocal

⁴² Coalition Ex. No. ICG-3, Direct Testimony of Don J. Wood at 7.

⁴³ *Bell Atlantic Telephone Companies v. Federal Communications Commission*, 206 F.3rd 1 (D.C. Cir. 2000).

⁴⁴ Coalition Ex. No. ICG-4, Rebuttal Testimony of Don J. Wood at 4-10.

⁴⁵ Coalition Ex. No. ICG-3, Direct Testimony of Don J. Wood at 7.

⁴⁶ Coalition Ex. No. ICG-3, Direct Testimony of Don J. Wood at 7; Coalition's Initial Brief at 15-16 (April 19, 2000).

compensation is due should be technology-neutral. The Coalition believes given the rapid development of new technologies and the consumer demand for Internet access, the Commission should not take any action that would have the effect of dictating how a carrier deploys new technology or designs its networks to serve its customers.⁴⁸

Second, with respect to the so-called virtual FX issue, the Coalition contends that the CLEC service described by SWBT is also provided by SWBT in essentially the same manner. The Coalition believes that any exemption afforded a CLEC's virtual FX traffic would result in discrimination against CLECs and provide a competitive advantage to SWBT's own similar offerings.⁴⁹

AT&T avers that the most efficient and effective approach to addressing the reciprocal compensation issue is to adopt a cost-based rate structure covering all traffic exchanged between AT&T and SWBT which originates and terminates within the same LATA.⁵⁰ AT&T states that the one exception to its proposal is AT&T's Feature Group D access traffic, which is generated via its long-distance network.⁵¹ Furthermore, AT&T agrees with the Coalition that ISP-bound traffic is local traffic, possessing all the cost and technical characteristics of a local call.⁵² AT&T argues that a CLEC should be compensated for any costs that it incurs in terminating a call from a SWBT customer because SWBT avoids having to incur those costs.⁵³

With regards to 8YY traffic, AT&T asserts that an 8YY call that originates on one carrier's network and terminates on another's network without the need for any interexchange

⁴⁷ Coalition Ex. No. CLEC-1, Direct Testimony of William Page Montgomery at 23-24.

⁴⁸ Allegiance Ex. No. 1, Direct Testimony of Richard Anderson at 2.

⁴⁹ Coalition Ex. No. CLEC-2, Rebuttal Testimony of William Page Montgomery at 37-39.

⁵⁰ AT&T Initial Post-Hearing Brief at 5 (April 19, 2000).

⁵¹ AT&T Ex. No. 5, Direct Testimony of Maureen A. Swift at 12.

⁵² AT&T Initial Post-Hearing Brief at 11 (April 19, 2000).

⁵³ *Id.* at 12.

carrier (IXC) transport is carried on local interconnection trunks and, therefore, is subject to reciprocal compensation.⁵⁴ AT&T further argues that virtual FX traffic and Internet Gateway traffic should not be treated differently from other local traffic. It states that there are no underlying routing or geographic characteristics that uniquely distinguish such traffic from other types of local calls. AT&T observes that, depending upon the physical boundaries of a customer's pre-defined local calling area, a local call may well traverse more central offices and route miles than a given toll call.⁵⁵ Moreover, AT&T contends that SWBT's position regarding Internet Gateway traffic would discriminate based on a CLEC's technology and network architecture and would be anti-competitive.⁵⁶

(c) *Commission Decision*

The Commission is again not persuaded by SWBT's argument that it should treat ISP-bound traffic differently for purposes of reciprocal compensation. The Commission has previously concluded that ISP-bound traffic is local in nature and reaffirms that such traffic is eligible for reciprocal compensation in this proceeding. Its prior rulings remain viable from technological, policy, and legal standpoints, and they are now supported by the federal appellate court decisions in Southwestern Bell Telephone Co. v. Public Utility Commission of Texas and Bell Atlantic Telephone Companies v. Federal Communications Commission. Moreover, designating ISP-bound traffic as local traffic is not inconsistent with any action taken by the FCC on the matter. Additionally, taking into account the possibility that the designation of ISP-bound traffic as local traffic may be subject to a successful future challenge at the FCC and/or in the courts, the Commission also finds that it is reasonable to compensate such traffic in the same manner as local traffic, for reasons that are the same or similar to those relied upon in concluding that ISP-bound traffic constitutes local traffic. Finally, the Commission concludes

⁵⁴ AT&T Ex. No. 5, Direct Testimony of Maureen A. Swift at Direct at 12.

⁵⁵ AT&T Ex. No. 4, Rebuttal Testimony of Patricia D. Kravtin at 20.

⁵⁶ *Id.*

that there are no compelling policy reasons for establishing a reciprocal compensation mechanism that would require the separation and/or measurement of ISP-bound traffic.

The Commission also reaffirms its previous determination that reciprocal compensation arrangements apply to calls that originate from and terminate to an end-user within a mandatory single or multi-exchange local calling area, including the mandatory EAS/ELCS areas comprised of SWBT exchanges and the mandatory EAS/ELCS areas comprised of SWBT exchanges and exchanges of independent ILECs.⁵⁷ Consistent with this precedent, optional EAS traffic is not subject to reciprocal compensation.⁵⁸ The Commission also finds that to the extent that FX-type and 8YY traffic do not terminate within a mandatory local calling scope, they are not eligible for reciprocal compensation.⁵⁹ The Commission reiterates that this Award does not preclude CLECs from establishing their own local calling areas or prices for purpose of retail telephone service offerings.⁶⁰

Finally, the Commission agrees with SWBT that transit traffic should not be eligible for reciprocal compensation. The Commission addresses transit traffic in its discussion of DPL Issue No. 4.

⁵⁷ See First Mega-Arbitration Award at ¶58; Project No. 16251, Order No. 55, Attachment 12 at ¶ 1.1. See also Evaluation of the Public Utility Commission of Texas, *In the Matter of Application of SBC Communications Inc., and Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. D/B/A/ Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In- Region*, CC Docket No. 00-4, at 88 (Jan. 31, 2000); Project No. 16251, Final Staff Report on Collaborative Process at 103-104 (Nov. 18, 1998).

⁵⁸ See First Mega-Arbitration Award at ¶59.

⁵⁹ These findings with regard to optional EAS and FX-type traffic do not preclude the parties affected by this Award from negotiating and/or arbitrating appropriate compensation related to such traffic in other proceedings in which interconnection agreements are being addressed. This Award, which focuses upon inter-carrier compensation for local traffic only, does not intend to place compensation-related issues for optional EAS and FX-type traffic in a regulatory "no man's land".

⁶⁰ See First Mega-Arbitration Award at ¶59.

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
01 NOV 20 PM 2:22
COMMISSION CLERK

DATE: November 21, 2001

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

FROM: DIVISION OF COMPETITIVE SERVICES (HINTON, BLOOM) ^{CH} ^B
DIVISION OF LEGAL SERVICES (KEATING, BANKS) ^{BIL} ^{BOB}

RE: DOCKET NO. 000075-TP - INVESTIGATION INTO APPROPRIATE
METHODS TO COMPENSATE CARRIERS FOR EXCHANGE OF TRAFFIC
SUBJECT TO SECTION 251 OF THE TELECOMMUNICATIONS ACT OF
1996.

AGENDA: 12/05/01 - SPECIAL 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\000075.RCM

DOCUMENT NUMBER-DATE

14778 NOV 20 01

FPSC-COMMISSION CLERK

DOCKET NO. 000075-TP
DATE: November 21, 2001

ISSUE 15: (a) Under what conditions, if any, may carriers assign telephone numbers to end users physically located outside the rate center in which the telephone number is homed?

(b) Should the intercarrier compensation mechanism for calls to these telephone numbers be based upon the physical location of the customer, the rate center to which the telephone number is homed, or some other criterion?

RECOMMENDATION: (a) Staff recommends that carriers be permitted to assign telephone numbers to end users physically located outside the rate center to which the telephone number is homed, within the same LATA. (HINTON)

(b) Staff recommends that intercarrier compensation for calls to these numbers be based upon the end points of the particular calls. However, staff does not recommend that the Commission mandate a particular intercarrier compensation mechanism for virtual NXX/FX traffic. Since non-ISP virtual NXX/FX traffic volume may be relatively small, and the costs of modifying the switching and billing systems may be great, staff believes it is best left to the parties to negotiate the best intercarrier compensation mechanism to apply to virtual NXX/FX traffic in their individual interconnection agreements. While not recommending a particular compensation mechanism, staff does recommend that virtual NXX traffic and FX traffic be treated the same for intercarrier compensation purposes. (HINTON)

POSITION OF PARTIES

BELLSOUTH:

Carriers should assign NPA/NXXs outside the rate centers to which they are homed only if the carrier can identify the physical endpoint of the call so that the appropriate compensation can be determined by the other carriers involved in the completion of the call.

VERIZON:

Carriers should not be permitted to assign telephone numbers to end users outside the rate center to which the numbers are homed. Intercarrier compensation should continue to depend upon the physical location of the customer. Otherwise, it will be

DOCKET NO. 000075-TP
DATE: November 21, 2001

impossible to maintain the distinction between local and toll calls.

SPRINT:

(a) Carriers should be permitted to assign NPA/NXX codes to end users outside the rate center in which the NPA/NXX is homed.

(b) It should be the responsibility of the originating carrier to deliver its traffic to the rate center in which the NPA/NXX is homed.

JOINT ALEC:

(a) Carriers should be allowed to assign telephone numbers to end users physically located outside the rate center in which the telephone [number] is homed anytime the carrier deems appropriate.

(b) Reciprocal compensation obligations should apply without regard to whether the physical location of the called customer is located within the originating rate center of the ILEC. The appropriate method to determine whether such traffic is local is to compare the calling and called parties NPA/NXXs.

AT&T, TCG, & MEDIAONE:

(a) Carriers should be allowed to assign telephone numbers to end users physically located outside the rate center in which the telephone [number] is homed anytime the carrier deems appropriate.

(b) Reciprocal compensation obligations should apply without regard to whether the physical location of the called customer is located within the originating rate center of the ILEC. The appropriate method to determine whether such traffic is local is to compare the calling and called parties NPA/NXXs.

ALLEGIANCE & LEVEL 3:

(a) If an ALEC establishes a POI within the LATA, it may offer service in any rate center in the LATA, assign telephone numbers to end users physically located outside the rate center to which the number is homed, and terminate calls dialed to that rate center at any location.

DATE: November 21, 2001

(b) Reciprocal compensation obligations should apply without regard to whether the physical location of the called customer is within the originating rate center of the ILEC. The appropriate method to determine whether such traffic is local is to compare the calling and called party's NPA/NXXs.

XQ:

(a) Carriers should be allowed to assign telephone numbers to end users physically located outside the rate center in which the telephone is homed anytime the carrier deems appropriate. Both ILECs and ALECs should be allowed to define both their outward and inward local calling areas. ALECs should be allowed to offer customers competitive alternatives to the local calling areas that are embodied in the ILEC's services. The costs that the ILEC incurs in transporting originating traffic to an ALEC are entirely unaffected by the location at which the ALEC delivers the calls to the ALEC's end user customer. As long as the ALEC establishes a point of interconnection within the LATA, it should be allowed to offer service in any rate center in the LATA and terminate calls dialed to that rate center at any location it wishes.

(b) Reciprocal compensation obligations should apply without regard to whether the physical location of the called customer is located within the originating rate center of the ILEC. The appropriate method to determine whether such traffic is local is to compare the calling and called party's NPA/NXXs.

STAFF ANALYSIS

In this issue the Commission is presented with two matters for determination. First, the Commission is to determine under what conditions carriers may assign telephone numbers to end users physically located outside the rate center in which the telephone number is homed. Second, the Commission is to determine whether intercarrier compensation for calls to these numbers should be based upon the physical location of the calling and called parties or upon a comparison of the NPA/NXXs assigned to them. Staff notes that due to the FCC's recent *ISP Remand Order*,⁶ which removes ISP-bound traffic from state jurisdiction, this issue is limited to intercarrier compensation arrangements for traffic that is

⁶ Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, CC Docket Nos. 96-98 and 99-68; FCC 01-131 released April 27, 2001.

delivered to non-ISP customers. (Level 3 BR 27) Sprint witness Maples explains that when you take ISP-bound traffic out of the equation, any real voice FX traffic is going to be minor. (TR 571) Nevertheless, no party to this proceeding has suggested that a Commission decision on this issue is no longer needed. Staff merely notes that the volume of traffic that will be subject to the Commission's decision on this issue has potentially decreased considerably since this docket was originally opened.

This issue centers around the ALECs' use of so-called "virtual NXXs." A virtual NXX is the practice of assigning NPA/NXXs to end users physically located outside of the rate center to which the NPA/NXX is homed. This is done in order to give virtual NXX customers a local dialing presence in rate centers other than the rate center in which they are physically located. In other words, end users located in a particular rate center can dial a NPA/NXX that is local to them, but it in fact connects them to a virtual NXX customer physically located outside of the rate center traditionally associated with that NPA/NXX.

Verizon witness Haynes argues that carriers should not be permitted to assign NPA/NXXs to end users located outside of the rate center to which the NPA/NXX is homed unless foreign exchange service is ordered. (TR 420) He explains that a customer's telephone number (NPA/NXX) serves two separate but related functions: proper call routing and rating. Telephone numbers serve to provide the network with specific information necessary to route calls correctly from the caller to the intended destination, as well as identifying the exchanges of the originating caller and the called party to provide for proper rating of calls. (TR 385-386) Witness Haynes states that assigning virtual NXXs does not affect the routing of calls. (TR 388) However, he contends that the proper rating of calls is at the heart of the virtual NXX issue. (TR 386)

Witness Haynes states that "a major public policy goal that has guided regulators and the telecommunications industry for many decades has been the widespread availability of affordable telephone service." (TR 386) He explains that to achieve this objective certain pricing conventions or principles were adopted. The primary principle is that basic exchange access rates typically provide unlimited calls within a confined geographic area at modest or no additional charge. He states that this "confined geographic area consists of the customer's 'home' exchange area and additional surrounding exchanges, together designated as the customer's 'local

DOCKET NO. 000075-TP
DATE: November 21, 2001

calling area.'" (TR 386-387) Witness Haynes states that calls outside of this local calling area are subject to an additional "toll" charge. He explains that toll service is generally priced higher on a usage-sensitive basis. In order to ensure that basic local phone service is universally available and affordable, local exchange companies are permitted to use revenues gained from toll service to hold down the price of basic local service. (TR 387)

Witness Haynes states that a second pricing principle is that the calling party pays to complete a call, with no charge levied on the called party. (TR 387) However, he explains that there are a few exceptions to this principle, such as where a called party agrees to pay toll charges in lieu of those charges being assessed upon the calling party (e.g., 1-800 calling, collect calling, and third party billing). Another suggested exception is where both the calling and called parties share the cost of the call, as with Foreign Exchange (FX) service. (TR 387)

Witness Haynes describes Verizon's FX service as a "toll substitute service." (TR 398) He explains that FX is a private line service designed so that a calling party may place what appears to be a local call, to a FX customer located outside the caller's local calling area. He states that if this was truly a local call, the called party would not be subject to a charge for the call. However, the FX customer (the called party) agrees to pay the additional charges which the calling party would otherwise have to pay to transport the call beyond the caller's local calling area, to the exchange where the FX customer is physically located. (TR 398) Witness Haynes explains that FX service provides a customer with the appearance of a presence in another local calling area. He states that the FX customer achieves this by "subscribing to basic exchange service from the 'foreign' switch and having its calls from that local calling area transported over a private line, which it also pays for, from the distant local calling area to its own premises." (emphasis in original) (TR 398) Witness Haynes explains that en route, the call is transported through the end office to which the FX customer is connected, without being switched, to the FX customer's local loop. (TR 398)

With regards to the proper rating of calls, witness Haynes explains:

the local exchange carrier tariff billing systems use the NXX codes of the calling and called parties to determine

the originating and terminating rate centers and exchange areas of the call. This information, in turn, is used to properly rate and subsequently bill the call. If the rate center or exchange area of the called party as determined by the called numbers NXX code is included in the originating subscriber's local calling area, then the call is rated as a local call.

