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August 1, 2002

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

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

Dear Secretary McNulty:

Enclosed please find two copies of the certified portions of the record form a prior Commission proceeding to be filed as an exhibit in the above-references case.

The original has been provided to ALJ Cocheres. A copy has been provided to opposing counsel.

If you have any questions concerning this filing, please call me.



Very truly yours,

Linda C. Smith

Linda C. Smith



LCS/sw
Enclosure

cc: ALJ Cocheres (w/o attachments)
*Parties of Record (w/o attachments)*

# COMMONWEALTH OF PENNSYLVANIA

# PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application Docket No. A-310203 F0002

Application of MFS Intelenet of Pennsylvania, Inc.

I, James J. McNulty, Secretary of the Pennsylvania Public Utility Commission, do hereby certify that the attached is a full, true and correct copy of Bell Atlantic Statement No. 2.0 (Albert) dated April 17, 1996 – cover sheet, table of contents and page 19 filed in the matter of the above entitled Application, as the same remains of record and on file in this office.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the Pennsylvania Public Utility Commission, this TWENTY-SIXTH day of JULY, 2002.

James J. McNulty, Secretary

APPLICATION OF MFS INTELENET OF PENNSYLVANIA, INC., MCI METRO ACCESS TRANSMISSION, TCG PITTSBURGH, AND EASTERN TELELOGIC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE AND RESELL LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES (PHASE II), DOCKET NOS. A-310203F0002, A-310213F0002, A-310236F0002 AND A-310258F0002

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BELL ATLANTIC STATEMENT NO. 2.0 (ALBERT)
(DIRECT)

4/12/96
Hbg
JAV

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Witness: DONALD ALBERT

DIRECT TESTIMONY OF
DONALD ALBERT
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Q. IS THERE A NEED FOR NXX CODE ASSIGNMENTS TO ADHERE TO AN AGREED-TO CONVENTION?

A. Yes. The NXX codes assigned to co-carriers must correspond to a convention, based on geographic boundaries, that allows Bell's switching equipment and billing systems to recognize the geographic location of a called number. As Mr. West explains in his direct testimony in support of Bell's Unbundling Proposal, this is essential to allow Bell to follow its approved tariffs.

## VI. INTERIM NUMBER PORTABILITY

Q. HOW DOES REMOTE CALL FORWARDING WORK WHEN PROVIDED THROUGH THE SWITCHES DEPLOYED IN BELL'S CENTRAL OFFICES?

A. Remote Call Forwarding works a little differently with each of the three major switch types used by Bell: 1AESS (AT&T); 5ESS (AT&T); and DMS-100 (Nortel). In the 1AESS, each RCF arrangement requires a directory number (telephone number), an originating central office switch line and a Simulated Facilities Group. Physically, the central office switch line is the same equipment termination that Bell connects to a cable pair, to provide dial-tone to a local Bell customer. In the 5ESS, each RCF arrangement also requires a directory number and an originating central office switch line. In the DMS-100, each RCF arrangement uses a directory number and call forwarding extension blocks.

# COMMONWEALTH OF PENNSYLVANIA

# PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of MFS Intelenet of Pennsylvania, Inc.

Application Docket No. A-310203 F0002

I, James J. McNulty, Secretary of the Pennsylvania Public Utility Commission, do hereby certify that the attached is a full, true and correct copy of the transcript dated April 9, 1996 along with pages 96 – 96, 123-151 and 161-163, transcript dated April 16, 1996 along with pages 478 – 482 and 498 – 508, transcript dated April 17, 1996 along with pages 867 – 870 and 877-881, MFS Statement 1.0 dated April 9, 1996 – pages 1, 15 – 16, Bell Statement No. 1.0A dated April 16, 1996 – cover sheet, table of contents, pages 18 & 19, Bell Statement No. 1.1B dated April 11, 1996 – cover sheet, table of contents, pages 1 and 7 – 9, Main Brief of Bell dated May 3, 1996 – cover sheet, table of contents, pages 51 – 53, Post-Hearing Brief of MFS dated May 2, 1996 – cover sheet, table of contents, pages 11 & 12, Exceptions of MFS dated June 28, 1996 – cover sheet, table of contents, pages 14 & 15, and Recommended Decision dated June 13, 1996 – cover sheet, table of contents, pages 82 & 83 filed in the matter of the above entitled Application, as the same remains of record and on file in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the Pennsylvania Public Utility Commission, this TWENTY-FIFTH day of JULY, 2002.

James J. McNulty

James J. McNulty, Secretary

| | | |
|---|---|---|
| Application of Eastern TeleLogic Corporation<br>For a certificate of public convenience and necessity to provide local exchange telecommunications service in the areas served by Bell Atlantic-Pennsylvania, Incorporated, within the Philadelphia LATA.<br><br>Initial Hearing | : | Docket No. A-310258F0002 |

Pages 54 through 174

Hearing Room 2
North Office Building
Harrisburg, Pennsylvania

Tuesday, April 9, 1996

Met, pursuant to adjournment, at 9:10 a.m.

BEFORE:

MICHAEL C. SCHNIERLE, Administrative Law Judge

APPEARANCES:

RUSSELL BLAU, Esquire
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(For MFS Intelenet of Pennsylvania)

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(For TCG Pittsburgh)

RICHARD D. SPIEGELMAN, Esquire
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305 North Front Street
Harrisburg, Pennsylvania 17101
(For MCImetro Access Transmission)

MS. DONOVAN: Thank you, Your Honor.

(Whereupon, the documents marked as TCG/ETC Statements Nos. 1.0, 2.0 and 2.1 were received in evidence.)

JUDGE SCHNIERLE: I believe next we have Mr. Ball. Please raise your right hand.

Whereupon,

GARY J. BALL

having been duly sworn, testified as follows:

JUDGE SCHNIERLE: Mr. Blau.

MR. BLAU: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. BLAU:

Q. Mr. Ball, would you state your name and business address for the record, please?

A. Yes. My name is Gary Ball. My business address is 33 Whitehall Street, 15th Floor, New York, New York, 10004.

Q. Did you submit direct testimony in this proceeding consisting of 31 pages and two exhibits designated GB-1 and GB-2?

A. Yes.

Q. Was this testimony prepared by you or under your direct supervision?

A. Yes.

Q. Did you also submit rebuttal testimony in this proceeding?

A. Yes.

Q. Consisting of 11 pages and an exhibit designated Exhibit GB-3?

A. Yes.

Q. And was that rebuttal testimony also prepared by you or under your direct supervision?

A. Yes.

MR. BLAU: Your Honor, I'd ask to mark the direct testimony of Gary Ball as MFS Statement 1.0, the exhibit labeled GB-1 as MFS Exhibit 1.1, and the exhibit labeled GB-2 as MFS Exhibit 1.2. And I would note for the record that those two exhibits contain proprietary information.

JUDGE SCHNIERLE: They may be so marked.

(Whereupon, the documents were marked as MFS Statement No. 1.0 and MFS Exhibits Nos. 1.1 and 1.2 for identification.)

MR. BLAU: I would also ask to mark the rebuttal testimony of Gary Ball as MFS Statement 2.0.

JUDGE SCHNIERLE: It may be so marked.

(Whereupon, the document was marked as MFS Statement No. 2.0 for identification.)

MR. BLAU: And Exhibit GB-3 as MFS Exhibit 2.1.

JUDGE SCHNIERLE: It may be so marked.

(Whereupon, the document was marked as MFS Exhibit No. 2.1 for identification.)

MR. BLAU: And I move to admit these in evidence subject to cross-examination and any timely motion to strike.

JUDGE SCHNIERLE: Any objection?

(No response.)

JUDGE SCHNIERLE: They are so admitted.

(Whereupon, the documents marked as MFS Statements Nos. 1.0 and 2.0 and MFS Exhibits Nos. 1.1, 1.2 and 2.1 were received in evidence.)

BY MR. BLAU:

Q. Mr. Ball, are you familiar with the rebuttal testimony of Witness Albert of Bell Atlantic?

A. Yes, I am.

Q. At pages 5 and 6 of that rebuttal testimony, Mr. Albert says that your proposal for a single point of interconnection in each LATA turns the national system of interexchange access on its head, because all carriers currently terminate their interexchange traffic at access tandems. Is he correct?

JUDGE SCHNIERLE: Ms. Conover?

MS. CONOVER: Mr. Arfaa will have cross.

JUDGE SCHNIERLE: Mr. Arfaa?

MR. ARFAA: Thank you, Your Honor.

**CROSS EXAMINATION**

BY MR. ARFAA:

Q. Good morning, Mr. Ball.

A. Good morning.

Q. Mr. Clearfield asked you one or two questions about resale of services. Do you recall that?

A. Yes, I do.

Q. And also, you have testimony on that subject on pages 8 through 11 in your rebuttal testimony; correct?

A. Yes.

Q. Now, Mr. Ball, you've had occasion before to comment on the validity of resale or its merits compared to utilities-based competition; haven't you?

A. Before this proceeding?

Q. Yes.

(Pause.)

Q. Well, let me ask you.

A. Maybe you could tell me where I commented on that.

(Laughter.)

Q. On March 15, 1996, you filed comments on behalf

of MFS Intelnet in Virginia before the Virginia State Corporation Commission's investigation into resale of local telephone service; did you not?

A. Yes, we did.

MR. ARFAA: Your Honor, with your permission I'll have the court reporter mark this document as Bell Cross Examination Exhibit No. 1.

JUDGE SCHNIERLE: It may be so marked.

**(Whereupon, the document was marked as Bell Cross Examination Exhibit No. 1 for identification.)**

(Document handed to witness.)

MR. CLEARFIELD: Off the record, could I look at that first?

(Pause.)

MR. CLEARFIELD: All right.

BY MR. ARFAA:

Q. Mr. Ball, do you have before you what has been marked as Bell Cross Examination Exhibit No. 1?

A. Yes.

Q. Would you turn to the last page? Are you listed as one of the people submitting the document?

A. Yes, I am.

Q. And these are, in fact, the comments that were referred to earlier that were filed on March 15th in

Virginia; is that right?

A. These were filed on March 15th, yes.

Q. Now, I'm not going to go through the whole document, Mr. Ball, but I do want to ask you a few questions.

These comments describe several kinds of resale, one of which is service re-branding, which I believe you spoke about with Mr. Clearfield. And that's one end of the spectrum that's described, all the way to facilities-based competition where you just buy and sell the loops. Is that a fair characterization?

A. Yes.

Q. Now, I take it that you agree that service re-branding, which is pure resale, or simple resale, provides a substantially lesser amount of economic and social benefits than the provision of facilities-based competition with reseller groups; is that right

MR. CLEARFIELD: Your Honor, I object. This is friendly cross. Mr. Arfaa is simply attempting to add to Mr. Ball's testimony with respect to resale. This is a position that Bell subscribes to MFS to some extent and has at least made some comments that are adverse to AT&T and not to Bell, and Mr. Arfaa has decided to supplement Mr. Ball's testimony with these comments, which are actually a legal document and not his -- there's no affidavit here, it's not

sworn and subscribed. It doesn't even indicate that Mr. Ball participated in writing it. So I object to the question, and I'm going to object in advance if the document is attempted to be admitted.

JUDGE SCHNIERLE: Mr. Arfaa?

MR. ARFAA: Thank you, Your Honor.

Two points. First of all, to the extent you deem this cross examination to be friendly, it is at this point friendly. Mr. Clearfield is, subject to your approval, free to ask follow-up questions. I don't think that's a valid objection to this line of questioning.

I have not yet offered the document for its admission. But I think it really strains credulity to have Mr. Clearfield object to a line of questions on a subject which he spent at least 20 minutes in cross-examining Mr. Ball.

MR. CLEARFIELD: Your Honor, may I respond?

JUDGE SCHNIERLE: The objection is overruled. You'll get another chance to question him. And I'm not ruling at this point on the admissibility of the document. I'll see where it goes.

MR. ARFAA: Thank you, Your Honor. I understand your ruling.

BY MR. ARFAA:

Q. Mr. Ball, I don't think that you were given an

opportunity to answer my last question. Let me restate it.

Do you agree that service re-branding, that is the simple resale of a service under a different brand, provides a substantially lesser amount of economic and social benefits in the provision of service by a facilities-based competitor using unbundled loops?

A. Yes, I do.

Q.

Q. And would you agree that of all of the kinds of resale, from service re-branding all the way to facilities-based competition using unbundled loops, the unbundled loop scenario, that is where an entrant utilizes the incumbent's unbundled loops in combination with its own switches at other facilities, provides the maximum competitive benefits to the public?

A. Yes.

Q. Now, Mr. Clearfield asked you during his cross examination whether there's a competitive advantage to beating your competitors to the market. Do you remember that line of cross examination?

A. Yes, I do.

Q. Would you also agree there's an advantage to delay your competitors' entry into the market?

A. Yes. We would never propose that, but yes.

(Laughter.)

A. I would agree with the concept.

(Laughter.)

Q. Well, I guess I'd say, for example, to delay the availability of unbundled loops would provide an advantage to competitors who wouldn't be using unbundled loops in competition with MFS; would you agree with that?

A. Yes.

Q. Now, Mr. Ball, referring back to Bell Cross Examination Exhibit No. 1, which is the Virginia comments, you did identify that your name appears on the signature page of that document; did you not?

A. Yes.

Q. Did you participate in the drafting of those comments?

A. I didn't actually draft it; I did review it.

Q. And are they true and correct to the best of your knowledge, information and belief?

A. Yes, this is MFS's position on these issues.

MR. ARFAA: Your Honor, I would move for the admission of Bell Cross Examination Exhibit No. 1.

MR. CLEARFIELD: Objection, Your Honor. This is a legal document, it's not a document that he has prepared. He's just testified to that. It's simply supplementing his rebuttal testimony without any notice or an opportunity, a reasonable opportunity, for AT&T or any other party who

wishes to consider it to respond. I don't know what's in this document, I don't know what comments or statements are made therein, and I think it would be impossible, certainly, as Mr. Ball's sitting here for me to analyze it.

I think it's inappropriate for a legal document to be moved into the record as an exhibit, Your Honor. The portions that have been referenced by Mr. Arfaa have been acknowledged by Mr. Ball, and beyond that I'm not sure that there's any materiality.

JUDGE SCHNIERLE: Mr. Arfaa?

MR. ARFAA: Thank you, Your Honor. I'm perplexed that Mr. Clearfield's or AT&T's unfamiliarity with these comments since they are a party to the Virginia proceeding.

MR. CLEARFIELD: Well, I didn't say I was unfamiliar with them, I said they're inappropriate to move them into the record.

MR. ARFAA: I'm sorry. I thought one of the bases for objecting was no ability to review them. And we certainly would not object to a short break to provide that opportunity, with Your Honor's approval.

Mr. Clearfield, as I said, opened the door to this area by attacking Mr. Ball's testimony on resale. I don't see how he can object to an explication of Mr. Ball's position. We would waste the time of the Commission and Your Honor and the parties by going through each and every

position that's stated in the document. I think it's really a more efficient use of time to simply admit it into evidence.

JUDGE SCHNIERLE: I'll tell you what. I'm going to take a ten-minute recess and read the document over myself, and then I'll make my ruling.

MR. ARFAA: Thank you, Your Honor.

JUDGE SCHNIERLE: We'll be back at 11:05.

(Recess.)

JUDGE SCHNIERLE: Let's go back on the record.

I have looked at Bell Cross Examination Exhibit 1, and I'm going to sustain the objection. It appears to me to be way beyond the scope of either Mr. Ball's rebuttal testimony or Mr. Clearfield's cross. It's loaded with legal opinion regarding the Telecommunications Act, and I think that the introduction of this thing at this particular point in time would -- I'm going to tell you something. I'll say this, that from my reading of the Commission's Order that established Phase II, I'm far from convinced at this point that wholesale rates for resale services is an issue that the Commission wanted to hear about in the proceeding. And going to wait till I hear the whole thing, but I'm disinclined to substantially open up that issue beyond the limited comment that Mr. Ball made in his testimony.

In my opinion, if Bell wanted to explore the

differences between the wholesale, resale and facilities-based, and the rest of the stuff, you should have done that in your own testimony. So the objection is sustained.

**(Whereupon, the document marked as Bell Cross Examination Exhibit No. 1 was rejected.)**

JUDGE SCHNIERLE: Mr. Arfaa, anything further?

MR. ARFAA: Not on the exhibit, Your Honor. I do have some more questions for Mr. Ball.

JUDGE SCHNIERLE: All right, you may continue then.

MR. ARFAA: Thank you.

BY MR. ARFAA:

Q. Mr. Ball, still good morning.

Mr. Ball, you refer in your direct testimony on page 6 to the Maryland loop trial that Bell Atlantic and MFS conducted; do you not?

A. Yes.

Q. Now, would you agree that Bell Atlantic was cooperative in performing that trial with MFS?

A. Yes.

Q. And would you agree that Bell Atlantic did not delay or hinder the test in any way?

A. Yes, I'd agree.

Q. And is it correct that MFS has no dispute about the technical sufficiency of the unbundling that was

performed in the test that MFS and Bell did together?

A. Well, I'd agree, the outcome of the test proved what we hoped it would prove, was that it's technically feasible to unbundle the loops; and we also got a lot of experience between our companies on how to do it. So it's our hope that that will be transferrable knowledge to other states.

Q. Yes. And the level of unbundling that Bell put forward in the test and that MFS worked on with Bell was sufficient for MFS's purposes; is that right?

A. At this point. I don't think we -- there is further things we probably will want to look at, but at this point of market entry I think it is sufficient.

Q. Thank you. Mr. Clearfield, during his cross examination, asked you about the kinds of customers, the number of customers that were used in the test. Do you recall that cross examination?

A. Yes.

Q. And I believe you answered that MFS used its own sales office as a subject as opposed to what Mr. Clearfield called real customers; is that right?

A. Yes.

Q. Is that answer in any way detract from your conclusion as to the technical sufficiency of the unbundling that was tested?

A. No. And I would like to clarify that. While they were internal customers, they were actually live lines. So they were actually receiving calls from the outside world and making calls over those lines.

Q. So it was a real life kind of test?

A. Yes.

Q. Now, Mr. Ball, in your rebuttal testimony on page 3, you discussed Bell Atlantic's suggested bona fide request procedure for further unbundling. Do you recall that testimony?

A. Yes, I'm looking at it.

Q. Now, according to your testimony the duty to unbundle, further unbundling is conditioned upon receiving -- the LEC receiving a request to unbundle; is that right?

A. Yes.

Q. And you've also testified on that page, I believe, that upon receiving the request the LEC has a duty to negotiate in good faith with the requested carrier concerning their request; is that right?

A. Yes.

Q. Now, assuming that the LEC does negotiate in good faith, MFS does not object to the establishment of a bona fide request process for unbundling as proposed by Bell, does it?

A. As proposed by Bell? Could you just make sure I

understand? Is there a section in the Bell testimony that I'm endorsing in this question?

Q. Well, I believe Mr. West -- well, your understanding of Bell's bona fide request proposal, which you testified to on your rebuttal page that we referred to, MFS has no objection to that procedure, in general at least, presuming that the LEC carries out its duty to negotiate in good faith?

A. Yes, as long as there's a recourse and things don't go too long, I think these requests will be -- some will be more complex than others. And they probably all shouldn't take the same amount of time. But as a general matter, the ability to -- the idea of sitting down with Bell trying to work it out as a first pass makes a lot of sense.

Q. And I think you mentioned with recourse to the Commission if necessary; is that right?

A. Yes, I think there would have to be some type of recourse if things aren't going well, it just doesn't flounder indefinitely.

Q. And with those conditions you have no objection to a bona fide request procedure?

A. Yes.

Q. Thank you.

Now, Mr. Ball, I'd like to address the subject of loop pricing. Generally in your testimony, you take issue

with Bell's pricing of unbundled loops that cost total service long run incremental cost plus a reasonable markup. But you'll agree that whatever Bell's proposal ultimately is, as approved by this Commission, the proposal for pricing unbundled loops must comply with the Telecommunications Act of '96?

A. I would agree with that, yes.

Q. Now, I'm going to refer to your direct testimony, please, at page 8. And here you're giving some details about your allegation that Bell's loop pricing proposal would create some kind of price squeeze; is that right?

A. Yes.

Q. Now, on page 8, and also in your Exhibit GB-1, which I don't think it's necessary to turn to, you included an interstate end user common line charge and a surrogate carrier common line charge in the calculation of the Bell rates for loops; is that right?

A. Yes.

Q. Mr. Ball, isn't it true that Bell does not have the authority to charge, in effect, either of those charges today?

A. Yes. This was based on our understanding that Bell Atlantic had petitioned the FCC for authority to charge those rates, and --

Q. The Federal Communications Commission?

A. Yes. And we were concerned that if that wasn't incorporated into this debate we could end up double-paying.

Q. Well, as far as you know, that petition has not been granted; is that right?

A. That's correct.

Q. And has MFS intervened in that proceeding before the FCC?

A. I don't know.

Q. Well, is it safe to say that if you had concerns, you would?

A. Well, I think our concern is not the fact that you recover some of the revenue from the interstate jurisdiction. Our concern would be that you recover twice; once from the interstate and once from the intrastate. So I don't think we have a conceptual problem with you recovering some of your costs.

Q. Okay. Your problem then is -- excuse me, your concern -- as stated, I think, on page 10 of your testimony, is that -- let's make sure I'm giving you the right words here. Yes, on line 4 -- that Bell is attempting to recover, quote, the same costs, close quote, by charging an interstate rate based on total service long run incremental cost, and the intrastate rate I'll only say we just described; that's your concern, right?

A. Yes.

Q. Well, Mr. Ball, isn't it true that interstate common line charges are calculated to cover embedded non-traffic's instant costs?

A. I would agree with that, yes.

Q. And embedded costs, as I think you testified earlier, are historical costs; right?

A. Yes.

Q. Costs that are already sunk, spent?

A. They're embedded costs, yes.

Q. And Bell's rate proposal is based on total service long run incremental cost; is it not?

A. Well, the portion that was filed in Pennsylvania is, yes.

Q. The portion that's before this Commission?

A. Yes.

Q. And long run incremental costs are forward-looking costs, aren't they?

A. Yes.

Q. They're not embedded costs, are they?

A. Correct.

Q. Now, MFS agrees that Bell should not be forced to price unbundled loops below total service long run incremental cost, doesn't it?

A. I would agree with that. And that's consistent with the act.

Q. When you say the act, you mean the -- Telecommunications Act?

A. Yes, the Telecommunications Act.

Q. And you're aware that Bell can't set it's dial tone line rate on its own, it needs to go to the Commission; doesn't it?

A. Yes.

Q. Now, Mr. Ball, MFS will offer a service called basic exchange access service in Pennsylvania, won't it?

A. Yes.

Q. And is that the equivalent to a dial tone line service?

A. Yes.

Q. And MFS also intends to offer other services, does it not?

A. Yes.

Q. Local usage services?

A. Yes.

Q. IntraLATA toll services?

A. Yes.

Q. Operator services?

A. Yes.

Q. Basically any service that it can sell across the dial tone line and make a profit; right?

A. We would like to make a profit, yes.

Q. And all of those services will generate revenue above and beyond what MFS charges for the basic exchange access service, won't it?

A. We may charge additional charges for some of those other services, yes.

Q. And they'll generate additional revenue, won't they?

A. Yes.

Q. Now, I'd like to refer you to your direct testimony on pages 19 and 20, Mr. Ball.

(Pause.)

Q. Are you with me?

A. I'm on page 19, yes.

Q. Generally on those pages you take issue with Bell's present proposal for its interim number portability service; is that right?

A. Yes.

Q. I'm not going to ask you to get into the details, but I just want to make sure that you would agree that Bell would incur some incremental usage-sensitive costs when it forwards calls to MFS.

A. Yes, to the degree your network's being used there would be some usage costs.

Q. I'd like to refer you to page 21 of your direct testimony, lines 1 through 11. Now, you argue there, or you

assert -- please let me know if this is a [illegible] characterization -- that Bell should not be permitted to recover any usage costs from co-carriers and forwarded calls as Bell's local usage interLATA toll and switched access charges provide enough contribution to cover those costs; is that your testimony there?

