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Thursday, August 15, 2002

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Secretary's Bureau
Public Utility Commission
2nd Floor North
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, Pennsylvania 17105-6680

RE: Petition of USLEC of Pennsylvania for Arbitration
July 17, 2002 Hearing before Judge Cocheres
A-310814 F7000

To Whom it May Concern:

The transcript in the above-referenced matter was returned to us with a request to sort out exhibits. Enclosed please find the original transcript, and three sets of exhibits. One set belongs with the enclosed transcript, and the other two sets of exhibits are for attachment to the other two transcripts already in your possession. New cover and exhibit pages are also enclosed for insertion in the those two transcripts.

We regret any inconvenience this may have caused.

Sincerely,

David Casker

David E. Casker
Quality Control Manager

(w/enclosures)

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Petition of USLEC of Pennsylvania, Inc., for Arbitration with Verizon Pennsylvania Inc., pursuant to Section 252(b) of the Telecommunications Act of 1996	Docket No. A-310814F7000

Keystone Building
Plaza Level
400 North Street
Hearing Room 3
Harrisburg, PA

Wednesday, July 17, 2002
Commencing at 10:04 a.m.

BEFORE:
LOUIS COCHERES, Administrative Law Judge

REPORTER: MELISSA L. CHARLTON

INDEX TO EXHIBITS

NUMBER		FOR IDENTIFICATION	IN EVIDENCE
VZ-1	(Diagram)	15	86
VZ-2	(Diagram)	27	86
VZ-3	(Interconnection)	46	86
VZ-4	(Tariff)	101	111
VZ-5	(Printout)	180	189
VZ-6	(Printout)	246	253
USLEC-1	(NPRM)	140	170
USLEC-2	(Excerpt)	146	--
USLEC-3	(Answers)	203	252
* USLEC-4	(MFS Phase Two Transcript)	255	--

* NOT ATTACHED

USLEC ATTACHMENTS:

Direct and Rebuttal Testimony of Frank Hoffman

Direct and Rebuttal Testimony of Wanda Montano

Direct and Rebuttal Testimony of Pete D'Amico

Direct and Rebuttal Testimony of Terry Haynes

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: April 19, 2001 **Released:** April 27, 2001

Comment Date: 90 days after publication in the Federal Register
Reply Comment Date: 135 days after publication in the Federal Register

By the Commission: Chairman Powell and Commissioner Ness issuing separate statements; Commissioner Furchtgott-Roth concurring and issuing a statement

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USLEC 1

I. INTRODUCTION

1. With this *Notice of Proposed Rulemaking (NPRM)*, we begin a fundamental re-examination of all currently regulated forms of intercarrier compensation. We intend to test the concept of a unified regime for the flows of payments among telecommunications carriers that result from the interconnection of telecommunications networks under current systems of regulation. Specifically, we seek comment on the feasibility of a bill-and-keep approach for such a unified regime. We also seek alternative comment on modifications to existing intercarrier compensation regimes. In sum, we seek to move forward from the transitional intercarrier compensation regimes to a more permanent regime that consummates the pro-competitive vision of the Telecommunications Act of 1996 ("1996 Act").[1]

2. As discussed below, there are currently two general intercarrier compensation regimes: (1) access charges for long-distance traffic; and (2) reciprocal compensation.

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act").

6. Bill and Keep for Traffic Subject to Section 251(b)(5)

69. In light of the current imbalances in traffic exchanged among interconnected networks, and the potential for inefficient incentives under the existing per-minute reciprocal compensation rates, we generally seek comment on the relative benefits of bill and keep for all traffic subject to section 251(b)(5),[88] versus the current per-minute reciprocal compensation rates imposed by most states. We seek comment from state commissions, in particular, regarding the benefits of either approach. We ask that parties discuss the incentives provided by each approach to intercarrier compensation. We also seek comment on the benefits of each approach in promoting competition and negating the effects of market power. We ask that commenters discuss the relative benefits of bill-and-keep and per-minute reciprocal compensation with respect to the pricing signals provided, and the relation between actual costs and prices determined under each approach. We seek comment on how the Commission should weigh the benefits of implementing bill and keep against any disadvantages that commenters may identify. We also seek comment on the disadvantages of applying a bill-and-keep arrangement to any particular type of traffic currently exchanged among interconnected carriers.

70. We seek comment on the best method for allocating transport responsibilities and costs among interconnected carriers under a mandatory bill-and-keep approach to reciprocal compensation. Under our current rules, the originating telecommunications carrier bears the costs of transporting traffic to its point of interconnection with the terminating carrier. If carriers must recover their transport costs from their end users, does this rule still make sense? What incentives does this rule create regarding location and number of points of interconnection (POIs)? Is there a more appropriate way to allocate transport costs?

71. Qwest argues, for example, that a bill-and-keep arrangement does not work when three carriers are involved in the transport and termination of traffic, because the middle carrier that transports the traffic from one LEC to the other does not really have a "customer" involved in the call from which it can recover costs.[89] Qwest therefore argues that the Commission should allow LECs to continue charging each other for delivering transiting traffic that originates on the networks of other carriers.[90] We ask commenters to address this and other issues related to the transport obligations of interconnected LECs under a bill-and-keep regime. CMRS carriers also originate and terminate three-carrier calls, some of which are governed by reciprocal compensation. We seek comment on the issues or problems that the current intercarrier compensation rules present for three-carrier calls. We seek comment on how bill and keep might affect such calls.

72. Under our current rules, interconnecting CLECs are obligated to provide one POI per LATA.[91] Under a bill-and-keep regime, should this rule still apply? How should carriers

[88] *See supra* note 7 and accompanying text.

[89] Qwest *ex parte* in CC Docket No. 99-68, Appendix B, at ii (filed Nov. 22, 2000).

[90] *Id.*

[91] 47 C.F.R. § 51.321; *see also* In the Matter of Application by SBC Communications Inc. *et al.* to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, *Memorandum Opinion and Order*, FCC 00-238 at ¶ 78, n.174 (rel. June 30, 2000).

select points of interconnection? If a CLEC chooses a point of interconnection outside a local calling area, should the LEC be obligated to meet the CLEC there? Or, should the CLEC be required to locate in every local calling area, or pay the ILEC transport and/or access charges if it does not? CMRS carriers may have several switches per MTA, which can comprise several states and multiple LATAs. Should originating carriers be required to deliver calls to all of a CMRS carrier's POIs? Should the Commission promulgate rules governing the technical requirements of interconnection, as it does for interconnection between CPE and the public switched telephone network?[92] We seek comment on how the costs of interconnection should be allocated between carriers in this context. We seek comment on how carriers will allocate the costs of actual interconnection facilities. In addition, we seek comment on how the costs for internal network upgrades necessary for interconnection should be allocated.[93]

73. Section 251(b)(5) provides that each LEC has the duty to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[94] In addition, section 252(d)(2) states that, for the purpose of ILEC compliance with section 251(b)(5), the terms and conditions for reciprocal compensation must: (1) provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the carrier"; and (2) "determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."[95] Section 252(d)(2)(B)(i) further provides that the foregoing language shall not be construed "to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep)."[96] The legislative history of the 1996 Act indicates that the term "mutual and reciprocal recovery of costs" includes "a range of compensation schemes, such as in-kind exchange of traffic without cash payment (known as bill-and-keep arrangements)."[97]

74. In the *Local Competition Order*, the Commission rejected claims that the Commission and states lack the authority to mandate bill-and-keep arrangements under any circumstances.[98] It instead found that in some circumstances, bill-and-keep arrangements can be imposed in the context of the arbitration process for termination of traffic.[99] The Commission

[92] *See generally* 47 C.F.R. Part 68.

[93] *See* Atkinson-Barnekov, *supra* note 43, at 13-14 (showing that the incremental cost of interconnection includes internal provisioning necessary to handle traffic exchanged with the interconnecting carrier).

[94] 47 U.S.C. § 251(b)(5).

[95] 47 U.S.C. § 252(d)(2).

[96] 47 U.S.C. § 252(d)(2)(B)(i).

[97] *See* S. Rep. No. 230, 104th Cong., 2nd Sess. 125 (1996), *reprinted in* A&P S. Rep. 104-230, 125 (1996).

[98] *Local Competition Order*, 11 FCC Rcd. at 16054. *See also* BellSouth Local Competition Comments in CC Docket No. 96-98 at 73-75; GTE Local Competition Comments in CC Docket No. 96-98 at 56-59; SBC Local Competition Comments in CC Docket No. 96-98 at 51-53.

[99] *Local Competition Order*, 11 FCC Rcd. at 16054.

of various implementation problems,[175] however, the Commission has never ordered a peak-load pricing rate structure, though it has permitted such rate structures. In implementing the reciprocal compensation provisions of the 1996 Act, for example, the Commission permitted states to adopt alternative rate structures, including: (1) a higher rate for peak periods; (2) a uniform per-minute rate; (3) a capacity-based rate; or (4) a bill-and-keep arrangement, provided that traffic is relatively balanced.[176] States, however, in applying the Commission's rules governing reciprocal compensation, have generally adopted average per-minute rates. Similarly, with respect to interstate access charges, the Commission has permitted ILECs to charge either a uniform per-minute rate to recover the costs of switching, or a two-part tariff consisting of a call setup charge and a per-minute charge.[177] The Commission has also sought comment on whether it should adopt capacity-based charges to recover switching costs.[178]

110. Our recent experience with ISP reciprocal compensation issues suggests certain questions about the use of uniform per-minute charges to recover the traffic-sensitive costs of termination. In particular, it appears that the Commission may have underestimated the inefficiencies associated with the use of uniform per-minute prices. Accordingly, we seek comment first on whether an average per-minute rate structure can efficiently recover the traffic sensitive costs of interconnection, whether for reciprocal compensation or for access charges. If parties believe that such a rate structure is inherently inefficient, then we ask them to propose alternative, more efficient rate structures. We also seek comment on whether the Commission overestimated the practical difficulties associated with peak-load pricing arrangements. In particular, we seek comment on: (1) how to deal with the practical, implementation problems associated with peak-load pricing; and (2) whether a peak-load pricing structure can eliminate the regulatory arbitrage opportunities of the existing interconnection pricing regimes.

111. We also invite comment on whether alternative rate structures would be more efficient, and whether they would eliminate some of the problems we are currently experiencing. For example, we ask parties to comment on the advantages and disadvantages of using a capacity-based rate structure, and a multi-part rate structure that includes both a call set-up charge and a per-minute charge. Finally, we invite parties to propose alternative rate structures that they believe would be more efficient, and to explain the basis for their belief.

c. Single Point of Interconnection Issues

112. As previously mentioned, an ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a

[175] The practical difficulties associated with peak-load pricing schemes include: (1) that peak traffic volumes may occur at different times in different areas (*e.g.*, between a downtown business area and a residential suburb); (2) that peak periods may change over time (*e.g.*, in response to increasing Internet use); and (3) that implementing a peak-load pricing scheme may cause a shift in the peak.

[176] *See* 47 C.F.R. §§ 51.507(c), 51.713; *Local Competition Order*, 11 FCC Rcd. at 15878-79 ¶¶ 755-757, 16028-29 ¶¶ 1063-64.

[177] *See* 47 C.F.R. § 69.106.

[178] *Pricing Flexibility Order and NPRM*, 14 FCC Rcd. at 14328-30 ¶¶ 211-16.

single POI per LATA.[179] Our current reciprocal compensation rules preclude an ILEC from charging carriers for local traffic that originates on the ILEC's network.[180] These rules also require that an ILEC compensate the other carrier for transport[181] and termination[182] for local traffic that originates on the network facilities of such other carrier.[183] Application of these rules has led to questions concerning which carrier should bear the cost of transport to the POI, and under what circumstances an interconnecting carrier should be able to recover from the other carrier the costs of transport from the POI to the switch serving its end user. In particular, carriers have raised the question whether a CLEC, establishing a single POI within a LATA, should pay the ILEC transport costs to compensate the ILEC for the greater transport burden it bears in carrying the traffic outside a particular local calling area to the distant single POI.[184] Some ILECs will interconnect at any POI within a local calling area; however, if a CLEC wishes to interconnect outside the local calling area, some LECs take the position that the CLEC must bear all costs for transport outside the local calling area.[185] CLECs hold the contrary view, that our rules simply require LECs to interconnect at any technically feasible point within a LATA, and that each carrier must bear its own transport costs on its side of the POI.[186]

113. If a carrier establishes a single POI in a LATA, should the ILEC be obligated to interconnect there and thus bear its own transport costs up to the single POI when the single POI is located outside the local calling area? Alternatively, should a carrier be required either to interconnect in every local calling area, or to pay the ILEC transport and/or access charges if the location of the single POI requires the ILEC to transport a call outside the local calling area? Further, if we should determine that a carrier establishing a single POI outside a local calling area must bear some portion of the ILEC's transport costs, do our regulations permit the imposition of access charges for calls that originate and terminate within one local calling area but cross local calling area boundaries due to the placement of the POI?[187]

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[179] *See supra* note 91 and accompanying text.

[180] *See* In the Matter of Joint Application by SBC Communications, Inc. *et al.* for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, *Memorandum Opinion and Order*, FCC 01-29 at ¶ 235 (rel. Jan. 22, 2001) ("*Kansas/Oklahoma 271 Order*") (citing 47 C.F.R. § 51.703(b); In the Matters of TSR Wireless, LLC *et al.* v. U.S. West, 15 FCC Rcd. 11166 (2000), *pet. for review docketed sub nom.*, *Qwest v. FCC*, No. 00-1376 (D.C. Cir. Aug. 17, 2000)).

[181] 47 C.F.R. § 51.701(c).

[182] 47 C.F.R. § 51.701(d).

[183] 47 C.F.R. § 51.701(e).

[184] *See Kansas/Oklahoma 271 Order, supra* note 180, at ¶¶ 232-34.

[185] SBC Reply in CC Docket No. 00-217, at 83-84.

[186] AT&T Comments in CC Docket No. 00-217, Attachment 2, Fettig Declaration, at 26-27.

[187] *See ISP Intercarrier Compensation Order* at ¶¶ 24-30 (discussing relationship between reciprocal compensation and access charges).

114. Finally, we are concerned that the interplay of our single POI rules and reciprocal compensation rules may lead to the deployment of inefficient or duplicative networks. By requiring an ILEC to interconnect with a requesting carrier at any technical feasible point in a LATA of that carrier's choosing, are we compelling inefficient network design by forcing the LEC to provision extra transport? Or, by requiring carriers to pay ILECs for transport outside a local calling area, are we forcing the competitive carrier into an inefficient replication of the ILEC network? Assuming that the ILEC receives reciprocal compensation for transporting terminating traffic, how precisely does a distant POI unfairly burden the LEC? Is the efficiency concern limited to those instances in which traffic between two networks is unbalanced and/or where transport is required beyond a certain distance? We seek comment on these questions, and any other issues related to the interplay between our single POI rules and our reciprocal compensation rules.

d. Virtual Central Office Codes

115. We seek comment on the use of virtual central office codes (NXXs),[188] and their effect on the reciprocal compensation and transport obligations of interconnected LECs. Commenters in this proceeding have indicated that some LECs are inappropriately using virtual NXXs to collect reciprocal compensation for traffic that the ILEC is then forced to transport outside of the local calling area.[189] We note that the Commission has delegated some of its authority to state public utility commissions in order that they may order the North American Numbering Plan Administrator (NANPA) to reclaim NXX codes that are not used in accordance with the Central Office Code Assignment Guidelines.[190] The Maine Public Utility Commission recently addressed the issue of virtual NXXs when it directed the NANPA to reclaim the NXX codes that Brooks Fiber used to provide "unauthorized interexchange service" as opposed to "facilities-based local exchange service."[191] In light of these developments, we seek comment on the following issues: (1) Under what circumstances should a LEC be entitled to use virtual NXX codes? (2) If LECs are permitted to use virtual NXX codes, what is the transport obligation of the originating LEC? (3) Should the LEC employing the virtual NXX code be required to provide transport from the central offices associated with those NXX codes?

2. Can CPNP Regimes Resolve the Existing Interconnection Issues and Will They Be Administratively Feasible?

116. We seek comment on how, if the Commission declines to adopt bill and keep, the existing CPNP regimes could be modified to deal with the issues presented by existing

[188] Virtual NXX codes are central office codes that correspond with a particular geographic area that are assigned to a customer located in a different geographic area.

[189] *See, e.g.*, BellSouth *ex parte* in CC Docket No. 99-68 at 2 (Nov. 7, 2000).