If the rate center exchange area of the called party, again determined by the NXX code of the called number, is outside of the local calling area then the call is determined to be toll. Thus the rate centers of calling and called parties as expressed in the unique NXX codes assigned to each rate center are absolutely essential for LECs to properly rate calls as either local or toll. (TR 421-422)

He argues that "the ALEC's virtual NXX codes scheme completely undermines the rating of a call as local or toll, thereby denying Verizon compensation for the transport costs it incurs to deliver the calls to the [ALECs]." (TR 422)

Witness Haynes defines a virtual NXX as an entire exchange code, consisting of 10,000 NPA/NXXs, obtained by a carrier and assigned to a rate center in which that carrier has no facilities or customers. The carrier then uses this exchange code to serve customers that are physically located in exchanges other than that to which the code is assigned. (TR 392) He states that in essence, virtual NXXs sever the connection between exchange areas and their corresponding exchange codes (NPA/NXXs), preventing ILECs from collecting for toll calls and inhibiting their ability to maintain affordable basic local service. (TR 393-394) In addition, witness Haynes contends that ALECs use virtual NXXs to make the call appear to be local to both the caller and the caller's carrier, and thereby claim reciprocal compensation for the call. (TR 392)

Witness Haynes asserts that the term "virtual NXX" was coined a few years ago by ALECs to describe the arrangement they devised to provide their customers (generally ISPs) with a one-way/inward 800-type service. However, he argues:

Had the [ALECs] legitimately provided their ISP customers with a one-way/inward toll-free number service, the customer with the toll-free 800, 877 or 888 number (i.e.,

DOCKET NO. 000075-TP
DATE: November 21, 2001

the ISP) would pay to receive all incoming calls, the terminating carrier (the [ALEC]) would pay the originating carriers (e.g., Verizon, independent telephone companies) carrier access charges, and the callers would reach the ISP free of charge. However, under the virtual NXX scheme employed by some, [ALECs] receive an 800-like arrangement, with Verizon bearing the costs to transport their traffic without compensation. (TR 394)

BellSouth witness Ruscilli also draws a comparison between virtual NXX service and 1-800 toll-free service. He states that virtual NXX and 800 service are similar toll-free services in which an interexchange toll call is made by a consumer who does not pay toll charges. He explains that the subscriber receiving the call pays to haul the call outside of the local calling area in which the call originates. (TR 90)

Verizon witness Haynes raises an additional issue regarding the use of a virtual NXX as he has defined it: number conservation. He argues that an ALEC's request of numbers for rate centers in which they have no customers appears to be a waste of numbering resources. (TR 410) Witness Haynes cites a June 2000 decision by the Maine Public Utilities Commission (PUC) in support of this position. He explains that an ALEC in Maine had requested 54 NXX codes for use outside the rate center in which their switch resided. These codes were used to provide interexchange service from across Maine to a single exchange within the state. He states that the Maine PUC ordered the return of these 54 codes since they were not used to serve local customers. He explains that over 500,000 numbers had been "stranded" with little chance of being utilized since the ALEC was only providing service in one rate center. (TR 410; EXH 16) In its brief, Verizon states that even if virtual NXX call rating problems could be allayed, the number conservation issues will remain. (BR 24)

Level 3 witness Gates disagrees that the use of virtual NXXs has a negative impact on numbering resources. He argues that if virtual NXX calls do impact the availability of numbers, then the ILEC's FX service, extended reach, Cyber DS-1, and other systems have impacted the number resources of Florida for decades. (TR 833) Witness Gates also contends that ALECs don't always have to obtain NPA/NXX codes in blocks of 10,000 as stated by Verizon witness Haynes. Witness Gates states that in jeopardy situations,

DOCKET NO. 000075-TP
DATE: November 21, 2001

companies can obtain codes broken down into 1,000, 500, even 100 number blocks. (TR 865) He argues that there is no proof that virtual NXXs have impacted the numbering resources of Florida, and it would be wrong to limit the availability of service based on a fact that is not in evidence. (TR 889)

Level 3 witness Gates also disagrees with ILEC contentions that virtual NXX calls are similar to 1-800 service. He explains that 8XX NPAs are not associated with a particular geographic area. In other words, callers from many geographic areas can place a toll-free call by dialing the same 8XX, while toll-free virtual NXX calls can only be placed from the rate center in which the customer's NPA/NXX is homed. (TR 782) In addition, he states that a 1-800 call has always been a toll call, as portrayed by the dialing pattern of 1-8XX-NXX-XXXX. He explains that when the call is dialed, the local switch recognizes the call as toll by the 1+ toll indicator, and routes the call to the access tandem for additional routing instructions. (TR 782) In contrast, virtual NXX calls are routed by the local switch like any other local call. (TR 783)

Witness Gates contends that the ALEC's virtual NXX service is a competitive response to the FX service that ILECs have provided for decades. (TR 843) However, witness Gates states that because ALEC and ILEC networks are so different, virtual NXX is provided a little different than FX service. He explains that ILEC networks, such as BellSouth's or Verizon's, have central offices in every exchange. When they provide FX service, they provide a private line from the foreign exchange (in which the NPA/NXX is homed) to the home exchange in which the FX customer is physically located. The ILEC then charges the FX customer for that private line. However, ALECs do not have central offices in every exchange. Witness Gates states that it is physically impossible for ALECS to offer a private line between exchanges. Therefore, ALECS provide this service via number assignment, hence the virtual NXX. (TR 843) Witness Gates asserts that "[t]he use of virtual NXX codes is not unlawful or in any other way improper." (TR 781) He states:

Customers want to use these so-called virtual NXX codes because it allows them to take advantage of state-of-the-art, currently available technologies that allow consumers to reach their businesses without the disincentive of a toll call. It also allows businesses and organizations to provide service in other areas

before they actually have facilities or offices in those areas. Absent such calling plans, consumers would have to wait for carriers to build out their networks - which could take years and millions of dollars. (TR 779)

Witness Gates contends that carriers use virtual NXXs because they allow them to respond to customer demand for new and innovative services, and a prohibition from using virtual NXXs would constitute an artificial impediment to the natural progression of competitive markets. He states that this will deny Florida residents the benefits associated with competitive development. (TR 780) Witness Gates describes what he contends are three negative impacts of prohibiting the use of virtual NXXs. First, he states that "ILECs would be able to evade the intercarrier compensation arrangements they have negotiated with ALECs." (TR 784) He explains that classifying virtual NXX calls as toll would make it nearly impossible and much more economically burdensome for ALECs to utilize virtual NXXs in the provision of service to customers. (TR 785) Second, witness Gates states that restrictions on the use of virtual NXXs would have a negative impact on the competitive deployment and use of affordable dial-up internet services in Florida. (TR 784-785) Finally, he argues that restrictions placed on virtual NXXs, and not on the ILEC's FX service, would give ILECs a competitive advantage over ALECs. (TR 785)

On the other hand, witness Gates suggests several benefits of permitting the use of virtual NXXs. He asserts that these benefits include: (1) providing ALEC customers with a local presence in additional local calling areas; (2) allowing short-term business expansion while carriers build-out their facilities over time; (3) enabling ISPs to provide cost-effective dial-up internet access throughout the state without the need for offices in every local calling area; (4) allowing consumers in lightly populated areas with low-cost dial-up access to the internet; (5) treating virtual NXX calls consistently with the way ILEC FX and other services are treated; and (6) providing a competitive alternative to ILEC FX service. (TR 793-794) In the end, witness Gates contends that this issue is really about a competitive loss for ILECs. He argues:

Total market dominance is a valuable asset, although it is not necessarily in the public interest. It would make sense for an ILEC to protect and preserve its monopoly by proposing language that would make it uneconomic for

Level 3 to chip away at its monopoly market share. (TR 790)

Joint ALEC witness Selwyn agrees that virtual NXX is a competitive response to the ILECs' FX service. He explains that the idea of terminating a call in a rate center that is different than that to which the customer's NPA/NXX is homed was not invented by ALECs. (TR 662) He argues that "ILECs have been offering foreign exchange ("FX") service for decades, and FX service accomplishes essentially the same result, although it is provisioned in a different way." (TR 662) Witness Selwyn explains that a caller in exchange B dials the FX number as a local call to exchange B, but the call is actually delivered to the FX customer physically located in exchange A. He states that this is "pretty much what happens under the 'virtual NXX' approach that is used by some ALECs." (TR 662)

Witness Selwyn suggests that ILECs also enable a customer to have a local presence in a different exchange to which they are physically located through remote call forwarding (RCF). (TR 663) He explains that instead of utilizing a leased channel between exchange A and exchange B, as is done in FX service, with RCF calls placed to the exchange B NPA/NXX are forwarded by the central office switch in exchange B to the customer's phone number in exchange A. He states that the call still appears to be local to the calling party located in exchange B, while the RCF customer located in exchange A pays the toll charge for the call. (TR 663) Witness Selwyn contends that with both the FX and RCF services, "the exchange A customer's inward calling area has been expanded to include exchange B." (emphasis in original) (TR 663)

Witness Selwyn contends that since ALECs do not have switching facilities in every ILEC local calling area, ALECs need to develop alternative means for providing the equivalent functionality to their customers. He states:

And that alternative to the ILECs' creation of a virtual presence for their FX customers in the "foreign exchange" is for the ALECs to use NXX codes rated in exchanges other than the one at which the incoming call will ultimately be delivered - which is exactly the same as what happens in the case of an ILEC FX or RCF call. (TR 665)

Witness Selwyn argues that prohibiting the use of virtual NXXs would penalize the ALECs for their lack of ubiquity while at the same time permitting ILECs to continue providing their customers with a "virtual presence" in an existing ILEC NXX code. He states that this amounts to protecting ILECs from ALEC incursion into the FX/RCF market. (TR 667) Witness Selwyn argues that carriers should be allowed to define both their outward and inward local calling areas. More specifically, he states that "ALECs should be allowed to offer customers competitive alternatives to the local calling areas that are embodied in the ILEC's services." (TR 637)

Verizon witness Haynes agrees that ALECs should be permitted to determine their own outward-dialing calling scopes. He states that a company's ability to offer different calling scopes is an important way to differentiate its services in the market. (TR 406) However, he argues that this "does not mean that an ALEC can arbitrarily expand the local dialing scope of an ILEC customer, as they propose to do here with a service that resembles 1-800 inward dialing, at least without appropriate compensation to the ILEC handling the call." (TR 406-407)

BellSouth witness Ruscilli agrees. He states that an ALEC is free to design whatever local calling area it wants for its own customers; however, it is not free to determine the local calling area for BellSouth customers. (TR 55) He argues:

What the ALEC is doing is offering a service that allows customers of other LECs (i.e., BellSouth) to place toll-free calls to selected customers of the ALEC who are physically located in a different local calling area...the ALEC is attempting to redefine BellSouth's local calling area, but only in those instances in which a BellSouth end user places a call to the ALEC's selected end users. (emphasis in original) (TR 54-55)

Witness Ruscilli states that BellSouth is not asking the Commission to limit an ALEC's ability to assign NPA/NXXs in whatever manner it sees fit. However, BellSouth requests that the Commission find that a call terminated to a virtual NXX customer physically located outside the local calling area of the rate center to which the NPA/NXX is homed, is not a local call. (TR 67)

Witness Ruscilli states that "BellSouth's position is that regardless of the numbers an ALEC assigns to its end users,

DOCKET NO. 000075-TP

DATE: November 21, 2001

BellSouth should only pay reciprocal compensation on calls that originate and terminate within the same local calling area." (TR 50) He argues that carriers should utilize NPA/NXXs in such a way that other carriers are able to distinguish local traffic from toll traffic. (TR 50) He states:

BellSouth is asking that ALECs separately identify any number assigned to an ALEC end user whose physical location is outside the local calling area associated with the NPA/NXX assigned to that end user, so that BellSouth will know whether to treat the call as local or long distance. Providing that an ALEC will separately identify such traffic, for purposes of billing and intercarrier compensation, BellSouth would not object to an ALEC assigning numbers out of an NPA/NXX to end users located outside the local calling area with which that NPA/NXX is associated. (TR 50)

Witness Ruscilli argues that without this information, ILECs have no way of knowing which calls are local and which calls are toll. (TR 50)

Witness Ruscilli explains that local traffic, for which reciprocal compensation is due, is traffic that originates and terminates in the same local calling area. On the other hand, intraLATA toll traffic, for which access charges apply, is traffic that originates in one local calling area and terminates in another local calling area. (TR 50) He states that ALECs are free to assign NPA/NXXs to end users physically located outside of the local calling area of the rate center to which the NPA/NXX is homed, but calls originated by BellSouth end users to those numbers are not local calls. Consequently, calls to these virtual NXXs are not local traffic and reciprocal compensation does not apply. (TR 50-51)

Witness Ruscilli provides an example of what occurs when an ALEC disassociates the physical location of a customer with a particular phone number from the rate center where that NPA/NXX code is homed. In his example, an ALEC takes a NPA/NXX that is homed in Jacksonville and assigns it to an end user physically located in Lake City. He explains that if a BellSouth end user in Jacksonville dials this NPA/NXX, BellSouth would bill its Jacksonville customer for a local call. BellSouth would hand off the call to the ALEC, and the ALEC would then carry the call from

that point to its end user in Lake City. Witness Ruscilli contends that "[t]he end points of that call are in Jacksonville and Lake City, and therefore, the call is a long distance call." (TR 52) Witness Ruscilli also provides a more extreme example in which the ALEC could assign that Jacksonville NPA/NXX to an end user in New York. He states that in the same way, this call from Jacksonville to New York would be billed to BellSouth's customer as a local call even though it is clearly a long distance call. In addition, witness Ruscilli argues that BellSouth would be billed reciprocal compensation for these calls, which are clearly long distance calls and not subject to reciprocal compensation. (TR 53)

Witness Ruscilli contends that the FCC has made it clear that traffic jurisdiction is determined based upon the originating and terminating end points of a call. (TR 53) He states the Feature Group A (FGA) access service is one example of this. He explains that with FGA, a customer would dial a 7 (or 10) digit number and receive dial tone from a distant office. The customer would then dial a long distance number. Witness Ruscilli contends that even though the customer dials a number that appears local, no one disputes that this FGA traffic is switched access with respect to jurisdiction and compensation between the involved companies. (TR 53)

Witness Ruscilli also suggests that BellSouth's FX service is another example of jurisdiction based upon end points of the call. He explains:

FX service is exchange service furnished to a subscriber from an exchange other than the one from which the subscriber would normally be served. Here again, it appears to the originating customer that a local call is being made when, in fact, the terminating location is outside the local calling area (i.e., long distance). Further, because the call to the FX number appears local and the calling and called NPA/NXXs are assigned to the same rate center, the originating end user is not billed for a toll call. Despite the fact that the calls appear to be local to the originating caller, FX service is clearly a long distance service. The reason the originating end user is not billed for a toll call is that the receiving end user has already paid for the charges from the real NPA/NXX office to the FX office. There are charges for this function and they are being

paid by the customer that is benefitting from the FX service. (TR 54)

Witness Ruscilli states that prior to February 23, 2001, BellSouth billed reciprocal compensation for calls from ALEC end users to BellSouth's FX customers, except for ISPs. (TR 57) However, he states that BellSouth has implemented a process to ensure that reciprocal compensation is not charged for any calls to its FX customers. (TR 58) He explains that BellSouth built a database of all existing FX numbers, to which newly assigned FX numbers are added as they are assigned. He states that this database is used to prevent billing reciprocal compensation for calls to BellSouth FX customers. (Tr 58-59)