A. Yes.

Q. Now, as far as you know, the rates for Bell's local usage, interLATA toll and switched access services were set before any co-carriers were authorized to provide service in Pennsylvania; isn't that right?

A. Yes.

Q. So it follows that the cost of forwarding co-carrier calls were not calls incurred by Bell or considered by the Commission when the Commission set those rates?

A. I would agree. But based on my knowledge of what the actual costs are, I would be shocked --

Q. I'm sorry, I'm not asking you about --

A. -- if those rates --

Q. -- the costs, I'm asking you about the rates.

A. -- didn't cover costs.

Q. Referring to your rebuttal testimony now, Mr. Ball, on page 7, you refer to spreading the additional costs of interim number portability among all

telecommunications providers, right?

A. Can you tell me where in my testimony.

Q. Page 7 of your rebuttal testimony.

(Pause.)

Q. This would be on pages 8 through 11, and generally the paragraph 8 through 21.

A. On page 7, or page 8 through 11?

Q. I'm sorry, line 8.

A. Oh.

MR. ARFAA: Pardon me, Your Honor.

BY MR. ARFAA:

Q. For the record, it's page 7, beginning at line 8.

A. Okay.

Q. Do I characterize your testimony correctly that you believe that the additional costs of interim number portability should be spread among all telecommunications providers in Pennsylvania; is that right?

A. Yes.

Q. And I believe the basis for that assertion, if you'll look at line 3 and 5, is your interpretation of Section 251(e)(2) of the new Telecommunications Act; is that right?

A. Yes.

Q. Now, will you admit that that section speaks of the establishment of permanent number portability?

A. Not necessarily.

Q. You won't admit it?

A. Huh?

Q. You won't admit that?

A. I won't admit that? Is that the question?

Q. Yes.

A. Yes, I won't admit that.

Q. All right. But you will, I hope, admit, because it's in your testimony, that the section speaks of establishing a number portability terms -- excuse me; establishing, the cost of establishing number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Federal Communications Commission?

A. Yes.

Q. And not the Pennsylvania Public Utility Commission?

A. Correct. But that doesn't preclude the Commission from attempting to be consistent with the act in any rate setting they do.

Q. And we'll, I'm sure, argue about what is consistent with the act and what is not; is that fair to say?

A. I think it's fair.

Q. Not here though.

A. We'll argue it, at the very least.

MR. ARFAA: May I take a moment, Your Honor?

JUDGE SCHNIERLE: Yes.

(Pause.)

BY MR. ARFAA:

Q. I'd like to speak to you, or ask you a few questions, about reciprocity of unbundling obligations. Do you believe that new entrants should have a reciprocal obligation to provide their loops to Bell on an unbundled basis, Mr. Ball?

A. No.

Q. Well, let's take, I think it's actually a scenario that was discussed earlier, the new office park situation where you have, let's say, in Chester County, Pennsylvania, or Delaware County, a large, old family estate of 200 acres developed. And one of the properties that was developed is a new office park with a lot of different size businesses in it. Are you with me that far?

A. Yes.

Q. And let's assume that MFS already has facilities and rights of way that are fairly close to the office park, and so you decide that you're going to bid for the business there with the developer and you want to be the local service provider to that office park. Is that a fair assumption, or is that a reasonable assumption to make for

the purposes of this hypothetical?

A. Of this hypothetical. As a practical matter I'm not so sure.

Q. Now, and let's assume then that MFS is successful in bidding against Bell and against Eastern TeleLogic and TCG and MCI Metro and gets the business and provides local service, wires the park, all the loops, and provides service for a year.

And I'd like you also to assume that one of your customers is dissatisfied with your service, just for the purposes of the hypothetical.

(Laughter.)

Q. And says: I want Bell. I want Bell back. I liked Bell. Assume for the purposes of the hypothetical.

A. This is very hypothetical now.

(Laughter.)

Q. Is it your testimony that Bell should build a loop from its closest point at that park to serve that one customer?

A. Well, I think under this hypothetical, I think Bell would probably have a pretty good reason to come to the Commission, or come to us, and request that. From our experience and understanding of the way these things happen, your hypothetical, I don't think, is very probable.

Q. Well, but I've asked you and you've accepted the

hypothetical for purposes of this question.

A. Well, yes. But I don't think it makes a lot of sense for the Commission to get involved and make determinations based on this hypothetical, which I don't believe is ever going to materialize.

Q. Do you think it's more reasonable for the Commission to get involved every time there's a dispute of this nature?

A. Well, I think it makes more sense to see if there actually is a dispute before we start worrying about it.

Q. Your answer is -- Bell's a big company, they're always before the Commission and it's not a big problem. But what if the customer says: You know, MFS was right, Bell stinks. But MFS stinks too. I want to go Eastern TeleLogic.

Would Eastern TeleLogic have to build facilities out there? Or will MFS unbundle the loop for Eastern TeleLogic? Or does Eastern TeleLogic have to go to the Commission?

A. I'm not sure. Like I said, it's such an extreme hypothetical, I don't think we've put that much thought into it.

Q. Well, under your testimony, if there's no reciprocal obligation to unbundle, and MFS has no obligation to provide the loop on an unbundled basis, it's certainly possible that in your view of the world Eastern TeleLogic

will have to come to you and say: I want to take your customer away. And you'll say: No, go to the Commission. And Eastern TeleLogic has come to Harrisburg, perhaps Judge Schnierle, and incur all these costs, just to get that loop; isn't that true?

A. No, I guess the reason we say it's not necessary is because there are no buildings or areas where we have this kind of monopoly power. You've created a hypothetical where we're now the monopoly.

Q. That's right.

A. But we're not. There's nowhere in this country where we have --

Q. Mr. Ball --

A. And it's made up.

Q. I'm sorry. Are you finished? Hypotheticals are made up.

A. Yes.

(Laughter.)

Q. All right. But we're assuming here that in three or four years MFS will certainly be in a position to go out and go to the developer of that facility and say: I want to provide local service to all of your 250 tenants in this brand new development that used to be on an 800-acre horse farm, such as do exist around Philadelphia. And wouldn't MFS in that case be the monopolist with respect to that?

They'll control the bottleneck, won't they?

A. Well, it's just as if we built to every building in Philadelphia, and all those customers took our service. It's just --

Q. Well, no sir, it's not; excuse me. By your testimony, Bell already has facilities to all the existing buildings in Philadelphia.

A. Right. And all those buildings --

Q. The situation may not.

A. And all those buildings are also wired for Bell Atlantic service.

Q. Right. And with this new development it would not be wired for Bell Atlantic service. I think that the record is clear.

JUDGE SCHNIERLE: Well, wait a minute, wait a minute. I have a couple questions here. There are areas just around Harrisburg here where they're building industrial parks in places where there are farms. You mean to tell me you don't think that there's going to be a situation where MFS or one of the other CLECs is going to be asked to run fiber or cables in there in lieu of Bell Atlantic? You don't see that happening at all in the foreseeable future?

THE WITNESS: Well, I think as a general matter, if I was a building developer, I think I'd be crazy to build a building and not provide access to the local phone company.

But assuming that happens, if it's a big enough customer, Bell's going to be beating down that guy's door, wanting to build facilities into them.

But what we said, if this situation occurs, Bell's well within their rights to come and say: Look, we have a case; MFS is a monopoly in this small segment of the world. We want access to some of their facilities. And I think at that point we would be obliged to give them to them.

But I think it's an extremely small probability that that's what's going to happen. And I do think in that case Bell would probably want to build their own facilities anyway.

Yes, we'd love for Bell Atlantic to become our customer. And I don't think we've ever refused any request from Bell Atlantic to buy any of our services.

JUDGE SCHNIERLE: You may continue.

MR. ARFAA: Thank you, Your Honor.

BY MR. ARFAA:

Q. Well, Judge Schnierle had posited what you call the unlikely event of MFS actually winning in competition for the office park.

Now, isn't it true though that MFS expects Bell to lose market share fairly rapidly once the unbundled loop is available?

A. No.

Q. Wouldn't you agree that MFS expects Bell to lose about 50 percent of its market share over the next five years?

A. There must be a document we're going to --

(Laughter.)

Q. Would you agree to that statement, or not?

A. That Bell's going to lose 50 percent of their market share?

Q. That MFS expects Bell to lost 50 percent of its market share over the next five years?

A. I don't agree, but it looks like there's a newspaper article that may contradict my opinion.

Q. Well, it's not really the newspaper article, Mr. Ball. Do you know who Andrew Litman is?

A. Yes.

Q. Who is Andrew Litman?

A. He's our senior vice president of regulatory government affairs.

Q. In that capacity does he speak on the company's behalf from time to time?

A. Oh, very often so.

Q. Okay. And will you accept, sir, subject to check, that -- I'm being advised to show this to you.

MR. ARFAA: May I approach the witness, Your Honor?

JUDGE SCHNIERLE: Yes.

MR. BLAU: Your Honor, may I also see the document that's being shown to the witness?

JUDGE SCHNIERLE: Sure.

MR. ARFAA: In fact, I'll show Mr. Blau first.

JUDGE SCHNIERLE: Show Mr. Blau first.

(Pause.)

BY MR. ARFAA:

Q. Mr. Ball, I have shown Mr. Blau and I'm going to show you an edition of the Washington Business Journal which is a newspaper. This is the edition for the week of March 15 through 21, 1996. I'm showing you page 15, and I'm just showing you this statement here, if you would just read that paragraph and then the carry-over paragraph on page 22.

MR. ARFAA: Your Honor, I hope not to have to burden the record with this document.

JUDGE SCHNIERLE: I hope so, too.

(Witness perusing document.)

BY MR. ARFAA:

Q. Have you finished reviewing the statement I pointed out to you?

A. Yes.

Q. Would you agree that Mr. Litman, at least, speaking on behalf of MFS, expects Bell to lose about 50 percent of its market share over the next five years?

A. That's what it says.

Q. Okay. Thank you, Mr. Ball.

MR. ARFAA: Thank you, Your Honor. I have no further questions on cross-examination.

JUDGE SCHNIERLE: Mr. Clearfield, do you wish to cross further on Mr. Arfaa's questions regarding the resale issue?

MR. CLEARFIELD: No, Your Honor. Under the circumstances, I do not.

JUDGE SCHNIERLE: Mr. Blau, redirect?

MR. BLAU: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. BLAU:

Q. Starting with the last subject first so that I can give Mr. Arfaa his newspaper back, let me ask Mr. Ball to read the first paragraph on page 22 of the Washington Business Journal article he was just referring to.

A. Which paragraph?

Q. The first paragraph on that page.

A. Would you like me to read it?

Q. Would you, please?

A. "We based our assumption on what happened to AT&T when the long distance market opened up in 1980. Back then, AT&T had it all. Today, they control only 56 to 57 percent of that market."

Q. And that's a quote from Mr. Litman?

That's all I have. Thank you.

JUDGE SCHNIERLE: Mr. Arfaa, anything further?

MR. ARFAA: May I have a moment, Your Honor?

JUDGE SCHNIERLE: Yes.

(Pause.)

MR. ARFAA: Your Honor, I do have a very brief recross.

JUDGE SCHNIERLE: All right, proceed.

MR. ARFAA: Thank you, Your Honor.

RECROSS-EXAMINATION

BY MR. ARFAA:

Q. Mr. Ball, during Mr. Clearfield's most recent examination, I believe you testified that you would expect the PUC to set wholesale rates for resold services; is that right?

MR. CLEARFIELD: Your Honor, I'm going to object. This is outside the scope of the redirect.

MR. ARFAA: It's not outside the scope of the recross.

MR. CLEARFIELD: That's not the purpose of recross-examination, Your Honor, as I understand it.

JUDGE SCHNIERLE: I'm going to let the one question go. I'll see what the next one sounds like.

Answer it, please.

THE WITNESS: Can you repeat the question? I got a

little lost.

BY MR. ARFAA:

Q. Mr. Ball, I'm just confirming, I'm trying to clear up what may be an unintended inconsistency. During Mr. Clearfield's examination, did you state that you would expect the Commission to set wholesale rates for resold services in the first instance?

A. I think that would -- yes, based on what the avoided costs would be.

Q. Didn't you testify during earlier cross-examination by Mr. Clearfield that those rates should be negotiated in the first instance, with recourse to the Commission if necessary?

MR. CLEARFIELD: Your Honor, this is just redirect, and I'm going to object. He said what he said.

I'll withdraw my objection. Let's just get it over with.

JUDGE SCHNIERLE: Well, did you say that?

THE WITNESS: I guess my assumption was, you know, getting into the negotiation process and the Act, I guess I was making an assumption that there would be failed negotiations and the Commission would be setting the rates during an arbitration process.

MR. ARFAA: Thank you, Mr. Ball.

Thank you, Your Honor. That concludes my

examination.

JUDGE SCHNIERLE: Do you want to ask anything else, Mr. Clearfield?

MR. CLEARFIELD: No, Your Honor.

MS. DONOVAN: Your Honor, may I ask just one question based on Mr. Clearfield's examination?

JUDGE SCHNIERLE: Yes.

RECROSS-EXAMINATION

BY MS. DONOVAN:

Q. Mr. Ball, Mr. Clearfield asked you if you knew of any resale restrictions in place in Pennsylvania that would prevent a reseller from coming in and reselling Bell's services. Do you remember that?

A. Yes.

Q. Are you aware that Bell Atlantic has filed a tariff lifting all of their resale restrictions? They filed it in March.

A. I was not aware of that.

Q. Would you agree then that if that tariff is approved, that there will be no resale restrictions preventing a reseller from coming into the market and reselling Bell's retail services?

A. I would agree.

MS. DONOVAN: Thank you.

JUDGE SCHNIERLE: Mr. Clearfield, do you wish to ask

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| Application of MFS Intelenet of Pennsylvania, Incorporated<br>For approval to operate as a local exchange telecommunications company in the areas served by Bell Atlantic-Pennsylvania, Incorporated, within the Philadelphia and Pittsburgh LATAs and to establish specific policies and requirements for the interconnection of competing local exchange networks. | Docket No. [redacted] |
| Application by TCG Pittsburgh<br>For a certificate of public convenience and necessity to operate as a local exchange telecommunications company in the portions of the Pittsburgh local access and transport area served by Bell Atlantic-Pennsylvania, Incorporated, General Telephone Company of Pennsylvania, North Pittsburgh Telephone Company and Hickory Telephone Company. | Docket No. A-310213F0002 |
| Application of MCI Metro Access Transmission Services, Incorporated<br>For a certificate of public convenience and necessity to provide and resell local exchange telecommunications services in Pennsylvania. | Docket No. A-310236F0002 |

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there's probably something to be said for that, also.

And with that in mind, I again urge you to see what you can do to bring about a resolution amongst yourselves rather than insisting that the Commission impose something.

With that, who is our first witness?

MR. WEST: Harold West.

JUDGE SCHNIERLE: Please stand and raise your right hand.

Whereupon,

HAROLD E. WEST

having been duly sworn, testified as follows:

JUDGE SCHNIERLE: Please be seated.

Ms. Conover?

MS. CONOVER: Yes, Mr. Arfaa will be presenting the witness this morning.

JUDGE SCHNIERLE: Mr. Arfaa?

MR. ARFAA: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ARFAA:

Q. Good morning, Mr. West.

A. Good morning.

Q. You have stated your full name for the record?

A. Yes, Harold E. West.

Q. Mr. West, do you have before you documents marked Bell Atlantic Statement 1.0, Harold E. West, Direct,

and 1.1, Harold E. West, Rebuttal?

A. Yes.

Q. And is there an exhibit attached to Statement 1.1 which is Exhibit 1.1.1?

A. Yes.

MR. ARFAA: Your Honor, I have handed the court reporter documents previously marked as just described, and I ask that they be marked that way for the record.

JUDGE SCHNIERLE: They may be so marked.

**(Whereupon, the documents were marked as Bell Atlantic Statements Nos. 1.0 and 1.1 and Bell Atlantic Exhibit No. 1.1.1 for identification.)**

MR. ARFAA: Thank you, Your Honor.

I also have a copy for you if you do not have a copy.

JUDGE SCHNIERLE: I have it.

MR. ARFAA: Your Honor, I also have two copies of an expurgated version of Statement 1.0, which need not be separately marked, I think, that I have provided for the public record.

JUDGE SCHNIERLE: We've been marking them separately. Why don't we mark them --

MR. ARFAA: It could be 1.0-A.

JUDGE SCHNIERLE: Okay, why don't we do that, 1.0-A.

This is the direct?

MR. ARFAA: Yes.

**(Whereupon, the document was marked as Bell Atlantic Statement No. 1.0-A for identification.)**

MR. ARFAA: Your Honor, I'd also note for the record that Statement 1.0 contains a corrected page. This correction was circulated to the parties on March 29th, and it relates to the same correction that was made to Ms. Beard's testimony in a similar manner yesterday. Do you have a copy of that?

JUDGE SCHNIERLE: I don't think I have it, thank you.

MR. ARFAA: It is page 15. It reflects the changes to the cost study.

BY MR. ARFAA:

Q. Mr. West, were the statements that have been marked Bell Atlantic Statements 1.0 and Statement 1.1 with the attached Exhibit 1.1.1 prepared under your supervision, direction and control?

A. Yes, they were.

Q. And do you have any corrections to those statements beyond what we just mentioned?

A. Yes, I do. I have three minor corrections.

Q. Would you state them for the record, please?

A. In the direct testimony at page 13, line 11,

delete the word "virtually".

In the direct testimony on page 17, line 14, the first word on that line should be "an", A-N.

And in the rebuttal testimony on page 6, line 20, after the last word on that line, "limitation", please add the word "of", O-F.

JUDGE SCHNIERLE: What page was that again?

THE WITNESS: I'm sorry, in the rebuttal, page 6, line 20.

JUDGE SCHNIERLE: Thank you, sir.

THE WITNESS: After the word "limitation".

MR. ARFAA: Your Honor, I also have an expurgated copy of the rebuttal testimony which I forgot to mention earlier. If it could be marked Bell Atlantic Statement 1.1-B, I'll pass two copies to the court reporter.

JUDGE SCHNIERLE: It may be so marked.

**(Whereupon, the document was marked as Bell Atlantic Statement No. 1.1-B for identification.)**

BY MR. ARFAA:

Q. Mr. West, are Statements 1.0 and 1.1 as corrected true to the best of your knowledge, information and belief?

A. Yes, they are.

Q. And if I asked you those questions today, the

questions set forth in those statements, would your answers be the same today?

A. Yes, they would

MR. ARFAA: Your Honor, I would move for the admission of Bell Atlantic Statement 1.0 and 1.1 with the attached Exhibit 1.1.1 subject to any cross-examination and timely motions to strike.

JUDGE SCHNIERLE: Any objections?

(No response.)

JUDGE SCHNIERLE: All right, they are so admitted.

**(Whereupon, the documents marked as Bell Atlantic Statements Nos. 1.0, 1.1, 1.0-A and 1.1-B and Bell Atlantic Exhibit No. 1.1.1 were received in evidence.)**

MR. ARFAA: Your Honor, Mr. West is available for cross-examination.

JUDGE SCHNIERLE: Mr. McClelland?

MR. McCLELLAND: Your Honor, if I may, I'd like to defer to some of the other parties.

JUDGE SCHNIERLE: Ms. Melillo?

MS. MELILLO: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. MELILLO:

Q. Good morning, Mr. West.

same local exchange unbundling tariff.

MS. MELILLO: Your Honor, if I could have a moment, that may conclude my cross-examination.

JUDGE SCHNIERLE: You may.

(Pause.)

MS. MELILLO: Your Honor, that does complete my cross-examination.

Thank you, Mr. West.

THE WITNESS: Thank you.

JUDGE SCHNIERLE: Mr. McClelland, are you ready yet, or do you still want to watch for a while?

MR. McCLELLAND: I think I'd like to defer. At this point, however, it does not look as if I would have cross-examination.

JUDGE SCHNIERLE: Okay. Mr. Blau?

MR. BLAU: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BLAU:

Q. Good morning, Mr. West.

A. Good morning.

Q. I'm Russell Blau representing MFS Intelenet.

A. Nice to meet you.

Q. I'd like to ask you a few questions first about the bona fide request procedure you've been discussing.

A. Okay.

Q. Anywhere in your testimony or in Bell Atlantic's proposal in this case has Bell Atlantic proposed a specific time limit for completion of the negotiations for response to the bona fide request?

A. In my testimony I gave a "for example" of 90 days, but that certainly isn't a hard and fast number.

Q. Has Bell Atlantic proposed any specific procedure for resolution of disputes where the parties cannot reach agreement on the unbundling request?

A. We have not in my testimony, but it seems to me there is such a procedure in the Telecommunications Act, and to the extent that our BFR process is parallel to the process described in the Act -- and we believe it is parallel -- there are a number of steps and a sort of protocol for how these requests ought to be handled.

Q. A few minutes ago you were discussing the possible situation where a co-carrier might have the only facilities into a particular customer's premises. Do you recall that?

A. Yes.

Q. Does that situation exist anywhere in Pennsylvania today to your knowledge?

A. Not to my knowledge, no.

Q. I notice from your description of your experience that you have had responsibility for a number of

years in areas of marketing and competition; is that correct?

A. Yes, I have.

Q. Would you say that Bell Atlantic has good brand recognition in Pennsylvania?

A. Yes, I would.

Q. Is that a valuable asset to the company?

A. It certainly is, yes.

Q. Perhaps we can explore an analogous situation. Have you ever seen advertisements for hotels in which hotels mention the fact that they provide AT&T long distance service?

A. I've seen the advertisements in the hotels. I don't know that I've seen them externally.

Q. Have you ever seen an advertisement for a hotel advertising the fact that it does not offer AT&T long distance service?

A. Actually, I have. I've seen them, say, offer Sprint.

Q. Is that also internally in the hotel?

A. Yes.

Q. I'd like to show you a document that was marked yesterday as MFS Cross-Examination Exhibit No. 2. Can you identify this document?

(Document handed to witness.)

A. If I'm not mistaken, this is part of an interrogatory response.

Q. And that was part of the response to MFS Interrogatory Set I, No. A-4; am I correct?

A. Yes, you are.

Q. And this is a supplemental response that was revised to take account of Ms. Beard's corrections to the cost study; is that correct?

A. Yes; that's correct.

Q. Was this exhibit prepared by you or under your supervision?

A. Yes, it was.

MR. BLAU: Your Honor, I would move MFS Cross-Exam Exhibit No. 2 into evidence.

JUDGE SCHNIERLE: Any objection?

(No response.)

JUDGE SCHNIERLE: It's admitted.

**(Whereupon, the document marked as MFS Cross-Examination Exhibit No. 2 was received in evidence.)**

BY MR. BLAU:

Q. The exhibit before you, Mr. West, uses the term "contribution." Am I correct that contribution means the price of the service minus the incremental cost of the service?

A. Yes.

Q. In the columns on the left-hand side of the page referring to single business dial tone lines and multi-business dial tone lines there is the notation "including federal SLC." Is that subscriber line charge?

A. That is.

Q. Do I correctly conclude that the revenues that were used in computing the contribution in that column included the revenue from the federal subscriber line charge?

A. Yes, it did.

Q. Was there any change made to the costs, the incremental costs, from Ms. Beard's study to account for the federal subscriber line charge?

A. I am not personally familiar with what drove the change to Ms. Beard's cost study, but I'm fairly certain the answer to your question is no.

Q. In fact, there are no incremental costs associated with the subscriber line charge that are different from dial tone line costs; correct?

A. I think that's true, yes.

Q. The subscriber line charge is something that is charged for the use of a dial tone line but it's in the federal jurisdiction?

A. Yes.

Q. Now, the right-hand column labeled "Unbundled Loops," does that contribution include any federal subscriber line charge revenues?

A. No, it does not.

Q. Does it include any federal carrier common line charge revenues?

A. No, it does not, and that's because at this point in time we're not authorized to collect those charges for unbundled loops.

Q. Now, I think we established earlier in this hearing that hypothetical questions are make believe, so indulge me for a moment in some hypothetical questions.