[190] *See* In the Matter of Numbering Resource Optimization, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd. 7574, 7678-7682 (2000).

[191] Investigation into the Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber Docket No. 98-758, Order Requiring Reclamation of NXX Codes and Special ISP Rates by ILECs, Order No. 4, at 4 (Maine PUC June 30, 2000).

interconnection regimes, and whether CPNP regimes can be modified so that regulators can administer them easily. We also seek comment on how existing CPNP rules could be modified to address situations of regulatory arbitrage. To the extent that certain regulatory arbitrage opportunities arise from the disparities between existing interconnection regimes, we seek comment on the costs and benefits of moving to a uniform CPNP regime.

117. We also seek comment on how, under a unified CPNP regime, regulators should deal with the terminating access monopoly problem. In this regard, we ask parties to discuss the administrative feasibility of any proposed solution to this problem. For example, is there any way that regulators can avoid having to regulate the access rates of all local carriers? If the rates of all local carriers must be regulated, is there any way to simplify the form of regulation? For example, should we simply prohibit CLECs from charging terminating access charges that exceed those of the ILEC?

118. Parties should also address whether a CPNP regime increases the possibility of predatory price squeezes, particularly against long-distance carriers, and how this problem could be addressed. In this context, and to the extent that parties contend we should drop the presumption of symmetrical reciprocal compensation rates, we seek comment on how we can minimize the administrative burdens of setting multiple interconnection rates.

119. With respect to the problem of inefficient end-user charges, we seek comment on how existing CPNP rules can be modified to reduce this problem. For example, would this problem disappear if we moved to a capacity-based intercarrier compensation scheme? We also invite comment on how we can modify the existing intercarrier compensation scheme to eliminate any regulatory inefficiencies that might cause an entity to claim to be a network rather than a subscriber. Similarly, we seek comment on whether CPNP regimes create an incentive for carriers to discriminate between on-net and off-net calls, and whether this could increase any tendency toward tipping into monopoly.

120. Finally, we ask parties to comment on the administrative costs or regulatory burdens associated with reforming the existing CPNP regimes and making them more uniform. We also ask parties to discuss whether, under a CPNP regime, regulatory intervention can be reduced. For example, can rules be adopted that provide incentives for carriers to reveal their true costs of termination in a regulatory or arbitration process? Alternatively, if we will be unable to eliminate regulatory intervention, can we simplify the regulations?

D. Other Issues

1. Legal Authority

121. In Section II.B.6 above, we seek comment on whether the Commission has legal authority to establish bill-and-keep arrangements for reciprocal compensation between telecommunications carriers. With respect to any modification to the existing intercarrier compensation rules discussed herein or proposed by any party, we seek comment on whether the Commission has legal authority to adopt such a modification. In particular, with respect to bill-and-keep arrangements, we seek comment on whether the Commission has legal authority to modify our existing interstate access rules to move them into a bill-and-keep regime. Additionally, we seek comment (particularly from state public utility commissions) on whether

§51.305 Interconnection.

(a) An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network:

(1) For the transmission and routing of telephone exchange traffic, exchange access traffic, or both;

(2) At any technically feasible point within the incumbent LEC's network including, at a minimum:

(i) The line-side of a local switch;

(ii) The trunk-side of a local switch;

(iii) The trunk interconnection points for a tandem switch;

(iv) Central office cross-connect points;

(v) Out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and

(vi) The points of access to unbundled network elements as described in §51.319;

(3) That is at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party, except as provided in paragraph (4) of this section. At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC's network. This obligation is not limited to a consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier;

(4) That, if so requested by a telecommunications carrier and to the extent technically feasible, is superior in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the incumbent LEC provides interconnection. Nothing in this section prohibits an incumbent LEC from providing interconnection that is lesser in quality at the sole request of the requesting telecommunications carrier; and

(5) On terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of Sections 251 and 252 of the Act, and the Commission's rules including, but not limited to, offering such terms and conditions equally to all requesting telecommunications carriers, and offering such terms and conditions that are no less favorable than the terms and conditions upon which the incumbent LEC provides such interconnection to itself. This includes, but is not limited to, the time within which the incumbent LEC provides such interconnection.

(b) A carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent LEC's network and not for the purpose of providing to others telephone exchange service, exchange access service, or both, is not entitled to receive interconnection pursuant to Section 251(c)(2) of the Act.

(c) Previous successful interconnection at a particular point in a network, using particular facilities, constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, in networks employing substantially similar facilities. Adherence to the same interface or protocol standards shall constitute evidence of the substantial similarity of network facilities.

(d) Previous successful interconnection at a particular point in a network at a particular level of quality constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, at that level of quality.

(e) An incumbent LEC that denies a request for interconnection at a particular point must prove to the state commission that interconnection at that point is not technically feasible.

(f) If technically feasible, an incumbent LEC shall provide two-way trunking upon request.

(g) An incumbent LEC shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve interconnection consistent with the requirements of this section.

Historical Note

Subsection (g) added by order in Docket Nos. 96-98, 95-185 and 92-237, effective November 15, 1996, 61 FR 47284. For Second Report and Memorandum Opinion see 4 CR 484.

§51.321 Methods of obtaining interconnection and access to unbundled elements under Section 251 of the Act.

(a) Except as provided in paragraph (e) of this section, an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of this part, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier.

(b) Technically feasible methods of obtaining interconnection or access to unbundled network elements include, but are not limited to:

(1) Physical collocation and virtual collocation at the premises of an incumbent LEC; and

(2) Meet point interconnection arrangements.

(c) A previously successful method of obtaining interconnection or access to unbundled network elements at a particular premises or point on any incumbent LEC's network is substantial evidence that such method is technically feasible in the case of substantially similar network premises or points. A requesting telecommunications carrier seeking a particular collocation arrangement, either physical or virtual, is entitled to a presumption that such arrangement is technically feasible if any LEC has deployed such collocation arrangement in any incumbent LEC premises.

(d) An incumbent LEC that denies a request for a particular method of obtaining interconnection or access to unbundled network elements on the incumbent LEC's network must prove to the state commission that the requested method of obtaining interconnection or access to unbundled network elements at that point is not technically feasible.

(e) An incumbent LEC shall not be required to provide for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the incumbent LEC's premises if it demonstrates to the state commission that physical collocation is not practical for technical reasons or because of space limitations. In such cases, the incumbent LEC shall be required to provide virtual collocation, except at points where the incumbent LEC proves to the state commission that virtual collocation is not technically feasible. If virtual collocation is not technically feasible, the incumbent LEC shall provide other methods of interconnection and access to unbundled network elements to the extent technically feasible.

(f) An incumbent LEC shall submit to the state commission, subject to any protective order as the state commission may deem necessary, detailed floor plans or diagrams of any premises where the incumbent LEC claims that physical collocation is not practical because of space limitations. These floor plans or diagrams must show what space, if any, the incumbent LEC or any of its affiliates has reserved for future use, and must describe in detail the specific future uses for which the space has been reserved and the length of time for each reservation. An incumbent LEC that contends space for physical collocation is not available in an incumbent

LEC premises must also allow the requesting carrier to tour the entire premises in question, not only the area in which space was denied, without charge, within ten days of the receipt of the incumbent's denial of space. An incumbent LEC must allow a requesting telecommunications carrier reasonable access to its selected collocation space during construction.

(g) An incumbent LEC that is classified as a Class A company under §32.11 of this chapter and that is not a National Exchange Carrier Association interstate tariff participant as provided in part 69, subpart G, shall continue to provide expanded interconnection service pursuant to interstate tariff in accordance with §§64.1401, 64.1402, 69.121 of this chapter, and the Commission's other requirements.

(h) Upon request, an incumbent LEC must submit to the requesting carrier within ten days of the submission of the request a report describing in detail the space that is available for collocation in a particular incumbent LEC premises. This report must specify the amount of collocation space available at each requested premises, the number of collocators, and any modifications in the use of the space since the last report. This report must also include measures that the incumbent LEC is taking to make additional space available for collocation. The incumbent LEC must maintain a publicly available document, posted for viewing on the incumbent LEC's publicly available Internet site, indicating all premises that are full, and must update such a document within ten days of the date at which a premises runs out of physical collocation space.

(i) An incumbent LEC must, upon request, remove obsolete unused equipment from their premises to increase the amount of space available for collocation.

Historical Note

Subsections (c) and (f) amended and (h) and (i) added by order in Docket No. 98-147, effective June 1, 1999 (except subsections (f) and (h) are effective June 1, 1999), 64 FR 23229, 29598, 34137. For First Report see 15 CR 553.

Subsection (f) amended by order in Docket No. 98-147, effective October 10, 2000, 65 FR 54433, 57291. For Order on Reconsideration see 21 CR 1026.

Subsection (h) amended by order (FCC 01-204) in Docket No. 98-147, effective September 19, 2001, 66 FR 43516. For Fourth Report see 24 CR 417.

Subpart F - Pricing of Elements

§51.501 Scope.

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

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

§51.503 General pricing standard.

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

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

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

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

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

§51.505 Forward-looking economic cost.

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

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

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

(b) Total element long-run incremental cost. The total element long-run incremental cost of an element is the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the incumbent LEC's provision of other elements.

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

location of the incumbent LEC's wire centers.

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

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

(c) Reasonable allocation of forward-looking common costs.

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

(2) Reasonable allocation.

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

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

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

(1) Embedded costs. Embedded costs are the costs that the incumbent LEC incurred in the past and that are recorded in the incumbent LEC's books of accounts;

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

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

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

(e) Cost study requirements. An incumbent LEC must prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of

providing the element, using a cost study that complies with the methodology set forth in this section and §51.511.

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

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

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

§51.701 Scope of transport and termination pricing rules.

(a) The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications carriers.

(b) Telecommunications traffic. For purposes of this subpart, telecommunications traffic means:

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

(2) Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in §24.202(a) of this chapter.

(c) Transport. For purposes of this subpart, transport is the transmission and any necessary tandem switching of telecommunications traffic subject to Section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

(d) Termination. For purposes of this subpart, termination is the switching of telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

(e) Reciprocal compensation. For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier.

Historical Note

Section amended by order (FCC 01-131) in Docket Nos. 96-98 and 99-68, effective June 14, 2001, 66 FR 26800. For Order on Remand and Report see 23 CR 678.

§51.703 Reciprocal compensation obligation of LECs.

(a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier.

(b) A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

§51.709 Rate structure for transport and termination.

(a) In state proceedings, a state commission shall establish rates for the transport and termination of telecommunications traffic that are structured consistently with the manner that carriers incur those costs, and consistently with the principles in §§51.507 and 51.509.

(b) The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods.

Historical Note

Subsection (a) amended by order (FCC 01-131) in Docket Nos. 96-98 and 99-68, effective June 14, 2001, 66 FR 26800. For Order on Remand and Report see 23 CR 678.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

VERIZON PENNSYLVANIA INC.'S FIRST SUPPLEMENTAL RESPONSES TO US LEC OF PENNSYLVANIA, INC.'S FIRST SET OF DISCOVERY REQUESTS

Verizon Pennsylvania Inc. ("Verizon") hereby submits the following supplemental responses to the requests included in *US LEC of Pennsylvania, Inc.*'s ("US LEC") First Set of Discovery Requests (filed June 7, 2002).

Subject to and without waiving any of Verizon's objections (filed June 12, 2002), Verizon responds to US LEC's Requests as follows:

Request for Admission No. 1

Please admit that Verizon currently delivers its originated traffic to a single US LEC-IP per LATA in (a) the Pittsburgh (234) LATA and (b) the Philadelphia (228) LATA. If you do not so admit, please explain the reasons for your denial.

Response to Request for *Admission* No. 1

Verizon admits that it currently delivers traffic originated by its end-user customers in the Pittsburgh and Philadelphia LATAs for delivery to US LEC customers in those LATAs to a single physical point, on US LEC's network, in each of the LATAs.

Request for Admission No. 3

Please admit that Verizon is currently financially responsible for the facilities used to deliver its originated traffic to the single US LEC-IP in (a) the Pittsburgh (234) LATA and (b) the Philadelphia (228) LATA. If you do not so admit, please explain the reasons for your denial.

USL 3

Response to Request for Admission No. 3

Verizon admits that it currently delivers the traffic identified in the response to Request for Admission No. 1 to the points identified in that response, using facilities that it owns, without charge to US LEC.

Interrogatory No. 2

Please identify and explain the factors Verizon analyzes when determining how, where, and when to establish an Interconnection Point or Point of Interconnection with a CLEC.

Response to Interrogatory No. 2

Verizon's Interconnection Points ("IPs") are established at the end office serving the terminating Verizon end-user customer, or at the tandem serving the terminating end office. The tandem and end office switches serving a particular customer are the designated wire center switches, as provided in the Local Exchange Routing Guide ("LERG"), that include translations and terminate the appropriate trunking facilities to complete calls to that Verizon customer. Moreover, the reciprocal compensation rates established by the Pennsylvania Public Utility Commission ("PUC") are based on costs that consider efficient Verizon IPs for end office and tandem routed calls using the terminating end office and tandem serving the terminating end office.

Interrogatories No. 7 and 9

7. Please provide all cost studies and other documents in your possession, custody or control relating to an analysis of Verizon's purported costs based upon a single Interconnection Point or Point of Interconnection per LATA with a CLEC.

9. Please provide all traffic studies, cost studies, network planning, and other documents in your possession, custody or control relating to an analysis of Verizon's purported costs of delivering Verizon's originating local traffic to US LEC's IP at its switch in (a) the Pittsburgh (234) LATA and (b) the Philadelphia (228) LATA.

Response to Interrogatories No. 7 and 9

Verizon does not possess any traffic studies, cost studies, or other documents referenced in these interrogatories.

Interrogatories No. 16-17

16. Please identify and explain the factors Verizon analyzes when determining whether a trunk and/or dedicated transport is efficiently utilized when that trunk and/or dedicated transport is (a) between two Verizon end offices; (b) between a Verizon end office and a Verizon tandem; (c) between a Verizon end office and a CLEC end office; (d) between a Verizon tandem and a CLEC end office.

17. Please state the utilization level that Verizon believes is efficient from a network planning perspective for each of the trunks and dedicated facility categories listed in DR 16.

Response to Interrogatories No. 16-17

(a), (b), and (d): Verizon evaluates the utilization of final trunk groups based on the ratio of "trunks required" to "trunks in service." For a specific trunk group, "trunks required" is the calculation of the number of trunks needed to provide service at the engineering design level (either B.005 or B.01), based on the traffic demand (offered load/usage) on the trunk group during the study period. "Trunks in service" is the installed number of trunks in operation during that period. Verizon uses this utilization measurement to monitor and provide additional trunks for itself and for CLEC trunk groups that Verizon engineers.

Verizon will review final trunk groups to determine the need to take the following actions: (1) disconnect trunks from underutilized trunk groups that have a utilization level of less than 60 percent; (2) analyze trunk groups that reach a utilization level of 70 percent or greater, to determine whether those trunk groups should be augmented; and (3) augment trunk groups that reach a utilization level of 80 percent or greater.

(a) and (c): For high-usage trunk groups, Verizon engineers these trunk groups using an Economic Centum Call Second ("ECCS") (Hundred Call Second) equal to five.

Interrogatory No. 23

Please explain how Verizon proposes to inform US LEC of the amount and application of any "other costs (to the extent Verizon purchases such transport from ... a third party)" that must be included in the Verizon-proposed calculation in Section 7.1.1.1.1.

Response to Interrogatory No. 23

Verizon will notify US LEC in writing.

Interrogatory No. 24

Using the rates in Appendix A of the proposed agreement, and assuming (a) that US LEC maintains its IP at its switches — (located at V&H coordinates 05619/02187 [CLLI PITBPAMADS1] in the Pittsburgh (234) LATA and located at V&H coordinates 05250/01461 [CLLI PHLAPAFGDSG] in the Philadelphia (228) LATA) — and assuming (b) that Verizon originates (x) 100, (y) 1,000, or (z) 100,000 minutes of local traffic a month from each Verizon end office to US LEC in each LATA, please calculate the amount by which Verizon proposes to reduce US LEC's reciprocal compensation rate under the Verizon-proposed calculation defined in Section 7.1.1.1.1 of the Interconnection Attachment. Please explain each step in your calculation and provide documentation supporting your calculation.