Witness Ruscilli states that BellSouth requests the Commission find that calls placed to NPA/NXXs assigned to customers physically located outside of the local calling area to which the NPA/NXX is assigned are not local calls, based upon the end points of these calls. In addition, witness Ruscilli contends that the Commission should find that ALECs must identify calls to these numbers as long distance, and pay BellSouth for the originating switched access service that BellSouth provides on those calls. (TR 67) He argues that a call to a virtual NXX is not local, so it is not subject to reciprocal compensation; instead, BellSouth is entitled to access charges because it is providing the ability for ALECs to have customers in BellSouth's local calling area make long distance calls on ALEC networks. (TR 170-171) Witness Ruscilli explains:

When a BellSouth end user calls a person located outside of that end user's basic local calling area, BellSouth receives compensation in addition to the basic local rates it charges to its customers. When BellSouth carries an intraLATA toll call, for instance, BellSouth collects toll charges from its customer who placed the call. When a BellSouth customer places an interLATA call, BellSouth collects originating access from the IXC. When BellSouth carries an intraLATA call from a BellSouth end user to a BellSouth FX customer, BellSouth receives compensation for the FX service (including the toll component of that service) from its FX customer. Similarly, when BellSouth carries calls to a BellSouth customer with an 800 number, BellSouth receives compensation for the 800 service (including the toll

component of that service) from its 800 service customer.
(TR 56-57)

He contends that in each of these cases BellSouth receives compensation for calls placed to points outside of the local calling area from some source other than the local rates charged to its customers making the call. (TR 57)

Verizon witness Haynes agrees that ILECs are not compensated for virtual NXX calls. He argues that the use of virtual NXXs by ALECs makes an inward toll call appear local, thereby denying Verizon the opportunity to collect just compensation for the transport it provides to ALECs on that call. (TR 389) Witness Haynes contends that virtual NXX calls are terminated by the ALEC to end users located outside of the local calling area of the originating customer, in which case toll charges would normally apply. He asserts that ALECs then claim that these calls are local, and bill Verizon for reciprocal compensation for the calls. (TR 390) Witness Haynes contends that Verizon incurs the transport costs related to these calls, yet is denied an opportunity to recover its costs from either its originating subscriber or the ALEC, due to misapplication of proper NXX codes. (TR 390)

Verizon witness Haynes also argues that reciprocal compensation is not appropriate for virtual NXX calls. He states that under the Act, reciprocal compensation is paid only for local calls. He states that "reciprocal compensation was predicated on reciprocity - the assumption that carriers would be exchanging local traffic." (TR 395) He argues that since virtual NXX calls are not local, but rather toll calls, reciprocal compensation does not apply. (TR 422-423)

Witness Haynes agrees with BellSouth witness Ruscilli that end points determine jurisdiction, stating that "the determining factor for rating a call as local in all instances is the location of the calling and called parties within the same local calling area." (TR 395) He argues that if the ALEC's virtual NXX customer is located outside of the local calling area of the Verizon caller, the call is not local regardless of whether the ALEC has assigned a number that appears to be within the Verizon customer's local calling area. (TR 392)

Sprint witness Maples supports an ALEC's right to assign NPA/NXXs to end users outside the rate center in which the NPA/NXX

is homed. (TR 515) However, he agrees that the end points of a call determine its jurisdiction. He states that the jurisdiction of voice traffic for purposes of establishing intercarrier compensation obligations should be based on the definition of local calling areas and the physical end points of the call. (TR 538) Witness Maples suggests that the physical end points of a call in relation to the definition of local calling area has historically driven intercarrier compensation. (TR 573)

Level 3 witness Gates disagrees. He argues that "[h]istorically, the telecommunications industry has compared NXX codes to determine the appropriate treatment of calls as local or toll." (TR 759) He states that calls are conventionally rated and routed throughout the industry based upon the NXX codes of the originating and terminating numbers. (TR 818-819) Witness Gates argues that even under the proposals of BellSouth and Verizon, virtual NXX calls would still be rated as local for retail purposes since no ILEC has proposed to assess toll charges on its own customers, even though they claim these calls are toll for intercarrier compensation purposes. (TR 819)

In addition, witness Gates states that virtual NXX calls are routed to the point of interconnection (POI) and handed off to the ALEC just as any other local call. (TR 819) Witness Gates explains that there is no additional cost to an ILEC when it originates a call to an ALEC's virtual NXX customer, because the ILEC carries the call the same distance to the POI and incurs the same facilities cost regardless of the physical location of the virtual NXX customer. (TR 786) He states that "the ILEC's obligations and costs are the same in delivering a call originated by one of its customers, regardless of whether the call terminates at a so-called 'virtual' or 'physical' NXX behind the ALEC switch." (TR 786) He argues that there is "no economic, engineering, factual or policy basis for making intercarrier compensation depend on the actual location of the terminating carrier's customer." (TR 758)

Witness Gates also asserts that since the physical location of the customer is irrelevant to the costs incurred by the ILEC in delivering a virtual NXX call, it would not be justified in assessing originating access charges for these calls. (TR 795-796) He explains:

The so-called virtual NXX calls are locally-dialed calls. They are treated as local at retail by the ILECs. They

DATE: November 21, 2001

are routed as local over interconnection facilities, specifically the local interconnection trunks. The ILEC has no more responsibility for originating these calls than it does for any other local call, yet the ILECs want to deny the ALECs reciprocal compensation for these calls, and to add insult to injury, want to charge the ALECs originating access charges, as well. (TR 832)

Access charges have not and should not apply to locally-dialed calls as they have nothing to do with the costs associated with routing locally-dialed calls. These virtual NXX calls are local, they do not increase the incumbents' costs one iota, and they provide a valuable service to consumers. Incumbents should pay reciprocal compensation on all locally dialed calls. (TR 833)

Joint ALEC witness Selwyn agrees, stating that an ILEC's costs are not affected by the physical location of the ALEC's customer to whom it delivers a call. (TR 637) He argues that the ILEC only transports a virtual NXX call to the POI, and "the location where the ALEC ultimately delivers the call has no effect whatsoever upon the ILEC's work or its costs." (TR 643) Witness Selwyn contends that the only cost an ILEC will possibly incur as a result of virtual NXX is a competitive loss. He explains that when a customer dials a number that is rated to one exchange but delivered to another, under the ILEC's tariff a toll charge may apply. However, an ALEC may, in an effort to differentiate its service, offer features that are not offered by the ILEC, such as treating these calls as local and thus not imposing a specific charge for the call. (TR 646) He states:

If, as a result of the ALEC's offering, some of the ILEC's customers are persuaded to switch over to the ALEC's service, the ILEC will sustain a loss of both local and toll revenue. *Such a loss of business is a direct and inescapable outcome of competition;* the ILEC can either respond by reducing or eliminating its own (toll) charge for these calls (thereby sustaining some revenue loss), or risk losing customers to the less expensive ALEC service (thereby also sustaining some revenue loss). The issue here is entirely one of pricing

and competitive response, not one of policy. (emphasis in original) (TR 646-647)

Verizon witness Haynes challenges these conclusions, arguing that ILECs "would lose revenue not through legitimate competition, but because an ALEC inappropriately assigned numbers to customers located in rate centers outside of the local calling area." (TR 413) BellSouth witness Ruscilli agrees, stating that when an ALEC assigns a Jacksonville NPA/NXX to a Lake City end user, no local competition is created in Jacksonville. He argues that BellSouth customers dialing virtual NXX numbers remain BellSouth's local customers. Witness Ruscilli contends that "[t]here is nothing that the ALEC is providing in this case that even resembles local service." (TR 65-66)

BellSouth witness Taylor asserts that treating virtual NXX calls as local instead of toll "would represent a regulatory anomaly or loophole, not a competitive loss." (TR 263) He explains that when the ILEC responds to customer demand for toll-free calling, it offers FX service that allows customers to dial a local number while the FX customer pays for the cost of the service. Since the call is a toll call, no reciprocal compensation is paid when an ALEC end user calls the FX customer. He argues that in contrast, virtual NXX service is free to both the calling and called parties. In addition, ALECs want to charge reciprocal compensation for these calls. (TR 263-264) Witness Taylor states:

While both the ILEC and the ALEC are free to offer FX-like services under any pricing structure they want, it is important that both ALEC and ILEC services be subject to the same regulatory treatment. Since the call originates and terminates in different local calling areas, it is not a local call and neither ALEC nor ILEC should pay reciprocal compensation when its subscriber dials such a number. (TR 264)

Level 3 witness Gates argues that denying reciprocal compensation for virtual NXX traffic, and imposing access charges, would make it uneconomical for ALECs to provide this service. (TR 829) However, Verizon witness Haynes contends that the Commission should require ALECs to recover their costs from their own virtual NXX customers, rather than ILECs. He states that "[t]his would be consistent with the way Verizon recovers its costs for its own FX service - from its FX customer, the called party." (TR 402)

DOCKET NO. 000075-TP

DATE: November 21, 2001

BellSouth witness Ruscilli agrees, stating that ALECs are free to charge its virtual NXX customers for the service provided to them, similar to how BellSouth charges its FX customers. (TR 91)

Verizon witness Haynes also disagrees with the ALEC position that it is industry practice to determine jurisdiction of calls based upon the NXX of the calling and called parties. He argues that national numbering policy requires that numbers be provided to carriers with the understanding that they will be used to serve customers physically located within the rate center for which they are being requested. He contends that virtual NXX service violates these guidelines because the ALEC is not providing local service within the exchanges to which the NPA/NXXs are homed. (TR 410)

Witness Gates argues that locally dialed calls are treated as local regardless of the location of the terminating customer because that is the way the network works. He argues that ALEC and ILEC switches are set up to treat locally dialed calls as local traffic. (TR 853) Level 3 argues in its brief that treating virtual NXX calls as toll calls would impose costs on all LECS by requiring billing system changes. (BR 30) Witness Gates suggests that "we keep the status quo," and not require costly changes be made to the switches and switching architecture that has been deployed throughout the United States. (TR 854)

Sprint witness Maples suggests a similar conclusion. He proposes that an industry task force be established to examine the ramifications of this before a decision is made. (TR 575) He explains that when you take ISP-bound traffic out of the virtual NXX issue, what is left is a relatively small amount of traffic. If the Commission were to decide that access charges are due for virtual NXX/FX traffic, then modifications would have to be made to the billing systems in order to accommodate that. (TR 574) Witness Maples questions whether the industry would want to incur this cost for a relatively small amount of voice virtual NXX/FX traffic. (TR 574-575) He suggests that more evidence should be gathered before a ruling be made that would require these modifications. For example, if the non-ISP traffic is relatively small and the necessary modifications to the billing system are large, the industry may want to just pay reciprocal compensation for this traffic as a compromise. On the other hand, if the volume of non-ISP traffic is large, then perhaps reciprocal compensation should not be paid. (TR 575) Nevertheless, witness Maples agrees that

jurisdiction is determined by the end points of a call, and access charges would apply to long distance traffic. (TR 575)

Parties to this proceeding have cited several decisions by other state commissions in support of their respective positions regarding virtual NXXs. In its brief, Level 3 cites decisions in North Carolina, Kentucky, and Michigan. (BR 32-34) In the North Carolina decision, the North Carolina Utilities Commission (NCUC) ruled that calls to MCIm's virtual NXX customers should be treated as local, and reciprocal compensation should be paid. The NCUC stated that determining whether a call was local or not based upon the NPA/NXX dialed was reasonable and appropriate.⁷ (BR 32) In the Kentucky decision cited by Level 3, the Kentucky Public Service Commission (KPSC) found that virtual NXXs should be treated the same as FX service. In addition, the KPSC stated that both FX and virtual NXX service should be treated as local traffic when delivered within the same LATA.⁸ (BR 33) Finally, in a Michigan Public Service Commission (MPSC) decision, the MPSC decided not to reclassify FX service as exchange access traffic exempt from reciprocal compensation.⁹ (BR 33) In a second Michigan decision cited by Level 3, the MPSC found that virtual NXX arrangements do not impact an ILEC's financial or operational responsibilities, stating that the ILEC's costs are "the same as when the call is undisputedly local."¹⁰ (BR 33-34)

In their joint brief, the ALECs cite an additional decision by the California Public Utilities Commission. (BR 25-26) In that decision, the CPUC stated that the rating of a call should be determined based upon the designated NXX prefix. The CPUC found that abandoning the linkage between the NXX prefix and its

⁷ Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996, Docket No. P-474, Sub 10, Recommended Arbitration Order, 74 (N.C.U.C., adopted April 3, 2001).

⁸ In the Matter of Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, Case No. 2000-404, Order, 7 (Ky. PSC March 14, 2001)

⁹ Application of Ameritech Michigan to Revise its Reciprocal Compensation Rates and Rate Structure and to Exempt Foreign Exchange Service from Payment of Reciprocal Compensation, Case No. U-12696, 8-11 (Mich. PSC, Jan. 23, 2001)

¹⁰ Petition of Coast to Coast Telecommunications, Inc. for Arbitration of Interconnection, Rates, Terms, Conditions, and Related Arrangements with Michigan Bell Telephone Company, d/b/a Ameritech Michigan, Case No. U-12382, Order Adopting Arbitration Agreement, 9 (Mich. PSC, Aug. 12, 2000)

DOCKET NO. 000075-TP

DATE: November 21, 2001

associated rate center would undermine the ability of customers to know whether they are making a local or toll call, as well as the service expectations of the called party (ISPs).¹¹ (BR 25)

BellSouth witness Ruscilli cites several state commission decisions as well. (TR 59-65) Witness Ruscilli states that the Public Service Commission of South Carolina (SCPSC) reached a decision on this issue in the recent BellSouth/Adelphia arbitration case on January 16, 2001 (Docket No. 2000-516-C, Order No. 2001-045). He explains that the SCPSC adopted BellSouth's proposed language that specifies that virtual NXX traffic that originates in one local calling area and terminates in another local calling area is not local traffic. In addition, the SCPSC ruled that reciprocal compensation was not due for this traffic, and that BellSouth was entitled to collect access charges from Adelphia when BellSouth originates virtual NXX traffic. (TR 59) Witness Ruscilli also refers to a February 6, 2001, decision by the Tennessee Regulatory Authority (TRA), in which the TRA ruled that "the calls to an NPA/NXX in the local calling area outside the rate center where the NPA/NXX is homed should be treated as intrastate interexchange toll traffic for purposes of intercarrier compensation and are subject to access charges." (TR 61)

Witness Ruscilli also cites a July 5, 2000, decision by the Georgia Commission in BellSouth's arbitration with Intermedia (Docket No. 11644-U). In this decision the Georgia Commission ordered that Intermedia be permitted to assign NPA/NXXs in accordance with its local calling areas, provided that it furnish the necessary information for other carriers to properly route and rate calls to those numbers as either toll or local. (TR 61) This is similar to a decision that was reached by the Florida Commission (FPSC) in the BellSouth/Intermedia arbitration (Docket No. 991854-TP, Order No. PSC-00-1519-FOF-TP dated August 22, 2000). In that decision the FPSC decided that Intermedia would not be permitted to assign NPA/NXXs outside the areas to which they are traditionally assigned until such time as it could provide information necessary for the proper routing and rating of calls. (TR 60) Witness Ruscilli states that since this decision, BellSouth has identified a means to handle the rating issue identified by the FPSC. He explains that BellSouth proposes not to charge its customers for long distance calls, even though a long distance call has been made

¹¹ Order Instituting Rulemaking on the Commission's own Motion into Competition for Local Exchange Service, Rulemaking 95-04-043 at 26 (California PUC, September 2, 1999)

to a virtual NXX. He contends that this is similar to how BellSouth rates calls by its customers to 800 numbers. Witness Ruscilli states that similar to 800 service, the ALEC is incurring the long distance costs, and if it chooses to do so it may recover these costs from the end user that subscribes to the ALEC service. However, he emphasizes that, like 800 service, virtual NXX is a long distance service. (TR 60-61)

In addition, witness Ruscilli refers to decisions made outside of BellSouth's region in Maine, Texas, and Illinois. He asserts that these states found that the virtual NXX call scenario is not local service. He also states that Texas and Illinois further found that reciprocal compensation should not apply in virtual NXX situations. (TR 62) Witness Ruscilli explains that in the Illinois Commerce Commission (ICC) decision in Docket 00-0332, dated August 30, 2000, the ICC stated that since FX/virtual NXX traffic does not originate and terminate in the same local rate center, as a matter of law it cannot be subject to reciprocal compensation. (TR 63-64) The Public Utilities Commission of Texas reached a similar conclusion in its decision in Docket No. 21982, dated July 13, 2000. (TR 64)

Analysis

In keeping with the issues as presented for determination, the first question to consider is under what circumstances a carrier may be permitted to assign NPA/NXXs to end users physically located outside the rate center in which the NPA/NXX is homed. Verizon witness Haynes contends that ALECs should not be permitted to assign numbers in such fashion unless FX service is ordered. (TR 420) One of witness Haynes' arguments in support of a prohibition on the use of virtual NXXs is number conservation. He contends that the practice of obtaining entire NXX codes for exchanges in which an ALEC has no customers appears to be a sheer waste of numbering resources. (TR 410) As an example, witness Haynes cites a decision in which the Maine Commission ordered the recall of 54 codes from which only a limited number of NPA/NXXs were assigned to customers through virtual NXX. (TR 410)

While staff shares the concern that entire NXX codes could be obtained for the purpose of actually utilizing only a small percentage of the numbers, there is no evidence in the record that this has taken place in Florida. Staff agrees with Level 3 witness Gates that a decision to prohibit the practice of virtual NXXs

should not be based upon evidence not in the record. (TR 889) However, if at some time in the future facts are presented that prove this practice is in fact adversely affecting number conservation in Florida, staff believes that the Commission should exercise its authority to reclaim NXX codes that have not been utilized to serve customers, or have only been utilized to serve a select few customers while leaving the remaining numbers from that code to lie dormant. Staff agrees that in those situations, this practice would be a waste of numbering resources.