Let's suppose that in June of this year the Commission issues a decision in this case and sets some unbundled loop rates, and 30 days later the time for filing petitions for reconsideration of that decision expires; and then the day after that opportunity expires, the Federal Communications Commission issues an order granting your petition to collect the subscriber line charge and the carrier common line charge from the unbundled customer. Are you following my hypothetical so far?

A. Hypothetically, I'm following you, yes.

Q. Is it your suggestion that in that situation the co-carriers should then come back here to this Commission and start a new proceeding to complain about the fact that

we're now paying for both the state unbundled loop rate and the federal subscriber line charge and carrier common line charge?

A. I think that's within your prerogative, absolutely. I recognize there is an issue there. I think it can be argued either way. I don't think there's any need to argue it until or if we were to get that sort of authority.

Q. If we were to argue about that issue, you would expect that, like this case, it would require hearings and discovery and it might take a number of months to reach a decision; is that correct?

A. I couldn't speculate on the time frame. I'm not sure how long an issue of that narrow scope takes to resolve, if it would even require Commission resolution. It's quite possible it could be negotiated.

Q. Well, if it wasn't negotiated and whatever length of time it takes, Bell Atlantic would intend to collect both the state and the federal charges during that time, wouldn't it?

A. I think it's fair to say if we're authorized to collect --

Q. Under my hypothetical case.

A. -- charges, under your hypothetical we would probably go ahead and collect them, yes.

Q. Let me make sure I understand your new proposal on number portability. Let's take a different hypothetical. Let's suppose that I am a Bell Atlantic customer somewhere in the suburbs outside Philadelphia and I place a phone call to downtown Philadelphia, and the customer that I'm calling happens to have switched to MFS and so you're going to forward the call to them. That's the hypothetical.

A. Okay.

Q. I'll be paying you some usage charge for placing this call, correct, some number of cents per minute or some number of cents per call?

A. Yes.

Q. And that price that I'm paying to Bell Atlantic as your customer is above your cost and includes some contribution; correct?

A. Yes.

Q. And then when you forward the call to MFS, under your proposal you would charge MFS a per minute rate which is above the usage cost of forwarding the call, and again, includes some contribution. And I'm not mentioning numbers because I don't want to get into the proprietary information.

A. Right. And we would also pay MFS the terminating rate for local.

Q. Okay.

Let me ask you to look for a minute at Exhibit No. 1.1.1, which was with your rebuttal testimony and contains some tariff pages.

A. Okay.

Q. I'd just like to focus on Sheet No. 3, which is the Pa. P.U.C. No. 182A, and it is the page that has the large table of numbers on it, numbers and letters.

A. I'm sorry; my page numbers have been eradicated. Is this the sheet we're talking about (indicating)?

Q. Yes.

A. Okay.

JUDGE SCHNIERLE: That's the Twenty-sixth Revised Sheet 3, this one here (indicating)?

THE WITNESS: Yes.

JUDGE SCHNIERLE: Okay. You may proceed.

MR. BLAU: Thank you, Your Honor.

BY MR. BLAU:

Q. Let me direct your attention to the bottom of the page under "Other Exchanges Philadelphia" where Zones 1, 2, 3 and 4 are listed.

A. Okay.

Q. The numbers shown in the boxes in the table indicate which rate group a call from the zone shown on the left-hand side of the page to the zone across the top of the page would fall; is that correct?

A. At the top of the matrix are the from points, and then the to points are the vertical part of the matrix, and depending on the number, that would indicate which metro call band the call falls in and would determine the rate treatment.

Q. Okay. So just to take the first column, if the call comes from Suburban Zone 10 and goes to Philadelphia Zone 2a, then that falls into call band 3?

A. Correct.

Q. And that determines what rate applies?

A. Yes.

Q. And if it goes to Zone 2b, c or d, those are all in rate band 3 in this case?

A. That's right.

Q. And your concern, as I understand your testimony, is those instances where the sub-zones are not all in the same band but are in different bands; correct?

A. That's right. Then it becomes difficult for us to enforce our tariffs if the CLEC doesn't have an NXX assigned to each one of those sub-zones.

Q. If you would look across the rows for Zone 2, would you agree with me that there are considerably more instances in which all four of the numbers for Zones 2a, b, c and d are the same than instances in which they are different?

A. Yes, I would.

Q. Would you agree the same is true for Zones 3a, b, c and d, there are more instances where they are the same than where they are different?

A. Sure. The problem clearly lies with the ones where they're different.

Q. Is it also true for Zones 4a, b, c, that there are more instances where the bands are the same than where they are different?

A. Yes, that would appear to be true.

MR. BLAU: No further questions, Your Honor.

JUDGE SCHNIERLE: Mr. Sullivan?

MR. SULLIVAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SULLIVAN:

Q. Good morning, Mr. West. It's a pleasure to see you again. I just had a few questions for you which really follow up on Ms. Melillo's line of inquiry concerning reciprocal unbundling, and specifically the testimony which I'm referring to is page 7 of your direct.

A. Okay.

Q. Lines 6 through 7. I believe Mr. Blau had also asked one of my questions, so I'll go to the issue. Are you aware of any instances in which Bell has utilized a CAP facility, Competitive Access Provider facility, in

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| Application of MFS Intelenet of Pennsylvania, Incorporated<br>For approval to operate as a local exchange telecommunications company in the areas served by Bell Atlantic-Pennsylvania, Incorporated, within the Philadelphia and Pittsburgh LATAs and to establish specific policies and requirements for the interconnection of competing local exchange networks. | Docket No. A-310203F0002 |
| Application by TCG Pittsburgh<br>For a certificate of public convenience and necessity to operate as a local exchange telecommunications company in the portions of the Pittsburgh local access and transport area served by Bell Atlantic-Pennsylvania, Incorporated, General Telephone Company of Pennsylvania, North Pittsburgh Telephone Company and Hickory Telephone Company. | Docket No. A-310213F0002 |
| Application of MCI Metro Access Transmission Services, Incorporated<br>For a certificate of public convenience and necessity to provide and resell local exchange telecommunications services in Pennsylvania. | Docket No. A-310236F0002 |

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JUDGE SCHNIERLE: Further redirect?

MR. CLEARFIELD: No, Your Honor.

JUDGE SCHNIERLE: You may step down. Thank you.

(Witness excused.)

JUDGE SCHNIERLE: All right, Mr. Albert I guess is next.

Please raise your right hand.

Whereupon,

DONALD E. ALBERT

having been duly sworn, testified as follows:

JUDGE SCHNIERLE: Please be seated.

DIRECT EXAMINATION

BY MR. MILCH:

Q. Good afternoon, Mr. Albert.

A. Good afternoon.

Q. Would you please state your name and spell your last name for the record?

A. It's Donald E. Albert, and the spelling of the last name is A-L-B-E-R-T.

Q. Mr. Albert, do you have before you a document labeled Bell Atlantic Statement No. 2.0, Albert Direct Testimony?

A. Yes, I do.

Q. Does that document consist of 35 pages with no attachments?

A. That's correct.

Q. And do you have in front of you a document labeled Bell Atlantic Statement No. 2.1, Albert Rebuttal?

A. Yes.

Q. And it contains 31 pages of testimony and an Exhibit 2.1.1 of three pages?

A. Yes, I do.

MR. MILCH: I have provided two copies of the documents, am providing them to the court reporter.

Your Honor, I would ask that they be marked Bell Atlantic Statement 2.0 and 2.1 respectively.

JUDGE SCHNIERLE: They may be so marked.

**(Whereupon, the documents were marked as Bell Atlantic Statements Nos. 2.0 and 2.1 for identification.)**

BY MR. MILCH:

Q. Mr. Albert, were these documents prepared by you or under your direction or supervision?

A. Yes, they were.

Q. And do you have any changes or corrections to these documents?

A. I have a couple minor corrections to make. Let me start with the direct testimony.

On page 16, on line 10, I've got a misspelling. I

need to strike an extraneous "e" in the word "favored", so the correct spelling should be F-A-V-O-R-E-D.

Then on page 27 of the direct, on line 17, I need to strike the word "why" and need to change the word "shared" to be "combined". And that's it for the direct.

Then in the rebuttal, on page 5, on line 1, the words "tandem switching and" should all be deleted. So the way that sentence should read should be, "for the additional transport it must provide to accomplish this service".

And then still in the rebuttal, on page 10, in the two diagrams, the rectangles to the far right where the word "Atlantic" shows twice, the word "Atlantic" should be deleted, so each of those rectangles to the right should then read, "BA-PA Access Tandem". That's it.

Q. Thank you, Mr. Albert.

With those changes, if I were to ask you these questions today, would your answers be the same?

A. Yes, they would.

Q. As to both Statement 2.0 and 2.1?

A. Yes.

Q. And to the best of your knowledge, information and belief, are the answers contained in Statement 2.0 and 2.1 true and correct?

A. Yes, they are.

MR. MILCH: Your Honor, I would move these into

evidence subject to timely objections and motions to strike.

JUDGE SCHNIERLE: Objection?

(No response.)

JUDGE SCHNIERLE: They are so admitted.

**(Whereupon, the documents marked as Bell Atlantic Statements Nos. 2.0 and 2.1 were received in evidence.)**

MR. MILCH: Your Honor, we have some very short surrebuttal, as we had indicated earlier.

JUDGE SCHNIERLE: Proceed.

BY MR. MILCH:

Q. Mr. Albert, have you reviewed the rebuttal testimony of the parties that criticizes Bell's port offering in this case?

A. Yes, I have.

Q. And what is your understanding of that criticism, and do you have any response?

A. The understanding I have is they're basically criticizing port, saying that it alone unto itself will not work because it does not include any usage along with it.

The point I'd like to make relative to that is, in our proposal and in other areas of our testimony, we have in fact said that the switch port has been designed so that it needs to have usage and access added to it. Those are available packages. A usage package can be added to the

hook up, the definitions of how it would work.

In my current job responsibilities, for me to go forward and to work with our operations people and to get them zeroed in on what they would have to do to implement this, I would not be able to give them directions, methods, procedures, operation of this very general, generic, unbundled switch element.

So I guess still I basically don't understand, from that very, very general description. I can relate to a switching machine and hooking things together and getting it actually to work in terms of lines and trunks and usage and all the different piece parts.

But the aspect of some very loosely described leasing capacity, providing capacity, that I could not do.

MR. MILCH: Thank you. We have no further surrebuttal, Your Honor, and Mr. Albert is available for cross-examination.

JUDGE SCHNIERLE: Before I do that, I have a couple of questions that I tried to ask of the last guy, and he didn't seem to know, so I'll try them on you.

Are you familiar with Mr. Riggert's testimony regarding the permanent number portability, as opposed to the interim?

THE WITNESS: Yes, I am.

JUDGE SCHNIERLE: And he opined that that would

be -- software to essentially carry out that data base scheme might be available the second quarter of 1997. Do you recall that?

THE WITNESS: Yes, I read that.

JUDGE SCHNIERLE: Is that also your opinion?

THE WITNESS: I had heard some recent estimates that it might be a little bit later, but that's probably not an unreasonable estimate. Ninety-seven is still what all the vendors are working towards to try and get this developed.

The whole LRN approach still is being defined, still is being worked by the industry, still is being developed, but that's not an untypical estimate of the different manufacturers.

JUDGE SCHNIERLE: It might be a year away or maybe a little longer than that?

THE WITNESS: Yes.

JUDGE SCHNIERLE: The question I posed to him, and I'll pose to you, also, to your knowledge, will that solution also, will it or can it also solve the problem of the requiring the CLECs to have an exchange, one exchange for every geographic area in Bell's territory so that you don't have the ambiguous billing problem?

THE WITNESS: I think we'll still have to operate with that basic requirement, but the end result of that requirement, using up numbers more quickly, the more rapid

exhaust of NPAs, I think the LRN will help significantly to avoid that or to minimize that.

It's still being worked and developed and defined, but that particular problem that results from the usage of the telephone numbers, I think LRN will have a positive impact there.

JUDGE SCHNIERLE: It seemed to me if I understood his testimony correctly, what would happen is, when I picked up the telephone and dialed, the first thing that the system would do would be to look up in a data base and see who I belonged to, in essence, whether I belonged to Bell or MFS or somebody else.

And on the other end, it would look, I guess check the calling number and see, am I calling somebody on MFS's network or Bell's or whoever, and route the call.

It just seemed to me that if the thing can check both ends, then it knows, if my address is in the data base somewhere, it can also provide billing information that the system needs.

THE WITNESS: Yes, basically there's the telephone number, the digits that the end user would dial. Then in the data base would be the number that the network would really use for routing of the call.

JUDGE SCHNIERLE: The network captures the calling party number because that's how you offer Caller ID, so

you'd have, with the proper configuration of the data base, you'd have the whole package to bill the call as well as route it, basically.

THE WITNESS: And in terms of the aspects that still need to be defined and developed and worked out, the billing piece becomes one of the more complicated ones that's still being worked on.

But in terms of the end result of using LRN and the impact on the rapidly chewing up the telephone numbers and then correspondingly more rapid exhaust of the NPAs, it will help out to alleviate that.

JUDGE SCHNIERLE: Okay.

Mr. Clearfield?

MR. CLEARFIELD: Yes, Your Honor.

JUDGE SCHNIERLE: Actually, I'll start with the public. Ms. Melillo?

MS. MELILLO: We have no cross-examination, Your Honor.

JUDGE SCHNIERLE: Ms. Smith?

MS. SMITH: No, Your Honor.

JUDGE SCHNIERLE: Mr. Blau?

MR. BLAU: If it's all right with Your Honor, I'd like to go after Mr. Canis.

JUDGE SCHNIERLE: Mr. Canis?

MR. CANIS: Yes, Your Honor.

Your Honor, let me just start with one procedural question first. I don't know if Mr. Clearfield had any questions that would challenge the witness' ability to authenticate some of these documents, but some of my line of questioning was going to refer to one of those.

MR. MILCH: Your Honor?

JUDGE SCHNIERLE: Yes.

MR. MILCH: I apologize for interrupting. We were going to lay a foundation for the security analysis of Mr. Albert, and I inadvertently forgot. If you want me to now, I can do it, or not.

MR. CANIS: It would be helpful for me in terms of the photograph, because I did want to ask some questions on it.

MR. MILCH: As you recall, my use of the photograph was only as to whether it was a typical situation, not whether it actually represented any particular --

MR. CANIS: My recollection was, Mr. Albert was going to authenticate it.

MR. MILCH: Mr. Albert can explain how that photograph came to be taken and lay a foundation for it.

MR. CLEARFIELD: We're not going to oppose the photograph.

JUDGE SCHNIERLE: Are you going to challenge or -- let's get this thing one at a time. Before you cross, I'm

**DIRECT TESTIMONY OF GARY J. BALL**
on behalf of
**MFS Intelenet of Pennsylvania, Inc.**
A-310203F002, A-310213F002, A-310236F002, A-310258F002 (Phase II)

**Q. Please state your name and business address.**

A. My name is Gary J. Ball. My business address is MFS Communications Company, Inc., 33 Whitehall Street, 15th Floor, New York, New York 10004.

**Q. What is your position with MFS Communications Company, Inc.?**

A. I am the Director of Regulatory Affairs for the Eastern Region.

**Q. What are your responsibilities in that position?**

A. I am responsible for the regulatory oversight of commission dockets and other regulatory matters and serve as MFS' representative to various members of the industry. I am also responsible for coordinating co-carrier discussions with local exchange carriers within the Eastern Region.



**Q. Please describe your previous professional experience and educational background.**

A. I graduated from the University of Michigan in 1986 with a Bachelor of Science degree in Electrical Engineering. After three years as a Radar Systems Engineer, I enrolled in the University of North Carolina Business School, from which I obtained a Masters of Business Administration in 1991. For the past four and a half years, I have worked in the telephone industry. From June 1991 through February 1993, I worked for Rochester Telephone Corporation, a local exchange carrier, beginning as a Network Planning Analyst, responsible for financial and technical analysis of new services and upgrades to its local exchange network. In February 1992, I was promoted to Senior Regulatory Analyst, responsible for developing state tariff filings and general regulatory support for dedicated and switched services. From February, 1993 through August, 1994, I worked for Teleport Communications Group, Inc., a competitive access provider, as Manager of Regulatory Affairs. I was responsible for developing and implementing regulatory policies

things the provisions of access to unbundled network elements on cost-based rates. Congress has struck an appropriate balance between the obligations of new entrants and of incumbents, and there is no need for this Commission to take any action to upset that balance.

## III. NUMBERING RESOURCES ISSUES

**Q. What did Bell propose with respect to the assignment of numbering resources?**

A. Bell has proposed to administer NXX (or central office) code assignments for new entrants on an "interim basis" without charge, recognizing that the Federal Communications Commission (FCC) is likely to designate a new entity to perform this function within the next two years. Bell also proposed that new entrants should be required to designate their assigned NXX codes to correspond with existing Bell "zone" and "exchange" designations.

**Q. What is the significance of the geographic area associated with an NXX code?**

A. Today, each incumbent LEC is assigned one or more NXX codes. These codes are required to permit the assignment of telephone numbers to subscribers within the North American Numbering Plan. For example, the NXX code that serves this Commission is 717-787 (where 717 is the area code and 787 is the central office code). Each NXX code can serve up to 10,000 telephone numbers (for example, 787-0000 through 787-9999).

Each NXX code must be assigned to a particular end office switch within the incumbent LEC's network. This is because the NXX code is used as the basic address for routing calls within the telephone network; for example, a call dialed to 717-787-1234 is routed to the end office assigned the 717-787 code. Each end office, in turn, typically serves end users within a defined geographic area. This system has arisen primarily for reasons of cost efficiency and administrative simplicity. It is technically possible for a

customer in York to be served by an end office in Lancaster, for example, and indeed this is occasionally done through special arrangements such as foreign exchange service. Nonetheless, in the vast majority of cases, an end office only serves users whose premises are located within its assigned serving area. As a result, the central office code is widely used as a basis for establishing the location of a customer for purposes of billing distance-sensitive services. In Bell's tariff, the basis for billing is the "zone" for local calling within the Pittsburgh, Pittsburgh Suburban, Philadelphia, and Philadelphia Suburban exchanges, and the "exchange" in the rest of the state. A "zone" or "exchange" may consist of one or more end offices and their associated serving areas.

Q. **How would Bell's proposal affect new entrants?**

A. Bell's proposal would require new entrants to use the same "zone" and "exchange" definitions as are found in Bell's tariffs when we assign telephone numbers to end users. So, for example, if we had a particular NXX code assigned to Philadelphia Zone 2a, all 10,000 line numbers available within that code would have to be used to serve customers located within the geographic boundaries of that zone. At least in the near future, that will be a very inefficient requirement in many parts of Pennsylvania—in other words, we will have to reserve blocks of 10,000 line numbers for geographic areas where we are very unlikely to have such large numbers of customers.

Q. **Is this requirement a technical obstacle to new entrants' operations?**

A. Not really. It will require us to open additional codes within our switching equipment, which is an extra chore but not a very burdensome one. The more significant concern is that Bell's proposal does not promote efficient use of scarce numbering resources.

**Q. Please explain.**

A. There are only so many central office codes available in each area code. (The maximum number, in theory, is 784. In practice it is smaller because some codes, like "555", are reserved for special purposes, and others are off-limits to avoid customer confusion; for example, within any area code it is not permitted to use either the same area code or the area code of any adjacent area as an NXX code.) When all those codes are in use, the area code has to be split or otherwise "relieved." Area code relief is expensive and disruptive to residents and businesses within the affected areas. Customers have to learn new dialing patterns and businesses may have to print new stationery and change advertisements. Area code changes also impose costs on telecommunications carriers to reprogram their switches. For all these reasons, it is desirable to conserve NXX codes and to minimize the need for area code changes, while recognizing that they cannot be avoided entirely (due to continuing growth in usage).

**Q. What is the status of area code exhaust in Pennsylvania?**

A. The area code that is closest to exhaust is 412 (Pittsburgh). As I understand it, discussions have already taken place within the industry concerning 412 relief. These discussions did not reach consensus and so it is likely that the Commission will soon be asked to rule on the appropriate method of relief. I believe that the 412 area code is projected to require relief by the second quarter of 1997, little over a year from now. Three other area codes in Pennsylvania, namely 215, 717, and 610, are projected to exhaust within the next three to four years. Therefore, numbering resource conservation is an issue of immediate practical concern to the great majority of Pennsylvanians over the next few years.

**Q. Is there any alternative to Bell's proposal?**

A. Yes. In Phase I of this case, I presented an alternative proposal. Recognizing that most new entrants will likely concentrate their initial marketing efforts on Philadelphia and

Pittsburgh, I proposed that NXX codes in these areas should be assigned based on the rating points used by Bell for toll, rather than local, service. Bell uses larger groupings of central offices for purposes of measuring toll call distances than it uses in establishing local calling zones, so this alternative would require new entrants to use fewer NXX codes in these cities. In Philadelphia, for example, we would need only four NXX codes to serve the entire city, as opposed to 11 codes under Bell's proposal. This would promote the public interest by permitting more efficient use of the limited number of codes available. I continue to urge adoption of this proposal in this phase of the proceeding.

## IV. NUMBER PORTABILITY

Q. **What did the Commission decide in Phase I *with* respect to interim number portability?**

A. In the *Phase I Order*, the Commission concluded

> that number portability is an essential component to fostering competition. We reach this conclusion in light of the evidence showing that customers are simply reluctant to switch their local exchange carrier if that entails the loss of their telephone number. We also reach this conclusion because refusal to provide number portability, even on an interim basis as we do here, could erect a substantial impediment to competition.

*Phase I Order* at 54-55. It then adopted the ALJ's proposed resolution of this issue as an interim solution, requiring Bell to offer call forwarding at a rate of $4.00 per month per business line, and specifically rejected Bell's arguments that further hearings should be conducted on the pricing of this service. The Commission explained this decision as follows:

> [W]e conclude that the $4.00 recurring charge is sustainable on an interim basis as the most well-developed alternative in the record until a true number portability system is devised. . . . Finally, Bell's approach would require imposition of the obligation but remand on the question of costs and revenues. This approach has the benefit of crafting an interim solution and

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APPLICATION OF MFS INTELENET OF PENNSYLVANIA, INC., MCI METRO ACCESS TRANSMISSION, TCG PITTSBURGH, AND EASTERN TELELOGIC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE AND RESELL LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES (PHASE II), DOCKET NOS. A-310203F0002, A-310213F0002, A-310236F0002 AND A-310258F0002

BELL ATLANTIC STATEMENT NO. 1.0 (WEST)
(DIRECT)

Witness: HAROLD E. WEST



EXPURGATED

*DIRECT TESTIMONY OF*
HAROLD E. WEST
*BEFORE THE*
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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if the Loop Unbundling Test is any indication, the parties are likely to discover a variety of technical and operations support complications that will only become evident when the parties actually try to operate a set of unbundled ports in different switch types. Accordingly, Bell is willing to begin work immediately on an Unbundled Port Test with whichever co-carrier considers itself most interested in acquiring unbundled ports. If this test reveals significant charges in cost from Ms. Beard's preliminary study, Bell will propose an adjusted price for the unbundled port.

Q. WOULD USAGE AND SWITCHED ACCESS CHARGES APPLY TO AN UNBUNDLED PORT FACILITY?

A. Yes. As Mr. Albert testifies, an unbundled port provides the ability to terminate local and toll calls, but does not include usage or access charges associated with those functions. Bell proposes to charge for usage and switched access in addition to the basic rate for the unbundled port facility itself. The charges should be the tariffed rates, less the portion of the tariffed rates that would be avoided.

## V. BELL'S PROPOSAL REGARDING NXX ASSIGNMENT

Q. IS THERE A NEED FOR NXX CODE ASSIGNMENTS TO ADHERE TO AN AGREED-TO CONVENTION?

A. Yes. As Mr. Albert explains in his direct testimony, the NXX codes assigned to co-carriers must correspond to a convention, based on geographic boundaries, that

allows Bell's switching equipment and billing systems to recognize the geographic location of a called number. This is essential to allow Bell to follow its approved tariffs, which require it to distinguish between calls that should be rated and billed as local from those that should be rated and billed as toll. Unless co-carrier numbers follow the existing geographic numbering convention, Bell has no way of knowing which rate structure to apply to a call from a Bell customer to a co-carrier customer. This would confuse consumers (particularly as additional co-carriers enter the market), create administrative complexity, and generate obvious potential for unfair competition.