Response to Interrogatory No. 24

Under Section 7.1.1.1.1 of the Interconnection Attachment, and assuming that no tandem switching or other costs are incurred, the following calculation is used:

$$\frac{\text{dedicated transport rate per mile} \times \text{\# of miles between Verizon originating office and US LEC location} + \text{fixed dedicated transport rate}}{\text{average minutes of use for a DS1}} = \text{per minute transport rate}$$

Using the applicable rates in Appendix A of the proposed agreement, the per minute transport rate is:

$$\frac{(\$0.60 \times [\text{miles}]) + \$35.22}{200000} = \$0.000003 \times \text{miles} + \$0.000176$$

Assuming that the distance between the end office and the US LEC IP that is not geographically relevant is 25 miles and that 100,000 minutes of use are originated in the month, the credit would be $25.11.

($0.000003 x 25) + $0.000176 = $0.000251 x 100000 minutes = $25.11

US LEC is capable of performing the calculations for the other end offices in the Pittsburgh and Philadelphia LATAs, inasmuch as those calculations vary only with respect to the distance between the end office and the US LEC switch in that LATA and the number of minutes of traffic originated.

Interrogatory No. 26

Please identify and explain the financial, technical, or other reasons why US LEC could not meet its VGRIP obligation by establishing its IP through a means other than collocation (*e.g.*, entrance facility, mid-span meet, etc.). Please provide all documentation supporting your response.

Response to Interrogatory No. 26

Verizon would be willing to consider VGRIP language that would include other interconnection alternatives and would review a VGRIP proposal from US LEC that includes multiple interconnection options. However, US LEC has made it clear that, regardless of the permitted means of interconnection, it will not accept Verizon-originated traffic at more than one point per LATA.

Interrogatories No. 39-40

39. Please state whether Verizon believes the charges identified in Verizon-proposed Section 7.1.1.1.1 of the Interconnection Attachment comply with a Total Element Long Run Incremental Cost methodology adopted by the Federal Communications Commission and/or the Commission. If the answer is yes, please provide a detailed explanation of your reasoning and provide all documentation supporting your assertion.

40. Please state whether Verizon believes the charges identified in Verizon-proposed Section 7.1.1.1.1 of the Interconnection Attachment comply with the pricing standards of

section 252(d) of the Act. If the answer is yes, please provide a detailed explanation of your reasoning and provide all documentation supporting your assertion.

Response to Interrogatories No. 39-40

Verizon believes the charges referenced in these two interrogatories satisfy the requirements of 47 U.S.C. § 252(d), which the FCC has interpreted to require rates for unbundled network elements ("UNE") to be set using the Total Element Long-Run Incremental Cost ("TELRIC") methodology. As Verizon has previously explained to US LEC, the charges identified in Section 7.1.1.1.1 are based on the UNE rates that the Pennsylvania PUC established for the specified facilities. The FCC has found that the "the Pennsylvania Commission followed basic TELRIC principles" in establishing UNE rates and that those "rates are within the range that reasonable application of TELRIC would produce." Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419, ¶¶ 55-56 (2001).

Interrogatories No. 45-46

45. Does Verizon have the capability to distinguish Voice Information Service traffic from other local traffic?

46. If your response to DR 45 is affirmative, please state the process by which you distinguish such traffic, state how long that process has been in place and identify all studies you have undertaken to determine the accuracy of the process.

Response to Interrogatories No. 45-46

Verizon has the capability of distinguishing Voice Information Service traffic that is dialed using distinct NXX codes, including 976 and 556 numbers. Verizon distinguishes the traffic on the basis of the dialed number; this process has been in place for many years and is accurate. Verizon does not ordinarily distinguish Voice Information Service traffic that is not dialed using dedicated NXX codes.

Interrogatory No. 47

Have you ever billed or received reciprocal compensation for calls received from CLECs for termination to your customers who offer Voice Information Services? Please explain your answer.

Response to Interrogatory No. 47

If Voice Information Service traffic that is dialed using distinct NXX codes, including 976 and 445 numbers, is delivered to Verizon over a separate trunk group, it is Verizon's policy not to bill reciprocal compensation on such traffic. If Voice Information Service traffic is not delivered to Verizon over a separate trunk group, Verizon would not routinely distinguish such traffic from local traffic for reciprocal compensation billing purposes.

Interrogatories No. 49, 50, and 52

49. Do you contend that "receiving" traffic is different than "terminating" traffic for the purposes of assessing reciprocal compensation? Please provide the factual and legal basis for your contention.

50. Do you contend that traffic can be "received" but not terminated? Please provide the factual and legal basis for your contention.

52. Do you contend that there is a difference between a "receiving" party and a "terminating" party with respect to a particular call?

Response to Interrogatories No. 49, 50, and 52

"Receiving traffic" is a broader term than "terminating traffic." It includes traffic, such as Internet-bound traffic, that the receiving carrier does not terminate but instead passes on to another party for onward transmission. For example, with respect to an Internet-bound call from a Verizon customer through an Internet service provider ("ISP") served by US LEC, US LEC would receive the call but would not terminate it. The factual and legal basis for this conclusion are set forth in Mark L. Evans & Aaron M. Panner, "Analysis of Issues on Remand in ISP Reciprocal Compensation Proceeding," attached to the Comments of the United States Telecom Association in CC Docket No. 96-98 (FCC filed July 21, 2000), *available at*

http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6511457918, and in the Declaration of Charles Jackson, attached to Comments of Verizon Communications Inc. in CC Docket No. 96-98 (FCC filed July 21, 2001), *available at* http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6511359995.

Interrogatory No. 55

Please explain how you rate each of the following types of traffic originated by or terminated to your FX customers, and provide all documentation supporting your answer:

(a) A call placed by a Verizon end user to a Verizon FX customer where the NXX code of the dialed number (FX customer) and the NXX code of the calling party's number are assigned to the same local calling area, but the FX customer is not physically located within that local calling area.

(b) A call placed by a Verizon FX customer to a Verizon end user where the NXX code of the dialed number and the NXX code of the calling party's number (FX customer) are assigned to the same local calling area, but the FX customer is not physically located in that local calling area.

(c) A call placed by a Verizon end user to a Verizon FX customer where the NXX code of the dialed number (FX customer) is assigned to a local calling area within the same local access transport area ("LATA") as the calling party, but not assigned to the same local calling area as the calling party, and where the FX customer is physically located in the same local calling area as the calling party.

(d) A call placed by a Verizon FX customer to a Verizon end user where the NXX code of the dialed number is assigned to a local calling area within the same LATA, but not within the same local calling area, as the NXX code assigned to the FX customer, and where the FX customer is physically located in the same local calling area as the called party.

(e) A call carried by an interexchange carrier and terminated to a Verizon FX customer.

Response to Interrogatory No. 55

(a) With Foreign Exchange ("FX") service, calls are rated between originating and terminating subscribers based on the originating customer's class of service to the "foreign" switch. In this example, the call would appear "local" to the caller and would be rated as such. The Verizon FX customer (the called party) would not receive such calls as part of local service.

Instead, the FX subscriber would pay a separate charge equal to the basic exchange service rate in the caller's local calling area, as well as paying a private line charge to transport the call beyond the caller's local calling area to the FX customer's premises. The currently available service options are contained in the following Verizon tariffs: Bell Atlantic-Pennsylvania, Inc., PA P.U.C. No. 1, § 12, Channels, and Local General Tariffs PA P.U.C. Nos. 180A, 182, 185B and 185C.

(b) See response a. In this case, the call would be rated as "local" to the FX customer, who has purchased basic exchange service in the foreign exchange, as well as private line service. The called party would not pay to receive the call.

(c) See response a. A call to an NXX associated with a non-local exchange would be billed as toll. The example is largely academic, however, because,if the FX customer is located in the same local calling area as the caller, the FX customer would ordinarily provide the calling party with a locally rated number, not an FX number that would require the caller to incur toll charges.

(d) See response c.

(e) Calls are rated by the interexchange carrier to the FX customer's foreign switch.

Interrogatory No. 56

Please explain how you bill each end user (or IXC) for each of the types of traffic identified in DR 55, and provide all documentation supporting your answer.

Response to Interrogatory No. 56

(a)-(d) Calls would be billed as they are rated, as described in Verizon's Response to Interrogatory No. 55.

(e) Such calls would be billed by the interexchange carrier.

Interrogatory No. 57

Please explain how you account (for separations or other regulatory purposes) for each of the types of traffic identified in DR 55, and provide all documentation supporting your answer.

Response to Interrogatory No. 57

Calls are accounted for as local or toll based on how the call is rated.

Interrogatory No. 59

Have you ever billed or received reciprocal compensation for calls received from customers of CLECs or other LECs for termination to your FX customers located in Pennsylvania? Please explain your answer.

Response to Interrogatory No. 59

If a CLEC customer originated a call to a Verizon FX customer with an assigned NXX code associated with the same local calling area as the NXX code of the originating CLEC customer, Verizon would ordinarily bill (and therefore also receive) reciprocal compensation on such a call. Verizon believes that in-bound FX traffic constitutes a very small proportion of in-bound traffic received from CLECs. Verizon does not believe that reciprocal compensation is due on such traffic.

Interrogatory No. 60

Are there any circumstances in which Verizon has been billed and/or paid access charges to the originating carrier for a call originated by another carrier and terminating to a Verizon FX customer? If so, please describe all circumstances under which such an obligation arose.

Response to Interrogatory No. 60

See Response to Interrogatory 55(e). If a carrier delivers traffic to a Verizon FX number that is rated as an interLATA or intraLATA toll call, and the carrier's customer originated the call, the originating carrier would owe access charges under Verizon's state and federal tariffs.

Interrogatory No. 61

Please state whether you offer any FX-Like Service; *e.g.*, do you currently offer any services or products to your customers, other than your FX service, under which a customer can obtain a telephone number with an "NXX" associated with a local calling area that is different from the local calling area in which the customer has a physical presence?

Response to Interrogatory No. 61

Verizon offers Enhanced IntelliLinQ PRI Hub Service and Internet Protocol Routing Service in Pennsylvania.

Interrogatory No. 62

Please state whether you provide "Internet Protocol Routing Service" in Pennsylvania.

Response to Interrogatory No. 62

Yes.

Interrogatory No. 63

Please state whether you provide "Single Number Service-Primary Rate Interface," Hub-PRI service, SNS-PRI service, or their functional equivalents, in Pennsylvania.

Response to Interrogatory No. 63

See Response to Interrogatory No. 61.

Interrogatory No. 64

Please state whether you provide in Pennsylvania any service, apart from 1-8YY service, by which an Internet service provider can use a single number for all of its customers within a LATA to reach it to obtain Internet access and not incur toll charges.

Response to Interrogatory No. 64

Both Enhanced IntelliLinQ PRI Hub Service and Internet Protocol Routing Service provide this functionality.

Interrogatory No. 65

Is "1-500" service available to ISPs in Pennsylvania?

Response to Interrogatory No. 65

Yes.

Interrogatory No. 66

If the answer to DRs 61, 62, 63, 64 or 65 is yes, please state the name of each such service, identify the tariff where the product is described, provide copies of all product descriptions and marketing materials associated with each service offering and state the number of customers in the Pittsburgh and Philadelphia LATAs who purchase each FX-like service.

Response to Interrogatory No. 66

See Reponses to Interrogatories No. 61-65. Internet Protocol Routing Service is described in Verizon's Tariff F.C.C. No. 1, § 16.5. Enhanced IntelliLinQ PRI Hub Service is described in Bell Atlantic-Pennsylvania, Inc. P.U.C. No. 1, § 21D. Verizon objects to the request for copies of all product descriptions and market materials as overly broad and unduly burdensome and not reasonably calculated to lead to discovery of relevant information. Verizon objects to the request for the number of customers who purchase Verizon's service because such information is proprietary and competitively sensitive.

Interrogatory No. 74

Have you ever billed or received reciprocal compensation for calls received from customers of CLECs or other LECs for termination to your customers who have purchased or subscribed to FX-Like Services? Please explain your answer.

Response to Interrogatory No. 74

See Response to Interrogatory No. 59. CLEC customers are generally unable to dial 1-500 numbers; Verizon does not believe that it has ever billed or received reciprocal compensation for calls received from customers of CLECs or other LECs for delivery to

customers who have purchased 1-500 service. Verizon believes that "FX-Like Services" traffic constitutes a very small proportion of in-bound traffic received from CLECs. Verizon does not believe that reciprocal compensation is due on such traffic.

Interrogatory No. 80

Please state whether your costs of originating locally-dialed calls from your customers to US LEC customers having line numbers assigned to the same NPA-NXX code vary depending on the physical location of those customers.

Response to Interrogatory No. 80

Verizon's costs of delivering traffic depend on the location of the applicable CLEC interconnection point and do not vary depending on the location of the CLEC customer. As Verizon has explained in the testimony of Terry Haynes, CLECs' use of virtual NXX codes may deprive Verizon of appropriate compensation for originating and transporting interexchange traffic.

Interrogatory No. 83

Has Verizon developed a process by which it can separate or identify traffic as FX or FX-Like Services traffic from all other locally dialed traffic?

Response to Interrogatory No. 83

Verizon has no automated process in place to identify CLEC-originated traffic bound for Verizon FX numbers. Verizon can accurately estimate the volume of such traffic using traffic studies. Verizon believes that the traffic described constitutes a very small proportion of in-bound traffic received from CLECs.

Interrogatory No. 85

Would implementing a process to separate FX or FX-Like Services traffic from all other locally dialed traffic require Verizon, US LEC, and other LECs to implement a new billing system to rate such traffic for purposes of intercarrier compensation?

Response to Interrogatory No. 85

No with respect to Verizon. Verizon cannot respond to this Interrogatory with respect to any other carrier.

Interrogatory No. 86

If the answer to DR 85 is yes, what does Verizon project the cost of implementing such a billing system to be?

Response to Interrogatory No. 86

N/A.

Respectfully submitted,

_____

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1. General

Each Party ("Providing Party") shall provide to the other Party, in accordance with this Agreement, the Providing Party's applicable Tariffs, and Applicable Law, interconnection with the Providing Party's network for the transmission and routing of Telephone Exchange Service and Exchange Access.

2. Methods for Interconnection and Trunk Types

2.1 Methods for Interconnection.

2.1.1 In accordance with, but only to the extent required by, Applicable Law, the Parties shall provide interconnection of their networks at any technically feasible point as specified in this Agreement.

2.1.2 **[DISPUTED ITEM]** Each Party ("Originating Party"), at its own expense, shall provide for delivery to the relevant IP of the other Party ~~("Receiving~~("Terminating Party") Reciprocal Compensation Traffic and Measured Internet Traffic that the Originating Party wishes to deliver to the ~~Receiving~~Terminating Party.

2.1.3 US LEC may use any of the following methods for interconnection with Verizon:

2.1.3.1 a Collocation arrangement US LEC has established at the Verizon-IP pursuant to the Collocation Attachment; and/or

2.1.3.2 a Collocation arrangement, or an Entrance Facility and transport arrangement, that has been established separately at the Verizon-IP by a third party and that is used by US LEC to interconnect with Verizon; and/or

2.1.3.3 an Entrance Facility and transport obtained from Verizon (and any necessary multiplexing) pursuant to the applicable Verizon access Tariff or contractual arrangement, from the US LEC network to the Verizon-IP.

2.1.4 US LEC may order from Verizon, in accordance with the rates, terms and conditions set forth in this Agreement and applicable Verizon Tariff(s) (or in the absence of applicable rates, terms and conditions set forth in this Agreement and Verizon Tariff(s), in accordance with rates, terms and conditions to be negotiated by the Parties), any of the methods for interconnection specified in Section 2.1.3 above.

2.1.5 Verizon may use any of the following methods for interconnection with US LEC:

2.1.5.1 an arrangement Verizon has established at the US LEC-IP that is operationally equivalent to a Collocation arrangement (including, but not limited to, a Verizon provided Entrance Facility); and/or

2.1.5.2 an arrangement that a third party has established at the US LEC-IP that is operationally equivalent to a Collocation

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arrangement and that is used by Verizon to interconnect with US LEC; and/or

2.1.5.3 a non-distance sensitive Entrance Facility obtained from US LEC (and any necessary multiplexing), from the POI to the US LEC-IP (including, but not limited to, at Verizon's election, an Entrance Facility accessed by Verizon through interconnection at a Collocation arrangement that US LEC has established at a Verizon Wire Center pursuant to the Collocation Attachment, or through interconnection at a Collocation arrangement that has been established separately at a Verizon Wire Center by a third party and that is used by US LEC), or an Entrance Facility obtained from a third party that has established an interconnection arrangement with US LEC.

2.1.6 Verizon may order from US LEC, in accordance with the rates, terms and conditions set forth in this Agreement and applicable US LEC Tariff(s) (or in the absence of applicable rates, terms and conditions set forth in this Agreement and US LEC Tariff(s), in accordance with rates, terms and conditions to be negotiated by the Parties), any of the methods for interconnection specified in Section 2.1.5 above.