Level 3 witness Gates argues that ALEC virtual NXX service is a competitive response to ILEC FX service. (TR 843) He states that it is provisioned differently because the networks of ALECs and ILECs are designed differently. He explains that ILECs provision FX service through private lines, made possible by the presence of end offices in every exchange. Since ALECs do not have end offices in every exchange, witness Gates contends that the only way ALECs can offer this service is through number assignment. (TR 843) Joint ALEC witness Selwyn concurs, stating that the practice of terminating a call in an exchange that is different than the exchange to which the NPA/NXX is assigned is nothing new. He contends that ILECs have been providing this service for decades through their FX service. (TR 662)

Staff agrees. Staff believes that virtual NXX is a competitive response to FX service, which has been offered in the market by ILECs for years. Differing network architectures necessitate differing methods of providing this service; nevertheless, staff believes that virtual NXX and FX service are similar "toll substitute services." (TR 398) Therefore, staff believes carriers should be permitted to assign NPA/NXXs in a manner that enables them to provision these competitive services. However, staff believes the practice of assigning NPA/NXXs to customers outside of the rate centers to which they are homed raises additional issues that must be addressed.

Several arguments have been made by parties regarding the virtual NXX issue, and staff has considered them all in framing its recommendation. However, staff believes the primary point of controversy is determining the proper jurisdiction of virtual NXX/FX traffic for the purposes of intercarrier compensation. BellSouth witness Ruscilli states that BellSouth is not asking that the Commission limit an ALEC's ability to assign NPA/NXXs in whatever manner it sees fit, but that the Commission should find

DOCKET NO. 000075-TP
DATE: November 21, 2001

that calls terminated to NPA/NXXs assigned to customers located outside of the rate center to which the NPA/NXX is homed are not local calls. (TR 67) This argument appears to be the crux of Verizon's contention that virtual NXX should not be permitted. As Verizon witness Haynes suggests, this is a rating issue. (TR 386) He argues that virtual NXX service undermines the rating of a call as local or toll. (TR 422)

Fundamentally staff believes this issue should not hinge upon how carriers provision/route virtual NXX/FX traffic, or upon the retail services purchased by end users. Instead, staff believes the resolution of this issue should be based on the premise of what is a local call for intercarrier compensation purposes. This leads us to the second subpart of this issue, which is whether intercarrier compensation for calls to virtual NXX/FX traffic should be based upon the end points of the call or upon the NPA/NXX assigned to the calling and called parties. Level 3 witness Gates contends that the telecommunications industry has historically compared NXX codes to determine the appropriate treatment of calls as local or toll. (TR 759) He argues that virtual NXX calls are locally dialed, and treated as local by the incumbents. He explains that because calls are routed based upon NPA/NXX, virtual NXX calls travel over the ILEC's local interconnection trunks. (TR 852) Witness Gates contends that these calls are locally dialed and should be treated as local calls. (TR 852)

In their joint brief, the ALECs contend that Verizon presently treats FX traffic as local, charging reciprocal compensation for terminating calls to its FX customers. (BR 20-21) Level 3 witness Gates argues that the only reason that BellSouth now separates its FX traffic so that reciprocal compensation is not charged for these calls is because ALECs have had some success with their virtual NXX service. (TR 853)

On the other hand, Sprint witness Maples states that the end points of a call in relation to the definition of local calling area have historically driven intercarrier compensation. (TR 573) BellSouth witness Ruscilli agrees, contending that the FCC has made it clear that traffic jurisdiction is determined based upon the originating and terminating end points of a call. (TR 53)

In an extreme example of the problems associated with determining intercarrier compensation based upon the NXXs assigned to the calling and called parties, witness Ruscilli gives an

example of a Jacksonville NPA/NXX being assigned to an ALEC virtual NXX customer physically located in New York. (TR 53) He argues that based upon a comparison of NPA/NXXs, if a BellSouth customer in Jacksonville calls this virtual NXX number, BellSouth would be charged reciprocal compensation even though a long distance call has clearly been made. (TR 53) While Level 3 witness Gates argues that this is "a ridiculous hypothesis," he states that this would still be a local call. (TR 858-859) Witness Gates contends that the ILEC's responsibilities would not change. He states that the ILEC technical and financial responsibilities would end at the POI, and the ALEC would be responsible for transporting the call 1500 miles to New York. (TR 859) Witness Gates argues that this call is technically feasible, but would never happen. He states that a virtual NXX is usually an intraLATA offering, and Level 3 has other services that they offer for 1500 miles of transport.

Staff acknowledges that this scenario is somewhat unlikely, but it does illustrate the controversy related to this issue. Staff disagrees with the ALEC position that jurisdiction of traffic should be determined based upon the NPA/NXXs assigned to the calling and called parties. Although presently in the industry switches do look at the NPA/NXXs to determine if a call is local or toll, staff believes this practice was established based upon the understanding that NPA/NXXs were assigned to customers within the exchanges to which the NPA/NXXs are homed. Level 3 witness Gates conceded during cross examination that historically the NPA/NXX codes were geographic indicators used as surrogates for determining the end points of a call. (TR 851-852)

Staff believes that a comparison of NPA/NXXs is used as a proxy for determining the actual physical location of the particular customer being called. In other words, the NPA/NXX provides a reasonable presumption of the physical location of a customer as being within the calling area to which the NPA/NXX is homed. Therefore, carriers have been able to determine whether a call is local or toll by comparing the NPA/NXXs of the calling and called parties. However, this presumption may no longer be valid in an environment where NPA/NXXs are disassociated from the rate centers to which they are homed.

Staff believes that the classification of traffic as either local or toll has historically been, and should continue to be, determined based upon the end points of a particular call. Staff believes this is true regardless of whether a call is rated as

DOCKET NO. 000075-TP
DATE: November 21, 2001

local for the originating end user (e.g., 1-800 service is toll traffic even though the originating customer does not pay the toll charges). Staff acknowledges that an ILEC's costs in originating a virtual NXX call do not necessarily differ from the costs incurred originating a normal local call. (Gates TR 786) However, staff does not believe that a call is determined to be local or toll based upon the ILEC's costs in originating the call. In addition, staff does not believe that the proper application of a particular intercarrier compensation mechanism is based upon the costs incurred by a carrier in delivering a call, but rather upon the jurisdiction of a call as being either local or long distance.

This raises the issue of whether reciprocal compensation or access charges should be applied to virtual NXX/FX traffic. Staff agrees with BellSouth witness Ruscilli that calls to virtual NXX customers located outside of the local calling area to which the NPA/NXX is assigned are not local calls for purposes of reciprocal compensation. (TR 67) As such, staff believes that they are not subject to reciprocal compensation. In their brief, the Joint ALECs point to the recently revised FCC Rule 51.701(b)(1) in support of their argument. (BR 22-23) This rule previously stated that telecommunications traffic that is subject to reciprocal compensation is defined as:

Telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission.

However, in its recent *ISP Remand Order*, the FCC amended this rule to state:

Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (see FCC 01-131, paras 34, 36 39, 42-43). (FCC Rule 51.701(b)(1))

The Joint ALECs assert that the revised rule clearly eliminates as a requirement for reciprocal compensation the previous language that a call be terminated within a local calling area established by the state commission. That being the case, the Joint ALECs contend that the ILEC position, that a virtual NXX call

DOCKET NO. 000075-TP
DATE: November 21, 2001

is not subject to reciprocal compensation because it is not "local telecommunications traffic," has been eliminated. (BR 23) However, staff agrees with Verizon witness Haynes that the FCC's revision of Rule 51.701 has no effect on the jurisdiction of virtual NXX traffic. (TR 498) Staff agrees with witness Haynes that traffic that originates in one local calling area and terminates in another local calling area would be considered *intrastate exchange access* under the FCC's revised Rule 51.701(b)(1). (TR 498) As such, staff believes virtual NXX/FX traffic would not be subject to reciprocal compensation pursuant to Rule 51.701(b)(1).

Witness Ruscilli requests that the Commission find that ALECs must identify calls to virtual NXX customers as long distance and pay BellSouth for originating switched access for these calls. (TR 657) Although it seems reasonable to apply access charges to virtual NXX/FX traffic that originates and terminates in different local calling areas, staff believes that separately identifying virtual NXX traffic for the purpose of applying switched access charges raises additional issues that must be considered.

Level 3 witness Gates states that virtual NXX/FX traffic is treated as local because ALEC and ILEC switches are set up to treat locally-dialed calls as local. (TR 853) Level 3 contends that treating virtual NXX calls as toll would impose costs on all LECs by requiring billing system changes. (BR 30) Witness Gates suggests we "keep the status quo," and not require these costly changes be made to the switching architecture. (TR 854)

Sprint witness Maples raises an additional point that staff believes to be compelling. He explains that when ISP-bound traffic is removed from the virtual NXX issue, what is left is a relatively small amount of traffic. (TR 574) Witness Maples questions whether the industry would want to incur the cost of billing system modifications for a relatively small amount of voice virtual NXX/FX traffic. (TR 574-575) He explains that if the volume of non-ISP traffic is small and the required modifications are large, the industry may want to pay reciprocal compensation for this traffic as a compromise. On the other hand, if the volume of traffic is large, then perhaps reciprocal compensation should not be paid. (TR 575)

Staff is troubled that Verizon insists that reciprocal compensation should not be applied to virtual NXX traffic, while at the same time charging reciprocal compensation for its own FX

traffic. (TR 433, 436) However, staff recognizes that witness Haynes attributes this to the fact that Verizon's billing systems are presently configured to determine whether a call is local or not, based upon the number dialed. He states that Verizon has not as of yet examined the possibility of separating FX traffic from local traffic dialed to the same NPA/NXX. (TR 492-493) While BellSouth has shown that this approach is technically feasible by developing its own database to separate FX traffic, staff is hesitant in recommending that the Commission mandate the development of such a database by all LECs.

Neither does staff recommend that the Commission establish an industry task force to examine this matter, as witness Maples suggests. However, staff does believe that the balance between costly modifications and traffic volumes should be considered when determining what, if any, intercarrier compensation should be applied to virtual NXX/FX traffic. Unfortunately, this factual information is not in the record. Staff believes that whether reciprocal compensation or access charges should apply to virtual NXX/FX traffic is better left for parties to negotiate in individual interconnection agreements. Staff notes that while virtual NXX calls that terminate outside of the local calling area associated with the rate center to which the NPA/NXX is homed are not local calls, and therefore carriers are not obligated to pay reciprocal compensation, parties are free to negotiate intercarrier compensation terms in their agreements that reflect the most efficient means of interconnection. If parties decide to continue to pay reciprocal compensation instead of making costly modifications to their networks and billing systems, staff believes this is reasonable. Staff also believes parties are free to agree to pay no compensation for virtual NXX/FX traffic, or apply access charges, as they deem fit for the purposes of their interconnection agreements.

Conclusion

Staff recommends that carriers be permitted to assign telephone numbers to end users physically located outside the rate center to which the telephone number is homed. In addition, staff recommends that intercarrier compensation for calls to these numbers be based upon the end points of the particular calls. This approach will ensure that intercarrier compensation will not hinge on a carrier's provisioning and routing method, nor an end user's service selection. Staff believes that calls terminated to end

DOCKET NO. 000075-TP
DATE: November 21, 2001

users outside the local calling area in which their NPA/NXXs are homed are not local calls for purposes of intercarrier compensation; therefore, staff believes that carriers are not obligated to pay reciprocal compensation for this traffic. Although this unavoidably creates a default for determining intercarrier compensation, staff does not recommend that the Commission mandate a particular intercarrier compensation mechanism for virtual NXX/FX traffic. Since non-ISP virtual NXX/FX traffic volumes may be relatively small, and the costs of modifying the switching and billing systems to separate this traffic may be great, staff believes it is best left to the parties to negotiate the best intercarrier compensation mechanism to apply to virtual NXX/FX traffic in their individual interconnection agreements. While not recommending a particular compensation mechanism, staff does recommend that virtual NXX traffic and FX traffic be treated the same for intercarrier compensation purposes.

47 U.S.C. § 203(b)(1). Changes in schedule; discretion of Commission to modify requirements

(1) No change shall be made in the charges, classifications, regulations, or practices which have been so filed and published except after one hundred and twenty days notice to the Commission and to the public, which shall be published in such form and contain such information as the Commission may by regulations prescribe.

47 U.S.C. § 251. Interconnection

(a) General duty of telecommunications carriers

Each telecommunications carrier has the duty—

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256 of this title.

(b) Obligations of all local exchange carriers

Each local exchange carrier has the following duties:

(1) Resale

The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) Number portability

The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(3) Dialing parity

The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

(4) Access to rights-of-way

The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 of this title.

(5) Reciprocal compensation

The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

(c) Additional obligations of incumbent local exchange carriers

In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:

(1) Duty to negotiate

The duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) Interconnection

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

- (A) for the transmission and routing of telephone exchange service and exchange access;
- (B) at any technically feasible point within the carrier's network;
- (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
- (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

(3) Unbundled access

The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the

requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

(4) Resale

The duty—

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

(5) Notice of changes

The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

(6) Collocation

The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

(d) Implementation

(1) In general

Within 6 months after February 8, 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section.

(2) Access standards

In determining what network elements should be made available for purposes of subsection (c)(3) of this section, the Commission shall consider, at a minimum, whether—

(A) access to such network elements as are proprietary in nature is necessary; and

(B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

(3) Preservation of State access regulations

In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that—

(A) establishes access and interconnection obligations of local exchange carriers;

(B) is consistent with the requirements of this section; and

(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

(e) Numbering Administration

(1) Commission authority and jurisdiction

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

(2) Costs

The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

(f) Exemptions, suspensions, and modifications

(1) Exemption for certain rural telephone companies

(A) Exemption

Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).

(B) State termination of exemption and implementation schedule

The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

(C) Limitation on exemption

The exemption provided by this paragraph shall not apply with respect to a request under subsection (c) from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. The limitation contained in this subparagraph shall not apply to a rural telephone company that is providing video programming on February 8, 1996.