Bell proposes that NXX codes to co-carriers conform to each "Zone or Exchange Area" as listed in Bell's tariffs and as recognized by Bell's switches and billing systems. A "Zone or Exchange Area" is a geographic area within which calls are rated as local calls. Requiring NXX codes to be assigned to co-carriers based on Bell's Zone or Exchange Areas will *not* require them to rate and bill calls the same as Bell. They will be free to set their own local calling areas, local rates and toll rates.

## VI. BELL'S PROPOSAL REGARDING INTERIM NUMBER PORTABILITY

Q. WHAT IS BELL'S PROPOSAL REGARDING INTERIM NUMBER PORTABILITY?

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APPLICATION OF MFS INTELENET OF PENNSYLVANIA, INC., MCI METRO ACCESS TRANSMISSION, TCG PITTSBURGH, AND EASTERN TELELOGIC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE AND RESELL LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES (PHASE II), DOCKET NOS. A-310203F0002 A-310213F0002, A-310236F0002 AND A-310258F0002

BELL ATLANTIC STATEMENT NO. 1.1 (WEST)
(REBUTTAL)

Witness: Harold E. West



# EXPURGATED

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# REBUTTAL TESTIMONY OF HAROLD E. WEST

## BEFORE THE

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

## I. INTRODUCTION AND STATEMENT OF PURPOSE

Q. PLEASE STATE YOUR NAME.

A. My name is Harold E. West.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed direct testimony on February 22, 1996 (Bell Atlantic St. No. 1.0 (West)).

Q. PLEASE EXPLAIN THE PURPOSE OF YOUR TESTIMONY.

A. The purpose of this testimony is to rebut some of the criticisms of BA-PA's interconnection and unbundling proposal made in the direct testimonies submitted by several of the parties in this case. First, I explain why the Commission should reject the attempts by AT&T and the Competitive Telephone Association ("CTA") to expand this proceeding beyond its original scope. I then refute the criticisms made by several witnesses of the unbundling, number portability, and directory and operator services elements of BA-PA's proposal and reveal the flaws inherent in several parties' alternative proposals. My testimony complements the rebuttal testimonies filed on behalf of BA-PA by Ms. Beard, Mr. Albert and Dr. Taylor.

REQUIRED TO UNBUNDLE VARIOUS SWITCHING COMPONENTS OR SUBCOMPONENTS?

A. No. BA-PA has complied with this Commission's Phase I Order and has put forth a proposal for unbundling the loop and switch port. Requests for additional unbundling should be handled through the BFR process. Any disputes arising from BFR may ultimately require Commission intervention, but BA-PA is committed to working cooperatively with the co-carriers to meet their unbundling needs.

Q. DO YOU AGREE WITH MR. RIGGERT'S (AT 19) ASSERTION THAT NID INSTALLATION RATES SHOULD BE BASED ON TSLRIC, NOT THE EXISTING TARIFF?

A. No. The normal tariffed rates associated with a Bell technician making a field visit to the customer premises are already based on TSLRIC, so there is no need to introduce another rate.

Q. DO YOU AGREE WITH MR. GRUBER (AT 29-30) AND MR. BALL (AT 8) THAT BA-PA SHOULD NOT BE PERMITTED TO COLLECT A SLC FROM USERS OF UNBUNDLED LOOPS AND THAT, IF ALLOWED TO DO SO, THE PRICE OF THE UNBUNDLED LOOP SHOULD BE REDUCED ACCORDINGLY?

A. No. The SLC is an explicit subsidy mechanism under federal law for the recovery of 25% of the embedded, non-traffic sensitive costs of the local loop, and the charge should be levied regardless of whether the loop is unbundled. Moreover, the SLC is an interstate rate that is added to the intrastate rates, and there is no basis for making a reduction in intrastate rates because of the imposition of an interstate charge. Finally, this issue is now before the FCC, and until the FCC resolves the question of BA-PA's ability to levy this charge, there is no issue for this Commission to reach.

Q. *SHOULD THE COMMISSION ADOPT MR. BALL'S (AT 18) PROPOSAL THAT NXX CODES IN THE PHILADELPHIA AND PITTSBURGH METROPOLITAN AREAS BE ASSIGNED BASED ON THE RATING POINTS USED BY BA-PA FOR TOLL, RATHER THAN LOCAL SERVICE?*

A. No. MFSI's NXX assignment proposal would introduce call rating ambiguities that would make it difficult for BA-PA to enforce its tariff, would lead to customer confusion, and would cause BA-PA to lose revenue. Exhibit 1.1.1 contains a table showing the applicable metro call bands for calls made from Philadelphia Suburban exchanges to all points within the Philadelphia and Philadelphia Suburban exchanges. For an example of ambiguous rate treatment, notice that a call originating from Zone 23 (Cynwyd-Narberth) to Zone 2b (Overbrook-Wynnefield) is rated as a metro band 1 call. A call originating from Zone 23 to Zone 2a (City-West), however, is rated as a metro band 2 call. A three minute day call, rated as metro band 1, costs 7 cents, while a three minute day call, rated as metro band 2, costs 15 cents. Under MFSI's proposal, Zones 2a and 2b (as well as 2c and 2d for that matter) could be served by the same co-carrier NXX. Because BA-PA would no longer be able to distinguish 2a from 2b via NXX, it would be unable to determine whether a 3 minute day call originated in Zone 23 and terminated to a co-carrier somewhere in Zone 2 should be rated at 7 cents or 15 cents.

The same situation exists for calls originating from Zone 23 and terminating in Zone 3 where calls to subzone 3c (Manayunk-Roxborough) are rated as metro band 1 and calls to subzone 3d (Germantown-Logan) are rated as metro band 2. These rating ambiguities have obvious customer confusion potential, and BA-PA's ability to properly charge customers its tariffed rates as required by the Public Utility Code would be destroyed.

Another ambiguity would arise for customers subscribing to the unlimited local usage option. For example, customers calling from Zone 24 (Ardmore) who

subscribe to the unlimited usage package receive flat rate (no per minute charges) calling to Zone 2b (Overbrook-Wynnefield), but pay measured service rates for calls to the rest of Zone 2. Adopting MFSI's NXX assignment proposal, which could allow a co-carrier to serve all of Zone 2 with a single NXX would make it impossible for BA-PA to differentiate flat rate calls (Zone 24 to Zone 2b) from measured rate calls (Zone 24 to Zones 2a, 2c and 2d).

Q. DO YOU AGREE WITH MFSI'S (BALL AT 7-9) CLAIM THAT BA-PA'S UNBUNDLED LOOP RATES -- RECURRING AND NONRECURRING -- CREATE A "PRICE SQUEEZE"?

A. No. For full and fair local exchange competition to develop, it is essential that BA-PA be permitted to charge the co-carriers rates that cover the costs of serving them. Mr. Ball's price squeeze allegation misses a number of critical points. First, as Dr. Taylor notes in his rebuttal testimony, it is incorrect to compare BA-PA's dial tone line rate with the unbundled loop rate to measure a price squeeze. Instead, the unbundled loop rate should be compared to the average revenue from the services provided over the unbundled loop. As a matter of competitive parity, co-carriers should instead have to pay the costs for unbundled loops and recover their costs through a combination of co-carrier dial tone line rates and other services, just like BA-PA does. Second, MFSI's assertion of "price squeeze" ignores the fact that residence dial tone line is currently priced between $3.65 and $4.75 per line -- well below TSLRIC -- and that the these rates were adopted to further the Commission's universal service policy. Furthermore, as explained in Ms. Beard's rebuttal testimony, there are additional costs associated with unbundled loops. Under these circumstances, co-carriers should not be permitted to insist that BA-PA's dial tone line rates be used as a price ceiling for unbundled loops.

ORIGINAL

**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---|---|---|
| Applications of MFS INTELENET OF | : | |
| PENNSYLVANIA, INC.; MCI METRO | : | Docket Nos. |
| ACCESS TRANSMISSION SERVICES, | : | |
| INC., TCG PITTSBURGH, and | : | A-310203F0002 |
| EASTERN TELELOGIC CORPORATION | : | A-310213F0002 |
| for a Certificate of Public | : | A-310236F0002 |
| Convenience and Necessity to | : | A-310258F0002 |
| Provide and Resell Local Exchange | : | |
| Telecommunications Services | : | (Phase II) |
| | : | |

# MAIN BRIEF OF BELL ATLANTIC - PENNSYLVANIA, INC.

## EXPURGATED



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Attorneys for
**BELL ATLANTIC - PENNSYLVANIA, INC.**

Dated: May 3, 1996

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where the calling party has selected the CLEC as the toll carrier through presubscription or dialing 10XXX.[221]

Ms. Murray and, to a lesser extent, Messrs. Ball and Giesy (Lathrop) object to this proposal on the specious argument that BA-PA would somehow require the CLECs to use non-shared trunk groups which will cause the CLECs to incur unnecessary costs without any corresponding public benefit.[222] This argument has no basis in BA-PA's proposal, under which ***only*** BA-PA incurs added trunking expenses by using a separate trunk group to deliver its customers' traffic to the CLECs.[223]

Mr. Albert explained that accurate traffic forecasting and trunk provisioning are critical to ensuring unblocked traffic flows. If carriers are required to share a single trunk group for both their customers' traffic and another carrier's customers' traffic, any forecasting or provisioning errors on either carriers' part may cause the other to suffer a degradation in the quality of the service it provides to its own customers.[224]

Under BA-PA's proposal, each carrier is responsible for accurately forecasting its own customers' traffic and providing sufficient trunking to carry that traffic. Each carrier thus

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[221] BA-PA St. No. 2.1 (Albert Rebuttal) at 8-12; *see* BA-PA St. No. 2.0 (Albert Direct) at 26-28. If local and toll traffic are combined on a trunk group, the co-carriers must provide BA-PA with a "percent local use" ("PLU") factor to distinguish between local and toll traffic. *Id.* at 26-27.

[222] ETC/TCG St. No. 1.0 (Murray Direct) at 24-26; MFS St. No. 1.0 (Ball Direct) at 29; MCI St. No. 1 (Lathrop/Giesy Direct) at 11-12.

[223] BA-PA St. No. 2.1 (Albert Rebuttal) at 12.

[224] *Id.* at 11. This is not a hypothetical fear: Mr. Ball testified that MFS's traffic projections "will be little better than guesswork." MFS St. No. 1.0 (Ball Direct) at 30. Nevertheless, CLECs and BA-PA must exchange traffic forecasts so that all carriers can anticipate demand for equipment other than trunks. BA-PA St. No. 2.0 (Albert Direct) at 34; BA-PA St. No. 2.1 (Albert Rebuttal) at 30. BA-PA will, of course, treat such forecasts as proprietary information. *Id* at 31.

bears the risk of its own errors. BA-PA's customers' service quality should not be put at risk simply for the convenience of the CLECs.

### C. NXX Assignments.

BA-PA has proposed a numbering convention that requires co-carriers to assign NXX codes (*i.e.*, the first three digits of telephone numbers) based upon the "Zone and Exchange Areas" set forth in BA-PA's tariffs. Unless this proposal is adopted, BA-PA will be unable to apply its rate structure accurately to calls made by BA-PA customers to CLEC customers.[225] This would confuse consumers, create undue administrative complexity, and generate an obvious potential for unfair competition.[226]

MFS has proposed that NXX codes in the Philadelphia and Pittsburgh metropolitan areas be assigned based on toll, rather than local rating points.[227] As Mr. West explained, however, BA-PA's Local Metro Call Band rating structure in those areas requires different rates to be charged for calls to and from different subzones.[228] MFS's proposal would introduce call rating ambiguities for those calls, as well as for customers subscribing to unlimited local usage options.[229] BA-PA's proposal will eliminate all such ambiguities, and it should be adopted.

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[225] BA-PA St. No. 1.0 (West Direct) at 18-19; BA-PA St. No. 2.0 (Albert Direct) at 19.

[226] BA-PA St. No. 1.0 (West Direct) at 19.

[227] MFS St. No. 1.0 (Ball Direct) at 18.

[228] BA-PA St. No. 1.1 (West Rebuttal) at 8.

[229] BA-PA St. No. 1.1 (West Rebuttal) at 8-9.

## V. THE COMMISSION SHOULD NOT DETERMINE THE LEVEL OF WHOLESALE RATES IN THIS PROCEEDING

Despite the fact that the Commission's Order does not mention the setting of wholesale rates in this proceeding, AT&T— which is neither an applicant nor a party to the proceeding[230]— seeks to advance ***its own*** market entry strategy by attempting to set wholesale prices for BA-PA's retail services. No applicant in this proceeding has requested the setting of wholesale rates; indeed, MFS has strongly opposed AT&T's attempt to expand the scope of the proceeding,[231] which is designed to set the terms and conditions for ***facilities-based*** local competition. As MFS notes, the setting of wholesale rates is a complex issue and one that will have a substantial impact on the development of facilities-based competition.[232] Since the issue is not properly before the Commission at this point, AT&T's effort to set wholesale rates should be rejected.[233]

In addition, there is insufficient information in the record about the costs BA-PA will avoid when operating as a wholesaler for wholesale rates to be set under the Act.[234] Since this issue was not one initially framed by the Commission, BA-PAdid was unable to perform its own analysis of its avoided costs.[235] Mr. Dionne's alternative "cost study" and wholesale pricing proposal are deficient in a number of respects. Mr. Dionne did not develop his study, nor could he explain the origin of the factors underlying it.[236] Mr. Dionne's suggestion that the avoided

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[230] Tr. 874-75 (ALJ Schnierle).

[231] MFS St. No. 2.0 (Ball Rebuttal) at 8-11.

[232] *Id.* at 8-11; Tr. at 107 (Ball).

[233] Given AT&T's intervenor status, and the opposition of at least one applicant to injecting this extraneous issue into the proceeding, it would be improper to decide the wholesale issue in this docket.

[234] MFS St. No. 2.0 (Ball Rebuttal) at 9.

[235] BA-PA St. No. 1.1 (West Rebuttal) at 2.

[236] Tr. at 749, 759 (Dionne).

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | | |
|---|---|---|
| **Applications of** | ) | |
| | ) | |
| **MFS Intelenet of Pennsylvania, Inc.** | ) | **Docket No. A-310203F0002** |
| **MCI Metro Access Transmission** | ) | **Docket No. A-310213F0002** |
| **TCG Pittsburgh, and** | ) | **Docket No. A-310236F0002** |
| **Eastern Telelogic Corporation** | ) | **Docket No. A-310258F0002** |

# POST-HEARING BRIEF OF MFS INTELENET OF PENNSYLVANIA, INC.



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Dated: May 2, 1996

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## VI. THE COMMISSION SHOULD STRIKE THE APPROPRIATE BALANCE BETWEEN BELL'S INTEREST IN PRESERVING EXISTING RATING AND BILLING SYSTEMS WITH THE PUBLIC INTEREST IN CONSERVING NUMBERING RESOURCES.

Bell's Proposal regarding the assignment of numbering resources for new entrants would enforce an inefficient use of scarce numbering resources. It requires new entrants to use the same "zone" and "exchange" definitions found in Bell's tariffs when MFSI-PA assigns telephone numbers to end users. So, for example, if MFSI-PA was assigned a particular NXX (exchange) code for Philadelphia Zone 2a, all 10,000 line numbers available within that code would have to be used solely for customers located within the geographic limits of that zone. For the near future, that will be an inefficient requirement in many parts of Pennsylvania, meaning that MFSI-PA must reserve many more blocks of 10,000 line numbers, or central office codes, than will be necessary, particularly in geographic areas where MFSI-PA will not have such large concentrations of customers. MFS St. 1.0 at 16-17. This will accelerate area code exhaust, particularly in areas needing relief in the near future. Id. at 17.

MFSI-PA's alternative proposal, presented in *Phase I* and which MFSI-PA urges the Commission to adopt, is that NXX Codes in the Pittsburgh and Philadelphia areas should be assigned based on rating points used by Bell for toll service. Id. at 17-18. In these metropolitan areas, where new entrants will likely concentrate their early marketing efforts, Bell uses larger clusters of central offices for measuring toll calls as opposed to establishing local calling zones, so this alternative would require new entrants to use fewer NXX codes in those cities. As an example, in Philadelphia MFSI-PA would need only four NXX codes to serve the entire city, as contrasted to the 11 codes for the same area under Bell's proposal. Id. at 18. This proposal will conserve NXX

codes and minimize the need for area code changes and the disruption and expense that entails for residents and businesses within the affected areas.

## VII. BELL'S REVISED PRICING PROPOSAL FOR INTERIM NUMBER PORTABILITY SEEKS UNJUSTIFIABLE USAGE CHARGES WHICH ARE UNSUPPORTED BY BELL'S COSTS, AND IS BEYOND THE SCOPE OF PHASE II.

### A. Bell Should Not be Permitted to Re-Open the Issue of Interim Rates for Co-Carrier Call Forwarding.

Bell has included in its Phase II Proposal a proposal for pricing of Co-Carrier Call Forwarding as an interim form of number portability, though the Commission did not specify this as an issue in Phase II. This portion of the Proposal should be dismissed as outside the scope of this proceeding, and as constituting an untimely petition for reconsideration of the *Phase I Order*.

In the *Phase I Order*, the Commission concluded:

> that number portability is an essential component to fostering competition. We reach this conclusion in light of the evidence showing that customers are simply reluctant to switch their local exchange carrier if that entails the loss of their telephone number. We also reach this conclusion because refusal to provide number portability, even on an interim basis as we do here, could erect a substantial impediment to competition.

*Phase I Order* at 54-55. It then adopted the ALJ's proposed resolution of this issue as an interim solution, requiring Bell to offer call forwarding at a rate of $4.00 per month per business line, and specifically rejected Bell's arguments that further hearings should be conducted on the pricing of this service. The Commission explained this decision as follows:

**Before the**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| **Applications of** | ) | |
| | ) | |
| **MFS Intelenet of Pennsylvania, Inc.** | ) | **Docket No. A-310203F0002** |
| ***MCI Metro Access Transmission*** | ) | **Docket No. A-310213F0002** |
| **TCG Pittsburgh, and** | ) | **Docket No. A-310236F0002** |
| **Eastern Telelogic Corporation** | ) | **Docket No. A-310258F0002** |

# EXCEPTIONS OF MFS INTELENET OF PENNSYLVANIA, INC. AND EASTERN TELELOGIC CORPORATION TO RECOMMENDED DECISION

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Dated: July 1, 1996

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which will more than cover the entire cost of the call, including the cost of forwarding it to the new entrant." MFS St. 1.0 at 21, ll. 4-7.[10]

The minimum recurring RCF charge of $1.25 per month on a *per number (not per path) basis* is reasonable and justified by the cost data (*see* RD at 75). It is also a rate previously proposed by ETC and TCG (*see id.* at 74), and is consistent with the recurring monthly rate methodology adopted in *Phase I*. This rate would cover Bell's asserted direct costs of providing the service (*see id.*) and would also provide Bell some contribution toward shared costs for all lines. Although a recurring charge of $1.25 per month on a per number basis is certainly an adequate rate, if the Commission were to determine an INP rate at a rate that is something more than $1.25, it should only be a flat, per number monthly rate, *not* a usage-based rate.

## VIII. THE COMMISSION SHOULD REVERSE THE ALJ'S RECOMMENDATION TO ADDRESS THE SCARCITY OF NXX NUMBERING RESOURCES IN MORE DENSELY POPULATED URBAN AREAS.

Finally, the RD unfortunately severely underestimates and exacerbates what is a true shortage of NXX codes by adopting the Bell proposal for distribution of NXX codes. The geographic limits established for each NXX zone will place demands on MFS and other CLECs to reserve far more NXX codes than they would otherwise need, particularly in less densely populated areas. RD at 82. This will hasten area code exhaust, the societal effects of which are both disruptive and expensive

[10] A recurring INP rate was presented in the ALJ's Initial Decision in *Phase I*, and Bell filed exceptions, arguing that INP should be based on rates set out in its enduser remote call forwarding tariff. Bell Phase I Exceptions (filed July 16, 1995) at 80. That existing tariff **includes** usage charges, and the Commission's rejection of Bell's exceptions was a knowing rejection of Bell's attempt to impose usage charges. Bell did not seek timely reconsideration of the *Phase I* Order, as provided under 66 Pa.C.S.A. § 703(f), and its ongoing effort to revive usage-based pricing is equally untimely here.

to businesses and residents who must change their area codes (NPAs). MFSI-PA M. Br. at 11-12; RD at 82-83. Recent events since the RD was issued have dramatically underscored the significance of this issue to new entrants. According to reports in the trade press, on June 20, 1996 TCG filed an emergency petition with the Commission seeking an order directing Bell to cease all promotional activities and to refrain from introducing new service in those rate centers within the 412 area code (NPA) for which there are no further NXX codes available to CLECs.[11]

Accordingly, the Commission should adopt the proposal made by MFSI-PA in its main brief, that NXX Codes in the Pittsburgh and Philadelphia areas should be assigned based upon rating points used by Bell for toll service. MFSI-PA M. Br. at 11; MFS St. 1.0 at 17-18. This will avoid the unnecessary squandering of NXX codes under the Bell Proposal, such as 11 codes under the Bell proposal --as opposed to 4 codes under the MFSI-PA proposal-- for MFSI-PA to service the entire Philadelphia area. Such a rule would be prudent action by the Commission which would have the societal benefits of avoiding: (1) the potential expense and disruption to businesses and consumers of area code exhaust caused by profligate distribution of NXXs, as well as (2) the rationing of numbers to new entrants which artificially limits their entry into the market.

## IX. CONCLUSION AND RELIEF REQUESTED.

For the foregoing reasons, the Commission should, as a threshold matter, declare that its decision is an interim one in an effort to expedite local competition in Pennsylvania, pending the negotiation and arbitration of interconnection agreements pursuant to the requirements of the 1996

[11] Communications Daily (Tuesday, June 25, 1996), Vol. 16, No. 123 at 7.

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | | |
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| APPLICATION OF MFS INTELENET OF PENNSYLVANIA, INC. | : | Docket No. A-310203F0002 |
| APPLICATION OF TCG PITTSBURGH | : | Docket No. A-310213F0002 |
| APPLICATION OF MCI METRO ACCESS TRANSMISSION SERVICES, INC. | : | Docket No. A-310236F0002 |
| APPLICATION OF EASTERN TELELOGIC CORP. | : | Docket No. A-310258F0002 |



**RECOMMENDED DECISION**

Before
Michael C. Schnierle
Administrative Law Judge

# PUBLIC VERSION
# [PROPRIETARY MATERIAL HAS BEEN REMOVED]

June 13, 1996

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VIII. Assignment of NXX Codes.

BA-PA has proposed a numbering convention that requires CLECs to assign NXX codes (*i.e.*, the first three digits of telephone numbers) based upon the "Zone and Exchange Areas" set forth in BA-PA's tariffs. BA-PA contends that unless this proposal is adopted, BA-PA will be unable to apply its rate structure accurately to calls made by BA-PA customers to CLEC customers. BA-PA argues that this would confuse consumers, create undue administrative complexity, and generate an obvious potential for unfair competition. (BA-PA M.B. at 52).

MFS has proposed that NXX codes in the Philadelphia and Pittsburgh metropolitan areas be assigned based on toll, rather than local rating points. MFS argues that BA-PA's proposal regarding the assignment of numbering resources for new entrants would enforce an inefficient use of scarce numbering resources. For example, if MFS was assigned a particular NXX (exchange) code for Philadelphia Zone 2a, all 10,000 line numbers available within that code would have to be used solely for customers located within the geographic limits of that zone. MFS argues that for the near future, that will be an inefficient requirement in many parts of Pennsylvania, meaning that MFS must reserve many more blocks of 10,000 line numbers, or central office codes, than will be necessary, particularly in geographic areas where MFS will not have such large concentrations of customers. This will accelerate area code exhaust, particularly in areas needing relief in the near future. MFS maintains that its proposal will conserve NXX codes

and minimize the need for area code changes and the disruption and expense that entails for residents and businesses within the affected areas. (MFS M.B. at 11-12).