2.2 Trunk Types.

2.2.1 In interconnecting their networks pursuant to this Attachment, the Parties will use, as appropriate, the following separate and distinct trunk groups:

2.2.1.1 Interconnection Trunks for the transmission and routing of Reciprocal Compensation Traffic, translated LEC IntraLATA toll free service access code (e.g., 800/888/877) traffic, and IntraLATA Toll Traffic, between their respective Telephone Exchange Service Customers, Tandem Transit Traffic, and, Measured Internet Traffic, all in accordance with Sections 5 through 8 of this Attachment;

2.2.1.2 Access Toll Connecting Trunks for the transmission and routing of Exchange Access traffic, including translated InterLATA toll free service access code (e.g., 800/888/877) traffic, between US LEC Telephone Exchange Service Customers and purchasers of Switched Exchange Access Service via a Verizon access Tandem in accordance with Sections 9 through 11 of this Attachment; and

2.2.1.3 Miscellaneous Trunk Groups as mutually agreed to by the Parties, including, but not limited to: (a) choke trunks for traffic congestion and testing; and, (b) untranslated IntraLATA/InterLATA toll free service access code (e.g. 800/888/877) traffic.

2.2.2 Other types of trunk groups may be used by the Parties as provided in other Attachments to this Agreement (e.g., 911/E911 Trunks; Information Services Trunks) or in other separate agreements between the Parties (e.g., Directory Assistance Trunks, Operator Services Trunks, BLV/BLVI Trunks).

2.2.3 Except as otherwise provided in this Agreement, the Parties will mutually agree upon where One-Way Interconnection Trunks (trunks with traffic going in one direction, including one-way trunks and uni-directional two-way trunks) and/or Two-Way Interconnection Trunks (trunks with traffic going in both directions) will be deployed.

2.2.4 In the event the volume of traffic between the Party's networks, which is carried by a Final Tandem Interconnection Trunk group, exceeds the Centium Call Second (Hundred Call Second) busy hour equivalent of one (1) DS-1 at any time and/or 200,000 minutes of use for a single month: (a) if One-Way Interconnection Trunks are used, the originating Party shall promptly establish new End Office One-Way Interconnection Trunk groups between the Verizon End Office and the US LEC network; or, (b) if Two-Way Interconnection Trunks are used, US LEC shall promptly submit an ASR to Verizon to establish new End Office Two-Way Interconnection Trunk group(s) between that Verizon End Office and the US LEC network.

2.2.5 Except as otherwise agreed in writing by the Parties, the total number of Tandem Interconnection Trunks between US LEC's network and a Verizon Tandem will be limited to a maximum of 240 trunks. In the event that the Parties have exhausted Tandem offload requirements, as stated in Section 2.2.4, then the Parties agree to exceed the 240 trunk limitation at the Verizon Tandem until such time as Verizon or US LEC exceeds 200,000 combined minutes of use to a specific end office as detailed in Section 2.2.4. US LEC shall promptly submit an ASR to Verizon to establish new or additional End Office Trunks to insure that the volume of traffic between US LEC's network and the Verizon Tandem does not exceed the capacity of the 240 trunks.

2.3 One-Way Interconnection Trunks.

2.3.1 Where the Parties have agreed to use One-Way Interconnection Trunks for the delivery of traffic from US LEC to Verizon, US LEC, at US LEC's own expense, shall:

2.3.1.1 provide its own facilities for delivery of the traffic to the US LEC Collocation arrangement at the Verizon-IP or to the third-party Collocation arrangement used by US LEC at the Verizon-IP; and/or

2.3.1.2 obtain transport for delivery of the traffic to the US LEC Collocation arrangement at the Verizon-IP or to the third-party Collocation arrangement used by US LEC at the Verizon-IP (a) from a third-party, or, (b) if Verizon offers such transport pursuant to this Agreement or an applicable Verizon Tariff, from Verizon; and/or

2.3.1.3 order the One-Way Trunks from Verizon in accordance with the rates, terms and conditions set forth in this Agreement and applicable Verizon Tariffs, for installation on an Entrance Facility obtained by US LEC from Verizon pursuant to Sections 2.1.3.3 and 2.1.4, and also order multiplexing and transport from Verizon pursuant to Sections 2.1.3.3 and 2.1.4.

2.3.1.3.1 For each Tandem One -Way Interconnection Trunk group provided by Verizon to US LEC with a utilization level of less than sixty percent (60%) for three consecutive months, unless the Parties agree otherwise, US LEC will promptly submit ASRs to disconnect a sufficient number of Interconnection Trunks to attain a utilization level of approximately sixty percent (60%). The minimum utilization level of sixty percent (60%) is not required until trunk group members have been in service for at least ninety (90) days.

2.3.2 Where the Parties have agreed to use One-Way Interconnection Trunks for the delivery of traffic from Verizon to US LEC, Verizon, at Verizon's own expense, shall:

2.3.2.1 provide its own facilities for delivery of the traffic to the Verizon Collocation arrangement or interconnection arrangement at the US LEC-IP or to the third-party Collocation arrangement used by Verizon at the US LEC-IP; or

2.3.2.2 obtain transport for delivery of the traffic to the Verizon Collocation arrangement or interconnection arrangement at the US LEC-IP or to the third-party Collocation arrangement used by Verizon at the US LEC-IP (a) from a third-party, or, (b) if US LEC offers such transport pursuant to this Agreement or an applicable US LEC Tariff, from US LEC; or

2.3.2.3 order the One-Way Trunks from US LEC in accordance with the rates, terms and conditions set forth in this Agreement and applicable US LEC Tariffs for installation on an Entrance Facility obtained by Verizon from US LEC pursuant to Sections 2.1.5.3 and 2.1.6, or obtain the One-Way Trunks from a third-party that has established an interconnection arrangement with US LEC.

2.4 Two-Way Interconnection Trunks.

2.4.1 Where the Parties have agreed to use Two-Way Interconnection Trunks for the exchange of traffic between Verizon and US LEC, US LEC shall order from Verizon, and Verizon shall provide, the Two-Way Interconnection Trunks and the Entrance Facility, on which such Trunks will ride, and transport and multiplexing, in accordance with the rates, terms and conditions set forth in this Agreement and Verizon's applicable Tariffs.

2.4.2 Prior to ordering any Two-Way Interconnection Trunks from Verizon, US LEC shall meet with Verizon to conduct a joint planning meeting ("Joint Planning Meeting"). At that Joint Planning Meeting, each Party shall provide to the other Party originating Centium Call Second (Hundred Call Second) information, and the Parties shall mutually agree on the appropriate initial number of Two-Way End Office and Tandem Interconnection Trunks and the interface specifications at the Point of Interconnection (POI). Where the Parties have agreed to convert existing One-Way Interconnection Trunks to Two-Way Interconnection Trunks, at the Joint Planning Meeting, the Parties shall

also mutually agree on the conversion process and project intervals for conversion of such One-Way Interconnection Trunks to Two-Way Interconnection Trunks.

2.4.3 Two-Way Interconnection Trunks shall be from a Verizon End Office or Tandem to a mutually agreed upon POI.

2.4.4 On a semi-annual basis, US LEC shall submit a good faith forecast to Verizon of the number of End Office and Tandem Two-Way Interconnection Trunks that US LEC anticipates Verizon will need to provide during the ensuing two (2) year period to carry traffic from US LEC to Verizon and from Verizon to US LEC. US LEC's trunk forecasts shall conform to the Verizon CLEC trunk forecasting guidelines as in effect at that time.

2.4.5 The Parties shall meet (telephonically or in person) from time to time, as needed, to review data on End Office and Tandem Two-Way Interconnection Trunks to determine the need for new trunk groups and to plan any necessary changes in the number of Two-Way Interconnection Trunks.

2.4.6 Two-Way Interconnection Trunks shall have SS7 Common Channel Signaling. The Parties agree to utilize B8ZS and Extended Super Frame (ESF) DS1 facilities, where available.

2.4.7 With respect to End Office Two-Way Interconnection Trunks, both Parties shall use an economic Centium Call Second (Hundred Call Second) equal to five (5).

2.4.8 Two-Way Interconnection Trunk groups that connect to a Verizon access Tandem shall be engineered using a design blocking objective of Neal-Wilkenson B.005 during the average time consistent busy hour. Two-Way Interconnection Trunk groups that connect to a Verizon local Tandem shall be engineered using a design blocking objective of Neal-Wilkenson B.01 during the average time consistent busy hour. Verizon and US LEC shall engineer Two-Way Interconnection Trunks using BOC Notes on the LEC Networks SR-TSV-002275.

2.4.9 The performance standard for final Two-Way Interconnection Trunk groups shall be that no such Interconnection Trunk group will exceed its design blocking objective (B.005 or B.01, as applicable) for three (3) consecutive calendar traffic study months.

2.4.10 US LEC shall determine and order the number of Two-Way Interconnection Trunks that are required to meet the applicable design blocking objective for all traffic carried on each Two-Way Interconnection Trunk group. US LEC shall order Two-Way Interconnection Trunks by submitting ASRs to Verizon setting forth the number of Two-Way Interconnection Trunks to be installed and the requested installation dates within Verizon's effective standard intervals or negotiated intervals, as appropriate. US LEC shall complete ASRs in accordance with OBF Guidelines as in effect from time to time.

2.4.11 Verizon may (but shall not be obligated to) monitor Two-Way Interconnection Groups using service results for the applicable design

blocking objective. If Verizon observes blocking in excess of the applicable design objective on any Tandem Two-Way Interconnection Trunk group and US LEC has not notified Verizon that it has corrected such blocking, Verizon may submit to US LEC a Trunk Group Service Request directing US LEC to remedy the blocking. Upon receipt of a Trunk Group Service Request, US LEC will complete an ASR to augment the Two-Way Interconnection Trunk Group with excessive blocking and submit the ASR to Verizon within five (5) Business Days.

2.4.12 The Parties will review all Tandem Two-Way Interconnection Trunk groups that reach a utilization level of seventy percent (70%), or greater, to determine whether those groups should be augmented. US LEC will promptly augment all Tandem Two-Way Interconnection Trunk groups that reach a utilization level of eighty percent (80%) by submitting ASRs for additional trunks sufficient to attain a utilization level of approximately seventy percent (70%), unless the Parties agree that additional trunking is not required. For each Tandem Two-Way Interconnection Trunk group with a utilization level of less than sixty percent (60%), unless the Parties agree otherwise, US LEC will promptly submit ASRs to disconnect a sufficient number of Interconnection Trunks to attain a utilization level of approximately sixty percent (60%) for each respective group, unless the Parties agree that the Two-Way Interconnection Trunks should not be disconnected. In the event US LEC fails to submit an ASR for Two-Way Interconnection Trunks in conformance with this section, Verizon may bill US LEC for the excess Interconnection Trunks at the applicable Verizon rates.

2.4.13 Because Verizon will not be in control of when and how many Two-Way Interconnection Trunks are established between its network and US LEC's network, Verizon's performance in connection with these Two-Way Interconnection Trunk groups shall not be subject to any performance measurements and remedies under this Agreement, and, except as otherwise required by Applicable Law, under any FCC or Commission approved carrier-to-carrier performance assurance guidelines or plan.

2.4.14 Upon three (3) months prior written notice and with the mutual agreement of the Parties, either Party may withdraw its traffic from a Two-Way Interconnection Trunk group and install One-Way Interconnection Trunks to the other Party's relevant POI, provided that, if a Party has failed to comply with this Agreement with regard to Two-Way Interconnection Trunks, the other Party may upon three (3) months prior written notice and without mutual agreement of the non-complying Party, withdraw its traffic from a Two-Way Interconnection Trunk group and install One-Way Interconnection Trunks to the non-complying Party's relevant POI.

2.4.15 US LEC will route its traffic to Verizon over the End Office and Tandem Two-Way Interconnection Trunks in accordance with SR-TAP-000191, including but not limited to those standards requiring that a call from US LEC to a Verizon End Office will first be routed to the End Office Interconnection Trunk group between US LEC and the Verizon End Office.

2.4.16 When the Parties implement Two-Way Interconnection Trunks, the Parties will work cooperatively to calculate a Proportionate Percentage

of Use ("PPU") factor for each facility on which the Two-Way Interconnection Trunks ride, based on the total number of minutes of traffic that each Party sends over the Two-Way Interconnection Trunks riding on that facility. US LEC will pay a percentage of Verizon's monthly recurring charges for each facility on which the Two-Way Interconnection Trunks ride equal to US LEC's percentage of use of that facility as shown by the PPU. The PPU shall not be applied to calculate the charges for any portion of a facility that is on US LEC's side of US LEC's-IP, which charges shall be solely the financial responsibility of US LEC. During the first full calendar quarter (and any partial calendar quarter preceding such first full calendar quarter) after the first Two-Way Interconnection Trunk is established on a facility, the PPU for that facility will be fifty percent (50%) for each Party. For each calendar quarter thereafter, the Parties shall recalculate the PPU using actual traffic usage data for the preceding calendar quarter.

Non-recurring charges for the facility on which the Two-Way Interconnection Trunks ride shall be apportioned as follows: (a) for the portion of the facility on Verizon's side of the US LEC-IP, US LEC shall pay fifty percent (50%) of the Verizon non-recurring charges; and, (b) for the portion of the facility on US LEC's side of the US LEC-IP, US LEC shall be solely responsible for the non-recurring charges.

Notwithstanding the foregoing provisions of this Section 2.4.16, if US LEC fails to provide US LEC-IPs in accordance with this Agreement, US LEC will be responsible for one hundred percent (100%) of all recurring and non-recurring charges associated with Two-Way Interconnection Trunk groups until US LEC establishes such US LEC-IPs.

3. **Alternative Interconnection Arrangements**

3.1 In addition to the foregoing methods of Interconnection, and subject to mutual agreement of the Parties, the Parties may agree to establish an End Point Fiber Meet arrangement, which may include a SONET backbone with an optical interface at the OC-n level in accordance with the terms of this Section. The Fiber Distribution Frame at the US LEC location shall be designated as the POI for both Parties.

3.2 The establishment of any End Point Fiber Meet arrangement is expressly conditioned upon the Parties' reaching prior written agreement on routing, appropriate sizing and forecasting, equipment, ordering, provisioning, maintenance, repair, testing, augment, and compensation, procedures and arrangements, reasonable distance limitations, and on any other arrangements necessary to implement the End Point Fiber Meet arrangement.

3.3 Except as otherwise agreed by the Parties, End Point Fiber Meet arrangements shall be used only for the termination of Reciprocal Compensation Traffic, Measured Internet Traffic, and IntraLATA Toll Traffic.

4. **Initiating Interconnection**

4.1 If US LEC determines to offer Telephone Exchange Services and to interconnect with Verizon in any LATA in which Verizon also offers Telephone Exchange Services and in which the Parties are not already interconnected pursuant to this

Agreement, US LEC shall provide written notice to Verizon of the need to establish Interconnection in such LATA pursuant to this Agreement.

4.2 The notice provided in Section 4.1 shall include (a) the initial Routing Point(s); (b) the applicable US LEC-IPs to be established in the relevant LATA in accordance with this Agreement; (c) US LEC's intended Interconnection activation date; (d) a forecast of US LEC's trunking requirements conforming to Section 14.3; and (e) such other information as Verizon shall reasonably request in order to facilitate Interconnection.

4.3 The interconnection activation date in the new LATA shall be mutually agreed to by the Parties after receipt by Verizon of all necessary information as indicated above. Within ten (10) Business Days of Verizon's receipt of US LEC's notice provided for in Section 4.1, Verizon and US LEC shall confirm the Verizon-IP(s), the US LEC-IP(s) and the mutually agreed upon Interconnection activation date for the new LATA.

5. Transmission and Routing of Telephone Exchange Service Traffic

5.1 Scope of Traffic.

Section 5 prescribes parameters for Interconnection Trunks used for Interconnection pursuant to Sections 2 through 4 of this Attachment.

5.2 Trunk Group Connections and Ordering.

5.2.1 For One-Way or Two-Way Interconnection Trunks, both Parties shall use either a DS-1 or DS-3 facilities interface at the POI. When and where an STS-1 interface is available, the Parties may agree to use such an interface. Upon mutual agreement, the Parties may agree to use an optical interface (such as OC-n).