(2) Suspensions and modifications for rural carriers

A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) of this section to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification—

(A) is necessary—

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

(g) Continued enforcement of exchange access and interconnection requirements

On and after February 8, 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996. During the period beginning on February 8, 1996 and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

(h) Definition of incumbent local exchange carrier

(1) Definition

For purposes of this section, the term "incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that—

(A) on February 8, 1996, provided telephone exchange service in such area; and

(B)(i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or

(ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i).

(2) Treatment of comparable carriers as incumbents

The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if—

(A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);

(B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and

(C) such treatment is consistent with the public interest, convenience,

and necessity and the purposes of this section.

(i) Savings provision

Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201 of this title.

47 U.S.C. § 252. Procedures for negotiation, arbitration, and approval of agreements.

(a) Agreements arrived at through negotiation

(1) Voluntary negotiations

Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 of this title. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before February 8, 1996, shall be submitted to the State commission under subsection (e) of this section.

(2) Mediation

Any party negotiating an agreement under this section may, at any point in the negotiation, ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

(b) Agreements arrived at through compulsory arbitration

(1) Arbitration

During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

(2) Duty of petitioner

(A) A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning—

- (i)** the unresolved issues;
- (ii)** the position of each of the parties with respect to those issues; and
- (iii)** any other issue discussed and resolved by the parties.

(B) A party petitioning a State commission under paragraph (1) shall, provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition.

(3) Opportunity to respond

A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the State commission receives the petition.

(4) Action by state commission

(A) The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

(B) The State commission may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived.

(C) The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

(5) Refusal to negotiate

The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

(c) Standards for arbitration

In resolving by arbitration under subsection (b) of this section any open issues and imposing conditions upon the parties to the agreement, a State commission shall—

(1) ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title;

(2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section; and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(d) Pricing standards

(1) Interconnection and network element charges

Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251 of this title, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section—

(A) shall be—

- (i)** based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and
- (ii)** nondiscriminatory, and

(B) may include a reasonable profit.

(2) Charges for transport and termination of traffic

(A) In general

For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5) of this title, a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless—

- (i)** such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate *on the network facilities of the other carrier*; and
- (ii)** such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

(B) Rules of construction

This paragraph shall not be construed—

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

(3) Wholesale prices for telecommunications services

For the purposes of section 251(c)(4) of this title, a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

(e) Approval by State commission

(1) Approval required

Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) Grounds for rejection

The State commission may only reject—

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) of this section if it finds that—

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) of this section if it finds that the agreement does not meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title, or the standards set forth in subsection (d) of this section.

(3) Preservation of authority

Notwithstanding paragraph (2), but subject to section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(4) Schedule for decision

If the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a) of this section, or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b) of this section, the agreement shall be deemed approved. No State court shall have jurisdiction to review the action of a State commission in approving or

rejecting an agreement under this section.

(5) Commission to act if State will not act

If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.

(6) Review of state commission actions

In a case in which a State fails to act as described in paragraph (5), the proceeding by the Commission under such paragraph and any judicial review of the Commission's actions shall be the exclusive remedies for a State commission's failure to act. In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 of this title and this section.

(f) Statements of generally available terms

(1) In general

A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251 of this title and the regulations thereunder and the standards applicable under this section.

(2) State commission review

A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 of this title and the regulations thereunder. Except as provided in section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(3) Schedule for review

The State commission to which a statement is submitted shall, not later than 60 days after the date of such submission—

(A) complete the review of such statement under paragraph (2) (including any

reconsideration thereof), unless the submitting carrier agrees to an extension of the period for such review; or

(B) permit such statement to take effect.

(4) Authority to continue review

Paragraph (3) shall not preclude the State commission from continuing to review a statement that has been permitted to take effect under subparagraph (B) of such paragraph or from approving or disapproving such statement under paragraph (2).

(5) Duty to negotiate not affected

The submission or approval of a statement under this subsection shall not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under section 251 of this title.

(g) Consolidation of State proceedings

Where not inconsistent with the requirements of this chapter, a State commission may, to the extent practical, consolidate proceedings under sections 214(e), 251(f), and 253 of this title, and this section in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the State commission in carrying out its responsibilities under this chapter.

(h) Filing required

A State commission shall make a copy of each agreement approved under subsection (e) of this section and each statement approved under subsection (f) of this section available for public inspection and copying within 10 days after the agreement or statement is approved. The State commission may charge a reasonable and nondiscriminatory fee to the parties to the agreement or to the party filing the statement to cover the costs of approving and filing such agreement or statement.

(i) Availability to other telecommunications carriers

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.

(j) Definition of incumbent local exchange carrier

For purposes of this section, the term "incumbent local exchange carrier" has the meaning provided in section 251(h) of this title.

[Code of Federal Regulations]
[Title 47, Volume 1]
[Revised as of October 1, 2001]
From the U.S. Government Printing Office via GPO Access
[CITE: 47CFR1.115]

[Page 137-139]

TITLE 47--TELECOMMUNICATION

CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION

PART 1--PRACTICE AND PROCEDURE--Table of Contents

Subpart A--General Rules of Practice and Procedure

Sec. 1.115 Application for review of action taken pursuant to delegated authority.

(a) Any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission. Any person filing an application for review who has not previously participated in the proceeding shall include with his application a statement describing with particularity the manner in which he is aggrieved by the action taken and showing good reason why it was not possible for him to participate in the earlier stages of the proceeding. Any application for review which fails to make an adequate showing in this respect will be dismissed.

(b)(1) The application for review shall concisely and plainly state the questions presented for review with reference, where appropriate, to the findings of fact or conclusions of law.

(2) Except as provided in paragraph (b)(5) of this section, the application for review shall specify with particularity, from among the following, the factor(s) which warrant Commission consideration of the questions presented:

(i) The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy.

(ii) The action involves a question of law or policy which has not previously been resolved by the Commission.

(iii) The action involves application of a precedent or policy which should be overturned or revised.

(iv) An erroneous finding as to an important or material question of fact.

(v) Prejudicial procedural error.

(3) The application for review shall state with particularity the respects in which the action taken by the designated authority should be changed.

(4) The application for review shall state the form of relief sought and, subject to this requirement, may contain alternative requests.

(c) No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.

Note: Subject to the requirements of Sec. 1.106, new questions of fact or law may be presented to the designated authority in a petition for reconsideration.

(d) Except as provided in paragraph (e) of this section, the application for review and any supplemental thereto shall be filed within 30 days of public notice of such action, as that date is defined

in section 1.4(b). Opposition to the application shall be filed within 15 days after the application for review is filed. Except as provided in paragraph (e)(3) of this section, replies to oppositions shall be filed within 10 days after the opposition is filed and shall be limited to matters raised in the opposition.

(e)(1) Applications for review of interlocutory rulings made by the Chief Administrative Law Judge (see Sec. 0.351) shall be deferred until the time when exceptions are filed unless the Chief Judge certifies the matter to the Commission for review. A matter shall be certified to the Commission only if the Chief Judge determines that it presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception. The request to certify the matter to the Commission shall be filed within 5 days after the ruling is made. The application for review shall be filed within 5 days after the order certifying the matter to the Commission is released or such ruling is made. Oppositions shall be filed within 5 days after the application is filed. Replies to oppositions shall be filed only if they are requested by the Commission. Replies (if allowed) shall be filed within 5 days after they are requested. A ruling certifying or not certifying a matter to the Commission is final: Provided, however, That the Commission may, on its own motion, dismiss the application for review on the ground that objections to the ruling should be deferred and raised as an exception.

(2) The failure to file an application for review of an interlocutory ruling made by the Chief Administrative Law Judge or the denial of such application by the Commission, shall not preclude

[[Page 138]]

any party entitled to file exceptions to the initial decision from requesting review of the ruling at the time when exceptions are filed. Such requests will be considered in the same manner as exceptions are considered.

(3) Applications for review of a hearing designation order issued under delegated authority shall be deferred until exceptions to the initial decision in the case are filed, unless the presiding Administrative Law Judge certifies such an application for review to the Commission. A matter shall be certified to the Commission only if the presiding Administrative Law Judge determines that the matter involves a controlling question of law as to which there is substantial ground for difference of opinion and that immediate consideration of the question would materially expedite the ultimate resolution of the litigation. A ruling refusing to certify a matter to the Commission is not appealable. In addition, the Commission may dismiss, without stating reasons, an application for review that has been certified, and direct that the objections to the hearing designation order be deferred and raised when exceptions in the initial decision in the case are filed. A request to certify a matter to the Commission shall be filed with the presiding Administrative Law Judge within 5 days after the designation order is released. Any application for review authorized by the Administrative Law Judge shall be filed within 5 days after the order certifying the matter to the Commission is released or such a ruling is made. Oppositions shall be filed within 5 days after the application for review is filed. Replies to oppositions shall be filed only if they are requested by the Commission. Replies (if allowed) shall be filed within 5 days after they are requested.

(4) Applications for review of final staff decisions issued on delegated authority in formal complaint proceedings on the Common Carrier Bureau's Accelerated Docket (see, e.g., Sec. 1.730) shall be filed within 15 days of public notice of the decision, as that date is

defined in Sec. 1.4(b). These applications for review, oppositions and replies in Accelerated Docket proceedings shall be served on parties to the proceeding by hand or facsimile transmission.

(f) Applications for review, oppositions, and replies shall conform to the requirements of Secs. 1.49, 1.51, and 1.52, and shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554. Except as provided below, applications for review and oppositions thereto shall not exceed 25 double-space typewritten pages. Applications for review of interlocutory actions in hearing proceedings (including designation orders) and oppositions thereto shall not exceed 5 double-spaced typewritten pages. When permitted (see paragraph (e)(3) of this section), reply pleadings shall not exceed 5 double-spaced typewritten pages. The application for review shall be served upon the parties to the proceeding. Oppositions to the application for review shall be served on the person seeking review and on parties to the proceeding. When permitted (see paragraph (e)(3) of this section), replies to the opposition(s) to the application for review shall be served on the person(s) opposing the application for review and on parties to the proceeding.

(g) The Commission may grant the application for review in whole or in part, or it may deny the application with or without specifying reasons therefor. A petition requesting reconsideration of a ruling which denies an application for review will be entertained only if one or more of the following circumstances is present:

(1) The petition relies on facts which related to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or

(2) The petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.

(h)(1) If the Commission grants the application for review in whole or in part, it may, in its decision:

(i) Simultaneously reverse or modify the order from which review is sought;

(ii) Remand the matter to the designated authority for reconsideration in accordance with its instructions, and, if an evidentiary hearing has been

[[Page 139]]

held, the remand may be to the person(s) who conducted the hearing; or

(iii) Order such other proceedings, including briefs and oral argument, as may be necessary or appropriate.

(2) In the event the Commission orders further proceedings, it may stay the effect of the order from which review is sought. (See Sec. 1.102.) Following the completion of such further proceedings the Commission may affirm, reverse or modify the order from which review is sought, or it may set aside the order and remand the matter to the designated authority for reconsideration in accordance with its instructions. If an evidentiary hearing has been held, the Commission may remand the matter to the person(s) who conducted the hearing for rehearing on such issues and in accordance with such instructions as may be appropriate.

Note: For purposes of this section, the word ``order'' refers to that portion of its action wherein the Commission announces its judgment. This should be distinguished from the ``memorandum opinion'' or other material which often accompany and explain the order.

(i) An order of the Commission which reverses or modifies the action taken pursuant to delegated authority is subject to the same provisions with respect to reconsideration as an original order of the Commission. In no event, however, shall a ruling which denies an application for review be considered a modification of the action taken pursuant to delegated authority.

(j) No evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission believes should have been taken in the original proceeding shall be taken on any rehearing ordered pursuant to the provisions of this section.

(k) The filing of an application for review shall be a condition precedent to judicial review of any action taken pursuant to delegated authority.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[28 FR 12415, Nov. 22, 1963, as amended at 41 FR 14871, Apr. 8, 1976; 44 FR 60295, Oct. 19, 1979; 46 FR 18556, Mar. 25, 1981; 48 FR 12719, Mar. 28, 1983; 50 FR 39000, Sept. 26, 1985; 54 FR 40392, Oct. 2, 1989; 55 FR 36641, Sept. 6, 1990; 57 FR 19387, May 6, 1992; 62 FR 4170, Jan. 29, 1997; 63 FR 41446, Aug. 4, 1998]

Subpart F—Pricing of Elements

§ 51.501 Scope.

(a) The rules in this subpart apply to the pricing of network elements, interconnection, and methods of obtaining access to unbundled elements, including physical collocation and virtual collocation.

(b) As used in this subpart, the term "element" includes network elements, interconnection, and methods of obtaining interconnection and access to unbundled elements.

§ 51.503 General pricing standard.

(a) An incumbent LEC shall offer elements to requesting telecommunications carriers at rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

(b) An incumbent LEC's rates for each element it offers shall comply with the rate structure rules set forth in §§ 51.507 and 51.509, and shall be established, at the election of the state commission—

(1) Pursuant to the forward-looking economic cost-based pricing methodology set forth in §§ 51.505 and 51.511; or

(2) Consistent with the proxy ceilings and ranges set forth in § 51.513.

(c) The rates that an incumbent LEC assesses for elements shall not vary on the basis of the class of customers served by the requesting carrier, or on the type of services that the requesting carrier purchasing such elements uses them to provide.

§ 51.505 Forward-looking economic cost.

(a) *In general.* The forward-looking economic cost of an element equals the sum of:

(1) The total element long-run incremental cost of the element, as described in paragraph (b); and

(2) A reasonable allocation of forward-looking common costs, as described in paragraph (c).

(b) *Total element long-run incremental cost.* The total element long-run incremental cost of an element is the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated

taking as a given the incumbent LEC's provision of other elements.

(1) *Efficient network configuration.* The total element long-run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers.

(2) *Forward-looking cost of capital.* The forward-looking cost of capital shall be used in calculating the total element long-run incremental cost of an element.

(3) *Depreciation rates.* The depreciation rates used in calculating forward-looking economic costs of elements shall be economic depreciation rates.

(c) *Reasonable allocation of forward-looking common costs—*(1) *Forward-looking common costs.* Forward-looking common costs are economic costs efficiently incurred in providing a group of elements or services (which may include all elements or services provided by the incumbent LEC) that cannot be attributed directly to individual elements or services.

(2) *Reasonable allocation.* (i) The sum of a reasonable allocation of forward-looking common costs and the total element long-run incremental cost of an element shall not exceed the stand-alone costs associated with the element. In this context, stand-alone costs are the total forward-looking costs, including corporate costs, that would be incurred to produce a given element if that element were provided by an efficient firm that produced nothing but the given element.

(ii) The sum of the allocation of forward-looking common costs for all elements and services shall equal the total forward-looking common costs, exclusive of retail costs, attributable to operating the incumbent LEC's total network, so as to provide all the elements and services offered.

(d) *Factors that may not be considered.* The following factors shall not be considered in a calculation of the forward-looking economic cost of an element:

(1) *Embedded costs.* Embedded costs are the costs that the incumbent LEC

incurred in the past and that are recorded in the incumbent LEC's books of accounts;

(2) *Retail costs.* Retail costs include the costs of marketing, billing, collection, and other costs associated with offering retail telecommunications services to subscribers who are not telecommunications carriers, described in § 51.609;

(3) *Opportunity costs.* Opportunity costs include the revenues that the incumbent LEC would have received for the sale of telecommunications services, in the absence of competition from telecommunications carriers that purchase elements; and

(4) *Revenues to subsidize other services.* Revenues to subsidize other services include revenues associated with elements or telecommunications service offerings other than the element for which a rate is being established.

(e) *Cost study requirements.* An incumbent LEC must prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, using a cost study that complies with the methodology set forth in this section and § 51.511.

(1) A state commission may set a rate outside the proxy ranges or above the proxy ceilings described in § 51.513 only if that commission has given full and fair effect to the economic cost based pricing methodology described in this section and § 51.511 in a state proceeding that meets the requirements of paragraph (e)(2) of this section.