While I am sympathetic to MFS' concerns, I conclude that BA-PA's position on this issue should prevail for now. At this point, there is no evidence that BA-PA's proposal will lead to number exhaustion in the immediate future. Moreover, there appears to be a long-term solution to this problem that does not involve either BA-PA's or MFS' proposals. The solution that is under development for permanent number portability may also significantly alleviate the number exhaustion problem. (Tr. 878-880). For this reason, and because the FCC has under consideration the whole area of number portability and dialing parity (61 Fed. Reg. 18,341-18,344), the Commission should reject MFS' proposal on NXX assignments at this time. If the number exhaustion problem is not otherwise solved in the near future, this issue may be revisited upon petition of an affected party.

IX. Service Quality Standards.

As noted by OTS, the Commission in the MFS I Order, directed that the CLECs be subject to the same quality of service standards that are applicable to the incumbent LECs. MFS I Order, at 86, Ordering Paragraphs 3, 10, 18. These standards are found at 52 Pa. Code Chapters 63 and 64. As further noted by OTS, this requirement was the subject of some debate at the hearings. OTS urges that the Commission continue to insist on the position stated in the MFS I Order. (OTS M.B. at 28-29). No other party discussed

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KLR

July 25, 2002

ORIGINAL

Secretary James P. McNulty
Pennsylvania Public Utility Commission
P.O. Box 3265
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Harrisburg, PA 17101-3265

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

Dear Secretary McNulty:

Enclosed please find the original and four copies (one for time-stamp) of US LEC of Pennsylvania, Inc.'s Best and Final Offer in the above referenced case. If you have any questions, please do not hesitate to call.

Very truly yours,

Linda C Smith

Linda C. Smith

DOCUMENT FOLDER

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LCS/sw
Enclosure

cc: Wanda G. Montano
Todd Murphy
Michael Shor, Esq.

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**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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DOCKETED
AUG 13 2002

**US LEC OF PENNSYLVANIA INC.'S**
**BEST AND FINAL OFFER**

Pursuant to the Prehearing Order No. 2 (May 20, 2002) issued in the above-captioned docket, US LEC of Pennsylvania Inc. ("US LEC") submits this Best and Final Offer. As agreed during the July 23, 2002 telephone conference, in this Best and Final Offer, US LEC provides specific contract language to replace certain sections of the Interconnection Agreement that was attached to US LEC's Petition for Arbitration with Verizon-Pennsylvania Inc. ("Verizon") as Exhibit B. This Interconnection Agreement was incorporated in the evidentiary record by reference during the July 23, 2002 telephone conference. The substitute contract language US LEC submits in this Best and Final Offer includes (1) contract language that both Parties have agreed to as part of their settlement of Issues 7, 10, and 11 and (2) revised contract language that US LEC proposes to resolve Issues 1 and 2. For the remaining issues (3, 4, 5, 6, 8 and 9), US LEC's Best and Final Offer has not changed from the contract language US LEC proposed in the Interconnection Agreement attached as Exhibit B to its Petition.

US LEC provides the Attachment name, section number, and page number of the Interconnection Agreement for the revised contract language submitted as part of this Best and Final Offer. With respect to the contract language US LEC proposes to resolve Issues 1 and 2, the proposal consists of Verizon's template agreement with the following revisions: agreed-upon language is shown in normal type, while deletions that US LEC proposes to make are reflected in ~~strike-through~~ text and additions that US LEC proposes to make are shown in underlined text. Notwithstanding this Best and Final Offer, US LEC will continue to negotiate in good faith with Verizon in an effort to resolve disputed issues and will notify the Commission promptly if and when arbitration of certain issues is no longer necessary.

**Issues 1 & 2: (Glossary, Section 2.45; Interconnection Attachment, Sections 2.1.5.3, 7.1.1.1, 7.1.1.1.1, 7.1.1.2, 7.1.1.3)**

US LEC proposes the following new language concerning Issues 1 and 2.

Replace Section 2.45 of the Glossary (page 31) with the following:

2.45 IP (Interconnection Point). **[DISPUTED ITEM]**

~~For Reciprocal Compensation Traffic, the point at which a Party who receives Reciprocal Compensation Traffic from the other Party assesses Reciprocal Compensation charges for the further transport and termination of that Reciprocal Compensation Traffic.~~

"Interconnection point" or "IP" means the switching, Wire Center, or similar network node in a Party's network at which such Party applies Reciprocal Compensation rates or Intercarrier Compensation rates for Measured Internet Traffic. Verizon IPs include any Verizon End Office, for the delivery of traffic terminated to numbers served out of that End Office, and/or any Verizon access Tandem Office, for the delivery of traffic to numbers served out of any Verizon End Office that subtends that access Tandem Office. US LEC IPs include any US LEC Switch, for the delivery of traffic terminated to numbers served out of that Switch.

Replace Section 2.1.5.3 of the Interconnection Attachment (page 53) with the following:

2.1.5.3 a non-distance sensitive Entrance Facility obtained from US LEC (and any necessary multiplexing), from the POI to the US LEC-IP (including, but not limited to, at Verizon's election, an Entrance Facility accessed by Verizon through interconnection at an ~~Collocation~~ arrangement that US LEC has established at a Verizon Wire Center pursuant to Section 2.1.3 of the ~~Collocation~~Interconnection Attachment, or through interconnection at an

~~Collocation~~ arrangement that has been established separately at a Verizon Wire Center by a third party and that is used by US LEC under Section 2.1.3 of the Interconnection Attachment), or an Entrance Facility obtained from a third party that has established an interconnection arrangement with US LEC.

Replace Section 7.1.1.1 of the Interconnection Attachment (pages 61-62) with the following:

7.1.1.1 In accordance with Applicable Law, for each LATA in which US LEC requests to interconnect with Verizon, US LEC will designate the POI(s) at any technically feasible location within the LATA. Except as otherwise agreed by the Parties, the Parties shall establish IPs as defined in Section 2.45 of the Glossary. Where the terminating Party's IP is not at the same location as that party's POI, the originating Party is financially responsible for transporting its originating traffic to the terminating Party's IP. In the case of Verizon as the originating Party, Verizon may meet this transport obligation by purchasing a US LEC entrance facility under Section 2.1.5.3 of the Interconnection Attachment or by designating a POI at US LEC's switch and delivering its traffic on its owned or leased facilities to US LEC's switch under mutually agreed upon terms. ~~Geographically Relevant Interconnection Points ("IPs"). Each Party (an "Originating Party") may request that the other Party (a "Receiving party") establish IPs on the Receiving Party's network that are geographically relevant to the NXXs (and associated rate centers) that are assigned by the Receiving Party. The Originating Party is responsible for delivering Reciprocal Compensation Traffic originating on its network to the Receiving Party's geographically relevant IP. The points on the US LEC network at which Verizon shall hand off Reciprocal Compensation Traffic to US LEC are designated as the US LEC Interconnection Points ("US LEC IPs"). The points on the Verizon network at which US LEC shall hand off Reciprocal Compensation Traffic to Verizon are designated as the Verizon Interconnection Points ("Verizon IPs"). In the case of Verizon as a Receiving Party, to the extent US LEC requests Verizon to establish a geographically relevant IP in addition to the Verizon IPs at the Verizon Tandems, the geographically relevant IP shall be the Verizon end office serving the Customer for whom the traffic is intended. In the case of US LEC as a Receiving Party, US LEC will establish geographically relevant IPs by establishing a US LEC IP at a Collocation site at each Verizon Tandem in a LATA (or at such other wire centers in the LATA designated by Verizon) for those NXXs serving equivalent Verizon rate centers which subtend the Verizon Tandem. In any LATA in which Verizon agrees that US LEC may meet its obligation to establish geographically relevant IPs through a Collocation site at fewer than all of the Verizon Tandems in a LATA, then Verizon shall determine and advise US LEC as to which US LEC IP established at a Collocation site (or other available US LEC IP) Verizon will deliver traffic from each relevant originating rate center or other originating location.~~

As part of this Best and Final Offer, US LEC reiterates its proposal to delete in their entirety Sections 7.1.1.1.1 and 7.1.1.2 of the Interconnection Attachment (pages 62-63).

Replace Section 7.1.1.3 of the Interconnection Attachment (page 63) with the following:

7.1.1.3 In any LATA where the Parties are already interconnected prior to the effective date of this Agreement, and except as otherwise agreed by the Parties, ~~US LEC~~the Parties may maintain existing POI(s) and ~~CLEC~~ IP(s). ~~, except that Verizon may request in writing to transition such US LEC IPs to the US LEC IPs described in subsections 7.1.1.1 and 7.1.1.2, above. Upon such request, the Parties shall negotiate mutually satisfactory arrangements for the transition to CLEC IPs that conform to subsections 7.1.1.1 and 7.1.1.2 above. If the Parties have not reached agreement on such arrangements within thirty (30) days, (a) either Party may pursue available dispute resolution mechanisms; and, (b) US LEC shall bill and Verizon shall pay only the lesser of the negotiated intercarrier compensation rate or the End Office reciprocal compensation rate for relevant traffic, less Verizon's transport rate, tandem switching rate (to the extent traffic is tandem switched), and other costs (to the extent that Verizon purchases such transport from US LEC or a third party), from Verizon's originating End Office to the US LEC IP.~~

**Issue 7: (Interconnection Attachment, Section 12.4)**

The Parties have settled Issue 7. The following agreed-to language should replace Section 12.4 of the Interconnection Attachment (page 71):

12.4 US LEC shall exercise its best efforts to enter into a reciprocal Telephone Exchange Service traffic arrangement (either via written agreement or mutual Tariffs) with any CLEC, ILEC, CMRS carrier, or other LEC, to which it delivers Telephone Exchange Service traffic that transits Verizon's Tandem Office.

**Issue 10: (General Terms and Conditions, Section 9.3)**

The Parties have settled Issue 10. The following agreed-to language should replace Section 9.3 of the General Terms and Conditions (pages 5-6):

9.3 If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party shall give notice to the billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. A Party may also dispute prospectively with a single notice a class of charges that it disputes. Subject to the requirements of Applicable Law, notice of a dispute may be given by a Party at any time, either before or after an amount is paid, and a Party's payment of an amount shall not constitute a waiver of such Party's right to subsequently dispute its obligation to pay such amount or to seek a refund of any amount paid. The billed Party shall pay by the Due Date all undisputed amounts. Billing disputes shall be subject to the terms of Section 14, Dispute Resolution.

**Issue 11: (General Terms and Conditions, Section 21)**

The Parties have settled Issue 11. The following agreed-to language should replace Sections 21.1.1, 21.1.2, 21.1.3, and 21.1.4 of the General Terms and Conditions (page 12):

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,

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Dated: July 25, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below via electronic and overnight mail.

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Verizon Pennsylvania, Inc.
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August 1, 2002

ORIGINAL

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

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

Dear Secretary McNulty:

Enclosed please the original and ten (10) copies, one for time-stamp and return, of US LEC'S Main Brief, in the above-references case.

Copies have been served as stated on the attached certificate of service. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Linda C. Smith

Linda C. Smith

DOCUMENT FOLDER

LCS/sw
Enclosure

cc: Wanda Montano
Todd Murphy

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## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below via electronic and overnight mail.

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Dated: August 1, 2002

ORIGINAL

**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**POST HEARING BRIEF OF**
**US LEC OF PENNSYLVANIA INC.**


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Dated: August 1, 2002

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

## POST HEARING BRIEF OF US LEC OF PENNSYLVANIA INC.

US LEC of Pennsylvania Inc. ("US LEC"), by its undersigned counsel, and pursuant to Procedural Order No. 2 entered in this proceeding, respectfully submits its post-hearing brief.

## INTRODUCTION AND STATEMENT OF THE CASE

US LEC is a certificated competitive local exchange carrier ("CLEC") providing facilities-based services in the Commonwealth of Pennsylvania and is interconnected with Verizon Pennsylvania Inc. ("Verizon") in the Philadelphia and Pittsburgh LATAs. US LEC and Verizon first entered into an interconnection agreement governing US LEC's operations in Pennsylvania in 1999. On November 17, 2001, US LEC and Verizon began negotiating a new interconnection agreement. The parties were able to resolve the vast majority of issues before US LEC filed its petition with the Pennsylvania Public Utility Commission ("Commission") requesting arbitration of eleven (11) specific issues that the parties could not resolve. Since then, US LEC and Verizon have resolved three (3) of the issues and have withdrawn them from the arbitration.[1]

[1] Issues 7, 10 and 11 identified in the Petition for Arbitration have been settled through continuing good faith negotiation between the Parties.

The remaining unresolved issues are identified as follows:

Issues 1 and 2 collectively involve US LEC's right to choose the method by which it will interconnect with Verizon in each LATA, the number of Points of Interconnection ("POI") that US LEC is allowed to establish in each LATA, whether Verizon can require US LEC to identify more POIs than the law requires and the allocation of costs between US LEC and Verizon for transporting calls originating on each of their networks.

Issues 3 and 4 deal with whether the parties are obligated to pay each other reciprocal compensation for terminating calls to Voice Information Service Providers and whether US LEC can be required to construct a dedicated trunk for delivering Voice Information Services Traffic to providers served by Verizon.

Issue 5 concerns whether the parties will continue to use the traditional "originating party" / "terminating party" nomenclature in widespread use throughout the industry in connection with the exchange of traffic or whether Verizon will be allowed to introduce the entirely new concept of a "receiving party" instead of a terminating party.

Issue 6 asks whether, in calculating their reciprocal compensation obligations, the parties will continue to utilize the NPA/NXX of the calling and called numbers as the factors determining whether a call is local or toll or whether they will be required to change that historical system and, instead, determine their obligations based on the physical end-points of the originating and terminating callers.

Issue 8 addresses the compensation framework that will govern the parties' reciprocal compensation obligations for terminating calls to Internet service providers ("ISPs") in the event the compensation framework in the FCC's Internet Order is vacated or reversed on appeal.

Finally, Issue 9 deals with whether Verizon should be permitted to change its non-tariffed charges during the term of the agreement, *i.e.*, those fixed by the parties during their negotiations of the interconnection agreement, or must such charges remain fixed for the entire term.

At bottom, the issues which remain unresolved touch upon some of US LEC's most fundamental rights under the Telecom Act and the FCC's rules implementing those rights. It is evident from Verizon's response to US LEC's petition and the testimony of its witnesses that Verizon's effort here is aimed at circumventing US LEC's statutory rights and at overturning decades of industry-wide practice in an effort to further throttle the development of true local competition in Pennsylvania. While obvious throughout Verizon's testimony, nowhere is this motive more evident than in the statements of Terry Haynes, Verizon's witness on the issue of compensation for FX services (Issue 6). In Mr. Haynes' view, it is perfectly legal in Pennsylvania for Verizon to offer a variety of FX services, which involve assigning NXX codes to customers who are not physically located in the calling area to which those NXX codes are "homed". However, if US LEC offers precisely the same services, and assigns NXX codes in precisely the same manner, it somehow becomes a violation of Pennsylvania PUC rules. Similarly, it is perfectly acceptable for Verizon to bill and collect reciprocal compensation from CLECs for calls their customers make to Verizon's FX customers, but if a CLEC bills Verizon for calls that Verizon customers make to a CLEC's FX customers, it becomes "a free ride" and "arbitrage."

The Commission has dealt with some of these issues in prior arbitrations and, in each of those cases, it reached the right result—choosing to advance competition over Verizon's steadfast opposition. The wisdom of the Commission's prior decisions is evident in a recent decision from the FCC's Wireline Competition Bureau ("Wireline Bureau"). Sitting in place of

the Virginia State Corporation Commission, and arbitrating interconnection agreements between Verizon and three CLECs—AT&T, Cox Communications and WorldCom—the Wireline Bureau addressed directly three of the issues that remain in this arbitration: Interconnection architecture and cost allocation (Issues 1 and 2); reciprocal compensation for FX traffic (Issue 6); and, the interplay between tariffed charges and agreed rates (Issue 9).[2] In each of these instances, Verizon made precisely the same arguments to the Wireline Bureau that it makes to this Commission, and the CLECs involved in the arbitrations made the same arguments that US LEC makes here.[3] In each instance, the Wireline Bureau rejected Verizon's positions and adopted the positions advocated by the CLECs.[4] The reasons for the Wireline Bureau's determinations will be discussed in detail below. It is clear, though, that in reaching its conclusions the Wireline Bureau plainly recognized that resolution of these issues, among others, would affect the parties' respective legal and financial obligations, would have a material impact on the future design and deployment of a CLEC's network architecture, and would affect the viability of competition. These same concerns drive this arbitration and the Commission should reach the results advocated by US LEC.

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[2] Indirectly, the Wireline Bureau also addressed Issue 3 (reciprocal compensation for Voice Information Services Traffic).

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

[4] Verizon will argue that the Wireline Bureau also addressed the issue of compensation for ISP-bound traffic in the event the FCC's ISP compensation framework is reversed or set aside (Issue 8) and that the Wireline Bureau resolved that issue in Verizon's favor. It is correct that the issue was raised, but the critical distinction is that the positions advocated by the CLECs in that case differ markedly from what US LEC proposes here; thus, that aspect of the Wireline Bureau's Arbitration Order is not dispositive here.

## JURISDICTION AND STANDARD OF REVIEW

The Commission has jurisdiction under Section 252(b) of the Communications Act of 1934, as amended ("Act"), to arbitrate this dispute. Through good faith negotiations, which began on November 17, 2001, the Parties were able to resolve the vast majority of issues included in their proposed interconnection agreement. However, where negotiations fail, the Act permits either party to file a petition for arbitration with the Commission.[5] US LEC timely filed its arbitration Petition on April 26, 2002 and Verizon filed its Response on May 21, 2001. Since then, the Parties resolved three of the eleven issues in dispute and withdrew them from the arbitration. US LEC filed direct testimony from Ms. Wanda Montano and Mr. Frank Hoffmann addressing all eight remaining issues; Verizon filed direct testimony from Mr. Peter D'Amico and Mr. Terry Haynes, but chose to limit its testimony to three issues—Issues 1, 2 and 6.[6] Both parties filed rebuttal testimony addressing Issues 1, 2 and 6. At the hearing on July 17, 2002, the parties presented their testimony and subjected each other's witnesses to cross examination. On July 25, the Parties submitted their Best and Final Offers that included each Party's proposed contract language where that proposal differed from the contract language that was submitted as Exhibit B to US LEC's Petition.

Under Section 252(b)(4) of the Act,[7] this Commission has jurisdiction to decide the eight issues that remain in dispute. In resolving these issues, the Commission must ensure that its determinations comply with Sections 251 and 252(d) of the Act, including the FCC's imple-

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[5] 47 U.S.C. § 252(b)(1).

[6] Verizon also filed testimony from Ms. Karen Fleming addressing Issue No. 11; however, that issue was settled and her testimony was withdrawn.

[7] Hereafter, US LEC will refer to Sections of the Act as "Section xxx."

menting regulations.[8] In addition, the Commission may ensure that its determinations comply with State law, so long as that State law complies with Section 253.[9]

## ARGUMENT

**ISSUES 1 and 2: (Glossary, Section 2.45; Interconnection Attachment, Sections 2.1.5.3, 7.1.1.1, 7.1.1.1.1, 7.1.1.2, 7.1.1.3)**

*The Commission Should Adopt US LEC's Positions on Issues One And Two—US LEC's Proposed Contract Language Complies with Federal Law And Verizon's Does Not*

In order for US LEC and Verizon to exchange traffic between their respective customers, they must interconnect their networks as required by Section 251(c)(2). The physical points at which they perform the connection are called points of interconnection ("POIs") or interconnection points ("IPs"). The financial responsibility of each Party is governed in part by its interconnection duty and in part by its duty to establish arrangements for the transport and termination of telecommunications under Section 251(b)(5). Issues 1 and 2 concern the manner in which the Parties will implement their respective interconnection and reciprocal compensation duties into contract language that will govern their exchange of traffic. Both the physical and financial aspects of interconnecting the Parties' different networks will be impacted by the Commission's resolution of these issues.

While the dispute between the Parties includes the proper allocation of transport costs, it also includes more fundamental questions about US LEC's rights to interconnection under federal law. Thus contrary to Verizon's allegations, this dispute is not about requiring each Party to bear the cost its network design imposes on the other Party. Rather, this dispute is about complying with federal and state law designed to open Verizon's monopoly local markets to competition. The recent *FCC Arbitration Order* provides both a roadmap for resolving the dispute in Issues 1 and 2 and a succinct summary of the obligations Verizon bears under federal rules in this regard:

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[8] 47 U.S.C. § 252(c).

[9] 47 U.S.C. § 252(e)(3).

> (1) competitive LECs have the right, subject to questions of technical feasibility, to determine where they will interconnect with, and deliver their traffic to, the incumbent LEC's network; (2) competitive LECs may, at their option, interconnect with the incumbent LEC's network at only one place in a LATA; (3) all LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs' networks for termination; and (4) competitive LECs may refuse to permit other LECs to collocate at their facilities.[10]

A summary of the rules on which these obligations are based and the application of those rules to US LEC's and Verizon's proposals shows that the Commission must reach the same conclusion as the *FCC Arbitration Order* and adopt US LEC's proposal over Verizon's Virtually Geographically Relevant Interconnection Points ("VGRIPs") proposal.

*1. Overview of The Legal Requirements That Govern Issues 1 And 2*

The Act and FCC rules define each Party's interconnection and reciprocal compensation rights and duties. Section 251(c)(2) imposes special interconnection duties on incumbent local exchange carriers ("ILECs"), such as Verizon. These duties include the obligation to provide interconnection at any technically feasible point and to provide such interconnection at rates that comply with the pricing requirements of Section 252(d).[11] Notably, the Act does not define the terms POI or IP. However, in interpreting the Act, the FCC has used the two terms interchangeably when discussing an ILEC's interconnection duties.[12]

The FCC has interpreted the first duty to include an obligation not only to provide interconnection at any technically feasible point,[13] but also an obligation to provide any technically feasible method of interconnection.[14] Interconnection trunking leased from the ILEC, physical

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[10] *FCC Arbitration Order* at ¶ 67.

[11] 47 U.S.C. § 251(c)(2)(B) & (D).

[12] *Cf. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶¶ 207, 209 (1996) (subsequent history omitted) ("*Local Competition Order*") (points of interconnection) with *Local Competition Order* at ¶ 209, 211 (interconnection points).

[13] 47 C.F.R. § 51.305(a)(2).

[14] 47 C.F.R. § 51.321(a); *Local Competition Order* at ¶ 549.

and virtual collocation, and meet-point arrangements are some of the technically feasible methods of interconnection recognized by the FCC.[15] In addition, a previous successful point or method of interconnection is substantial evidence that such point or method is technically feasible.[16] The ILEC may be relieved of these obligations only if it shows that the requested point or method of interconnection is not technically feasible.[17]

The FCC also has interpreted the first interconnection duty as requiring the ILEC to permit the requesting carrier, in this case US LEC, to choose a *single* point of interconnection in each Local Access and Transport Area ("LATA") in which the requesting carrier wishes to exchange traffic with the ILEC.[18] Initially, this Commission determined that Verizon could require a CLEC to interconnect at multiple points within a LATA. However, the U.S. Court of Appeals for the Third Circuit reversed that decision, finding that:

> The decision where to interconnect and where not to interconnect must be left to WorldCom, subject only to concerns of technical feasibility. Verizon has not presented evidence that it is not technically feasible for WorldCom to interconnect at only one point within a LATA. Nor has Verizon shown that it is technically necessary for WorldCom to interconnect at each access tandem serving area. *The PUC's requirement that WorldCom interconnect at these additional points is not consistent with the Act.*[19]

Subsequently, in an arbitration between Verizon's predecessor Bell Atlantic-Pennsylvania, Inc. ("BA-PA") and Focal Communications Corp. ("Focal"), this Commission

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[15] 47 C.F.R. § 51.321(b); *Texas 271* at ¶ 80.

[16] 47 C.F.R. §§ 51.305(c), 51.321(c); *Local Competition Order* at ¶¶ 198, 204, 554.