5.2.2 When One-Way or Two-Way Interconnection Trunks are provisioned using a DS-3 interface facility, then US LEC shall order the multiplexed DS-3 facilities to the Verizon Central Office that is designated in the NECA 4 Tariff as an Intermediate Hub location, unless otherwise agreed to in writing by Verizon. The specific NECA 4 Intermediate Hub location to be used for One-Way or Two-Way Interconnection Trunks shall be in the appropriate Tandem subtending area based on the LERG. In the event the appropriate DS-3 Intermediate Hub is not used, then US LEC shall pay 100% of the facility charges for the One-Way or Two-Way Interconnection Trunks.

5.2.3 Each Party will identify its Carrier Identification Code, a three or four digit numeric code obtained from Telcordia, to the other Party when ordering a trunk group.

5.2.4 Unless mutually agreed to by both Parties, each Party will outpulse ten (10) digits to the other Party.

5.2.5 Each Party will use commercially reasonable efforts to monitor trunk groups under its control and to augment those groups using generally accepted trunk engineering standards so as to not exceed blocking objectives. Each Party agrees to use modular trunk engineering techniques for trunks subject to this Attachment.

5.3 Switching System Hierarchy and Trunking Requirements.

For purposes of routing US LEC traffic to Verizon, the subtending arrangements between Verizon Tandem Switches and Verizon End Office Switches shall be the same as the Tandem/End Office subtending arrangements Verizon maintains for the routing of its own or other carriers' traffic. For purposes of routing Verizon traffic to US LEC, the subtending arrangements between US LEC Tandem Switches and US LEC End Office Switches shall be the same as the Tandem/End Office subtending arrangements that US LEC maintains for the routing of its own or other carriers' traffic.

5.4 Signaling.

Each Party will provide the other Party with access to its databases and associated signaling necessary for the routing and completion of the other Party's traffic in accordance with the provisions contained in the Unbundled Network Element Attachment or applicable access tariff.

5.5 Grades of Service.

The Parties shall initially engineer and shall monitor and augment all trunk groups consistent with the Joint Process as set forth in Section 14.1.

6. Traffic Measurement and Billing over Interconnection Trunks

6.1 For billing purposes, each Party shall pass Calling Party Number (CPN) information on calls carried over the Interconnection Trunks.

6.1.1 As used in this Section 6, "Traffic Rate" means the applicable Reciprocal Compensation Traffic rate, Measured Internet Traffic rate, intrastate Switched Exchange Access Service rate, interstate Switched Exchange Access Service rate, or intrastate/interstate Tandem Transit Traffic rate, as provided in the Pricing Attachment, an applicable Tariff, or, for Measured Internet Traffic, the FCC Internet Order.

6.1.2 If for any monthly period the originating Party passes CPN on ninety percent (90%) or more of its calls, the other Party ("Billing Party") may bill the originating Party the Local Traffic call completion rate, intrastate Switched Exchange Access Service rates, intrastate/interstate Tandem Transit Traffic rates, or interstate Switched Exchange Access Service rates applicable to each minute of traffic, as provided in Attachment A and applicable Tariffs, for which CPN is passed. For any remaining (up to 10%) calls without CPN information, the Billing Party may bill the originating Party for such traffic at the Reciprocal Compensation rate, intrastate Switched Exchange Access Service rates, intrastate/interstate Tandem Transit Traffic rates, or interstate Switched Exchange Access Service rates applicable to each minute of traffic, as provided in Attachment A and applicable Tariffs, in direct proportion to the minutes of use of calls passed with CPN information. If for any monthly billing period the originating Party passes CPN on eighty percent (80%) or more of its calls and provides evidence that it passed CPN on ninety percent (90%) or more of its calls for which it was technically feasible to do so, the Billing Party may bill the originating Party for traffic without CPN information at the Local Traffic call completion rate, intrastate Switched Exchange Access rates, intrastate/interstate Tandem Transit Traffic rates, or interstate Switched Exchange Access rates, applicable to each minute of traffic, as provided in Attachment A and applicable

Tariffs, in direct proportion to the minutes of use of calls passed with CPN information.

6.1.3 If the originating Party fails to pass CPN at the levels set forth in section 6.1.2 the Billing Party may bill the higher of its interstate Switched Exchange Access Service rates or its intrastate Switched Exchange Access Services rates for all traffic that is passed without CPN, unless the Parties agree that other rates should apply to such traffic.

6.2 At such time as a Billing Party has the capability, on an automated basis, to use such CPN to classify traffic delivered over Interconnection Trunks by the other Party by Traffic Rate type (e.g., Reciprocal Compensation Traffic/Measured Internet Traffic, intrastate Switched Exchange Access Service, interstate Switched Exchange Access Service, or intrastate/interstate Tandem Transit Traffic), such Billing Party may bill the originating Party the Traffic Rate applicable to each relevant minute of traffic for which CPN is passed. If the Billing Party lacks the capability, on an automated basis, to use CPN information on an automated basis to classify traffic delivered by the other Party by Traffic Rate type, the originating Party will supply Traffic Factor 1 and Traffic Factor 2. The Traffic Factors shall be supplied in writing by the originating Party within thirty (30) days of the Effective Date and shall be updated in writing by the originating Party quarterly. Measurement of billing minutes for purposes of determining terminating compensation shall be in conversation seconds (the time in seconds that the Parties equipment is used for a completed call, measured from the receipt of answer supervision to the receipt of disconnect supervision). Measurement of billing minutes for originating toll free service access code (e.g., 800/888/877) calls shall be in accordance with applicable Tariffs. Determinations as to whether traffic is Reciprocal Compensation Traffic or Measured Internet Traffic shall be made in accordance with Section 7.3.2.1 below.

6.3 Each Party, at its own expense, reserves the right to audit all Traffic, up to a maximum of two audits per calendar year, to ensure that rates are being applied appropriately; provided, however, that either Party shall have the right to conduct additional audit(s) if the preceding audit disclosed material errors or discrepancies. Each Party agrees to provide the necessary Traffic data in conjunction with any such audit in a timely manner.

6.4 Nothing in this Agreement shall be construed to limit either Party's ability to designate the areas within which that Party's Customers may make calls which that Party rates as "local" in its Customer Tariffs.

7. Reciprocal Compensation Arrangements Pursuant to Section 251(b)(5) of the Act

7.1 Reciprocal Compensation Traffic Interconnection Points.

7.1.1 Except as otherwise agreed by the Parties, the Interconnection Points ("IPs") from which US LEC will provide transport and termination of Reciprocal Compensation Traffic to its Customers ("US LEC-IPs") shall be as follows:

[SECTIONS 7.1.1.1, 7.1.1.2 AND 7.1.1.3 IN DISPUTE]

7.1.1.1. For each LATA in which US LEC requests to interconnect with Verizon, except as otherwise agreed by the Parties, US LEC shall establish an IP.~~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.~~

~~7.1.1.1.1 If US LEC fails to establish a geographically relevant IP as provided herein, then without waiver of Verizon's right to seek enforcement of the requirements of this Section, until the requested IP is established, US LEC shall bill and Verizon shall pay the applicable intercarrier compensation rate for relevant traffic less Verizon's transport rate (calculated by taking the dedicated transport per mile rate multiplied by the average mileage between the originating end offices and the CLEC POI plus the fixed dedicated transport rate and dividing the total by the average minutes of use for a DS1), tandem switching rate (to the extent the traffic is tandem switched), and other costs (to the extent Verizon purchases such transport from US LEC or a third party), from Verizon's originating End Office to US LEC's IP.~~

7.1.1.2 ~~At any time that US LEC establishes a Collocation site at a Verizon End Office, then either Party may request that~~

~~such US LEC Collocation site be established as the US LEC IP for traffic originated by Verizon Customers served by that End Office. Approval of such request shall not be unreasonably withheld or delayed. If US LEC should fail to establish an IP at an end office Collocation site pursuant to Verizon's request, within ninety (90) days following Verizon's request, then without waiver of Verizon's right to seek enforcement of the requirements of this Section, until the requested IP is established, US LEC shall bill and Verizon shall pay the applicable intercarrier compensation rate for relevant traffic less Verizon's transport rate, tandem switching rate (to the extent the traffic is tandem switched), and other costs (to the extent Verizon purchases such transport from US LEC or a third party), from Verizon's originating End Office to US LEC's IP.~~

7.1.1.3 In any LATA where the Parties are already interconnected prior to the effective date of this Agreement, US LEC may maintain existing CLEC-IPs, ~~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.~~

7.1.2 Except as otherwise agreed by the Parties, the Interconnection Points ("IPs") from which Verizon will provide transport and termination of Reciprocal Compensation Traffic to its Customers ("Verizon-IPs") shall be as follows:

7.1.2.1 For Reciprocal Compensation Traffic delivered by US LEC to the Verizon Tandem subtended by the terminating End Office serving the Verizon Customer, the Verizon-IP will be the Verizon Tandem switch.

7.1.2.2 For Reciprocal Compensation Traffic delivered by US LEC to the Verizon terminating End Office serving the Verizon Customer, the Verizon-IP will be Verizon End Office switch.

7.1.3 Should either Party offer additional IPs to any Telecommunications Carrier that is not a Party to this Agreement, the other Party may elect to deliver traffic to such IPs for the NXXs or functionalities served by those IPs. To the extent that any such US LEC-IP is not located at a Collocation site at a Verizon Tandem Wire Center or Verizon End Office Wire Center, then US LEC shall permit Verizon to establish

physical Interconnection through collocation or other operationally comparable arrangements acceptable to Verizon at the US LEC-IP.

7.1.4 Each Party is responsible for delivering its Reciprocal Compensation Traffic that is to be terminated by the other Party to the other Party's relevant IP.

7.2 Reciprocal Compensation. [DISPUTED ITEM]

The Parties shall compensate each other for the transport and termination of Reciprocal Compensation Traffic delivered to the terminating Party in accordance with Section 251(b)(5) of the Act at the rates stated in the Pricing Attachment. These rates are to be applied at the US LEC-IP for traffic delivered by Verizon for termination by US LEC, and at the Verizon-IP for traffic delivered by US LEC for termination by Verizon. Except as expressly specified in this Agreement, no additional charges shall apply for the termination from the IP to the Customer of Reciprocal Compensation Traffic delivered to the Verizon-IP by US LEC or the US LEC-IP by Verizon. When such Reciprocal Compensation Traffic is delivered over the same trunks as Toll Traffic, any port or transport or other applicable access charges related to the delivery of Toll Traffic from the IP to an end user shall be prorated to be applied only to the Toll Traffic. The designation of traffic as Reciprocal Compensation Traffic for purposes of Reciprocal Compensation shall be based on the ~~actual originating and terminating points of the complete end-to-end communication.~~originating NPA-NXX rate center and the terminating NPA-NXX rate center.

7.3 Traffic Not Subject to Reciprocal Compensation.

7.3.1 Reciprocal Compensation shall not apply to interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access.

7.3.2 Reciprocal Compensation shall not apply to Internet Traffic.

7.3.2.1 The determination of whether traffic is Reciprocal Compensation Traffic or Internet Traffic shall be performed in accordance with Paragraphs 8 and 79, and other applicable provisions, of the FCC Internet Order (including, but not limited to, in accordance with the rebuttable presumption established by the FCC Internet Order that traffic delivered to a carrier that exceeds a 3:1 ratio of terminating to originating traffic is Internet Traffic, and in accordance with the process established by the FCC Internet Order for rebutting such presumption before the Commission).

7.3.3 Reciprocal Compensation shall not apply to Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis.

7.3.4 Reciprocal Compensation shall not apply to Optional Extended Local Calling Area Traffic.

7.3.5 Reciprocal Compensation shall not apply to special access, private line, or any other traffic that is not switched by the terminating Party.

7.3.6 Reciprocal Compensation shall not apply to Tandem Transit Traffic.

7.3.7 [DISPUTED ITEM] ~~Reciprocal Compensation shall not apply to Voice Information Service Traffic (as defined in Section 5 of the Additional Services Attachment).~~

7.4 The Reciprocal Compensation rates (including, but not limited to, the Reciprocal Compensation per minute of use charges) billed by US LEC to Verizon shall not exceed the Reciprocal Compensation rates (including, but not limited to, Reciprocal Compensation per minute of use charges) billed by Verizon to US LEC.

8. Other Types of Traffic

8.1 [DISPUTED ITEM] ~~Notwithstanding any other provision of this Agreement or any Tariff: (a) the Parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of Internet Traffic shall be governed by the terms of the FCC Internet Order and other applicable FCC orders and FCC Regulations; and, (b) a Party shall not be obligated to pay any intercarrier compensation for Internet Traffic that is in excess of the intercarrier compensation for Internet Traffic that such Party is required to pay under the FCC Internet Order and other applicable FCC orders and FCC Regulations.~~ Notwithstanding any other provision of this Agreement or any Tariff, and except as set forth herein, the Parties' rights and obligations with respect to intercarrier compensation that is due in connection with their exchange of Internet Traffic shall be governed by the terms of the FCC Internet Order and other applicable FCC Orders and FCC Regulations. From the effective date of this Agreement until June 13, 2003, the parties shall compensate each other for the exchange of Internet Traffic at the rate of $0.0010 per MOU. From June 14, 2003 through the term of this agreement, or until the FCC issues a permanent rate structure governing intercarrier compensation for such traffic that is final and non-appealable, whichever is earlier, the parties shall compensate each other for the exchange of Internet Traffic at the rate of $0.0007 per MOU.

8.1.1 [DISPUTED ITEM] In the event the FCC's Internet Order is stayed, vacated, remanded or overturned by a court of competent jurisdiction, the Parties will maintain the rate structure set forth in section 8.1 hereof for the term of this Agreement; provided, however, that in consideration for maintaining the rate structure of the Internet Order, the Parties will waive all other provisions of the FCC's Internet Order, including but not limited to the growth cap and new market provisions.

8.2 Subject to Section 8.1 above, interstate and intrastate Exchange Access, Information Access, exchange services for Exchange Access or Information Access, and Toll Traffic, shall be governed by the applicable provisions of this Agreement and applicable Tariffs.

8.3 For any traffic originating with a third party carrier and delivered by US LEC to Verizon, US LEC shall pay Verizon the same amount that such third party carrier would have been obligated to pay Verizon for termination of that traffic at the location the traffic is delivered to Verizon by US LEC.

8.4 Any traffic not specifically addressed in this Agreement shall be treated as required by the applicable Tariff of the Party transporting and/or terminating the traffic.

8.5 Interconnection Points.

8.5.1 The IP for Measured Internet Traffic shall be the same as the IP for Reciprocal Compensation Traffic under Section 7.1 above.

8.5.2 [DISPUTED ITEM] Except as otherwise set forth in the applicable Tariff of a Party (~~"Receiving~~("Terminating Party") that receives Toll Traffic from the other Party, the IP of the ~~Receiving~~Terminating Party for Toll Traffic delivered to the ~~Receiving~~Terminating Party by the other Party shall be the same as the IP of the ~~Receiving~~Terminating Party for Reciprocal Compensation Traffic under Section 7.1 above.

8.5.3 [DISPUTED ITEM] The IP for traffic exchanged between the Parties that is not Reciprocal Compensation Traffic, Measured Internet Traffic or Toll Traffic, shall be as specified in the applicable provisions of this Agreement or the applicable Tariff of the ~~receiving~~terminating Party, or in the absence of applicable provisions in this Agreement or a Tariff of the ~~receiving~~terminating Party, as mutually agreed by the Parties.

9. Transmission and Routing of Exchange Access Traffic

9.1 Scope of Traffic.

Section 9 prescribes parameters for certain trunks to be established over the Interconnections specified in Sections 2 through 5 of this Attachment for the transmission and routing of traffic between US LEC Telephone Exchange Service Customers and Interexchange Carriers ("Access Toll Connecting Trunks"), in any case where US LEC elects to have its End Office Switch subtend a Verizon Tandem. This includes casually-dialed (1010XXX and 101XXXX) traffic.

9.2 Access Toll Connecting Trunk Group Architecture.

9.2.1 If US LEC chooses to subtend a Verizon access Tandem, US LEC's NPA/NXX must be assigned by US LEC to subtend the same Verizon access Tandem that a Verizon NPA/NXX serving the same Rate Center Area subtends as identified in the LERG.

9.2.2 US LEC shall establish Access Toll Connecting Trunks pursuant to applicable access Tariffs by which it will provide Switched Exchange Access Services to Interexchange Carriers to enable such Interexchange Carriers to originate and terminate traffic to and from US LEC's Customers.

9.2.3 The Access Toll Connecting Trunks shall be two-way trunks. Such trunks shall connect the End Office US LEC utilizes to provide Telephone Exchange Service and Switched Exchange Access to its Customers in a given LATA to the Tandem Verizon utilizes to provide Exchange Access in such LATA.