(2) Any state proceeding conducted pursuant to this section shall provide notice and an opportunity for comment to affected parties and shall result in the creation of a written factual record that is sufficient for purposes of review. The record of any state proceeding in which a state commission considers a cost study for purposes of establishing rates under this section shall include any such cost study.

§ 51.507 General rate structure standard.

(a) Element rates shall be structured consistently with the manner in which the costs of providing the elements are incurred.

(b) The costs of dedicated facilities shall be recovered through flat-rated charges.

(c) The costs of shared facilities shall be recovered in a manner that efficiently apportions costs among users. Costs of shared facilities may be apportioned either through usage-sensitive charges or capacity-based flat-rated charges, if the state commission finds that such rates reasonably reflect the costs imposed by the various users.

(d) Recurring costs shall be recovered through recurring charges, unless an incumbent LEC proves to a state commission that such recurring costs are de minimis. Recurring costs shall be considered de minimis when the costs of administering the recurring charge would be excessive in relation to the amount of the recurring costs.

(e) State commissions may, where reasonable, require incumbent LECs to recover nonrecurring costs through recurring charges over a reasonable period of time. Nonrecurring charges shall be allocated efficiently among requesting telecommunications carriers, and shall not permit an incumbent LEC to recover more than the total forward-looking economic cost of providing the applicable element.

(f) State commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences.

(1) To establish geographically-deaveraged rates, state commissions may use existing density-related zone pricing plans described in § 69.123 of this chapter, or other such cost-related zone plans established pursuant to state law.

(2) In states not using such existing plans, state commissions must create a minimum of three cost-related rate zones.

[61 FR 45619, Aug. 29, 1996, as amended at 64 FR 32207, June 16, 1999; 64 FR 68637, Dec. 8, 1999]

§ 51.509 Rate structure standards for specific elements.

In addition to the general rules set forth in § 51.507, rates for specific elements shall comply with the following rate structure rules.

§ 51.615

service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on resale.

(1) An incumbent LEC may impose such a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory, such as by proving to a state commission that the incumbent LEC lacks the capability to comply with unbranding or rebranding requests.

(2) For purposes of this subpart, unbranding or rebranding shall mean that operator, call completion, or directory assistance services are offered in such a manner that an incumbent LEC's brand name or other identifying information is not identified to subscribers, or that such services are offered in such a manner that identifies to subscribers the requesting carrier's brand name or other identifying information.

§ 51.615 **Withdrawal of services.**

When an incumbent LEC makes a telecommunications service available only to a limited group of customers that have purchased such a service in the past, the incumbent LEC must also make such a service available at wholesale rates to requesting carriers to offer on a resale basis to the same limited group of customers that have purchased such a service in the past.

§ 51.617 **Assessment of end user common line charge on resellers.**

(a) Notwithstanding the provision in § 69.104(a) of this chapter that the end user common line charge be assessed upon end users, an incumbent LEC shall assess this charge, and the charge for changing the designated primary interexchange carrier, upon requesting carriers that purchase telephone exchange service for resale. The specific end user common line charge to be assessed will depend upon the identity of the end user served by the requesting carrier.

(b) When an incumbent LEC provides telephone exchange service to a requesting carrier at wholesale rates for resale, the incumbent LEC shall continue to assess the interstate access

47 CFR Ch. I (10-1-01 Edition)

charges provided in part 69 of this chapter, other than the end user common line charge, upon interexchange carriers that use the incumbent LEC's facilities to provide interstate or international telecommunications services to the interexchange carriers' subscribers.

Subpart H—Reciprocal Compensation for Transport and Termination of Telecommunications Traffic

EDITORIAL NOTE: Nomenclature changes to subpart H appear at 66 FR 26806, May 15, 2001.

§ 51.701 **Scope of transport and termination pricing rules.**

(a) The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications carriers.

(b) *Telecommunications traffic.* For purposes of this subpart, telecommunications traffic means:

(1) Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (see FCC 01-131, paragraphs 34, 36, 39, 42-43); or

(2) Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.

(c) *Transport.* For purposes of this subpart, transport is the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

(d) *Termination.* For purposes of this subpart, termination is the switching of telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of

such traffic to the called party's premises.

(e) *Reciprocal compensation.* For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one 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.

[61 FR 45619, Aug. 29, 1996, as amended at 66 FR 26806, May 15, 2001]

§ 51.703 Reciprocal compensation obligation of LECs.

(a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier.

(b) A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

§ 51.705 Incumbent LECs' rates for transport and termination.

(a) An incumbent LEC's rates for transport and termination of telecommunications traffic shall be established, at the election of the state commission, on the basis of:

(1) The forward-looking economic costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511;

(2) Default proxies, as provided in § 51.707; or

(3) A bill-and-keep arrangement, as provided in § 51.713.

(b) In cases where both carriers in a reciprocal compensation arrangement are incumbent LECs, state commissions shall establish the rates of the smaller carrier on the basis of the larger carrier's forward-looking costs, pursuant to § 51.711.

§ 51.707 Default proxies for incumbent LECs' transport and termination rates.

(a) A state commission may determine that the cost information available to it with respect to transport and termination of telecommunications traffic does not support the adoption of a rate or rates for an incumbent LEC that are consistent with the require-

ments of §§ 51.505 and 51.511. In that event, the state commission may establish rates for transport and termination of telecommunications traffic, or for specific components included therein, that are consistent with the proxies specified in this section, provided that:

(1) Any rate established through use of such proxies is superseded once that state commission establishes rates for transport and termination pursuant to §§ 51.705(a)(1) or 51.705(a)(3); and

(2) The state commission sets forth in writing a reasonable basis for its selection of a particular proxy for transport and termination of telecommunications traffic, or for specific components included within transport and termination.

(b) If a state commission establishes rates for transport and termination of telecommunications traffic on the basis of default proxies, such rates must meet the following requirements:

(1) *Termination.* The incumbent LEC's rates for the termination of telecommunications traffic shall be no greater than 0.4 cents (\$0.004) per minute, and no less than 0.2 cents (\$0.002) per minute, except that, if a state commission has, before August 8, 1996, established a rate less than or equal to 0.5 cents (\$0.005) per minute for such calls, that rate may be retained pending completion of a forward-looking economic cost study.

(2) *Transport.* The incumbent LEC's rates for the transport of telecommunications traffic, under this section, shall comply with the proxies described in § 51.513(c) (3), (4), and (5) of this part that apply to the analogous unbundled network elements used in transporting a call to the end office that serves the called party.

[61 FR 45619, Aug. 29, 1996, as amended at 61 FR 52709, Oct. 8, 1996]

§ 51.709 Rate structure for transport and termination.

(a) In state proceedings, a state commission shall establish rates for the transport and termination of telecommunications traffic that are structured consistently with the manner that carriers incur those costs, and consistently with the principles in §§ 51.507 and 51.509.

§ 61.55 Contract-based tariffs.

(a) This section shall apply to price cap LECs permitted to offer contract-based tariffs under § 69.727(a) of this chapter.

(b) Composition of contract-based tariffs shall comply with §§ 61.54(b) through (i).

(c) Contract-based tariffs shall include the following:

(1) The term of contract, including any renewal options;

(2) A brief description of each of the services provided under the contract;

(3) Minimum volume commitments for each service;

(4) The contract price for each service or services at the volume levels committed to by the customers;

(5) A general description of any volume discounts built into the contract rate structure; and

(6) A general description of other classifications, practices, and regulations affecting the contract rate.

[64 FR 51266, Sept. 22, 1999]

§ 61.58 Notice requirements.

(a) Every proposed tariff filing must bear an effective date and, except as otherwise provided by regulation, special permission, or Commission order, must be made on at least the number of days notice specified in this section.

(1) Notice is accomplished by filing the proposed tariff changes with the Commission. Any period of notice specified in this section begins on and includes the date the tariff is received by the Commission, but does not include the effective date. If a tariff filing proposes changes governed by more than one of the notice periods listed below, the longest notice period will apply. In computing the notice period required, all days including Sundays and holidays must be counted.

(2)(i) Local exchange carriers may file tariffs pursuant to the streamlined tariff filing provisions of section 204(a)(3) of the Communications Act. Such a tariff may be filed on 7 days' notice if it proposes only rate decreases. Any other tariff filed pursuant to section 204(a)(3) of the Communications Act, including those that propose a rate increase or any change in terms and conditions, shall be filed on 15

days' notice. Any tariff filing made pursuant to section 204(a)(3) of the Communications Act must comply with the applicable cost support requirements specified in this part.

(ii) Local exchange carriers may elect not to file tariffs pursuant to section 204(a)(3) of the Communications Act. Any such tariffs shall be filed on at least 16 days' notice.

(iii) Except for tariffs filed pursuant to section 204(a)(3) of the Communications Act, the Chief, Common Carrier Bureau, may require the deferral of the effective date of any filing made on less than 120 days' notice, so as to provide for a maximum of 120 days' notice, or of such other maximum period of notice permitted by section 203(b) of the Communications Act, regardless of whether petitions under § 1.773 of this chapter have been filed.

(3) Tariff filings proposing corrections or voluntarily deferring the effective date of a pending tariff revision must be made on at least 3 days' notice, and may be filed notwithstanding the provisions of § 61.59. Corrections to tariff materials not yet effective cannot take effect before the effective date of the original material. Deferrals must take effect on or before the current effective date of the pending tariff revisions being deferred.

(4) This subsection applies only to dominant carriers. If the tariff publication would increase any rate or charge, or would effectuate and authorized discountinuation, reduction or other impairment of service to any customer, the offering carrier must inform the affected customers of the content of the tariff publication. Such notification should be made in a form appropriate to the circumstance, and may include written notification, personal contact, or advertising in newspapers of general circulation.

(b) Tariffs for new services filed by price cap local exchange carriers shall be filed on at least one day's notice.

(c) Contract-based tariffs filed by price cap local exchange carriers pursuant to § 69.727(a) of this chapter shall be filed on at least one day's notice.

(d)(1) A local exchange carrier that is filing a tariff revision to remove its corridor or interstate intraLATA toll services from its interexchange basket

pursuant to § 61.42(d)(4)(ii) shall submit such filing on at least fifteen days' notice.

(2) A local exchange carrier that has removed its corridor and interstate intraLATA toll services from its inter-exchange basket pursuant to § 61.42(d)(4)(ii) shall file subsequent tariff filings for corridor or interstate intraLATA toll services on at least one day's notice.

(e) *Non-price cap carriers and/or services.* (1) Tariff filings in the instances specified in paragraphs (d)(1) (i), (ii), and (iii) of this section must be made on at least 15 days' notice.

(i) Tariffs filed in the first instance by new carriers.

(ii) Tariffs filings involving new rates and regulations not previously filed at, from, to or via points on new lines; at, from to or via new radio facilities; or for new points of radio communication.

(iii) Tariff filings involving a change in the name of a carrier, a change in Vertical or Horizontal coordinates (or other means used to determine airline mileages), a change in the lists of mileages, a change in the lists of connecting, concurring or other participating carriers, text changes, or the imposition of termination charges calculated from effective tariff provisions. The imposition of termination charges does not include the initial filing of termination liability provisions.

(2) Tariff filings involving a change in rate structure, a new offering, or a rate increase must be made on at least 45 days' notice.

(3) Alascom, Inc. shall file its annual tariff revisions for its Common Carrier Services (Alascom Tariff F.C.C No. 11) on at least 35 days' notice.

(4) All tariff filings not specifically assigned a different period of public notice in this part must be made on at least 35 days' notice.

(f) [Reserved]

[49 FR 40869, Oct. 18, 1984, as amended at 54 FR 19844, May 8, 1989; 55 FR 42384, Oct. 19, 1990; 56 FR 1500, Jan. 15, 1991; 56 FR 5956, Feb. 14, 1991; 56 FR 55239, Oct. 25, 1991; 58 FR 36149, July 6, 1993; 59 FR 10304, Mar. 4, 1994; 62 FR 5778, Feb. 7, 1997; 64 FR 46591, Aug. 26, 1999; 64 FR 51266, Sept. 22, 1999]

§ 61.59 Effective period required before changes.

(a) Except as provided in § 61.58(a)(3) or except as otherwise authorized by the Commission, new rates or regulations must be effective for at least 30 days before a dominant carrier will be permitted to make any change.

(b) Changes to rates and regulations that have not yet become effective, *i.e.*, are pending, may not be made unless the effective date of the proposed changes is at least 30 days after the scheduled effective date of the pending revisions.

(c) Changes to rates and regulations that have taken effect but have not been in effect for at least 30 days may not be made unless the scheduled effective date of the proposed changes is at least 30 days after the effective date of the existing regulations.

[64 FR 46592, Aug. 26, 1999]

Subpart F—Specific Rules for Tariff Publications of Dominant and Nondominant Carriers

§ 61.66 Scope.

The rules in this subpart apply to all carriers, unless otherwise noted.

[64 FR 46592, Aug. 26, 1999]

§ 61.68 Special notations.

(a) A tariff filing must contain a statement of the authority for any matter to be filed on less than the notice required in § 61.58. The following must be used:

Issued on not less than — days' notice under authority of — (specific reference to the special permission, decision, order or section of these rules).

If all the matter in a tariff publication is to become effective on less than the notice required in § 61.58, specific reference to the Commission authority must be shown on the title page. If only a part of the tariff publication is to become effective on less than the notice required in § 61.58, reference to the Commission authority must appear on the same page(s), and be associated with the pertinent matter.

(b) When a portion of any tariff publication is issued in order to comply

PENNSYLVANIA ADMINISTRATIVE CODE
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
SUBPART A. GENERAL PROVISIONS
CHAPTER 5. FORMAL PROCEEDINGS
SUBCHAPTER A. PLEADINGS AND OTHER PRELIMINARY MATTERS
FORMAL COMPLAINTS
Current through Supp. 332 (July, 2002)

§ 5.21. Formal complaints generally.

- (a) A person complaining of an act done or omitted to be done by a person subject to the jurisdiction of the Commission, in violation, or claimed violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission, may file a formal complaint with the Commission.
- (b) If the complaint relates to a provision in a tariff, regulation, report or other similar document on file with the Commission as a matter of public record, the document should be identified.
- (c) A copy of the complaint will be served by the Commission, by certified mail, upon the respondent. If the complaint proposes to change an existing or proposed tariff rate of a fixed public utility subject to the jurisdiction of the Commission, a copy of the complaint will be served by the Commission on the Office of Trial Staff, Office of Consumer Advocate and Office of Small Business Advocate.
- (d) The filing of a formal complaint entitles the complainant to a formal hearing before the Commission except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. Motions may be filed in accordance with §§ 5.101 and 5.102 (referring to preliminary motion; and motions for summary judgment and judgment on the pleadings).
- (e) With respect to complaints filed against the Commission, no answer need be filed. The issues in the proceeding will be determined by prehearing conference memoranda or as specified by the presiding officer.
- (f) Subsections (a)--(e) supersede 1 Pa. Code § 35.9 (relating to formal complaints generally).

Authority

The provisions of this § 5.21 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504--506, 1301 and 1501.

Source

The provisions of this § 5.21 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 414. Immediately preceding text appears at serial pages (215940) and (222431).

<General Materials (GM) - References, Annotations, or Tables>

COPR. © WEST 2002 NO CLAIM TO ORIG. U.S. GOVT. WORKS

52 PA ADC § 5.21
52 Pa. Code § 5.21

Page 3

NOTES OF DECISIONS

Standing

Gas marketing company had standing to file a formal complaint against utility on behalf of its 150 customers who were also customers of the utility, alleging that the utility's proposed MSSS rate would adversely affect the customers' operating costs and would permit impermissible discrimination against some of those customers in violation of section 1304 of the Public Utility Code. *Interstate Gas Marketing, Inc. v. Pennsylvania Public Utility Commission*, 679 A.2d 1349 (Pa. Cmwlth. 1996).