[17] 47 C.F.R. §§ 51.302(e), 51.321(d); *Local Competition Order* at ¶¶ 203, 205, 211, 554; *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*, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, ¶ 78 (rel. Jun. 30, 2000) ("*Texas 271*").

[18] *Texas 271* at ¶ 78; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132, ¶ 72, 112 (rel. April 27, 2001) ("*Intercarrier Compensation NPRM*"); *FCC Arbitration Order* at ¶ 52.

[19] *MCI Telecommunications Corp. et al. v. Bell Atlantic-Pennsylvania et al.*, 271 F.3d 491, 518 (3d Cir. 2001) (emphasis added).

upheld Focal's right to choose both the physical and financial point of demarcation between the two networks.[20] In another arbitration, it also upheld this principle when it adopted Sprint's interconnection proposal over Verizon's VGRIPs proposal because Sprint's proposal complied with the law's requirements.[21]

With respect to Verizon's second interconnection duty noted above, the FCC has established rules that govern the prices ILECs may charge for interconnection and the burden of proof regarding those charges. Specifically, FCC rules require that ILECs submit cost studies to support the interconnection rates they propose to charge requesting carriers:

> An incumbent LEC must prove to the state commission that the rates for each [interconnection] it offers do not exceed the forward-looking economic cost per unit of providing the [interconnection], using a cost study that complies with the methodology set forth in this section and § 51.511.[22]

CLECs, such as US LEC, are not subject to these special interconnection duties imposed solely upon ILECs under Section 251(c)(2).[23] Instead, CLECs are subject only to the Section 251(a)(1) duty to interconnect directly or indirectly with other telecommunications carriers, such as Verizon. Although a CLEC is free to negotiate points of interconnection on its network, it is not required to provide an ILEC interconnection at any technically feasible point on the CLEC's network.[24]

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[20] *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.*, Docket Not. A-310630F0002, Opinion and Order, 43-44 (PA PUC Aug. 17, 2000) ("*Focal Arbitration Order*").

[21] *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.*, Docket No. A-310183F0002, Opinion and Order, 55-56 (Pa. PUC Oct. 12, 2001) ("*Sprint Arbitration Order*").

[22] 47 C.F.R. § 51.505(e). Pursuant to 47 C.F.R. § 51.501(b), US LEC has substituted the word "interconnection" for "element."

[23] *Local Competition Order* at ¶ 220; *FCC Arbitration Order* at ¶ 57.

[24] *Local Competition Order* at ¶ 220; *FCC Arbitration Order* at ¶ 71.

The interaction between the Parties' interconnection duties and their reciprocal compensation responsibilities determines the financial obligations each Party bears for transporting its originating traffic. Both US LEC and Verizon are subject to Section 251(b)(5). This Section requires that the Parties "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[25] The FCC has interpreted this duty to require that a LEC bear financial responsibility for transporting its originating telecommunications traffic to the point of interconnection selected by the requesting carrier.[26] Together, Verizon's interconnection and reciprocal compensation duties, sometimes referred to as "the rules of the road," require that Verizon bear financial responsibility for delivering traffic originated by its customers to US LEC's chosen point of interconnection.[27] US LEC likewise bears the same obligation for traffic originated by its customers. In other words, the physical and financial demarcation points between two interconnecting networks are at the same location.

The originating carrier is also responsible for compensating the terminating carrier for the transport and termination services provided to terminate the call. The FCC has divided reciprocal compensation into two rate elements (1) transport and (2) termination. It defines transport as "the transmission... of telecommunications traffic...from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party."[28] In applying these definitions, the Wireline Bureau recently determined that AT&T may charge Verizon for the mileage-sensitive dedicated transport AT&T provides to carry Verizon's

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[25] 47 U.S.C. § 251(b)(5).

[26] 47 C.F.R. § 51.703(b); *Local Competition Order* at ¶¶ 1042, 1062; *FCC Arbitration Order* at ¶ 52. This Commission adopted a similar principle when it approved Sprint's proposal to locate Sprint's IPs within five miles of Verizon's tandems and required Verizon to bear the financial responsibility of delivering its traffic to those IPs. *Sprint Arbitration Order* at 55-56.

[27] *TSR Wireless, LLC. v. U S West Communications, Inc.*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, Memorandum Opinion and Order, FCC 00-194, ¶ 34 (rel. June 21, 2000) ("*TSR Wireless*") (emphasis added), *aff'd, Qwest Corp. et al. v. FCC et al,* 252 F.3d 462 (D.C. Cir. 2001).; *Intercarrier Compensation NPRM* at ¶ 70; *FCC Arbitration Order* at ¶ 67.

[28] 47 C.F.R. § 51.701(c).

originating traffic from the point of interconnection to AT&T's switch.[29] The Wireline Bureau also recognized, however, that a CLEC could voluntarily offer an ILEC a point of interconnection at the CLEC's switch and permit the ILEC to deliver its own facilities to the CLEC's switch, rather than purchasing the CLEC's transport.[30]

Requiring the originating LEC to bear the costs of delivering its originating traffic to the POI selected by the CLEC, and to compensate the terminating LEC for the transport and termination functions it performs, is consistent with the current calling-party's-network-pays ("CPNP") regime.[31] As the FCC has found, a LEC's costs of delivering its originating traffic to the network of a co-carrier are recovered in the LEC's end users' rates. The FCC has explained its rationale as follows:

> In essence, the originating carrier holds itself out as being capable of transmitting a telephone call to any end user, and *is responsible for paying the cost of delivering the call to the network of the co-carrier* who will then terminate the call. Under the Commission's regulations, *the cost of the facilities used to deliver this traffic is the originating carrier's responsibility*, because these facilities are part of the originating carrier's network. *The originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls.* This regime represents "rules of the road" under which all carriers operate, and which make it possible for one company's customer to call any other customer even if that customer is served by another telephone company.[32]

Although the FCC is considering modifications to the traditional CPNP regime and its rules of the road, to date, the FCC has not adopted any such new rules. Therefore, as the arbitrator, the Commission must apply existing FCC rules to resolve Issues 1 and 2. As the Wireline Bureau determined: "We reiterate that we base our decisions on current [FCC] rules and precedent, and therefore reject or modify parties' proposals that extend beyond existing

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29 *FCC Arbitration Order* at ¶¶ 66, 67 n. 187.

30 *FCC Arbitration Order* at ¶ 71.

31 *Intercarrier Compensation NPRM* at ¶ 9.

32 *TSR Wireless* at ¶ 34.

law."[33] As the Wireline Bureau found, a proposal that requires each party to bear the costs of delivering its originating traffic to the POI selected by the CLEC is more consistent with existing FCC rules than a proposal that requires a CLEC to bear Verizon's costs of delivering its originating traffic to a POI beyond the Verizon-specified IP.[34]

*2. US LEC's Proposal Is Consistent with Federal And State Law*

US LEC's proposed contract language is consistent with the requirements of federal and state law. Its Best and Final Offer revised US LEC's initial proposal on Issues 1 and 2 based on testimony during the hearing that elaborated on the Parties' existing network architecture. It was also offered in an effort to address some of the concerns Verizon raised concerning US LEC's position on Issues 1 and 2.

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

Consistent with Section 251(c)(2) and FCC Rules 51.305(a)(2) and 51.321(a), US LEC's proposal permits US LEC to choose the POI(s) within each LATA where it will interconnect with Verizon and the method of interconnection. US LEC BFO Section 7.1.1.1; Exhibit B, Interconnection Attachment, Section 2.1.3 (pg 52). US LEC has chosen to establish those POIs at each Verizon access tandem within a LATA. Hoffmann Direct at 6. US LEC has also chosen a technically feasible method of interconnection, namely leasing transport form Verizon. Tr. 21:7-15 (Hoffmann Cross). Under US LEC's proposal, it would be able to maintain its chosen POIs and method of interconnection. Consistent with Section 251(b)(5) and FCC Rules 51.701, 51.703 and 51.709, US LEC's proposal requires each LEC to bear the financial burden of

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[33] *FCC Arbitration Order* at ¶ 31.

[34] *FCC Arbitration Order* at ¶¶ 53-54.

delivering its originating telecommunications traffic to the POI(s) selected by US LEC and to compensate the terminating LEC for the transport and termination functions the terminating LEC provides.

In practice, the Parties have implemented slightly different network interconnection architectures in the Pittsburgh and Philadelphia LATAs. However, both arrangements are consistent with the requirement that Verizon bear the costs of delivering its originating traffic to US LEC's network.[35] In the Pittsburgh LATA, US LEC picks up Verizon's originating traffic at its POI at Verizon's tandem and receives compensation for a non-distance sensitive entrance facility to deliver Verizon's traffic to US LEC's switch (in addition to receiving compensation for terminating the call). Hoffmann Direct at 8; Tr. 40:10-14 (Hoffmann Cross). This is consistent with Verizon's duty to compensate US LEC for transport under Section 251(b)(5) and FCC Rules 51.701, 51.703, and 51.709[36] and could continue under US LEC's proposal. The non-distance sensitive pricing of the entrance facility ensures that Verizon would not bear a greater transport obligation if US LEC's switch was located some distance from Verizon's tandem. Tr. 62:14-63:8 (Hoffmann Cross). The Commission approved a similar proposal by Sprint to address Verizon's concerns about the distance it would have to transport its originating traffic.[37]

In the Philadelphia LATA, because the Parties have agreed that Verizon may establish a POI at US LEC's switch, Verizon brings its originating traffic over its own facilities to US LEC's network and compensates US LEC for terminating its traffic under Section 251(b)(5) and FCC Rules 51.701 and 51.703. Tr. 21:7-22:7, 23:14-19 (Hoffmann Cross). This arrangement could also be continued under US LEC's proposal.

The fact that the Parties are currently operating under these arrangements is substantial evidence that US LEC's requested points and method of interconnection are technically

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35 *FCC Arbitration Order* at ¶ 52.

36 *See also FCC Arbitration Order* at ¶¶ 66, 67 n. 187.

37 *Sprint Arbitration Order* at 55-56 (requiring Sprint to locate its IPs within five miles of Verizon's tandems).

feasible.[38] Because Verizon has submitted no evidence to the contrary, it has no right to deny US LEC the requested points of interconnection and methods of interconnection. To the contrary, because Verizon has failed to show that US LEC's requested interconnection architecture is not technically feasible, Verizon has a duty to provide it.[39]

*3. Verizon's Proposal Is Not Consistent with Federal Or State Law*

Verizon describes its VGRIPs proposal as including three "options." However, these options have been unilaterally defined by Verizon, thus significantly limiting any alleged choice US LEC has in establishing interconnection arrangements with Verizon. Under the first option, Verizon may request that US LEC establish a collocated IP at each Verizon tandem where US LEC provides local service. D'Amico Direct at 10. Under the second option, if US LEC establishes a collocation arrangement at a Verizon end office, Verizon may request that US LEC establish an IP at that collocation arrangement. D'Amico Direct at 10. Verizon repeatedly emphasizes that US LEC may decline these requests. D'Amico Direct at 10, 12; D'Amico Rebuttal at 3-4. However, if US LEC declines, it is stuck with option three. Tr. 49:1-50:5 (Hoffmann Cross). Under option three, the virtual IP option, US LEC must pay for the costs of transporting Verizon's originating traffic *from the Verizon end office* to US LEC's chosen IP. Tr. 124:1-9 (D'Amico Cross).

Verizon claims that VGRIPs is consistent with federal law. Tr. 113:21-25 (D'Amico Cross). However, implementing either "option" one or three under VGRIPs would violate at least one FCC rule. Implementing "option" two is consistent with federal law only because US LEC *may* offer Verizon interconnection at any point on US LEC's network, even though US LEC is not required to do so. However, if US LEC exercises its right under federal law to decline Verizon's request, it is stuck with an "option" (three) that violates federal law. While the parties may agree voluntarily to contract language that does not comply with federal law, US LEC has not agreed to VGRIPs. Tr. 35:21-36:1 (Hoffmann Cross). The "choices" VGRIPs

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[38] 47 C.F.R. §§ 51.305(c), 51.321(c).

[39] 47 C.F.R. §§ 51.302(e), 51.321(d).

affords US LEC are all unilaterally defined by Verizon and, as such, are unacceptable. The Commission previously rejected similar Verizon attempts to dictate both the physical and financial demarcation points between Verizon's and a CLEC's networks in Verizon's arbitrations with Focal and Sprint. The Commission should similarly reject Verizon's VGRIPs proposal in this arbitration.

Notwithstanding Verizon's claims to the contrary, implementing so-called option one, the physical IP option, violates at least two FCC rules. Verizon claims that US LEC may interconnect with Verizon at a single, technically feasible point of interconnection in a LATA under VGRIPs. Tr. 114:4-20 (D'Amico Cross). Verizon also claims that US LEC may choose any technically feasible method of interconnection. Tr. 118:14-18, 119:20-121:18 (D'Amico Cross). However, in order to sustain this fiction, Verizon relies on the fact that its limits on the location and method of interconnection apply only to an IP (as opposed to a POI). But neither the Act nor FCC rules make or accept the distinction on which Verizon relies. To the contrary, the FCC has held that ILECs "must prove to the state commissions that such points are not technically feasible *interconnection points.*"[40] Similarly, the Wireline Bureau recently rejected Verizon's proposal "to establish an IP that is distinct from the POI."[41] This Commission also determined in one arbitration that a CLEC (Focal) is entitled to keep the POI and IP at the same location[42] and in another arbitration that a CLEC (Sprint) is entitled to locate its IP within five miles of Verizon's tandem.[43]

As Mr. D'Amico admitted, a physical IP is a place where the "wires" of two networks are twisted together. Tr. 121:23-122:9 (D'Amico Cross). In other words, using Verizon's parlance, a physical IP is the same as a POI. Tr. 118:11-13 (D'Amico Cross). Yet VGRIP's option one

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40 *Local Competition Order* at ¶ 211 (emphasis added).

41 *FCC Arbitration Order* at ¶ 66.

42 *Focal Arbitration Order* at 43-44. *See also* D'Amico Direct at 6 (admitting that single POI permitted under order would serve as both POI and IP).

43 *Sprint Arbitration Order* at 55-56. *See also* Tr. 123:5-12 (D'Amico cross) (admitting that the Sprint IP could be at Sprint's switch).

*requires* US LEC to establish these physical IPs/POIs at each Verizon tandem in a LATA. In the Pittsburgh and Philadelphia LATAs, this means that US LEC would be required to establish a physical IP/POI at two Verizon tandems in each LATA.[44] Thus option one clearly denies US LEC its statutory right to choose a single POI per LATA. Because option one requires US LEC to establish the physical IP/POI via collocation (Tr. 120:10-22; D'Amico Cross), it also denies US LEC the right to interconnect with Verizon via any technically feasible method.[45] The Verizon-defined physical IP is nothing more than an attempt to disguise a POI. Verizon's efforts to avoid its interconnection duties under state and federal law in this manner should be rejected.

Surprisingly, Verizon's second option, while technically and economically unpalatable, actually complies with federal law. Although Verizon does not have the right under Section 251(a)(1) to interconnect with US LEC's network at any technically feasible point (*e.g.*, a US LEC end office collocation arrangement), the Parties are free to negotiate points of interconnection on US LEC's network. Therefore if US LEC agreed to implement this second option (which it does not), permitting Verizon to establish a physical IP/POI at this point on US LEC's network would not violate federal law.

Since US LEC does not wish to establish the IPs requested by Verizon under either options one or two, however, under Verizon's proposal it is stuck with option three—the virtual IP option. Tr. 72:25-74:2 (Hoffmann Redirect). This third option (the only alternative Verizon proposes to options one and two) requires US LEC to bear the cost of Verizon's originating traffic on Verizon's side of the physical IP/POI selected by US LEC. Tr. 73:23-74:2 (Hoffmann Redirect). As such, it relieves Verizon of its obligation to bear the cost of delivering its originating traffic to US LEC's network. As the Wireline Bureau recently explained:

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[44] As Mr. Hoffmann testified, US LEC has established POIs at Verizon's tandems but has used its preferred method of interconnection to do so, rather than the collocation method VGRIPs requires. Hoffmann Direct at 6; Tr. 21:7-15 (Hoffmann Cross).

[45] *Local Competition Order* at ¶ 549 (Section 251(c)(2) does not limit an ILEC's interconnection duty to providing a specific method of interconnection).

> This precept stems from rules 51.703(b) and 51.709(b), which on the one hand preclude all LECs from charging other carriers for local traffic that the LEC originates, 47 CFR § 51.703(b), and on the other hand permit carriers providing transmission facilities between two networks to recover from the interconnecting carrier "only the costs of the proportion of that trunk capacity used by [the] interconnecting carrier to send traffic that will *terminate* on the providing carrier's network."[46]

As Verizon has emphasized, under the virtual IP option, US LEC would not be physically responsible for transporting Verizon's originating traffic. D'Amico Direct at 12. Instead, Verizon would transport that traffic over its own facilities. Yet in stark contrast to its obligations under federal law, Verizon would charge US LEC for the transport capacity used to deliver traffic that *originates* on Verizon's network.[47] By dictating the location of a virtual IP deep within its own network (at the end office where transport of the call begins), and attempting to recharacterize itself as a transport provider (Verizon Response at 15), Verizon attempts to escape its obligations under FCC Rule 51.703(b). As the Wireline Bureau determined, however, Verizon may not circumvent federal law in this manner.[48]

Verizon argues that it only has an obligation to deliver its originating traffic to a CLEC at no cost to the CLEC if the point of interconnection is in the same local calling area in which the call originated. Tr. 139:7-12 (D'Amico Cross). As the *FCC Arbitration Order* affirms, Verizon is reading an exception into the rules that is being *considered* by the FCC, but does not yet exist.[49] Even if that exception did exist, however, VGRIPs violates even Verizon's reading of FCC rules. An example based on the Parties' current interconnection architecture in Philadelphia highlights the unlawfulness of Verizon's proposal. US LEC's switch is located one mile from Verizon's Market tandem. Tr. 20:15-18 (Hoffmann Cross). Thus the two switches are presumably both located in the same Philadelphia local calling area. Yet because US LEC wants

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46 *FCC Arbitration Order* at ¶ 67 n. 187 (emphasis in original) (citations omitted).

47 *Id.*; *see also* 47 C.F.R. §§ 51.703(b), 51.709(b).

48 *FCC Arbitration Order* at ¶¶ 53-54

49 *FCC Arbitration Order* at ¶ 54.

to maintain its existing, non-collocated POI at Verizon's tandem (rather than establish a collocated IP at Verizon's tandem – a POI by another name), Verizon refuses to bear the cost of delivering its originating traffic to US LEC. Even though the delivery point would be within the Philadelphia local calling area (either at Verizon's tandem or at a POI Verizon established at US LEC's switch), Verizon would escape all financial obligations of transporting its originating traffic within that local calling area. Tr. 128:5-129:17 (D'Amico Cross). Thus even under Verizon's strained interpretation of FCC rules, VGRIPs does not comply with federal law.

*4. Verizon Has Not Met Its Burden of Proof*

Verizon bases its limiting interpretation of FCC rules on language in the FCC's *Local Competition Order* concerning so-called "expensive" forms of interconnection. D'Amico Direct at 14-15, 16. As noted above, however, the *FCC Arbitration Order* makes clear that while the FCC is considering such an exemption, none exists under current FCC rules.[50] And even if the claimed "expensive" interconnection exception did exist, Verizon has not met its burden of proof to qualify for it. Verizon claims that because US LEC's requested form of interconnection, a single POI and IP per LATA, is "expensive," Verizon is entitled to recover its costs of that expensive interconnection arrangement. However, Verizon submitted no cost study in this proceeding. Tr. 135:14-16 (D'Amico Cross). As such, outside of its own *ipse dixit*, it has failed to meet its burden of proof under FCC Rule 51.505(e).

More to the point, Verizon has not even explained the criteria the Commission should apply to determine whether a particular form of interconnection is, or is not, expensive. Although one could infer from Mr. D'Amico's prefiled testimony that Verizon would define interconnection within the local calling area as "not expensive" (D'Amico Rebuttal at 6), on cross examination Mr. D'Amico stated that delivering traffic to a point within a local calling area could also be expensive. Tr. 138:1-8 (D'Amico Cross). Thus Verizon has defined no baseline against which to measure the "exception" it alleges exists.

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50 *Id.*

Further, there are any number of factors that influence whether a particular interconnection arrangement is "expensive." As Mr. Hoffmann testified, any combination of factors, including volume and balance of traffic, availability of facilities, and distance, could affect whether a particular interconnection arrangement is expensive. Tr. 55:18-24 (Hoffmann Cross) 70:22-72:3 (Hoffmann Redirect). Additionally, the FCC is exploring factors that could cause a particular interconnection arrangement to be "expensive," including the balance of traffic and location of the delivery point.[51] Yet Verizon would not have the Commission take any of these factors into account when evaluating its VGRIPs proposal.

Under the Parties' current arrangements, Verizon is financially responsible for delivering its originating traffic to a single IP per LATA, US LEC's switch. Tr. 133:5-14 (D'Amico Cross). Verizon believes, however, that the transport obligations under the current arrangements are unfair. Tr. 133:11-18 (D'Amico Cross). Even though he could have examined the Parties' current network architecture to determine how much it costs Verizon to deliver its originating traffic to US LEC today, Mr. D'Amico testified that he did not attempt to quantify that cost. Tr. 136:11-19 (D'Amico Cross). Mr. D'Amico submitted no facts concerning the distance Verizon hauls its originating traffic to US LEC's switch, the volume of calls that Verizon delivers to US LEC at a point outside of the local calling area in which the call originated, or the balance of traffic between the Parties. Tr. 117:3-8, 135:22-136:19 (D'Amico Cross). In short, Mr. D'Amico did not quantify in *any* manner the costs Verizon incurs under the Parties' current arrangement or the factors that could influence those costs. Tr. 136:11-19 (D'Amico Cross). Similarly, Verizon did not quantify in *any* manner the costs it would incur under US LEC's proposal during the term of the agreement that is being arbitrated (or the costs Verizon would shift to US LEC if VGRIPs were adopted).

Finally, Verizon has presented no evidence that it does not already recover the cost of delivering its originating traffic to US LEC through the rates Verizon charges its customers. Mr.

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[51] *Intercarrier Compensation NPRM* at ¶ 114; Tr. 140:18-142:22 (D'Amico Cross).

D'Amico implied that Verizon's local rates only recover the costs of delivering Verizon's originating traffic within the local calling area, while Verizon's toll rates recover the costs of delivering Verizon's originating traffic outside of the local calling area. D'Amico Direct at 4, 8. Yet Mr. D'Amico admitted that he did not submit a dollar figure to quantify the cost to Verizon of delivering traffic to US LEC, either within a local calling area or outside of it. Tr. 152:18-153:10 (D'Amico Cross). Mr. D'Amico also testified that he has no idea what the relationship is between Verizon's end user rates and its costs of delivering traffic. Tr. 134:10-12, 153:11-15 (D'Amico Cross). To Mr. Haynes' knowledge, while some of Verizon's end user rates may be below-cost, others may be above-cost. Tr. 218:4-8 (Haynes Cross). Thus Verizon cannot rely on the local and toll rates it charges its customers as a proxy for the costs it alleges it is entitled to recover from US LEC. In short, Verizon has submitted no factual evidence to prove that delivering its originating traffic to a single US LEC POI/IP per LATA causes Verizon to incur uncompensated costs.

The costs of interconnecting two networks arise in part from the differences between the two networks and in part from engineering factors such as the availability of facilities, traffic volume, and distance. Montano Rebuttal at 3. If the Commission were to adopt Verizon's proposal without proof of the costs Verizon incurs, it would have to ignore the fact that Verizon, through its own chosen network design, contributes to the cost of interconnecting its network with US LEC's. It would also have to ignore the fact that Verizon is already receiving compensation from its customers for providing them access to the PSTN and therefore could be compensated twice for performing one function. Verizon would not be permitted to establish charges for collocation or unbundled network elements based on the hypotheticals or vague allegations of uncompensated costs it asserts in this arbitration, it should not be permitted to impose additional transport costs on US LEC based on such unsubstantiated claims either.