9.2.4 Access Toll Connecting Trunks shall be used solely for the transmission and routing of Exchange Access to allow US LEC's Customers to connect to or be connected to the interexchange trunks of any Interexchange Carrier which is connected to a Verizon access tandem.

10. Meet-Point Billing Arrangements

10.1 US LEC and Verizon will establish Meet-Point Billing (MPB) arrangements in order to provide a common transport option to Switched Exchange Access Services customers via a Verizon access Tandem Switch in accordance with the Meet Point Billing guidelines contained in the OBF's MECAB and MECOD documents, except as modified herein, and in Verizon's applicable Tariffs. The arrangements described in this Section 10 are intended to be used to provide Switched Exchange Access Service where the transport component of the Switched Exchange Access Service is routed through an access Tandem Switch that is provided by Verizon.

10.2 In each LATA, the Parties shall establish MPB arrangements for the applicable US LEC Routing Point/Verizon Serving Wire Center combinations.

10.3 Interconnection for the MPB arrangement shall occur at the Verizon access Tandems in the LATA, unless otherwise agreed to by the Parties.

10.4 US LEC and Verizon will use reasonable efforts, individually and collectively, to maintain provisions in their respective state access Tariffs, and/or provisions within the National Exchange Carrier Association (NECA) Tariff No. 4, or any successor Tariff sufficient to reflect the MPB arrangements established pursuant to this Agreement.

10.5 In general, there are four alternative Meet-Point Billing arrangements possible, which are: Single Bill/Single Tariff, Multiple Bill/Single Tariff, Multiple Bill/Multiple Tariff, and Single Bill/Multiple Tariff, as outlined in the OBF MECAB Guidelines.

Each Party shall implement the "Multiple Bill/Single Tariff" or "Multiple Bill/Multiple Tariff" option, as appropriate, in order to bill an IXC for the portion of the MPB arrangement provided by that Party. Alternatively, in former Bell Atlantic service areas, upon agreement of the Parties, each Party may use the New York State Access Pool on its behalf to implement the Single Bill/Multiple Tariff or Single Bill/Single Tariff option, as appropriate, in order to bill an IXC for the portion of the MPB arrangement provided by that Party.

10.6 The rates to be billed by each Party for the portion of the MPB arrangement provided by it shall be as set forth in that Party's applicable Tariffs, or other document that contains the terms under which that Party's access services are offered. For each US LEC Routing Point/Verizon Serving Wire Center combination, the MPB billing percentages for transport between the US LEC Routing Point and the Verizon Serving Wire Center shall be calculated in accordance with the formula set forth in Section 10.17.

10.7 Each Party shall provide the other Party with the billing name, billing address, and Carrier Identification Code (CIC) of the IXC, and identification of the Verizon Wire Center serving the IXC in order to comply with the MPB notification process as outlined in the MECAB document.

10.8 Verizon shall provide US LEC with the Switched Access Detail Usage Data (EMI category 1101XX records) on magnetic tape or via such other media as the Parties may agree to, no later than ten (10) Business Days after the date the usage occurred.

10.9 US LEC shall provide Verizon with the Switched Access Summary Usage Data (EMI category 1150XX records) on magnetic tape or via such other media as the Parties may agree, no later than ten (10) Business Days after the date of its rendering of the bill to the relevant IXC, which bill shall be rendered no less frequently than monthly.

10.10 All usage data to be provided pursuant to Sections 10.8 and 10.9 shall be sent to the following addresses:

To US LEC:

Access Billing/IT Group
US LEC Corporation
6801 Morrison Boulevard
Charlotte, NC 28211

For Verizon:

New York State Access Pool
C/O ACM, Inc.
120 Erie Blvd.
Schenectady, N.Y. 12305
Attn: Mark Ferri

Either Party may change its address for receiving usage data by notifying the other Party in writing pursuant to Section 29 of the General Terms and Conditions.

10.11 US LEC and Verizon shall coordinate and exchange the billing account reference (BAR) and billing account cross reference (BACR) numbers or Operating Company Number ("OCN"), as appropriate, for the MPB arrangements described in this Section 10. Each Party shall notify the other if the level of billing or other BAR/BACR elements change, resulting in a new BAR/BACR number, or if the OCN changes.

10.12 Each Party agrees to provide the other Party with notification of any errors it discovers in MPB data within thirty (30) calendar days of the receipt of the original data. The other Party shall attempt to correct the error and resubmit the data within ten (10) Business Days of the notification. In the event the errors cannot be corrected within such ten- (10) Business-Day period, the erroneous data will be considered lost. In the event of a loss of data, whether due to uncorrectable errors or otherwise, both Parties shall cooperate to reconstruct the lost data and, if such reconstruction is not possible, shall accept a reasonable estimate of the lost data based upon prior usage data.

10.13 Either Party may request a review or audit of the various components of access recording up to a maximum of two (2) audits per calendar year. All costs associated with each review and audit shall be borne by the requesting Party. Such review or audit shall be conducted subject to Section 7 of the General Terms and Conditions and during regular business hours. A Party may conduct additional audits, at its expense, upon the other Party's consent, which consent shall not be unreasonably withheld.

10.14 Except as expressly set forth in this Agreement, nothing contained in this Section 10 shall create any liability for damages, losses, claims, costs, injuries, expenses or other liabilities whatsoever on the part of either Party.

10.15 MPB will apply for all traffic bearing the 500, 900, toll free service access code (e.g. 800/888/877) (to the extent provided by an IXC) or any other non-geographic NPA which may be designated for such traffic in the future.

10.16 In the event US LEC determines to offer Telephone Exchange Services in a LATA in which Verizon operates an access Tandem Switch, Verizon shall permit and enable US LEC to subtend the Verizon access Tandem Switch(es) designated for the Verizon End Offices in the area where there are located US LEC Routing Point(s) associated with the NPA NXX(s) to/from which the Switched Exchange Access Services are homed.

10.17 Except as otherwise mutually agreed by the Parties, the MPB billing percentages for each Routing Point/Verizon Serving Wire Center combination shall be calculated according to the following formula, unless as mutually agreed to by the Parties:

a / (a + b) = US LEC Billing Percentage

and

b / (a + b) = Verizon Billing Percentage

where:

a = the airline mileage between US LEC Routing Point and the actual point of interconnection for the MPB arrangement; and

b = the airline mileage between the Verizon Serving Wire Center and the actual point of interconnection for the MPB arrangement.

10.18 US LEC shall inform Verizon of each LATA in which it intends to offer Telephone Exchange Services and its calculation of the billing percentages which should apply for such arrangement. Within ten (10) Business Days of US LEC's delivery of notice to Verizon, Verizon and US LEC shall confirm the Routing Point/Verizon Serving Wire Center combination and billing percentages.

11. Toll Free Service Access Code (e.g., 800/888/877) Traffic

The following terms shall apply when either Party delivers toll free service access code (e.g., 800/877/888)("8YY") calls to the other Party. For the purposes of this Section 11, the terms "translated" and "untranslated" refers to those toll free service access code calls that have been queried ("translated") or have not been queried ("untranslated") to an 8YY database. Except as otherwise agreed to by the Parties, all then US LEC originating "untranslated" 8YY traffic will be routed over a separate one-way trunk group.

11.1 When US LEC delivers translated 8YY calls to Verizon for completion,

11.1.1 to an IXC, US LEC shall:

11.1.1.1 provide an appropriate EMI record to Verizon for processing and Meet Point Billing in accordance with Section 10 above; and

11.1.1.2 bill the IXC the US LEC query charge associated with the call.

11.1.2 to Verizon or another LEC that is a toll free service access code service provider in the LATA, US LEC shall:

11.1.2.1 provide an appropriate EMI record to the toll free service access code service provider; and

11.1.2.2 bill to the toll free service access code service provider the US LEC's Tariffed Feature Group D ("FGD") Switched Exchange Access or Reciprocal Compensation charges, as applicable, and the US LEC query charge; and

11.1.2.3 Verizon shall bill applicable Tandem Transit Service charges and associated passthrough charges to US LEC.

11.2 When Verizon performs the query and delivers translated 8YY calls, originated by Verizon's or another LEC's Customer,

11.2.1 to US LEC in it's capacity as a toll free service access code service provider, Verizon shall:

11.2.1.1 bill US LEC the Verizon query charge associated with the call as specified in the Pricing Attachment; and

11.2.1.2 provide an appropriate EMI record to US LEC; and

11.2.1.3 bill US LEC Verizon's Tariffed FGD Switched Exchange Access or Reciprocal Compensation charges as applicable.

11.3 When US LEC: delivers untranslated 8YY calls to Verizon for completion,

11.3.1 to an IXC, Verizon shall:

11.3.1.1 query the call and route the call to the appropriate IXC; and

11.3.1.2 provide an appropriate EMI record to US LEC to facilitate billing to the IXC; and

11.3.1.3 bill the IXC the Verizon query charge associated with the call and any other applicable Verizon charges.

11.3.2 to Verizon or another LEC that is a toll free service access code service provider in the LATA, Verizon shall:

11.3.2.1 query the call and route the call to the appropriate LEC toll free service access code service provider; and

11.3.2.2 provide an appropriate EMI record to US LEC; to facilitate billing to the LEC toll free service access code service provider; and

11.3.2.3 bill the LEC toll free service access code service provider the query charge associated with the call and any other applicable Verizon charges.

11.4 Verizon will not direct untranslated toll free service access code call to US LEC.

12. Tandem Transit Traffic

12.1 As used in this Section 12, Tandem Transit Traffic is Telephone Exchange Service traffic that originates on US LEC's network, and is transported through a Verizon Tandem to the Central Office of a CLEC, ILEC other than Verizon, Commercial Mobile Radio Service (CMRS) carrier, or other LEC, that subtends the relevant Verizon Tandem to which US LEC delivers such traffic. Neither the originating nor terminating customer is a Customer of Verizon. Subtending Central Offices shall be determined in accordance with and as identified in the Local Exchange Routing Guide (LERG). Switched Exchange Access Service traffic is not Tandem Transit Traffic.

12.2 Tandem Transit Traffic Service provides US LEC with the transport of Tandem Transit Traffic as provided below.

12.3 Tandem Transit Traffic may be routed over the Interconnection Trunks described in Sections 3 through 6. US LEC shall deliver each Tandem Transit Traffic call to Verizon with CCS and the appropriate Transactional Capabilities Application Part ("TCAP") message to facilitate full interoperability of CLASS Features and billing functions.

12.4 **[DISPUTED ITEM]** 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. ~~If US LEC does not enter into and provide notice to Verizon of the above referenced arrangement within 180 days of the initial traffic exchange with relevant third party carriers, then Verizon may, at its sole discretion, terminate Tandem Transit Service at anytime upon thirty (30) days written notice to US LEC, provided, however, that Verizon shall not terminate Tandem Transit Service pursuant to this section 12.4 pending resolution of a complaint on such termination filed by US LEC at the Commission (which complaint shall include a request for expedited resolution by the Commission) within 15 days of receipt of notice of termination provided by Verizon.~~

12.5 US LEC shall pay Verizon for Transit Service that US LEC originates at the rate specified in the Pricing Attachment, plus any additional charges or costs the CLEC, ILEC , CMRS carrier, or other LEC, imposes or levies on Verizon for the delivery or termination of such traffic, including any Switched Exchange Access Service charges.

12.6 Verizon will not be required to provide Tandem Transit Traffic Services for local Tandem Transit Traffic to be delivered to a CLEC, ILEC, CMRS carrier, or other LEC, if the volume of local Tandem Transit Traffic to be delivered to the CLEC, ILEC, CMRS carrier, or other LEC exceeds one (1) DS-1 level volume of calls per CLEC, ILEC, CMRS carrier, or other LEC per Verizon tandem serving area for a period of three consecutive months. Prior to the threshold being reached, US LEC and the relevant 3rd party shall negotiate agreements to establish direct connections, so that these direct connections can be made available when the threshold has been exceeded for 60 days. Once the first directly connected DS-1 is installed to a CLEC, ILEC, CMRS carrier, or other LEC, overflow traffic may traverse the Verizon tandem to that entity until such time that the level of overflow traffic meets the requirements specified in this Section 12.6 addressing the need for an additional DS-1. Each subsequent need for an additional DS-1 will be handled in a like manner.

12.7 If or when a third party carrier's Central Office subtends a US LEC Central Office, then US LEC shall offer to Verizon a service arrangement equivalent to or the same as Tandem Transit Service provided by Verizon to US LEC as defined in

this Section 12 such that Verizon may terminate calls to a Central Office of a CLEC, ILEC, CMRS carrier, or other LEC, that subtends a US LEC Central Office ("Reciprocal Tandem Transit Service"). US LEC shall offer such Reciprocal Transit Service arrangements under terms and conditions no less favorable than those provided in this Section 12.

12.8 Neither Party shall take any actions to prevent the other Party from entering into a direct and reciprocal traffic exchange agreement with any carrier to which it originates, or from which it terminates, traffic.

13. Number Resources, Rate Center Areas and Routing Points

13.1 Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party's right to employ or to request and be assigned any Central Office Codes ("NXX") pursuant to the Central Office Code Assignment Guidelines and any relevant FCC or Commission orders, as may be amended from time to time, or to establish, by Tariff or otherwise, Rate Center Areas and Routing Points corresponding to such NXX codes.

13.2 It shall be the responsibility of each Party to program and update its own switches and network systems pursuant to information provided on ASRs as well as the LERG in order to recognize and route traffic to the other Party's assigned NXX codes. Except as expressly set forth in this Agreement, neither Party shall impose any fees or charges whatsoever on the other Party for such activities.

13.3 Unless otherwise required by Commission order, the Rate Center Areas will be the same for each Party. During the term of this Agreement, US LEC shall adopt the Rate Center Area and Rate Center Points that the Commission has approved for Verizon within the LATA and Tandem serving area. US LEC shall assign whole NPA-NXX codes to each Rate Center Area unless otherwise ordered by the FCC, the Commission or another governmental entity of appropriate jurisdiction, or the LEC industry adopts alternative methods of utilizing NXXs.

13.4 US LEC will also designate a Routing Point for each assigned NXX code. US LEC shall designate one location for each Rate Center Area in which the US LEC has established NXX code(s) as the Routing Point for the NPA-NXXs associated with that Rate Center Area, and such Routing Point shall be within the same LATA as the Rate Center Area but not necessarily within the Rate Center Area itself. Unless specified otherwise, calls to subsequent NXXs of US LEC will be routed in the same manner as calls to US LEC's initial NXXs.

13.5 Notwithstanding anything to the contrary contained herein, nothing in this Agreement is intended, and nothing in this Agreement shall be construed, to in any way constrain US LEC's choices regarding the size of the local calling area(s) that US LEC may establish for its Customers, which local calling areas may be larger than, smaller than, or identical to Verizon's local calling areas.

14. Joint Network Implementation and Grooming Process; and Installation, Maintenance, Testing and Repair

14.1 Joint Network Implementation and Grooming Process.

Upon request of either Party, the Parties shall jointly develop an implementation and grooming process (the "Joint Grooming Process" or "Joint Process") which may define and detail, inter alia:

14.1.1 standards to ensure that Interconnection Trunks experience a grade of service, availability and quality which is comparable to that achieved on interoffice trunks within Verizon's network and in accord with all appropriate relevant industry-accepted quality, reliability and availability standards. Except as otherwise stated in this Agreement, trunks provided by either Party for Interconnection services will be engineered using a design-blocking objective of B.01.

14.1.2 the respective duties and responsibilities of the Parties with respect to the administration and maintenance of the trunk groups, including, but not limited to, standards and procedures for notification and discoveries of trunk disconnects;

14.1.3 disaster recovery provision escalations;

14.1.4 additional technically feasible and geographically relevant IP(s) in a LATA as provided in Section 2; and

14.1.5 such other matters as the Parties may agree, including, e.g., End Office to End Office high usage trunks as good engineering practices may dictate.

14.2 Installation, Maintenance, Testing and Repair.

Unless otherwise agreed in writing by the Parties, to the extent required by Applicable Law, Interconnection provided by a Party shall be equal in quality to that provided by such Party to itself, any subsidiary, affiliates or third party. If either Party is unable to fulfill its obligations under this Section 14.2, it shall notify the other Party of its inability to do so and will negotiate alternative intervals in good faith. The Parties agree that to the extent required by Applicable Law, the standards to be used by a Party for isolating and clearing any disconnections and/or other outages or troubles shall be at parity with standards used by such Party with respect to itself, any subsidiary, affiliate or third party.