CROSS REFERENCES

This section cited in 52 Pa. Code § 30.52 (relating to commencement of complaints).

52 PA ADC § 5.21
END OF DOCUMENT

COPR. © WEST 2002 NO CLAIM TO ORIG. U.S. GOVT. WORKS

52 PA ADC § 53.31
52 Pa. Code § 53.31

Page 2

PENNSYLVANIA ADMINISTRATIVE CODE
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
SUBPART C. FIXED SERVICE UTILITIES
CHAPTER 53. TARIFFS FOR NONCOMMON CARRIERS
PUBLIC NOTICE OF TARIFF CHANGES
Current through Supp. 332 (July, 2002)

§ 53.31. Requirement of notice.

Unless the Commission otherwise orders, a public utility to which this subchapter applies may not change an existing and duly established tariff, except after notice of 60 days to the public.

<General Materials (GM) - References, Annotations, or Tables>

CROSS REFERENCES

This section cited in 52 Pa. Code § 53.43 (relating to maintenance and availability of the public file); and 52 Pa. Code § 63.115 (relating to tariff supplements).

52 PA ADC § 53.31
END OF DOCUMENT

COPR. © WEST 2002 NO CLAIM TO ORIG. U.S. GOVT. WORKS

PENNSYLVANIA ADMINISTRATIVE CODE
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
SUBPART C. FIXED SERVICE UTILITIES
CHAPTER 53. TARIFFS FOR NONCOMMON CARRIERS
TARIFF FILING REQUIREMENTS FOR INCUMBENT LOCAL EXCHANGE CARRIERS AND
COMPETITIVE LOCAL EXCHANGE CARRIERS
Current through Supp. 332 (July, 2002)

§ 53.59. Cost support requirements and effective filing dates for tariff filings of noncompetitive services.

(a) CLEC services priced below ILEC rates. A CLEC that offers services that are substantially the same or functionally equivalent with noncompetitive services by an ILEC in the service territory of the ILEC, at rates and charges that are at or below the level of the corresponding rates and charges of the ILEC for these services, is not required to provide cost support for tariff filings and rate changes involving these services. These tariff filings will be effective on 1-day's notice if the following apply:

- (1) The CLEC offers these services in the same service territory as the ILEC.
- (2) The CLEC tariff filing does not contain any material changes in the CLEC's tariff rules, terms or conditions.
- (3) The CLEC specifically states in its accompanying cover letter that the filing is being made on 1-day's notice in accordance with this subsection, and that the tariff filing does not contain material changes in the CLEC tariff rules, terms or conditions.
- (4) The CLEC provides copies of the ILEC's effective tariffs designating the corresponding rates and charges of the same or functionally equivalent noncompetitive services.

(b) CLECs operating in multiple ILEC territories. When a CLEC offers services in the service territories of more than one ILEC, and the rates and charges for these services satisfy the criteria of subsection (a), the CLEC may file separate tariff schedules when the rates and charges for these services correspond to the rates and charges of the different ILECs in their respective service territories.

(c) CLEC services priced above ILEC rates and CLEC new services.

- (1) CLEC tariff filings for services that are substantially the same or functionally equivalent with noncompetitive services offered by an ILEC in the same service territory of the ILEC, at rates and charges that are higher than the corresponding rates and charges of the ILEC, will become effective as filed if the Commission does not take any action within 30 days from the date when all consumers subject to the rate increase shall have received individual notice.
- (2) CLEC tariff filings for new services will become effective as filed if the Commission does not take any action within 30 days from the date the tariff filing is filed with the Commission.
- (3) The tariff filings in this subsection shall be received by the Office of Consumer Advocate, the Office of Small Business Advocate and the Commission's Office of Trial Staff on the date of filing with the Commission's Secretary's Bureau.
- (4) The Commission may extend the review period in this subsection by up to an additional 30 days upon notice to the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission's Office of Trial Staff and the affected CLEC.

COPR. © WEST 2002 NO CLAIM TO ORIG. U.S. GOVT. WORKS

(5) The CLEC shall include the following summary documentation for tariff filings involving the services:

(i) A brief statement indicating whether the CLEC offers these services solely on the basis of resale of an ILEC's retail services, through its own facilities, or a combination of both.

(ii) A brief statement indicating whether the tariff filing represents an increase or decrease in existing rates and charges.

(iii) A summary justification of the tariff filing, including an explanation of whether the proposed changes have been caused by a corresponding change in rates and charges of the resold services of the underlying ILEC.

(d) CLEC ministerial administrative changes. CLEC ministerial administrative tariff filings for services that are substantially the same or functionally equivalent with noncompetitive services offered by an ILEC in the same service territory of the ILEC, will be effective on 1-day's notice.

(e) Cost support for CLEC filings. When new or revised CLEC rates for service are higher than those of the ILEC in that ILEC's service territory, the Commission may request relevant documentary support, including cost support and a statement of compliance with applicable guidelines. The requests can be made either before or after the rates become effective, and will only occur when it is necessary to protect consumers such as, without limitation, when the service is targeted to the economically disadvantaged or customers with poor credit histories.

(f) ILEC rate changes.

(1) Rate reductions. ILEC tariff filings for noncompetitive services that represent rate reductions from current rates and charges of that ILEC, will become effective as filed if the Commission does not take any action within a 10-day notice and review period. To obtain the 10-day notice and review period, the ILEC shall provide copies of its current tariff for the noncompetitive service for which it seeks a rate reduction.

(2) Rate increases. ILEC tariff filings for noncompetitive services that represent rate increases from current rates and charges of that ILEC will become effective as filed if the Commission does not take any action within 30 days from the date when all consumers subject to the rate increase shall have received individual notice.

(3) New services. ILEC tariff filings for new services will become effective as filed if the Commission does not take any action within 30 days from the date the tariff filing is filed with the Commission.

(4) Ministerial administrative changes. ILEC ministerial administrative tariff filings for noncompetitive services will be effective on 1-day's notice.

(5) Notice . The tariff filings in this subsection shall be received by the Office of Consumer Advocate, the Office of Small Business Advocate and the Commission's Office of Trial Staff on the date of filing with the Commission's Secretary's Bureau.

(6) Extension of review period. The Commission may extend the review period in this subsection by up to an additional 30 days upon notice to the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission's Office of Trial Staff and the affected ILEC.

(7) Documentary support. Nothing in this subsection affects the type of documentary support, including cost support and a statement of compliance with all applicable regulations, that will be necessary for an ILEC to file with the Commission for approval of tariff filings involving noncompetitive service offerings.

(g) Executive overview. ILECs and CLECs that file tariff filings in accordance with subsection (c) or (f) shall file an executive overview summarizing the reason for the filing. The executive overview shall include relevant information regarding the safety, adequacy, reliability and privacy considerations related to the proposed or revised

52 PA ADC § 53.59
52 Pa. Code § 53.59

Page 4

service.

(h) Lifeline plan statement. When a CLEC proposes increases in rates and charges for any of its basic local exchange services, the CLEC shall also state whether it has implemented a Lifeline Plan that has been approved by the Commission.

Authority

The provisions of this § 53.59 issued under the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501; and section 612 of The Administrative Code of 1929 (71 P. S. § 232).

Source

The provisions of this § 53.59 adopted December 1, 2000, effective December 2, 2000, 30 Pa.B. 6202.

<General Materials (GM) - References, Annotations, or Tables>

CROSS REFERENCES

This section cited in 52 Pa. Code § 53.57 (relating to definitions); and 52 Pa. Code § 53.58 (relating to offering of competitive services).

52 PA ADC § 53.59
END OF DOCUMENT

COPR. © WEST 2002 NO CLAIM TO ORIG. U.S. GOVT. WORKS

1 PHILIP D. BARTZ
 Acting Assistant Attorney General
 Civil Division
 2 EMILY M. SWEENEY
 United States Attorney
 3 HERBERT SUNDBY
 Assistant U.S. Attorney
 Telephone: (503) 727-1000
 4 THEODORE C. HIRT
 LESLIE V. BATCHELOR
 5 Attorneys, U.S. Department of Justice
 Civil Division
 6 950 Pennsylvania Avenue, N.W.
 Room 3738
 7 Washington, D.C. 20530
 Telephone: (202) 514-3309
 8
 9

RECEIVED
 AT&T Corp. Legal - Denver

FYI

AUG 16 2000

OV-NIT _____ PRO SER _____
 MESS _____ REG MAIL _____
 INTER-OF _____ FAX
 Other _____ Initials ll

10 IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF OREGON

11
 12 US WEST COMMUNICATIONS, INC.,

13 Plaintiff,

14 v.

15 AT&T COMMUNICATIONS OF THE
 16 PACIFIC NORTHWEST, INC., et al.,

17 Defendants

No. CV 97-1575 JE

18
 19
 20
 21
 22
 23 MEMORANDUM OF THE FEDERAL COMMUNICATIONS
 COMMISSION AS AMICUS CURIAE
 24
 25
 26
 27
 28

UNITED STATES DEPARTMENT OF JUSTICE
 CIVIL DIVISION
 950 PENNSYLVANIA AVE., N.W., RM. 3738
 WASHINGTON, D.C. 20530

1 the other carrier. Consequently, the FCC declared, "the overarching principle is that the carriers
2 are to share in the access revenues received for a ported call." *Id.* ¶ 140.

3 At least in broad outline, the Agreement between US WEST and Sprint complies with
4 this "overarching principle," because it requires US WEST to share certain access charge
5 revenues with Sprint. For example, the Sprint Agreement provides, in part, that "[t]ransport will
6 be shared by the companies . . .," and "Sprint will receive the end office charges (local
7 switching), [carrier common line], and termination charges," while "[t]andem switching will be
8 recovered by US WEST along with the entrance facility charges." Sprint Agreement at 79-80, §
9 9.1.10. Because the FCC's rules do not specify what a fair share would be, the FCC at this time
10 takes no position as to US WEST's specific arguments that the Sprint Agreement fails to divide
11 access charge revenues between the carriers in a manner that is fair or reasonable. A district
12 court in Washington recently approved the same access charge split in another US WEST-Sprint
13 agreement. See *US WEST Communications, Inc. v. Sprint Communications Co.*, No. C97-
14 1764R, slip op. at 9-10 (W.D. Wash. July 21, 1998) (Ex. 1 to Sprint Mem.).

15 **D. The Act Permits a New Entrant to Establish a Single Point of**
16 **Interconnection Per LATA, Unless Technically Infeasible.**

17 US WEST objects to the provision in its agreements with AT&T and MCI that allows
18 those carriers to establish a single point of interconnection per Local Access Transport Area
19 ("LATA"). US WEST observes that section 251(c)(2)(A) permits a requesting carrier to
20 interconnect its network "for the transmission and routing of telephone exchange service and
21 exchange access" and reads this provision to require a new entrant to interconnect at several
22 points within a single LATA. US WEST Mem. at 28.¹⁹

23 ¹⁹ US WEST phrases its objection in terms of "exchange areas." See US WEST Mem. at 29
24 ("Nothing in the Act suggests that a CLEC may interconnect in one local exchange area for the
25 purpose of providing exchange service in *other* local exchanges."). The term "exchange area"
26 creates confusion here, because it is used in some contexts to describe a LATA and in other

(continued...)

1 The 1996 Act allows a new entrant to interconnect with the ILEC's facilities "at any
2 technically feasible point." 47 U.S.C. § 251(c)(2); *see also* 47 U.S.C. § 251(c)(3). The ILEC is
3 relieved of its obligation to provide interconnection at a particular point in its network only if it
4 proves to the PUC that interconnection at that point is technically infeasible. 47 C.F.R. §
5 51.305(e); *see also FCC Order ¶¶ 198, 203, 205*. Under the FCC's interpretation, new entrants
6 may select the "most efficient points at which to exchange traffic with incumbent LECs, thereby
7 lowering the competing carriers' costs of, among other things, transport and termination." *FCC*
8 *Order ¶ 172*. Moreover, "[s]ection 251(c)(2) gives *competing carriers* the right to deliver traffic
9 terminating on an incumbent LEC's network at any technically feasible point in the network,
10 rather than obligating such carriers to transport traffic to less convenient or efficient
11 interconnection points." *FCC Order ¶ 209* (emphasis added). US WEST may not challenge
12 these binding FCC provisions in this forum.

13 Nothing in the 1996 Act or binding FCC regulations requires a new entrant to
14 interconnect at multiple locations within a single LATA. Indeed, such a requirement could be so
15 costly to new entrants that it would thwart the Act's fundamental goal of opening local markets to
16 competition. The provision in the AT&T and MCI agreements that allows interconnection at
17 "any point designated by [AT&T or MCI] that is technically feasible" is consistent with the Act
18 and FCC regulations and should be upheld. MCI Agreement at 30, Part III, § 36; AT&T
19 Agreement at 24, Part III, § 36.

20 US WEST's citations to various paragraphs of the *FCC Order*, taken out of context, are
21 not to the contrary. For example, the FCC determined that "all carriers . . . may obtain
22 interconnection pursuant to Section 251(c)(2) for the purpose of terminating calls originating
23 from their customers residing in the same telephone exchange (i.e., non-interexchange calls)."
24

25 ¹⁸(...continued)
26 contexts to describe smaller subdivisions within a LATA. *See generally United States v.*
Western Electric Co., 569 F.Supp. 990, 993-95 & n.9 (D.D.C. 1983).

27
28 MEMORANDUM OF THE FCC AS AMICUS CURIAE - 20

UNITED STATES DEPARTMENT OF JUSTICE
CIVIL DIVISION
920 PENNSYLVANIA AVE., N.W., RM. 3736
WASHINGTON, D.C. 20530

1 *FCC Order* ¶ 190. US WEST interprets this language to mean that a new entrant must
2 interconnect in the same local exchange in which it intends to provide local service. See US
3 WEST Mem. at 29. In fact, this passage refers to the prerequisites for obtaining interconnection
4 under Section 251(c)(2) -- not *where* in the incumbent LEC's network interconnection must
5 occur. Similarly, US WEST quotes from paragraph 191 of the *FCC Order* in support of its
6 position that a new entrant must interconnect in every local exchange in which it plans to provide
7 exchange access. See US WEST Mem. at 29. Paragraph 191 simply ensures that interexchange
8 (e.g., inter-LATA) carriers that "interconnect solely for the purpose of originating or terminating"
9 interexchange traffic -- rather than to provide local service -- do not qualify for interconnection
10 under Section 251(c)(2). Because there is no indication that AT&T and MCI seek
11 interconnection solely to terminate their interexchange traffic, US WEST's argument should be
12 rejected.

13 Additionally, US WEST complains that, if a new entrant is permitted to have only one
14 point of interconnection per LATA, rather than being required to establish a point of
15 interconnection in each local calling area in which it is offering local service, US WEST will
16 incur additional, unrecoverable costs. US WEST Mem. at 30-31. This objection should be
17 rejected. The 1996 Act "bars consideration of costs in determining 'technically feasible' points of
18 interconnection or access." *FCC Order* ¶ 199.¹⁶ In the absence of proof by US WEST that it is
19 not technically feasible for a new entrant to have only one point of interconnection in each
20 LATA, the provision permitting AT&T and MCI to establish a single point of interconnection
21 per LATA is consistent with the 1996 Act and binding FCC rules. See *US WEST*
22 *Communications, Inc. v. AT&T Communications of the Pacific Northwest*, No. C97-1320R, slip
23

24 ¹⁶ Consequently, a PUC cannot consider the cost to the ILEC in determining the technical
25 feasibility of points of interconnection. Considerations of technical feasibility "refer[] solely to
26 technical or operational concerns, rather than economic, space, or site considerations." *FCC*
Order ¶ 198; see also 47 C.F.R. § 51.5 (defining "technically feasible").