### 5. *Verizon's Proposal Is Inconsistent with The Federal And State Policy of Removing Barriers to Local Competition*

US LEC has invested substantial time and money to establish its current network inter-connection architecture with Verizon. Hoffmann Direct at 9. Altering the physical network architecture to comply with VGRIPs would result in additional and unnecessary expenditures of time and money and could result in disruptions in service to customers. Hoffmann Direct at 9-10. Although Mr. D'Amico admits that a different method of interconnection could be used to establish a physical IP, he offers no explanation for why Verizon is willing to deliver its originating traffic to its tandem only if US LEC establishes its IP via collocation. Tr. 120:17-121:15, 124:1-9 (D'Amico Cross). As Mr. Hoffmann testifies, this collocation requirement indicates that VGRIPs is just an effort to impose unnecessary costs on US LEC, Verizon's competitor. Hoffmann Rebuttal at 4-5.

Altering only the financial aspects of the current network architecture could also impose a substantial burden on US LEC. Today, the exchange of traffic between the Parties is roughly balanced. Tr. 68:6-9 (Hoffmann Redirect). Because each Party bears the burden of delivering its traffic to the other Party's IP, the originating transport costs also are roughly balanced. Tr. 68:10-17 (Hoffmann Redirect). However, under VGRIPs, the financial burden that Verizon currently bears to deliver its originating traffic to US LEC would be shifted to US LEC. Hoffmann Direct at 13, 14. Yet US LEC would not be permitted to shift to Verizon the same financial burden it currently bears with respect to its own originating traffic. Tr. 130:8-141:4 (D'Amico Cross). In the Allentown local call hypothetical discussed during the hearing, this means that in addition to bearing its own costs of transporting its traffic from Allentown to Verizon's IP in Philadelphia, US LEC would bear Verizon's costs of delivering its originating traffic from Allentown to US LEC in Philadelphia. Tr. 73:25-74:23 (Hoffmann Redirect). The end result of Verizon's proposal is that US LEC pays for all of the costs of transporting both Parties' originating traffic. Tr. 74:3-23 (Hoffmann Redirect). As shown above, this cost-shifting is inconsistent with the current calling-party's-network-pays regime and current FCC rules. In

addition, whether Verizon requires US LEC to mirror its legacy network physically or financially, it would create a barrier to entry. Montano Direct at 7-8, Montano Rebuttal at 5.

The FCC and the courts have explicitly warned that creating such barriers to entry violates the Act. As the U.S. Court of Appeals for the Third Circuit recently held after reviewing another Commission arbitration order:

> To the degree that a state commission may have discretion in determining whether there will be one or more *interconnection points* within a LATA, the commission, in exercising that discretion, must keep in mind whether the cost of interconnecting at multiple points will be prohibitive, creating a bar to competition in the local service area.[52]

As the Third Circuit plainly understands, the interconnection requirements of the Act do not give Verizon the discretion to dictate the location of the IP, as Verizon attempts to do through VGRIPs. Adopting Verizon's proposal to move US LEC's IP from its chosen location to multiple locations chosen by Verizon (either at each Verizon tandem under the physical IP option or at each Verizon end office under the virtual IP option) would fundamentally alter the economics of the competitive local service US LEC currently provides in Pennsylvania. Hoffmann Direct at 17. Adopting Verizon's multiple IP proposal also expresses a policy preference for the incumbent's historical network architecture, effectively penalizing new entrants for any deviation from that architecture. Montano Rebuttal at 3-4. The Commission should therefore also reject Verizon's proposal as inconsistent with the public policy of opening Pennsylvania's telecommunications markets to competition.

*6. The Commission Must Arbitrate This Dispute Based on The Facts of This Case, Sections 251 and 252(d) And State Law, And The Two Parties Before It*

Many of Verizon's claims that transport costs are unfairly allocated between the Parties are based on hypotheticals included in Mr. D'Amico's testimony. *See e.g.* D'Amico Rebuttal at 2. Yet Mr. D'Amico admitted that with respect to US LEC, the factual predicates for these

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[52] *MCI Telecommunication Corp. et al. v. Bell Atlantic-Pennsylvania et al.*, 271 F.3d 491, 517 (3d Cir. 2001) (emphasis added).

hypotheticals are false. Tr. 149:18-152:12 (D'Amico Cross). Nevertheless, Mr. D'Amico expressed concern that another CLEC could adopt this agreement and cause Verizon to incur additional expense, or US LEC could change its business plan during the term of the agreement. Tr. 162:6-163:12 (D'Amico Redirect). These concerns are not sufficient to justify rejecting US LEC's proposal and adopting VGRIPs.

The standard of review for arbitrations limits the Commission's discretion in resolving a disputed issue during arbitration. Thus, where, as here, US LEC has offered a proposal that complies with the requirements of Sections 251 and 252(d) and state law, the Commission may not reject that proposal based on Verizon's unfounded concerns about its potential obligations under Section 252(i).[53] Indeed, the Wireline Bureau recently rejected similar concerns expressed by Verizon as a basis for adopting VGRIPs over a single POI per LATA proposal, finding that:

> To the extent Verizon seeks prophylactically to "address future situations as well as other CLECs adopting this agreement," we do not think that is appropriate in this proceeding, particularly given the evidence presented, and thus decline to do so.[54]

Although the Commission need not consider compliance with Section 252(i) in resolving these arbitrated issues, FCC rules implementing Section 252(i) provide Verizon with ample opportunity as well as an appropriate forum to bring its concerns before the Commission. If another CLEC requests the Verizon/US LEC interconnection agreement under Section 252(i), Verizon may deny the request if it *proves to the state commission* that:

> The costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement.[55]

This rule applies only when another CLEC seeks to adopt the Verizon/US LEC agreement in the Commonwealth of Pennsylvania or in another state pursuant to the FCC's Bell

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53 47 U.S.C. §252(c); *see also* 47 U.S.C. § 252(e)(2)(B).

54 *FCC Arbitration Order* at ¶ 71 (footnotes omitted).

55 47 C.F.R. § 51.809(b)(1).

Atlantic/GTE merger conditions.[56] Critically, it has no impact at all on this arbitration. The Commission should therefore reject Verizon's arguments that Section 252(i) has any impact on the issues presented for arbitration.

This Commission has rejected Verizon's VGRIP proposal twice before. Most recently, the *FCC Arbitration Order* soundly rejected VGRIPs and adopted a CLEC proposal that permits the CLEC to determine not only the physical point of interconnection, but also the financial point of demarcation for the exchange of traffic with an ILEC, which is exactly what US LEC seeks to do here. The Third Circuit also has rejected Verizon's efforts to require that CLEC establish multiple POIs and IPs per LATA. Tireless and persistent in repeating its mantra, Verizon nevertheless continues to make unsubstantiated claims of "expensive" transport costs in an attempt to justify VGRIP's clear violation of FCC rules. As recently affirmed by the *FCC Arbitration Order*, there is no such exemption from FCC rules. And even if there were, Verizon has made no cost or factual showing to substantiate its allegation of unfairly allocated transport costs. In contrast, US LEC's proposal is consistent with the Act, FCC rules, and this Commission's precedent. The Commission should therefore adopt US LEC's proposals for Issues 1 and 2.

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[56] *See GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, FCC 00-221, App. D, ¶ 31(a) (rel. Jun. 16, 2000) ("*Merger Conditions*").

**Issue 3:** **(Glossary, Section 2.75; Additional Services Attachment, Section 5.1; Interconnection Attachment, Section 7.3.7).**

At issue here is whether US LEC—and Verizon, for that matter—is entitled to be paid reciprocal compensation for terminating "Voice Information Services" traffic. As stated in US LEC's petition, and in the testimony of Ms. Wanda Montano, Verizon seeks to define an entire category of traffic that it wants the Commission to exclude from the parties' reciprocal compensation obligations. (Montano Direct at 11) Verizon first defines "Voice Information Services Traffic" as a class of traffic that "provides [i] recorded voice announcement information or [ii] a vocal discussion program open to the public." (Verizon Template, Additional Services Attachment, Section 5.1). Then, without any sound basis in law or fact, Verizon asks the Commission to exclude the defined class of traffic from its reciprocal compensation obligations. The Commission should decline Verizon's request.

In fact, the categories of traffic that Verizon now defines as Voice Information Services Traffic fit completely the definition of "Reciprocal Compensation Traffic" that is the basis for the parties' reciprocal compensation obligations. (Montano Direct at 11)

FCC rules define "Reciprocal Compensation" as an arrangement "in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier."[57] Similarly, "Reciprocal Compensation Traffic" is defined as "[t]elecommunications 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

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[57] FCC Rule 51.701(e). The FCC defines "telecommunications traffic" as "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." FCC Rule 51.701(b)(1).

Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access."[58]

The categories of traffic included in the definition of "Voice Information Services Traffic" fit this definition: Whether the call is a "recorded voice announcement information or [ii] a vocal discussion program open to the public," it is originated by a customer of one party on that party's network and is terminated by a customer of the other party on that party's network. (*Id.*) Nor can the traffic be characterized as interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access.

"Exchange Access" is defined in the Telecommunications Act as "the offering of access to telephone exchange services or facilities *for the purpose of the origination or termination of telephone toll services.*" 47 U.S.C. § 153 (16) (emphasis added). The term has this same meaning for purposes of the parties' exchange of traffic in Pennsylvania because they have defined it in their proposed Interconnection Agreement as having "the meaning set forth in the Act." (Glossary at § 2.33).

"Information Access" is not defined in the Act; rather, it is defined in the Modified Final Judgment as "the provision of specialized exchange telecommunications services *by a BOC* in an exchange area in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services." (*United States v. AT&T*, 552 F. Supp. 131, 229 (D.D.C. 1982)(emphasis added).

In turn, "Information Services" is defined in the Act as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available

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[58] Glossary, Section 2.75.

information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." (47 U.S.C. § 153(20)).

US LEC interprets these definitions to exclude calls to Voice Information Service Providers, especially those providers who offer a service that offers "a vocal discussion program open to the public." That traffic does not fit the definition of "Information Service" and it typically involves a call that originates and terminates in the same local calling area. Indeed, the New York Public Service Commission addressed the issue and concluded that calls to so-called "chatlines" were eligible for reciprocal compensation.[59]

Similarly, to the extent that US LEC provides service to a Voice Information Service Provider who offers a "recorded voice announcement information", that service does not constitute "Information Access" because, by its terms, information access is defined as a service provided "by a BOC". It does not apply when the service is provided by a competitive local exchange provider. Nor is US LEC aware of any decision by the FCC or any state commission which holds that a call to a recorded voice announcement is not eligible for reciprocal compensation.

The Wireline Bureau addressed this issue, albeit in a more generalized fashion. Verizon alleges here that Voice Information Services Traffic is excluded from the parties' reciprocal compensation obligations because it is traffic that falls within the scope of Section 251(g) of the Act and, pursuant to the FCC's *ISP Remand Order*, all 251(g) traffic is excluded from reciprocal

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[59] *Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation*, Docket No. 99-C-0529, *Opinion and Order Concerning Reciprocal Compensation*, Order No. 99-10 (N.Y.P.S.C., rel. Aug. 26, 1999).

compensation.[60] In its arbitration before the Wireline Bureau, Verizon sought to define its reciprocal compensation obligations in exactly the same way that it does here—as excluding "interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access."[61] Verizon argued that all 251(g) traffic fell within those defined areas of traffic and, therefore, should be excluded automatically from its reciprocal compensation obligations.[62] The FCC rejected Verizon's argument, stating: "[w]e disagree with Verizon's assertion that every form of traffic listed in section 251(g) should be excluded from section 251(b)(5) reciprocal compensation."[63] In essence, the Wireline Bureau concluded that Verizon was relying entirely on the 251(g) arguments that had been rejected by the D.C. Circuit and "decline[d] to adopt Verizon's contract proposals that appear to build on the logic that the court has now rejected."[64] That reasoning applies with equal force here: to the extent that Verizon's argument against reciprocal compensation for Voice Information Services Traffic is predicated entirely on a faulty reading of the interplay between sections 251(b)(5) and 251(g), it should be rejected.[65]

In addition, another flaw in Verizon's efforts to exclude this category of traffic from the parties' reciprocal compensation obligations is that there is no technically feasible, cost-effective

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[60] *Response of Verizon Pennsylvania Inc. to Petition For Arbitration Filed By US LEC of Pennsylvania Inc.* at pp. 19-20.

[61] *Compare, FCC Arbitration Order* at ¶ 257, *quoting*, Verizon's Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.1., *with*, Verizon's Proposed Agreement to US LEC, Interconnection Attach., § 7.3.1.

[62] *FCC Arbitration Order* at ¶ 257.

[63] *Id.* at ¶ 261.

[64] *Id.*

[65] The Wireline Bureau did not reach the ultimate question of whether reciprocal compensation would be owed on calls to such information service providers as, for example, time and temperature recordings on the grounds that the parties agreed such services did not exist in Virginia and were not likely to be offered. (*FCC Arbitration Order* at ¶ 314.)

way to segregate the traffic from other traffic that unquestionably is eligible for reciprocal compensation. (Montano Direct at 12) Unlike intra- or interLATA toll traffic, which clearly is distinguishable, calls to so-called "Voice Information Service Providers" are indistinguishable from all other local traffic.

Consequently, the only way to separate the traffic is to program switches to "flag" calls to an identified database of providers. This is not only expensive and fairly inaccurate, it also is intrusive (it would force US LEC to inquire into the proposed business plans of all new customers) and would slow the operation of US LEC's switches. (Montano Direct at 13).

In short, there is no legal or factual basis to exclude what Verizon has defined as "Voice Information Services Traffic" and, as such, the parties should be required to compensate each other for exchanging and terminating such traffic.[66]

***Issue 4:*** **(Additional Services Attachment, Section 5.3)**

Closely related to Issue 3 is the question raised in Issue 4 of whether US LEC should be required to provide dedicated trunking, at its own expense, for Voice Information Service traffic that originates on US LEC's network for delivery to Voice Information Service providers served by Verizon.

Verizon has stated no reasonable basis for its position that, if US LEC's customers seek to call Voice Information Services connected to Verizon's network, then US LEC must provide, at its own expense, a separate, dedicated, trunk to carry that traffic. Verizon's proposal would impose significant costs on US LEC, yet Verizon has not made any showing, first, that such a dedicated facility even is necessary or, second, that the amount of traffic generated by US LEC's

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[66] It is instructive that Verizon did *not* include "Voice Information Services Traffic" as one of the traffic types excluded from reciprocal compensation in the recently concluded Sprint arbitration. In that case, the definition of "Reciprocal Compensation Traffic" that was adopted by the Commission did not mention so-called "Voice Information Services Traffic" at all. *See, Sprint Order* at 48.

customers and destined for Voice Information Services connected to Verizon's network is sufficiently large as to warrant a separate trunk. (Montano Direct at 13-14). The Commission should reject Verizon's position.

**Issue 5: (Glossary, Section 2.56; Interconnection Attachment, Sections 2.1.2, 8.5.2, and 8.5.3)**

Along with attempting to define a new category of traffic as exempt from reciprocal compensation—Voice Information Services Traffic—Verizon also seeks to change literally decades of common practice in the industry: the use of the term "terminating party" to indicate the carrier that terminates a call for purposes of traffic measurement and billing over interconnection trunks.

For decades, traffic has been referred to as either originating or terminating. Thus, in any call, there is an originating party served by an originating carrier and a terminating party served by a terminating carrier. (Montano Direct at 15) Even in the proposed interconnection agreement, this tradition is, for the most part, continued. Thus, in section 7.2, the parties agree that they will compensate each other for the "transport and termination" of Reciprocal Compensation Traffic. (*Id.*) In turn, "Reciprocal Compensation" is defined with respect to the "transport and termination" of "Reciprocal Compensation Traffic", which, itself, is defined with reference to traffic that is "terminated on the other Party's Network." (*Id.*)

Against this long-standing, historical backdrop, Verizon seeks to interject the novel concept of a "receiving party". Thus, in various sections of the Interconnection Attachment dealing with the delivery, measurement and billing of traffic, Verizon no longer refers to the delivery or measurement of traffic from the "originating party" to the "terminating party"; rather, Verizon refers to traffic delivered from the "originating party" to the "receiving party". Verizon does not define the term "receiving party" and states that the only reason it wants to

change this traditional designation is to respond to the FCC's view that calls to ISPs do not terminate there.[67]

Therein lies the source of the problem. Indeed, twice now, the FCC has tried to carve out calls to ISPs from carriers' § 251(b)(5) compensation obligations by stating that calls to ISPs do not terminate there, and each time the D.C. Circuit has slapped the FCC's administrative wrist and said "no." In fact, the D.C. Circuit has not found *any* of the FCC's reasons for that conclusion to be persuasive. Thus, there remains a distinct possibility that the FCC could conclude on its third opportunity to consider the issue that, in fact, for purposes of reciprocal compensation, calls to ISPs *do* terminate at the ISP.

In that event, if the Commission has ruled, or if US LEC has agreed that calls to ISPs are "received" by US LEC, but not "terminated" by US LEC, then given Verizon's litigious history on this issue, Verizon is likely to pounce on that distinction and argue, yet again, that US LEC is not entitled to receive reciprocal compensation for terminating calls to ISPs. (Montano Direct at 16-17) The Commission should not sanction Verizon's "shell game" and direct the parties to continue to use the term "terminating party" for billing, measurement and compensation purposes throughout the agreement.

**ISSUE No. 6: (Glossary, Section 2.56; Interconnection Attachment, Section 7.2)**

Issue No. 6 addresses two key aspects of the way the parties will compensate each other for exchanging Foreign Exchange, or FX, traffic. The first aspect is whether the parties should be obligated to pay each other reciprocal compensation for calls to numbers with NXX codes associated with the same local calling area. US LEC contends that this practice has been the industry standard for decades and the parties should continue to base the rating, routing and

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[67] Verizon Response at 23-24.

inter-carrier compensation mechanisms on the NPA/NXX's of the calling and called parties. Verizon, on the other hand, answers with a resounding "no". In yet another stark break with industry custom and practice, Verizon argues that the parties' reciprocal compensation obligations should be determined by the actual beginning and end-points of the call at issue.

The second aspect of Issue 6 is whether the parties should be able to charge originating access to each other on calls originating on their networks for termination to a customer with a particular NXX code if the customer assigned the NXX is physically located outside of the local calling area associated with that NXX code. US LEC's position is that if the Commission concludes, as we believe it should, that the parties should continue to base their inter-carrier compensation obligations on the NPA/NXX of the calling and called parties, then the physical location of those parties is irrelevant. (Montano Direct at 18) Verizon argues that this aspect of Issue 6 is not properly before the Commission, suggesting that the parties' tariffs govern the result. Verizon then restates its view that if the actual, physical location of the called party is outside of the local calling area to which the called party's NPA/NXX is assigned then, regardless of how the call is rated and routed, the call is an intraLATA toll call and originating access charges are due to the carrier serving the originating party. In each instance, Verizon is wrong and the Commission should adopt US LEC's position.

As a preliminary matter, US LEC feels constrained to address serious allegations of impropriety made by Verizon in this proceeding. In a transparent effort to distract the Commission's attention from the substance of the issue, Verizon's witness on this issue alleges on numerous occasions in his testimony and at the hearing on this matter that US LEC is violating Commission rules when it offers FX services by assigning NXX codes to customers with physical locations outside of the calling area where those NXX codes are assigned.

(Haynes Direct at 7, 10, 11; Haynes Rebuttal at 10; Tr. 210, 214). Mr. Haynes bases his allegations on this Commission's decisions in the *MFS II* and *Focal* decisions.[68] (Tr. 212:9-20) However, Mr. Haynes admits that he did not participate in the *MFS II* proceeding, had no idea how the issues in that proceeding were framed and never reviewed the *MFS II* transcripts. (Tr. 212:21-213:12) Yet this complete and utter lack of personal, first hand, knowledge did not prevent Mr. Haynes—or Verizon—from opining extensively that US LEC was violating orders and rules imposed by this Commission.

In order to put to rest these unsubstantiated allegations, US LEC has submitted certified copies of excerpts from the *MFS II* proceeding relating to the assignment of NXX codes—prefiled testimony, hearing transcripts, briefs, the proposed order and exceptions. It is crystal clear from these excerpts that the propriety of using NXX codes for FX services was not a subject of the *MFS II* proceeding. The subject of FX services appears to have been raised one time, by one witness—Mr. Gary Ball, on behalf of MFS—who acknowledged the existence of FX services.[69] No other party to that proceeding ever challenged Mr. Ball's acknowledgement or suggested that the use of NXX codes for FX services was improper. To compound the problem, Verizon asserts—in perhaps one of its most blatantly anti-competitive statements to date—that, while US LEC's FX offering is improper, *all* of the FX services that Verizon offers are perfectly legal. (Tr. 213:13-215:10) In short, there was no basis whatsoever for the allegations of impropriety made by Verizon against US LEC.

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[68] Opinion and Order, *Petition of Focal Communications Corporation of Pennsylvania for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Inter-connection Agreement With Bell Atlantic-Pennsylvania, Inc.*, Docket No. A-310630F0002, at 11 (Pa. PUC, Jan. 24, 2001), *citing*, Application of MFS Intelenet of Pennsylvania, Inc., Docket No. A-310203F0002 (Pa. PUC, July 31, 1996).

[69] See, Prefiled Testimony of Gary G. Ball on behalf of MFS Intelenet of Pennsylvania, Inc., filed April 15, 1996, at 15-16 ("It is technically possible for a customer in York to be served by an

As US LEC demonstrates below, the FX services that Verizon offers are functionally similar to the FX service that US LEC offers, that Verizon and US LEC agree on the way in which calls are rated and routed and, further, that both Verizon and US LEC have been billing and paying each other for reciprocal compensation for calls to their FX customers. Finally, US LEC will show that there is no practical, cost-effective, way for the parties to segregate FX traffic from other locally dialed traffic. As such, US LEC will demonstrate that the only real option for the Commission is to adopt US LEC's position on this issue.

*1. The Nature of the FX Services*

Verizon does not dispute, indeed, Verizon even concedes that, historically, the rating and routing of a call is determined by reference to the NPA/NXX's of the calling and called parties. (Haynes Direct at 5-7; Tr. 219:10-23, 227:19-228:30, 230:3-231:14). Thus, Verizon agrees that when the NPA/NXX of the calling and called parties are associated with the same local calling area, the call is routed as a local call and is rated as a local call to the originating party. (*Id.*) In that scenario, Verizon also agrees that if the calling party is a customer of one carrier and the called party is a customer of another carrier, then historically the carriers have billed each other for reciprocal compensation for terminating those calls. (Tr. 230) Conversely, if the NPA/NXX of the calling and called parties are associated with different local calling areas, then the call is routed as an intraLATA toll call and rated as such to the originating caller. (Haynes Direct at 6-7).

In a typical FX arrangement, a carrier—such as US LEC—assigns an NPA/NXX code associated with a particular local calling area to a customer that does not have a physical

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end office in Lancaster, for example, and indeed this is occasionally done through special arrangements such as foreign exchange service.")

presence in that local calling area.[70] When another carrier's customers call that telephone number, the originating carrier's switch recognizes it as a call to an US LEC customer and routes it to the point of interconnection ("POI") for delivery to US LEC. (Tr. 227:19-228:30) US LEC transports the call from the POI and terminates the call at the US LEC customer's premises.[71] Because the originating carrier's switch is programmed to compare the NPA/NXX of the originating and terminating parties, it recognizes the call as a local call and bills its end user accordingly. Regardless of where the terminating customer is located, the originating carrier always delivers the call to the terminating carrier; thus, the functions that the originating carrier performs are the same. (Tr. 228).