14.3 Forecasting Requirements for Trunk Provisioning.

Within ninety (90) days of executing this Agreement, US LEC shall provide Verizon a two (2) year traffic forecast. This initial forecast will provide the amount of traffic to be delivered to and from Verizon over each of the Interconnection Trunk groups over the next eight (8) quarters. The forecast shall be updated and provided to Verizon on an as-needed basis but no less frequently than semiannually. All forecasts shall comply with the Verizon CLEC Interconnection Trunking Forecast Guide and shall include, at a minimum, Access Carrier Terminal Location (ACTL), traffic type (Reciprocal Compensation Traffic/Toll Traffic, Operator Services, 911, etc.), code (identifies trunk group), A location/Z location (CLLI codes for US LEC-IPs and Verizon-IPs), interface type (e.g., DS1), and trunks in service each year (cumulative).

14.3.1 Initial Forecasts/Trunking Requirements. Because Verizon's trunking requirements will, at least during an initial period, be dependent on the Customer segments and service segments within Customer segments to whom US LEC decides to market its services, Verizon will be largely dependent on US LEC to provide accurate trunk forecasts for both inbound (from Verizon) and outbound (to Verizon) traffic. Verizon will, as an initial matter, provide the same number of trunks to terminate Reciprocal Compensation Traffic to US LEC as US LEC provides to terminate Reciprocal Compensation Traffic to Verizon. At Verizon's

discretion, when US LEC expressly identifies particular situations that are expected to produce traffic that is substantially skewed in either the inbound or outbound direction, Verizon will provide the number of trunks US LEC suggests; provided, however, that in all cases Verizon's provision of the forecasted number of trunks to US LEC is conditioned on the following: that such forecast is based on reasonable engineering criteria, there are no capacity constraints, and US LEC's previous forecasts have proven to be reliable and accurate.

14.3.1.1 Monitoring and Adjusting Forecasts. Verizon will, for ninety (90) days, monitor traffic on each trunk group that it establishes at US LEC's suggestion or request pursuant to the procedures identified in Section 14.3. At the end of such ninety-(90) day period, Verizon may disconnect trunks that, based on reasonable engineering criteria and capacity constraints, are not warranted by the actual traffic volume experienced.

14.3.1.2 In subsequent periods, Verizon may also monitor traffic for ninety (90) days on additional trunk groups that US LEC suggests or requests Verizon to establish.

15. Number Portability - Section 251(B)(2)

15.1 Scope.

The Parties shall provide Number Portability (NP) in accordance with rules and regulations as from time to time prescribed by the FCC.

15.2 Procedures for Providing LNP ("Long-term Number Portability").

The Parties will follow the LNP provisioning process recommended by the North American Numbering Council (NANC) and adopted by the FCC. In addition, the Parties agree to follow the LNP ordering procedures established at the OBF. The Parties shall provide LNP on a reciprocal basis.

15.2.1 A Customer of one Party ("Party A") elects to become a Customer of the other Party ("Party B"). The Customer elects to utilize the original telephone number(s) corresponding to the Telephone Exchange Service(s) it previously received from Party A, in conjunction with the Telephone Exchange Service(s) it will now receive from Party B. After Party B has received authorization from the Customer in accordance with Applicable Law and sends an LSR to Party A, Parties A and B will work together to port the Customer's telephone number(s) from Party A's network to Party B's network.

15.2.2 When a telephone number is ported out of Party A's network, Party A will remove any non-proprietary line based calling card(s) associated with the ported number(s) from its Line Information Database (LIDB). Reactivation of the line-based calling card in another LIDB, if desired, is the responsibility of Party B or Party B's Customer.

15.2.3 When a Customer of Party A ports their telephone numbers to Party B and the Customer has previously secured a reservation of line numbers from Party A for possible activation at a future point, these reserved but inactive numbers may be ported along with the active numbers to be ported provided the numbers have been reserved for

the Customer. Party B may request that Party A port all reserved numbers assigned to the Customer or that Party A port only those numbers listed by Party B. As long as Party B maintains reserved but inactive numbers ported for the Customer, Party A shall not reassign those numbers. Party B shall not reassign the reserved numbers to another Customer.

15.2.4 When a Customer of Party A ports their telephone numbers to Party B, in the process of porting the Customer's telephone numbers, Party A shall implement the ten-digit trigger feature where it is available. When Party A receives the porting request, the unconditional trigger shall be applied to the Customer's line before the due date of the porting activity. When the ten-digit unconditional trigger is not available, Party A and Party B must coordinate the disconnect activity.

15.2.5 The Parties shall furnish each other with the Jurisdiction Information Parameter (JIP) in the Initial Address Message (IAM), containing a Local Exchange Routing Guide (LERG)-assigned NPA-NXX (6 digits) identifying the originating switch on calls originating from LNP capable switches.

15.2.6 Where LNP is commercially available, the NXXs in the office shall be defined as portable, except as noted in 14.2.7, and translations will be changed in the Parties' switches to open those NXXs for database queries in all applicable LNP capable offices within the LATA of the given switch(es). On a prospective basis, all newly deployed switches will be equipped with LNP capability and so noted in the LERG.

15.2.7 All NXXs assigned to LNP capable switches are to be designated as portable unless a NXX(s) has otherwise been designated as non-portable. Non-portable NXXs include NXX codes assigned to paging, cellular and wireless services; codes assigned for internal testing and official use and any other NXX codes required to be designated as non-portable by the rules and regulations of the FCC. NXX codes assigned to mass calling on a choked network may not be ported using LNP technology but are portable using methods established by the NANC and adopted by the FCC. On a prospective basis, newly assigned codes in switches capable of porting shall become commercially available for porting with the effective date in the network.

15.2.8 Both Parties' use of LNP shall meet the performance criteria specified by the FCC. Both Parties will act as the default carrier for the other Party in the event that either Party is unable to perform the routing necessary for LNP.

15.3 Procedures for Providing NP Through Full NXX Code Migration.

Where a Party has activated an entire NXX for a single Customer, or activated at least eighty percent (80%) of an NXX for a single Customer, with the remaining numbers in that NXX either reserved for future use by that Customer or otherwise unused, if such Customer chooses to receive Telephone Exchange Service from the other Party, the first Party shall cooperate with the second Party to have the entire NXX reassigned in the LERG (and associated industry databases, routing tables, etc.) to an End Office operated by the second Party. Such transfer will be accomplished with appropriate coordination between the Parties and subject to appropriate industry lead times for movements of NXXs from one switch to

another. Neither Party shall charge the other in connection with this coordinated transfer.

15.4 Procedures for Providing INP (Interim Number Portability).

The Parties shall provide Interim Number Portability (INP) in accordance with rules and regulations prescribed from time to time by the FCC and state regulatory bodies, the Parties respective company procedures, and as set forth in this Section 15.4. The Parties shall provide INP on a reciprocal basis.

15.4.1 In the event that either Party, Party B, wishes to serve a Customer currently served at an End Office of the other Party, Party A, and that End Office is not LNP-capable, Party A shall make INP available only where LNP is not commercially available or not required by FCC orders and regulations. INP will be provided by remote call forwarding (RCF) and/or direct inward dialing (DID) technology, which will forward terminating calls to Party B's End Office. Party B shall provide Party A with an appropriate "forward-to" number.

15.4.2 Prices for INP and formulas for sharing Terminating access revenues associated with INP shall be provided where applicable, upon request by either Party.

15.4.3 Either Party wishing to use DID to provide for INP must request a dedicated trunk group from the End Office where the DID numbers are currently served to the new serving-End Office. If there are no existing facilities between the respective End Offices, the dedicated facilities and transport trunks will be provisioned as unbundled service through the ASR provisioning process. The requesting party will reroute the DID numbers to the pre-positioned trunk group using the LSR provisioning process. DID trunk rates are contained in the Parties' respective tariffs.

15.4.4 The Parties Agree that, per FCC 98-275, Paragraph 16, effective upon the date LNP is available at any End Office of one Party, Party A, providing INP for Customers of the other Party, Party B, no further orders will be accepted for new INP at that End Office. Orders for new INP received prior to that date, and change orders for existing INP, shall be worked by Party A. Orders for new INP received by Party A on or after that date shall be rejected. Existing INP will be grand-fathered, subject to Section 15.4.5, below.

15.4.5 In offices equipped with LNP prior to September 1, 1999 for former Bell Atlantic offices and October 1, 2000 for former GTE offices, the Parties agree to work together to convert all existing INP-served Customers to LNP by December 31, 2000 in accordance with a mutually agreed to conversion process and schedule. If mutually agreed to by the Parties, the conversion period may be extended one time by no more than 90 days from December 31, 2000.

15.4.6 Upon availability of LNP after October 1, 2000 at an End Office of either Party, both Parties agree to work together to convert the existing INP-served Customers to LNP by no later than 90 days from the date of LNP availability unless otherwise agreed to by the Parties.

15.4.7 When Verizon offers LNP to US LEC but US LEC has not converted to LNP at the end of the agreed to conversion period, then the remaining

INPs will be changed to a functionally equivalent tariff service and billed to US LEC at the tariff rate(s) for the subject jurisdiction.

15.5 Procedures for LNP Request.

The Parties shall provide for the requesting of End Office LNP capability on a reciprocal basis through a written request. The Parties acknowledge that Verizon has deployed LNP throughout its network in compliance with FCC 96-286 and other applicable FCC rules.

15.5.1 If Party B desires to have LNP capability deployed in an End Office of Party A, which is not currently capable, Party B shall issue a LNP request to Party A. Party A will respond to the Party B, within ten (10) days of receipt of the request, with a date for which LNP will be available in the requested End Office. Party A shall proceed to provide for LNP in compliance with the procedures and timelines set forth in FCC 96-286, Paragraph 80, and FCC 97-74, Paragraphs 65 through 67.

15.5.2 The Parties acknowledge that each can determine the LNP-capable End Offices of the other through the Local Exchange Routing Guide (LERG). In addition the Parties shall make information available upon request showing their respective LNP-capable End Offices, as set forth in this Section 15.5.

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NON FACILITIES-BASED AND FACILITIES-BASED COMPETITIVE

LOCAL EXCHANGE CARRIER TARIFF

WITHIN THE

COMMONWEALTH OF PENNSYLVANIA

Issued: December 10, 2001

Effective: December 11, 2001

Wanda Montano, Vice President, Regulatory & Industry Affairs
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6801 Morrison Boulevard
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VZ-4

Non Facilities-Based and Facilities-Based Competitive Local Exchange Carrier Tariff

This Tariff applies to the Non Facilities-Based and Facilities-Based Competitive Local Exchange services furnished by US LEC of Pennsylvania Inc. between one or more points in the Commonwealth of Pennsylvania. This tariff is in concurrence with Chapters 63 and 64 of 52 Pa. Code. any provisions contained in this tariff which are inconsistent with the Pennsylvania Public Utility Code (66 Pa. C.S. A § 101 et seq.), 52 Pa. Code, the Telecommunications Act of 1996, and the Commission's Regulations and Orders will be deemed inoperative and superseded.

This tariff is on file with the Pennsylvania Public Utility Commission and copies may be inspected during normal business hours at US LEC of Pennsylvania's principal place of business. Copies may also be inspected at the office of Dilworth Paxson, LLP at 305 North Front Street, Harrisburg, PA 17101-1236 or at 1735 Market Street, Philadelphia, PA 19103

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CHECK SHEET

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5	7	Original	8	13	Original
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5	9	Original	8	15	Original
5	10	Original*	8	16	Original
5	11	Original*	8	17	Original
6	1	Second*	8	18	Original
6	2	Second*	8	19	Original
6	3	Second*	8	20	Original
6	4	First*	8	21	Original
6	5	Second*	8	22	Original
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6	12	Original*	9	3	Original
6	13	Original*	9	4	Original
7	1	Original	9	5	Original
8	1	Original	9	6	Original
8	2	Original	9	7	Original
8	3	Original	9	8	Original
8	4	Original			

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SYMBOLS AND TARIFF FORMAT

SYMBOLS

The following symbols shall be used in this tariff for the purpose indicated below:

C To signify changed regulation or condition.
D To signify a decrease in rates.
I To signify an increased rate.

TARIFF FORMAT

A. Sheet Numbering - Sheet numbers appear in the upper right corner of the page. Sheets are numbered sequentially. However, new sheets are occasionally added to the tariff. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between sheets 14 and 15 would be 14.1.

B. Sheet Revision Numbers - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current sheet version on file with the Commission. For example, the 4th revised Sheet 14 cancels the 3rd revised Sheet 14. Because of various suspension periods, deferrals, etc. the Commission follows in their tariff approval process, the most current sheet number on file with the Commission is not always the tariff page in effect.

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TARIFF FORMAT (cont'd)

C. Paragraph Numbering Sequence - There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:

2.
2.1.
2.1.1.
2.1.1.A.
2.1.1.A.1.
2.1.1.A.1.(a).
2.1.1.A.1.(a).I.
2.1.1.A.1.(a).I.(i).
2.1.1.A.1.(a).I.(i).(1).

D. Check Sheets - When a tariff filing is made with the Commission, an updated check sheet accompanies the tariff filing. The check sheet lists the sheets contained in the tariff, with a cross reference to the current revision number. When new pages are added, the check sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on the check sheet if these are the only changes made to it (*i.e.*, the format, etc. remains the same, just revised revision levels on some pages). The tariff user should refer to the latest check sheet to find out if a particular sheet is the most current on file with the Commission.

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APPLICATION OF TARIFF

This tariff sets forth the service offerings, rates, terms and conditions applicable to the furnishing of intrastate end-user communications services by US LEC of Pennsylvania Inc., to customers within the local exchange service area in the Commonwealth of Pennsylvania defined herein.

This tariff is in concurrence with Chapters 63 and 64 of 52 Pa. Code.. Any provisions contained herein which are inconsistent with the Pennsylvania Public Utility Code (66 pa. C.S.), 52 Pa. Code, the Telecommunications Act of 1996, and the Commission's Regulations and Orders will be deemed inoperative and superseded.

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SECTION 1 - DEFINITIONS

Certain terms used generally throughout this tariff are defined below.

Account Codes: Permits Centrex Stations and attendants to dial an account code number of up to eight digits. For use when placing calls over facilities arranged for Automatic Message Accounting (AMA) recording. The account or project number must be input prior to dialing the called number.

Advance Payment: Part or all of a payment required before the start of service.

Automatic Number Identification (ANI): Allows the automatic transmission of a caller's billing account telephone number to a local exchange company, interexchange carrier or a third party subscriber. The primary purpose of ANI is to allow for billing of toll calls.

Bit: The smallest unit of information in the binary system of notation.

Call Back/Camp On: Permits a station line encountering an all-trunk-busy condition the option of being notified when a trunk becomes idle.

Call Forwarding:

Call Forwarding Station: Allows calls directed to a station line to be routed to a user defined line inside or outside the customer's telephone system.

Call Forwarding System: Permits calls attempting to terminate to a busy station line to be re-directed to a predetermined line inside or outside the customer's telephone system.

Call Forwarding Remote: This optional feature allows a user to activate/deactivate the Call Forwarding - All Calls feature or change the forwarded to telephone number from a remote location.

Call Forwarding Busy: Allows incoming calls to a busy station to be routed to a preselected station line or attendant within the same system or outside the system. Intercom calls can be arranged to be forwarded to a number different from DID calls.

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SECTION 1 - DEFINITIONS

Call Forwarding Variable Limited: When this feature is activated by a station line user or the attendant, incoming calls to the activated station line or attendant position will be automatically routed to any other selected station line, within the same Centrex system, or to the attendant position. The attendant may also activate this feature for a station line user.

Call Forwarding Variable Unlimited: The same as Call Forwarding Variable Limited except that incoming calls may be automatically routed to a telephone number outside the Centrex system or to station lines within the same Centrex system. The attendant may not activate this feature to a telephone number outside the Centrex system for a station line use. Calls forwarded outside the Centrex system are subject to the appropriate charges for local and toll messages.

Call Hold: Allows the user to hold one call for any length of time provided that neither party goes on-hook.

Call Park: Allows a station line to park a call against its own line number. The parked call can be retrieved from any station line by dialing a feature code and the line number against which the call is parked.

Call Pickup: Allows a station line to answer incoming calls to another station line within a defined call pickup group. Call pickup is provided on individual station lines within a customer group.

Call Transfer: Allows a station line user to transfer any established call to another station inside or outside the customer group without the assistance of the attendant.