1 op. at 20 (W.D. Wash. July 21, 1998) (Ex. 2 to Sprint Mem.); *US WEST Communications, Inc.*
2 *MFS Intelenet, Inc.*, No. C97-222WD, slip op. at 9 (W.D. Wash. Jan 7, 1998), *appeal pending.*
3 No. 98-35146 (9th Cir.) (Ex. 8 to Sprint Mem.). In any event, consistent with the *FCC Order*,¹⁷
4 the OPUC decision provides US WEST the opportunity to obtain additional compensation if a
5 specific request for interconnection warrants it. See OPUC Decision, Order No. 97-003, at 4
6 (Jan. 6, 1997).

7 **E. The OPUC Had the Discretion to Adopt a Bill-and-Keep Method of**
8 **Compensation for Transport and Termination of Traffic.**

9 US WEST asserts that the interim "bill-and-keep"¹⁸ provisions adopted by the OPUC in
10 the AT&T and MCI Agreements violate the Act by failing to provide US WEST with cost
11 recovery. US WEST Mem. at 26-28. See also AT&T Agreement at 36, § 41.3; MCI Agreement
12 at 45-46, § 41.3. Section 252(d)(2)(B)(i) of the Act provides that a bill-and-keep arrangement
13 may satisfy the pricing standards of Section 252(d)(2)(A) to the extent that it permits the "mutual
14 recovery of costs." The FCC found that, in determining if states may impose a bill-and-keep
15 requirement, a key factor is whether "the volume of terminating traffic that originates on one
16 network and terminates on another network is approximately equal to the volume of terminating
17 traffic flowing in the opposite direction, and is expected to remain so." *FCC Order* ¶ 1111. The
18 FCC stated that a state may "apply a general presumption that traffic between carriers is balanced
19
20

21 ¹⁷ "[A] requesting carrier that wishes a 'technically feasible' but expensive interconnection
22 would, pursuant to 252(d)(1), be required to bear the cost of that interconnection, including a
23 reasonable profit." *FCC Order* ¶ 199.

24 ¹⁸ Under a bill-and-keep compensation arrangement for the transport and termination of
25 calls between two carriers, neither carrier charges for terminating calls that originate on the
26 other's network. Instead, each carrier recovers from its own end users the cost of calls that (1)
27 originate on its network and are delivered to the other network and (2) originate on the other
28 network and terminate on its network. See *FCC Order* ¶ 1096.

CERTIFICATE OF SERVICE

I hereby certify that, on this 1st day of August 2002, I caused copies of the Post-Hearing Brief of Verizon Pennsylvania Inc. to be served on the following parties by electronic and overnight mail:

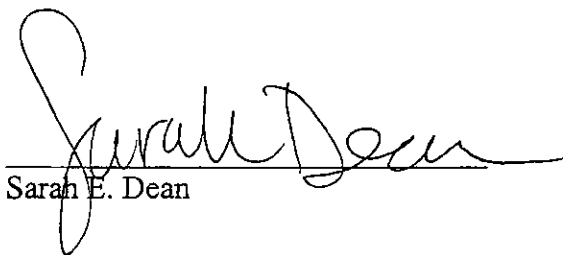
Pennsylvania Public Utility Commission

Hon. Louis Cocheres
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor, L-M West
Harrisburg, PA 17120
Email: lcocheres@state.pa.us

US LEC of Pennsylvania, Inc.

Michael L. Shor
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
Email: mlshor@swidlaw.com

Linda C. Smith, Esquire
Dilworth Paxson LLP
305 North Front Street
Suite 403
Harrisburg, PA 17101-1236
Email: smithlc@dilworthlaw.com


Sarah E. Dean

AUG 09 2002

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 :

BEST AND FINAL OFFER
OF VERIZON PENNSYLVANIA INC.

ORIGINAL

Verizon Pennsylvania Inc. ("Verizon"), by counsel and pursuant to the Pre-Hearing Order No. 2, dated May 20, 2002, hereby files its best and final offer with respect to the issues raised by the Petition for Arbitration of US LEC of Pennsylvania, Inc. Page number references in the text are to version of the proposed agreement attached to US LEC's petition.

STATEMENT OF UNRESOLVED ISSUES

Issue 1: (Glossary, Section 2.45; Interconnection Attachment, Sections 7.1.1.1, 7.1.1.1.1, 7.1.1.2, 7.1.1.3)

Issue: 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?

US LEC position: Yes. Under federal law, US LEC has the right to choose a single IP per LATA and any technically feasible method of interconnection and Verizon has an obligation to deliver its originating traffic to the IP selected by US LEC.

Verizon's Alleged Position: No. US LEC should be required to establish, or transition its existing architecture to, a US LEC-IP for receipt of Verizon-originated traffic by establishing a collocation arrangement at each

DOCKETED
AUG 20 2002

DOCUMENT
FOLDER

Verizon Tandem where US LEC assigns telephone numbers to its customers. If US LEC fails to establish such an IP, Verizon should pay US LEC the applicable reciprocal compensation rate less Verizon's transport rate, tandem switching rate, and any other costs assessed by US LEC or third parties for transport purchased by Verizon.

Verizon's Actual Position:

Although US LEC is entitled to select a single physical point of interconnection in each LATA, it must bear a fair share of the costs of whatever interconnection architecture it chooses.

The language originally proposed is Verizon's best and final offer with respect to Issue No. 1.

Issue 2: (Interconnection Attachment, Section 7.1.1.2)

Issue: Should Verizon be permitted to force US LEC to designate its collocation site at a Verizon end office as the US LEC-IP where Verizon will deliver its traffic?

US LEC position: No. Under the Act, US LEC has the right to determine where the IP(s) will be established, and as stated in Issue 1, US LEC's switch serves as US LEC's IP in the same manner as Verizon's switches serve as Verizon's IPs.

Verizon's Alleged Position:

Yes.

Verizon's Actual Position:

Under Verizon's proposal, US LEC would not be forced to designate a collocation site at a Verizon end office as an IP. However, if US LEC, which is not currently collocated in any Verizon end office, chooses to establish such a collocation arrangement but not to designate the collocation site as an IP, it should nonetheless become financially responsible for traffic at that point, through the establishment of a virtual IP at that end office.

The language originally proposed is Verizon's best and final offer with respect to Issue No. 2.

Issue 3: (Glossary, Section 2.75; Additional Services Attachment, Section 5.1; Interconnection Attachment, Section 7.3.7).

Issue: Is US LEC entitled to reciprocal compensation for terminating "Voice Information Services" traffic?

US LEC position: Yes. The traffic that Verizon now seeks to define as Voice Information Services Traffic fits completely the definition of Reciprocal Compensation Traffic that is eligible for reciprocal compensation.

Verizon's Alleged Position: No.

Verizon's Actual Position: No. "Voice Information Services" traffic is defined to include only traffic that is not subject to reciprocal compensation under current law.

Verizon is proposing new language to make clear that the exclusion of Voice Information Services from the scope of the parties reciprocal compensation obligations is intended simply to track federal law – that is, Verizon has modified the language to make clear that Voice Information Services is not subject to reciprocal compensation *to the extent that* such traffic is "interstate or intrastate exchange access, information access, or exchange services for such access." 47 C.F.R. § 51.701(b)(1).

The proposed language of the relevant provisions is set forth below:

Glossary, Section 2.75(Page 35): 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) **to the extent such traffic is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access.** 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.

Additional Services Attachment, Section 5.1 (Page 43): 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 **to the extent such traffic is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access.**

Interconnection Attachment, Section 7.3.7 (Page 65): Reciprocal Compensation shall not apply to Voice Information Service Traffic (as defined in Section 5 of the Additional Services Attachment) **to the extent such traffic is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access.**

Issue 4: (Additional Services Attachment, Section 5.3)

Issue: Should US LEC be required to provide dedicated trunking at its own expense for Voice Information Service traffic that originates on its network for delivery to Voice Information Service providers served by Verizon?

US LEC position: No.

Verizon's Alleged Position: Yes.

Verizon's Actual Position: Yes.

Verizon has modified the affected language to make clear that Voice Information Services must be delivered over separate trunks only in those cases where the Voice Information Service provider or the provider's carrier seeks to impose a distinct charge on the calling party for the Voice Information Services – typically, 556 and 976 numbers.

Additional Services Attachment, Section 5.3 (Page 43): US LEC shall have the option to route Voice Information Service Traffic that originates on its own network to the appropriate Voice Information Service connected to Verizon's network. **In the case of Voice Information Service Traffic for which a separate charge is imposed on the calling party by the Voice Information Service Provider, and** in the event US LEC exercises such option, US LEC will establish, at its own expense, a dedicated trunk group to the Verizon Voice Information Service serving switch. This trunk group will be utilized to allow US LEC to route Voice Information Service Traffic originated on its network to Verizon. For such Voice Information Service Traffic, unless US LEC has entered into a written agreement with Verizon under which US LEC will collect from US LEC's Customer and remit to Verizon the Voice Information Service provider's charges, 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.

Issue 5: (Glossary, Section 2.56; Interconnection Attachment, Sections 2.1.2, 8.5.2, and 8.5.3)

Issue: Should the term “terminating party” or the term “receiving party” be employed for purposes of traffic measurement and billing over interconnection trunks.

US LEC position: The term “terminating party” should be utilized, consistent with the plain language of Section 251(b)(5) and other sections of the Agreement.

Verizon's Alleged Position: The term “receiving party” should be utilized.

Verizon's Actual Position: The term “receiving party” is more accurate and should be used.

The language originally proposed is Verizon's best and final offer with respect to

Issue No. 5.

Issue 6: (Glossary, Section 2.56; Interconnection Attachment, Section 7.2)

Issue: (A) Should the parties be obligated to compensate each other for calls to numbers with NXX codes associated with the same local calling area?
(B) Should Verizon be able to charge originating access to US LEC on calls going to a particular NXX code if the customer assigned the NXX is located outside of the local calling area associated with that NXX code?

US LEC position: (A) The determination of whether a call is rated as local or toll for billing purposes is based upon the NXX of the originating and terminating numbers. This practice must be maintained such that calls between an originating and terminating NXX, associated with the same local calling area, should continue to be rated as local. Under any scenario, Verizon is responsible to bring traffic originated on its network to the US LEC-IP. The associated cost to Verizon does not change based upon the location of US LEC's customers;
(B) Verizon should not be allowed to charge US LEC originating access for calls to an NXX code if the customer assigned that NXX is located outside of the local calling area to which that NXX is assigned.

Verizon's Alleged Position: (A) Verizon should be allowed to revise the industry practice of comparing the NXX codes of the calling and the called party in order to rate a call as local or toll;
(B) Furthermore, Verizon should be allowed to impose originating access charges on a call going to an NXX code if the customer assigned that code is located outside of the local calling area associated with that NXX code.

Verizon's Actual Position:

A) Reciprocal compensation does not apply to interexchange traffic, defined by reference to the actual originating and terminating points of the complete end-to-end communication;
(B) Intrastate and interstate access charges are governed by the parties' tariffs.

The language originally proposed is Verizon's best and final offer with respect to Issue No. 6.

Issue 7: (Interconnection Attachment, Section 12.4)

Issue: Should Verizon be obligated to act as the transit carrier for US LEC and other third party local exchange carriers?

US LEC position: Verizon is compensated for the provision of transit service from the carrier serving the originating party and should be obligated to provide nondiscriminatory transit service to US LEC just as it does for other carriers. Verizon has no right to condition the provision of transit service on the existence of a contract (between US LEC and another carrier) to which Verizon is not a party.

Verizon's Alleged Position: Verizon will discontinue transit service unless US LEC has negotiated traffic exchange agreements with third party carriers and provided Verizon notice of such agreements.

Verizon's Actual Position:

The parties have settled this issue. The agreed language is set forth below.

Interconnection Attachment, Section 12.4 (Page.71). 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.

Issue 8: (Interconnection Attachment, Sections 8.1 and 8.1.1; General Terms and Conditions, Section 50.2)

Issue: What compensation framework should govern the parties' exchange and termination of ISP-bound traffic in the event the FCC's Internet Order is vacated or reversed on appeal?

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

Verizon's Alleged Position: In the event the Internet Order is vacated or reversed on appeal, the parties should have to negotiate and, if necessary, arbitrate a new compensation framework.

Verizon's Actual Position: The parties' obligations are governed by federal law.

The language originally proposed is Verizon's best and final offer with respect to Issue No. 8.

Issue 9: (Pricing Attachment, Section 1.5)

Issue: Should Verizon be permitted to change its non-tariffed charges during the term of the agreement, or must such charges remain fixed for the entire term?

US LEC position: Although tariffed charges may change during the term of the agreement due to changes in applicable tariffs, non-tariffed charges must remain fixed for the term of the agreement.

Verizon's Alleged Position: Both tariffed rates and non-tariffed rates may be changed whenever Verizon alters its existing rates or adds new tariffed rate elements or services.

Verizon's Actual Position: Applicable tariff charges take precedence over charges set out in the agreement; regulatory decisions modifying applicable charges should be incorporated into the agreement.

The language originally proposed is Verizon's best and final offer with respect to Issue No. 9.

Issue 10: (General Terms and Conditions, Section 9.3)

Issue: (A) Should the time period during which a party may dispute charges be limited to sixty (60) days from the invoice date, or should a party be permitted to dispute charges for an indefinite period?; and
(B) May an entire class of charges be disputed at once, or must each charge be disputed separately?

US LEC position: The time period during which a party may dispute any charges should be no longer than sixty (60) days from the invoice date, and each item must be disputed separately per bill cycle.

Verizon's Alleged Position: Parties may dispute a charge for an indefinite and unlimited time period, and an entire class of charges may be disputed at once.

Verizon's Actual Position:

The parties have settled this issue. The agreed language is set forth below:

General Terms and Conditions, Section 9.3 (Pages 5-6): 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.

Issue 11: (General Terms and Conditions, Section 21)

Issue: Should Verizon's proposed insurance requirements be adjusted to coverage levels that are consistent with the insurance that US LEC currently maintains?

US LEC position: Yes.

Verizon's Alleged Position: No.

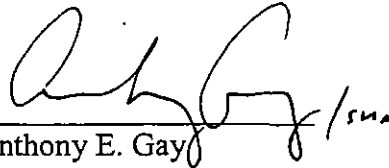
Verizon's Actual Position: US LEC should be required to maintain a commercially reasonable level of insurance.

The parties have settled this issue. The agreed language is set forth below.

General Terms and Conditions, Section 21 (Page 12): 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.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. E. Gay", with a horizontal line underneath it. To the right of the signature, the initials "sua" are written.

Anthony E. Gay
Verizon Pennsylvania Inc.
1717 Arch Street, 32N
Philadelphia, PA 19103
(215) 963-6023

Julia A. Conover
Verizon Pennsylvania Inc.

Of Counsel

Aaron M. Panner
Scott H. Angstreich
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

July 25, 2002

Attorneys for Verizon Pennsylvania Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on this 25th day of July 2002, I caused copies of the Best and Final Offer of Verizon Pennsylvania Inc. to be served on the following parties by electronic and overnight mail:

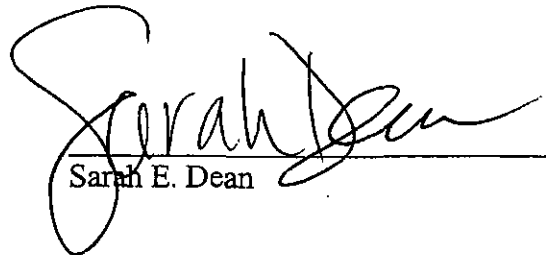
Pennsylvania Public Utility Commission

Hon. Louis Cocheres
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor, L-M West
Harrisburg, PA 17120
Email: lcocheres@state.pa.us

US LEC of Pennsylvania, Inc.

Michael L. Shor
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
Email: mlshor@swidlaw.com

Linda C. Smith, Esquire
Dilworth Paxson LLP
305 North Front Street
Suite 403
Harrisburg, PA 17101-1236
Email: smithlc@dilworthlaw.com


Sarah E. Dean