Verizon now proposes to change this treatment and asks the Commission to treat these types of calls as toll calls, but ***only*** for the purpose of determining how US LEC and Verizon will compensate each other for transporting and terminating these calls. Verizon does ***not*** propose to start billing its customers toll charges for these calls. (Tr. 234-35)

*2. The FX Services that Verizon and US LEC Offer Are Functionally Similar*

Verizon admits that it offers several types of services which involve assigning telephone numbers with NXX codes to customers who are not physically located in the calling area assigned to that NXX Code. Verizon offers to its Pennsylvania customers a traditional "Foreign Exchange" Service (Tr. 189:25-193:9), a service known as Enhanced IntelliLinQ PRI Hub Service (Tr. 195:20-205:20) and a service known as Internet Protocol Routing Service. (Tr. 205:21-208:14) All of these services are tariffed —either through Verizon's federal or state

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[70] *See* generally Prefiled Direct Testimony of US LEC Witness Wanda G. Montano at (hereafter "Montano Direct") and Prefiled Direct Testimony of Verizon Witness Terry Haynes at (hereafter "Haynes Direct").

[71] Carriers may use different methods to transport the call to their FX customer but the function is the same, regardless of the method.

tariff. (Tr. 193:5-9, 196:15-19, 207:21-25) With each of these services, Verizon allows a customer to obtain telephone numbers with NXX Codes assigned to local calling areas where that customer does not have a physical presence. (Tr. 208:15-21) Verizon acknowledges that these FX and FX-like services give their customers a "virtual" presence in calling areas where they have no physical facilities. (Tr. 191: 1-4; 201: 7-13; 208:15-21) Verizon admits to billing and receiving reciprocal compensation from CLECs whose customers call Verizon's customers utilizing FX and FX-like services. (Tr. 191: 10-14; 205: 7-13; 203:8-205:20)

US LEC offers a service that is similar to Verizon's FX Service.[72] Like Verizon's service, US LEC's involves assigning telephone numbers with NXX codes to customers who are not physically located in the calling area assigned to that NXX Code. (Montano Rebuttal at 11) US LEC's FX service is tariffed through US LEC's state tariff.[73] With its FX service, US LEC allows customers to obtain telephone numbers with NXX Codes assigned to local calling areas where that customer does not have a physical presence. (Montano Rebuttal at 11) US LEC's FX service give its customers a "virtual" presence in calling areas where they have no physical facilities. (*Id.*) Like Verizon, US LEC has billed and received reciprocal compensation from Verizon when its customers call US LEC's customers utilizing FX services. (Tr. 227:12-18)

Verizon made much of a US LEC service offering entitled "Local Toll Free service." (Tr. 181-82; Vz. Ex. 5). As is obvious from Verizon's exhibit (taken from US LEC's website), as well as from US LEC's state tariff, the "Local Toll Free Service is offered by US LEC as part of its long distance and toll free services, *not* as part of its local service offering. Indeed, perusing

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[72] US LEC serves 6 customers through FX arrangements. (Montano Rebuttal at 11) None are ISPs, indeed, US LEC does not currently serve any ISPs in Pennsylvania, and none are collocated with US LEC at its switches. (Tr. 150:23-152:12)

[73] US LEC Ex. 5; Local Exchange Carrier Tariff within the Commonwealth of Pennsylvania

US LEC's Local Exchange Carrier Tariff for Pennsylvania reveals that US LEC's foreign exchange service is tariffed as a local service[74] and "Local Toll Free service" is nowhere to be found. That is because, as Ms. Montano testified, the service Verizon referred to is "provisioned as an enhancement to our toll free service, inbound 800 service." (Tr. 183). It bears no relationship at all to US LEC's FX service and should be ignored by the Commission in determining this issue.

*3. There Is No Factual, Legal or Policy Basis to Change the Current System.*

Verizon offers no compelling factual, legal or policy basis to justify changing the historical treatment of FX traffic. In contrast, US LEC has demonstrated that the public interest will benefit from continuing to treat this traffic as local for all purposes, including intercarrier compensation. The record clearly demonstrates that US LEC's FX service provides the many benefits: (1) it provides CLEC customers with a local presence in additional local calling areas (Montano Direct at 20-21); (2) it allows businesses using FX to expand in the geographic area that they can reach with local calls (Tr. 25:9-14); (3) treating these calls as local is consistent with the way Verizon has always treated its own FX service (Tr. 189:25-195:9), Enhanced IntellilinQ PRI Hub Service (Tr. 195:20-205:20) and Internet Protocol Routing Service ("IPRS") (Tr. 205:21-208:14), and (4) CLEC FX service provides a competitive alternative to the FX services provided by Verizon. (Montano Direct at 21)

Verizon has not shown that the use of NXX codes to provision FX service is in any way improper or harmful to the public interest. To the contrary, the record confirms that adopting Verizon's proposal will harm the public interest. (Montano Direct at 19-20, 28-29) Adopting Verizon's proposal to deny intercarrier compensation and impose access charges on calls to US

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[74] US LEC Ex. 5; Local Exchange Carrier Tariff within the Commonwealth of Pennsylvania, at Section 8.12 ("Foreign Exchange (FX) Service").

LEC's FX customers will substantially increase US LEC's costs and make it uneconomic for US LEC to offer this service. (Montano Direct at 19-20) These results—increased costs for consumers through higher rates and elimination of competitive alternatives—are not in the public interest. (Montano Direct at 22-24)

Verizon's proposed scheme is contrary to established industry practice, contrary to law, and against the public interest. Adopting Verizon's proposal will hurt competition in Pennsylvania by reducing the availability and substantially raising the costs to provide services to compete with Verizon's FX service. The reduced availability of FX service, and hence of services offered by businesses that rely on them will cause economic harm, particularly to residents and small businesses in rural or sparsely populated areas of the state. (Montano Direct at 28-29) It is thus in the public interest for the Commission to continue to treat US LEC's FX traffic as local. The Commission should therefore reject Verizon's attempt to foist unnecessary costs onto US LEC, and to insulate itself from the realities of competition with Pennsylvania CLECs, such as US LEC.

*4. Continuing to Treat FX Calls As Local Serves The Public Interest and Ensures That The Benefits of Competition Between FX Services Offered By Verizon and US LEC Continue*

Pennsylvania consumers benefit from the services that are made available through the availability of FX services. (Tr. 225:15-226:1) Because calls to businesses which use either Verizon's or US LEC's FX service are rated as local for the calling party, end users in the remote local calling areas are able to make local, non-toll calls to these businesses. (Montano Direct at 20-21, 27-28) This permits the businesses to expand dramatically the number of customers who can reach them through a local call without the attendant cost of building facilities in each and every local calling area. (Montano Direct at 21) End users, especially those in rural or sparsely

populated areas of the state, benefit from being able to reach businesses by making local, non-toll calls. (Montano Direct at 21, 27-28)

Although Verizon has offered several types of FX services for years, now that CLECs such as US LEC are successfully offering competing services, Verizon is engaging in a region-wide campaign to change the way this traffic is regulated. After years of treating its own FX and FX-like services as a local service in all relevant respects, Verizon wants the Commission to reverse the intercarrier compensation rules for such traffic in order to insulate it from competition. Verizon wants the Commission to determine that Verizon is not obligated to compensate US LEC for terminating Verizon-originated traffic to US LEC's customers who are served by an FX service. More egregiously, and despite the fact that calls to customers who utilize an FX service are rated as local to the originating caller, Verizon also asks the Commission to allow it to *charge* US LEC for originating access, without compensating US LEC for terminating the call. (Haynes Rebuttal at 11-12) Thus, under Verizon's proposal, the costs that US LEC incurs to terminate this traffic will go uncompensated while Verizon will be paid for services it does not provide.

Whether a call is rated and billed as local or toll has always depended on the NXX dialed, not the physical location of the customer. This should not be confused with determining the *jurisdiction* of traffic (i.e., interstate or intrastate), which properly is determined by looking at the physical end-points of the call. In contrast, the *regulatory classification* of traffic is determined by comparing the rate centers associated with the originating and terminating NPA-NXXs for any given call. (Haynes Direct at 5-6) Comparison of the rate centers associated with the calling and called NPA-NXXs is consistent with how traffic historically has been rated and billed within the industry. (*Id.*) Verizon's efforts to change this standard industry practice is highlighted by

the recent *FCC Arbitration Order*. In the proceeding before the Wireline Bureau, Verizon's position was summarized as follows:

> Verizon objects to the petitioners' call rating regime because it allows them to provide a virtual foreign exchange ("virtual FX") service that obligates Verizon to pay reciprocal compensation, while denying it access revenues, for calls that go between Verizon's legacy rate centers. This virtual FX service also denies Verizon the toll revenues that it would have received if it had transported these calls entirely on its own network as intraLATA toll traffic. Verizon argues simply that "toll" rating should be accomplished by comparing the geographical locations of the starting and ending points of a call.[75]

These are the same arguments that Verizon has made in this case. In that case the CLECs articulated the same arguments that US LEC has presented to the Commission here. For example, calls to FX customers are indistinguishable from other calls that terminate within the local calling area (Tr. at 194-95; *FCC Arbitration Order* at ¶ 300) and it would be difficult and costly to segregate that traffic. (Haynes Rebuttal at 6; Tr. 232-34) In the FCC Arbitration, AT&T stated this argument as follows:

> AT&T further notes that, if Verizon were to prevail in treating AT&T's virtual FX traffic as toll traffic, there would have to be some way to segregate the virtual FX traffic from section 251(b)(5) traffic. AT&T asserts that there is currently no way to accomplish this by, as Verizon suggests, comparing the physical end points of a call. Furthermore, AT&T argues that a traffic study to determine the relative percentages of virtual FX and section 251(b)(5) traffic would be costly and overly burdensome.[76]

Considering all the arguments made by the parties, the Wireline Bureau rejected Verizon's effort to change the way carriers compensate each other for exchanging FX traffic. The Wireline Bureau stated its conclusion as follows:

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[75] *FCC Arbitration Order* at ¶ 286.

[76] *Id.* at ¶ 287 (footnotes omitted).

> We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes. We therefore accept the petitioners' proposed language and reject Verizon's language that would rate calls according to their geographical end points. Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide. The parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time.[77]

The Wireline Bureau does not stand alone in reaching this conclusion. Several state commissions, when confronted with the same arguments that Verizon makes here, have reached the same result articulated in the *FCC Arbitration Order*. For example, the North Carolina Utilities Commission ("NCUC") has ruled that a CLEC's FX services should be treated as local traffic subject to reciprocal compensation.[78] The NCUC considered the decisions relied on by Verizon in this proceeding, particularly the decision of the Maine Public Utilities Commission regarding VNXX. Nevertheless, the NCUC found the case inapplicable.

> The Commission believes that the question which the Commission needs to decide in this issue is whether a telephone call from a BellSouth customer physically located in one rate center to a MCIm customer physically located in a different rate center but who has a NPA/NXX code from the same rate center as the caller placing the call is a local call or a long distance call. The Commission believes that based on the evidence presented in this case, and assuming that MCIm has in place either owned or leased dedicated facilities between the FX customer's premises and the switch, the calls in question to the extent they are within a LATA should be classified as local and, therefore, subject to reciprocal compensation. The Commission notes that NPA/NXX codes were developed to rate calls and, therefore, MCIm's assertion that whether a call is local or not depends on the NPA/NXX dialed, not

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[77] *Id.* at ¶ 301.

[78] *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 (NCUC, adopted April 3, 2001).

> the physical location of the customer, is reasonable and appropriate.[79]

Accordingly, the NCUC concluded "that calls within a LATA originated by BellSouth customers to MCIm FX customers are to be considered local and, therefore, subject to reciprocal compensation."[80]

Similarly, the Kentucky Public Service Commission found that CLEC FX service should be treated the same as BellSouth's Foreign Exchange service, and both services should be treated as local traffic.

> Both utilities offer a local telephone number to a person residing outside the local calling area. BellSouth's service is called foreign exchange ("FX") service and Level 3's service is called virtual NXX service. The traffic in question is dialed as a local call by the calling party. BellSouth agrees that it rates foreign exchange traffic as local traffic for retail purposes. These calls are billed to customers as local traffic. If they were treated differently here, BellSouth would be required to track all phone numbers that are foreign exchange or virtual NXX type service and remove these from what would otherwise be considered local calls for which reciprocal compensation is due. This practice would be unreasonable given the historical treatment of foreign exchange traffic as local traffic.
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> Accordingly, the Commission finds that foreign exchange and virtual NXX services should be considered local traffic when the customer is physically located within the same LATA a[s] the calling area with which the telephone number is associated.[81]

Both of these decisions are consistent with the result reached by the Michigan Public Service Commission on a number of occasions. The Michigan Commission has considered this

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79 *Id.* at 74.

80 *Id.*

81 *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 (Ky. PSC March 14, 2001) at 7.

issue several times, and each time has decided not to reclassify foreign exchange service as non-local exchange traffic exempt from reciprocal compensation requirements.[82]

Finally, after recognizing that the state commission lacked jurisdiction to determine inter-carrier compensation for FX-like ISP-bound traffic, the Florida Staff made the following recommendation:

> 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.[83]

Notably, the Florida Staff made this recommendation after an extensive proceeding that included pre-filed testimony, a hearing, and post-hearing briefing by a number of interested parties.

The FCC's Wireline Bureau and the state commissions discussed above adopted the view that US LEC advocates here: it is the applicable rate center, as identified by the NPA/NXX, not the physical location of the calling or called party that is used to rate calls. Under this analysis,

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[82] *TDS Metrocom, Inc.*, Case No. U-12952, Opinion and Order (Mich. PSC Sep. 7, 2001), 2001 WL 1335639; *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, Opinion and Order (Mich. PSC Jan. 23, 2001); *Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Michigan*, Case No. U-12460, Opinion and Order (Mich. PSC Oct. 24, 2000); *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 Arbitrated Agreement (Mich. PSC Aug. 17, 2000); *Complaint of Glenda Bierman against CenturyTel of Michigan, Inc. d/b/a CenturyTel*, Opinion and Order, Case No. U-11821 (Mich. PSC Apr. 12, 1999).

[83] Memorandum to Director, Division of the Commission Clerk & Administrative Services, from Division of Competitive Services and Division of Legal Services, 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*, Issue 15(b), Staff Recommendation (Fl. P.S.C. Nov. 21, 2001).

FX calls are rated and billed as local calls based upon the designated rate center of the assigned NXX prefix even if the customer is not physically located within the rate center.

Because it has always been standard industry procedure for carriers to use NXX codes as rate center identifiers, the software in the ILEC and CLEC switches and billing systems looks at the NXXs of the calling and called parties to determine whether a call is to be rated and billed as local or toll. Verizon admits that it determines whether a call is local or toll by comparing the NXXs of the calling and called parties. (Haynes Direct at 5-7). Consistent with that practice, Verizon has always treated calls to its FX customers as local calls subject to reciprocal compensation. (Tr. 230-31; *see also* Haynes Rebuttal at 5-6) Under Verizon's proposal, however, because calls to FX numbers are otherwise indistinguishable from other locally-dialed calls, US LEC would be required to develop a program or to screen manually all local calls to customers using an FX service arrangement in order to avoid including traffic to those customers in compensation invoices submitted to Verizon. (Tr. 232-34) Verizon's position would force US LEC to expend considerable efforts and resources to undo the automated billing systems which have served as the basis for the design of modern switches and to maintain and assure the accuracy of an expensive and burdensome alternate tracking system.

Verizon's plan also would require both parties to establish different ratings for a single telephone number; one set for end user purposes, the other for compensation purposes. Such a system would be difficult and costly to establish and maintain. Instead, it makes far more sense —economic and practical—to continue the industry practice of comparing the NXX codes of the calling and the called party to determine whether a call is rated as local or toll. This is especially true because, as will be shown, Verizon's plan would deny compensation to US LEC for its costs to terminate this traffic, while compensating Verizon for transport services it does not provide.

The Commission should refuse Verizon's invitation to deny intercarrier compensation to US LEC and, by imposing originating access charges, make US LEC and other CLECs pay for the privilege of competing with Verizon. Doing so would turn the economics of competitive FX services on its head by reversing existing incentives to compete with Verizon. This reversal will leave the businesses that utilize US LEC's FX service with reduced availability of FX arrangements and drastically increased costs. As the record shows, rural residents are most likely to feel these effects through reduced access to services. (Montano Direct at 21, 27-28).

### 5. *Verizon Should Not Be Compensated For Services It Does Not Provide And For Costs It Does Not Incur*

The real point of Verizon's argument is not clearly stated, but is nonetheless evident. Verizon wants to recover revenues lost to competition from CLECs such as US LEC. As Mr. Haynes explained, when Verizon provides FX service in an Allentown-to-Philadelphia scenario, "the [FX] customer would have to subscribe to local service in the Allentown exchange, and the pay for transport from the Allentown exchange to Philadelphia. In that circumstance, the customer is paying for the right to receive calls in the Allentown exchange and to have those calls transported to Philadelphia." (Haynes Rebuttal at 8). In essence, Verizon's costs are thus recovered from Verizon customers. If the Verizon customer did not purchase FX service, callers in the "foreign" local calling area would incur toll charges to call it. When the Verizon customer purchases FX service, Verizon recovers this lost toll revenue from the FX customer. (Tr. 191) Therefore, when Verizon carries the entire call, Verizon loses toll revenue but gains FX revenue instead.[84]

In a competitive environment, however, US LEC, not Verizon, is providing the so-called "toll" component of the service; that is, US LEC provides the longer haul associated with

delivering the call from the end office switch to the "distant" location of the terminating party. Verizon wants to recover "the loss of toll revenue" when it is only providing a local service; that is, delivering the call to the point of interconnection, just like any other local call. Indeed, Verizon admits that its costs of transporting a call to US LEC's IP do not vary based upon the location of US LEC's customer. (Haynes Rebuttal at 12)

Service to a US LEC customer that has established a "virtual" presence in a local calling area is, from a Verizon network standpoint, indistinguishable from service to a US LEC customer that has established a "physical" presence in a local calling area. Verizon handles calls to either customer in the same manner and its costs are the same. Therefore, calls to either customer should be subject to the same regulatory treatment. That regulatory treatment calls for compensation to the terminating carrier, with the originating carrier being paid by the customer who dialed the local call. As has been noted, Verizon has recovered its costs to terminate calls from CLEC end users to its FX customers in this manner for years.

Verizon's desire to recover its "loss of toll revenues" as an entitlement is not a basis for setting reasonable interconnection terms in compliance with the Act.[85] Verizon can seek to recover lost revenues when its customer buys a service that eliminates toll charges, but it makes no sense for Verizon to recover its lost FX customer revenue from US LEC, where US LEC is incurring the cost to transport the calls to the terminating location. In a competitive market, when a company loses a customer, it also loses revenue. Since Verizon isn't used to having competition, it may have trouble understanding this concept, but the Commission should not be fooled by Verizon's sleight-of-hand attempt to get paid for *not* incurring costs and for *not*

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84 *FCC Arbitration Order* at ¶ 299.

85 *See* Section 251(c)(2)(D) (setting forth ILECs' obligation to provide interconnection on rates, terms and conditions that just, reasonable, and nondiscriminatory).

providing a service. The Commission should reject this type of corporate welfare at US LEC's expense.

In sum, Issue 6 in this case is about one thing and one thing only – Verizon's effort to limit competition. Verizon wants to continue to reap the benefits of its ubiquitous monopoly-financed network without the threat of competition to its revenue streams. US LEC's FX service is a perfect example of such competition. The market has responded favorably. Rather than respond in the market, however, Verizon comes to the Commission and seeks to have the rules changed in the middle of the competitive game. Verizon claims no benefit to the general public, offers no reasonable explanation as to why the rules should be changed, offers no realistic or cost-effective way to change those rules and, at bottom, offers only a narrow and slavish interpretation of FCC regulations that even the FCC's Wireline Bureau has refused to accept. The Commission should not be fooled; it should adopt US LEC's proposed resolution of this issue.

**Issue 8: (Interconnection Attachment, Sections 8.1 and 8.1.1; General Terms and Conditions, Section 50.2)**

Issue 8 addresses the question of what compensation arrangement should govern the parties' exchange and termination of ISP-bound traffic in the event the compensation framework in the FCC's *ISP Remand Order* is vacated or reversed on appeal. US LEC suggests that, in the event that portion of the *ISP Remand Order* is vacated or reversed on appeal, then the parties should continue to compensate each other at the rates set forth in the Order, but waive any other terms and conditions of that Order (e.g., the growth caps and new market restrictions). Verizon, on the other hand, contends that if the compensation framework is vacated or reversed, then the parties should have to negotiate and, if necessary, arbitrate a new compensation framework.

Given the extensive litigation over this issue that already has occupied this Commission, such a prospect is daunting, at best.

Unlike the CLEC parties in the recent FCC Arbitration, US LEC is not arguing for a return to state rates or for an expensive, retroactive, true-up in the event the compensation framework governing ISP-bound traffic is vacated or reversed.[86] Instead, in the interests of certainty and stability, and in order to avoid expensive and time-consuming negotiations and litigation, US LEC is willing to forego the opportunity to be compensated at state rates and proposes that the parties accept the rate structure—but not the limitations on growth and new markets—set forth in the *ISP Remand Order* for the balance of the term of the Agreement, or until the FCC imposes a permanent rate structure governing that traffic.

Verizon declined US LEC's offer of compromise and refuses to address the issue in the agreement at all. Evidently, Verizon prefers instead to engage in lengthy negotiations and, most likely extensive litigation, with US LEC in order to fix obligations that can, and should be addressed at this stage of the proceeding.

Given the long battles between CLECs and Verizon over compensation for ISP-bound traffic that have been waged for years in Pennsylvania, US LEC sees Verizon's position as ensuring months of fruitless negotiations and possibly additional years of endless litigation over US LEC's entitlement to a payment stream that this Commission repeatedly has held was proper. Instead, US LEC submits that the proposed compromise—a certain rate structure guaranteed for the life of the contract—is a vastly superior alternative and should be adopted by the Commission.

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[86] For this reason, the Wireline Bureau's conclusion in the arbitration—that the parties' standard change of law provisions should govern—should be disregarded here.

**ISSUE No. 9: (Pricing Attachment, Section 1.5)**

The issue raised is whether Verizon should 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 submits that tariffed charges should be permitted to change during the term of the agreement due to changes in applicable tariffs, however, non-tariffed charges—i.e., charges fixed in the agreement and not subject to any tariff—must remain fixed for the term of the agreement.

Verizon, on the other hand seeks the unrestricted ability to modify rates that the parties have agreed to in the agreement through subsequent tariff filings that would supercede the rates in the agreement. According to Section 1.5 of the proposed Pricing Attachment, Verizon reserves the right to supercede *any* rates (i.e., both tariffed rates and non-tariffed rates) set forth in the parties' agreement with tariffed rates that are put in place after the parties have executed the agreement.

This issue was addressed in the recent arbitration before the Wireline Bureau. In that case, Verizon argued, as it does here, for the right to supercede any price by filing a subsequent tariff. WorldCom pointed out that, among other problems, permitting Verizon to supercede negotiated prices with subsequent tariffs shifts the burden of proof from Verizon (which has the burden of proving reasonableness of its rates in a negotiated interconnection agreement) to a CLEC (which must prove that a filed tariff should be rejected).[87]

The Wireline Bureau "reject[ed] Verizon's proposed language because it would allow for tariffed rates to replace automatically the rates arbitrated in this proceeding. Thus, rates approved or allowed to go into effect by the Virginia Commission would supercede rates

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[87] *FCC Arbitration Order* at ¶ 592.

arbitrated under the federal Act."[88] Instead, the FCC adopted WorldCom's language that would permit tariff revisions that "materially and adversely" affect the negotiated terms of the agreement to become effective only upon the parties' written consent or upon the affirmative order of the Virginia Commission.[89]

Here, US LEC submits that non-tariffed rates that the parties have negotiated, or that have been fixed by the Commission, should be fixed for the term of the agreement (with the exception of rates that must be modified due to changes in Applicable Law, which are addressed in other sections of the agreement). The Commission should reject Verizon's proposal.

## CONCLUSION

For the reasons set forth herein, the Commission should adopt US LEC's proposed resolution of each unresolved issue and reject Verizon's proposed language. In each instance, the resolution advocated by US LEC (a) implements the statutory rights and duties imposed by the Act, as interpreted by the FCC and this Commission, (b) maintains widespread and long-held customs and practices within the telecommunications industry, and (c) advances and encourages the development of true competition in the market for local exchange services.

Respectfully submitted,

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[88] *Id.* at ¶ 600.

[89] *Id.* at ¶ 590.