Call Waiting: Permits a line in the talking state to be alerted by a tone when another call is attempting to complete to the line. Audible ringing is returned to the originating line. The Service also provides a hold feature that is activated by a switchhook flash.

Commission: The Pennsylvania Public Utility Commission.

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SECTION 1 - DEFINITIONS

Communications Services: The Company's intrastate toll and local exchange switched telephone services offered for both limited intraLATA and interLATA use.

Company: US LEC of Pennsylvania Inc., the issuer of this tariff.

Customer or Subscriber: The person, firm or corporation which orders service and is responsible for the payment of charges and compliance with the Company's regulations.

Dial Pulse (or "DP"): The pulse type employed by rotary dial station sets.

Direct Inward Dial (or "DID"): A service attribute that routes incoming calls directly to stations, by-passing a central answering point.

Direct Outward Dial (or "DOD"): A service attribute that allows individual station users to access and dial outside numbers directly.

Do Not Disturb: Permits the attendant to cut off a single station line and selected groups of station lines from receiving incoming and station-to-station calls.

DSX-1 Panel: Distribution equipment used to terminate and administer DS1 (1.544 Mbps) circuits.

Dual Tone Multi-Frequency (or "DTMF"): The pulse type employed by tone dial station sets.

Duplex Service: Service which provides for simultaneous transmission in both directions.

Federal Communications Commission (or "FCC"): Independent government agency that develops and implements policy concerning interstate and international communications.

Fiber Optic Cable: A thin filament of glass with a protective outer coating through which a light beam carrying communications signals may be transmitted by means of multiple internal reflections to a receiver, which translates the message.

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SECTION 1 - DEFINITIONS

Hunting: Routes a call to an idle station line in a prearranged group when the called station line is busy.

In-Only: A service attribute that restricts outward dial access and routes incoming calls to a designated answer point.

Joint User: A person, firm or corporation which is designated by the Customer as a user of services furnished to the Customer by the Company and to whom a portion of the charges for the service will be billed under a joint user arrangement as specified herein.

Kbps: Kilobits per second, denotes thousands of bits per second.

Last Number Redial: Enables a station line user to redial the last called number by use of an access code rather than dialing the entire number.

LATA: A Local Access and Transport Area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192; or any other geographic area designated as a LATA in the National Exchange Carrier Association, Inc. Tariff F.C.C. No. 4.

Local Exchange Carrier or ("LEC"): Denotes any individual, partnership, association, joint-stock company, trust or corporation engaged in providing switched communication within an exchange.

Mbps: Megabits, denotes millions of bits per second.

Multi-Frequency or ("MF"): An inter-machine pulse-type used for signaling between telephone switches, or between telephone switches and PBX/key systems.

Recurring Charges: The monthly charges to the Customer for services, facilities and equipment, which continue for the agreed upon duration of the service.

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SECTION 1 - DEFINITIONS

Service Commencement Date: The first day following the date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service which does not conform to standards set forth in the Service Order or this tariff, in which case the Service Commencement Date is the date of the Customer's acceptance. The Company and Customer may mutually agree on a substitute Service Commencement Date.

Service Order: The written request for Network Services executed by the Customer and the Company in the format devised by the Company. The signing of a Service Order by the Customer and acceptance by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this tariff, but the duration of the service is calculated from the Service Commencement Date.

Shared: A facility or equipment system or subsystem that can be used simultaneously by several Customers.

Speed Calling: Permits a station line user to dial selected numbers by using fewer digits than normally required. This is accomplished through the assignment of abbreviated codes to frequently called numbers. The speed calling list is customer changeable.

System: Allows shared use of speed calling list. A control station will add, change or delete telephone numbers from the list for the group.

Station: Allows a station line user to add, change or delete telephone numbers from a speed calling list. The list is dedicated to the individual station line user.

Three-Way Calling: Allows a station line user to add a third party to an existing conversation.

Two Way: A service attribute that includes outward dial capabilities for outbound calls and can also be used to carry inbound calls to a central point for further processing

User or End User: A Customer, Joint User, or any other person authorized by a Customer to use service provided under this tariff.

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SECTION 4 – EXCHANGE ACCESS SERVICE

4.1 General:

The Company's Local Telephone Service provides a Customer with the ability to connect to the company's switching network which enables the Customer to:

- place or receive calls to any calling Station in the local calling area, as defined herein;
- access basic 911 Emergency Service;
- access the interexchange carrier selected by the Customer for interLATA, intraLATA, interstate or international calling;
- access Operator Services;
- access Directory Assistance;
- place or receive calls to 800 telephone numbers;
- access Telephone Relay Service.

The Company's service can not be used to originate calls to other telephone companies caller-paid information services (e.g., 900, 976). Calls to those numbers and other numbers used for caller-paid information services will be blocked by the Company's switch.

Company's local exchange service allows the Customer unlimited access to stations on the public switched network within the Customer's basic local calling area, i.e., the local calling area as specified in the Incumbent Local Exchange Carrier's tariff in effect and as amended from time to time in the future.

Each Exchange Access Service is available on a "Full" service basis, whereby service is delivered to a demarcation/connection block at the customer's premises.

The following Exchange Access Service Options are offered:

Flat Rate Service
Measured Rate Service

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SECTION 4 – EXCHANGE ACCESS SERVICE

4.2 Explanation of Rate Schedules :

Three rate schedules are presented for each Exchange Access Service offered. Except for the central office exceptions listed below, a customer's rate schedule is dependent on the distance between the customer's dominant serving wire center and a US LEC switch.

Each rate schedule is airline mileage based as follows:

Schedule 1: Customers whose serving wire centers are 0 – 10 miles from a US LEC switch.

Schedule 2: Customers whose serving wire centers are 10 – 16 miles from a US LEC switch.

Schedule 3: Customers whose serving wire centers are greater than 16 miles from a US LEC switch.

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SECTION 8 - MISCELLANEOUS SERVICES

8.9 IntraLATA Toll Presubscription

(A) Presubscription is a procedure whereby an end user may select and designate an IntraLATA Toll Provider (ITP) to access for intra LATA toll calls without dialing an access code. This ITP must have a Feature Group D Trunk in place (or ordered) between its points of presence and the incumbent LEC Access Tandem(s). The end user or agent may designate an ITP for intraLATA toll, a different carrier for interLATA toll, or the same carrier for both. This ITP is referred to as the end user's, or agent's preferred intraLATA toll provider.

Each carrier will have one or more access codes assigned to it for various types of service. When an end user selects a carrier as its preferred intraLATA toll provider, only one access code of that carrier by the end user without dialing an access code. Should the same end user wish to use other services of the same carrier, it will be necessary for the end user to dial the necessary access code(s) to reach that carrier's other service(s).

An ITP must use Feature Group D (FGD) Switched Access Service to qualify as an intraLATA toll provider. A carrier authorized to handle intraLATA toll calls may request two-PIC capability provided that it interconnects its network either with the US LEC network or the subtending LEC tandem. Carriers wishing to participate must submit Access Service Requests and Translation Questionnaires to the Access Tandem owner and to US LEC.

Selection of an intraLATA toll provider by an end user is subject to the terms and conditions following.

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SECTION 8 - MISCELLANEOUS SERVICES

8.9 IntraLATA Toll Presubscription (cont'd)

8.9.1 Presubscription Charge Application

A. Existing end users may exercise an initial free presubscription choice, either by contacting US LEC or by contacting the ITP directly. The initial selection must be made at the time the Customer signs up for local service with US LEC, or within 30 days thereafter. If the Customer is unable to make an ITP selection at that time, a "No-Pic" designation will be applied to their account, and the Customer will have to dial a 10XXX code to access an ITP.

Following an existing end user's initial free selection, any subsequent selection is subject to a nonrecurring charge as set forth at the the end of this section.

B. If an ITP elects to discontinue Feature Group D service after implementation of the intraLATA toll presubscription option, the ITP is obligate to contact, in writing, all end users who have selected the canceling ITP will pay the PIC change charge as provided at the end of this section. The ITP must provide written notification to US LEC, that this activity has taken place.

C. An unauthorized PIC change is a change in the presubscribed intraLATA toll provider that the end user denies authorizing. PIC disputes for end user are resolved through an investigative process.

If an end user disputes a PIC change, the end user will be changed to the carrier of record prior to the PIC change. If the dispute is legitimate, the end user will be credited an amount equal to the PIC change charge provided at the end of this section and the carrier that submitted the PIC change will be assessed two PIC change charges-one for the invalid PIC change, and one for the change back to the prior carrier of record.

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SECTION 8 - MISCELLANEOUS SERVICES

8.9 IntraLATA Toll Presubscription (cont'd)

8.9.2 Presubscription Charge Application

D. When a discrepancy is determined regarding an end user's designation of a preferred intraLATA toll carrier, the following applies depending upon the situation described:

-A signed letter of authorization takes precedence over any order other than subsequent, direct customer contact with US LEC.

-When two or more orders are received for an end user line generated by telemarketing, the date field on the mechanized record used to transmit PIC change information will be used as the PIC authorization date. The order with the latest application date/time detemines customer choice.

-If an end user denies requesting a change in intraLATA toll presubscription as submitted by an ITP, and the ITP is unable to produce a letter of authorization, signed by the end user , the ITP will also be assessed the intraLATA toll presubscription change charges. The nonrecurring change charges are provided herein. The ITP will also be assessed the intraLATA toll presubscription change charge as specified herein, which was previously billed to the end user.

Neither the ITP or US LEC shall submit a PIC change order generated by outbound telemarketing unless and until the order has first been confirmed in accordance with the F.C.C.'s current anti-slamming practices and procedures.

	Per Line/Trunk Per Occurrence
InterLATA PIC Change	$5.00
IntraLATA PIC Change (When available)	$5.00
Both PIC selections changed simultaneously	$5.00

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SECTION 8 - MISCELLANEOUS SERVICES

8.12 Foreign Exchange (FX) Service

8.12.1 Description

FX Service enables a Customer to receive a Company-provided Exchange Access Service at a point outside the Exchange Access Service Area corresponding to the NPA-NXX designation (as set forth in Section 4.1) of such Exchange Access Service.

The Local Calling Area and all Usage Service rates which apply to an FX Exchange Access Service are the same as those which regularly apply to other Company-provided Exchange Access Services bearing the same NPA-NXX designation.

8.12.2 Rates

	Non-Recurring	Monthly Recurring
Foreign Exchange Service	$500.00	$1000.00

8.13 Hospitality Rates

Hospitality rates will have no local usage charges associated with them. Hotels and motels that supply guest rooms and route local and long distance guest traffic over Company digital facilities will qualify for Hospitality Rates.

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SECTION 10 - SERVICE AREAS

10.1 Service Area:

US LEC of Pennsylvania includes all non-rural exchanges in Pennsylvania as the potential areas where alternative local exchange service is planned, where facilities are available and pending appropriate interconnection agreements. Below are the exchanges that are within a single local calling area are grouped together. The company will initially offer services under this tariff to customers in the following areas:

Philadelphia Zone 1:

Zone	1	Zone	21	Zone	33
Zone	2	Zone	22	Zone	34
Zone	3	Zone	23	Zone	37
Zone	4	Zone	24	Zone	38
Zone	10	Zone	25	Zone	39
Zone	11	Zone	26	Zone	40
Zone	12	Zone	28	Zone	41
Zone	13	Zone	29	Zone	42
Zone	14	Zone	30	Zone	43
Zone	17	Zone	31	Zone	44
		Zone	32	Zone	45

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SECTION 10 - SERVICE AREAS

10.1 Service Area (cont'd)

Philadelphia Zone 2:

Zone	1	Zone	22	Zone	33
Zone	2	Zone	23	Zone	34
Zone	3	Zone	24	Zone	37
Zone	4	Zone	25	Zone	38
Zone	10	Zone	26	Zone	39
Zone	11	Zone	28	Zone	40
Zone	12	Zone	29	Zone	41
Zone	13	Zone	30	Zone	42
Zone	14	Zone	31	Zone	43
Zone	17	Zone	32	Zone	44
Zone	21			Zone	45

Philadelphia Zone 3:

Zone	1	Zone	22	Zone	34
Zone	2	Zone	23	Zone	37
Zone	3	Zone	24	Zone	38
Zone	4	Zone	25	Zone	39
Zone	10	Zone	26	Zone	40
Zone	11	Zone	28	Zone	41
Zone	12	Zone	29	Zone	42
Zone	13	Zone	30	Zone	43
Zone	14	Zone	31	Zone	44
Zone	17	Zone	32	Zone	45
Zone	21	Zone	33		

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SECTION 10 - SERVICE AREAS

10.1 Service Area (cont'd)

Philadelphia Zone 4:

Zone	1	Zone	21	Zone	32
Zone	2	Zone	22	Zone	33
Zone	3	Zone	23	Zone	34
Zone	4	Zone	24	Zone	37
Zone	10	Zone	25	Zone	38
Zone	11	Zone	26	Zone	39
Zone	12	Zone	28	Zone	40
Zone	13	Zone	29	Zone	41
Zone	14	Zone	30	Zone	42
Zone	17	Zone	31	Zone	43
		Zone	45	Zone	44

Philadelphia Zone 11:

Zone	14
Zone	13
Zone	12
Zone	11
Zone	10

Philadelphia Zone 14:

Zone	2
Zone	11
Zone	13
Zone	14
Zone	17

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SECTION 10 - SERVICE AREAS

10.1 Service Area (cont'd)

Philadelphia Zone 17:
Zone 21
Zone 17
Zone 14
Zone 13
Zone 2

Philadelphia Zone 21:
Zone 2
Zone 13
Zone 17
Zone 21
Zone 22
Zone 24

Philadelphia Zone 23:
Zone 25
Zone 24
Zone 23
Zone 3
Zone 2

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SECTION 10 - SERVICE AREAS

10.1 Service Area (cont'd)

Philadelphia Zone 24:

Zone	2
Zone	21
Zone	22
Zone	23
Zone	24
Zone	25
Zone	26
Zone	31

Philadelphia Zone 25:

Zone	31
Zone	26
Zone	25
Zone	24
Zone	23
Zone	22

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SECTION 10 - SERVICE AREAS

10.1 Service Area (cont'd)

Philadelphia Zone 30:

SCHWENKSVL	
ROYERSFORD	
Zone	33
Zone	31
Zone	30
Zone	29
Zone	26
PHOENIXVILLE	
NORTHWALES	
LANSDALE	
HARLEYSVILLE	
COLLEGEVILLE	
CENTER POINT	

Philadelphia Zone 32:

Zone	34
Zone	33
Zone	32
Zone	31
Zone	3

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SECTION 10 - SERVICE AREAS

10.1 Service Area (cont'd)

Philadelphia Zone 34:
NORTHWALES

Zone	3
Zone	4
Zone	32
Zone	33
Zone	34
Zone	37
Zone	38
Zone	39

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Products

Long distance and toll-free services

Featured
ADVANTAGE T
Local
Long distance and toll-free
Internet and enhanced
Additional
Satisfaction guarantee and SLAs
Back to products

ADVANTAGE Flat Rate plan
US LEC now offers ADVANTAGE Flat Rate, a new pricing plan that uses just one flat rate for all calls. The plan provides one intrastate rate for incoming and outgoing calls, and one interstate rate for incoming and outgoing calls to anywhere in the United States.
Plan benefits include:

- Competitive pricing
- Simplified billing
- Works with all ADVANTAGE Local Calling plans
- Eliminates the need for least-cost routing based on called number
- Existing and new customers are eligible

Top

ADVANTAGE long distance calling plan
The more long distance calls you make, the more you can save with US LEC's ADVANTAGE T. Our list of ADVANTAGE T cities is always growing, so contact the sales representative in your area for more information. Get substantial savings on:

- IntraLATA (local toll)
- Intrastate (instate)
- Interstate (out-of-state)
- International calling to more than 150 countries

Top

VZ5

Long Distance Invoice Reports
Get detailed snapshots of long distance billing charges with US LEC's Long Distance (LD) Invoice Reports. Verify rates and identify any alarming trends. LD Invoice Reports offer a product by product summary report of all usage, with additional reports including:

- Most frequently called area code:
  - outbound toll
  - inbound toll-free and Local Toll-Free™
- 40 most frequently called numbers
- 40 longest calls - outbound and inbound
- 40 highest-cost calls
- International usage by country

Top

Toll-free service (800, 888, 877, 866, 855)
US LEC provides toll-free services with nationwide origination. We offer easy-to-remember vanity numbers and National Toll-Free Directory listings, and enhanced features such as specialized routing, take-back and transfer and NPA/NXX restriction on origination. All US LEC services are itemized on one convenient monthly invoice.

- Extends customers' reach throughout the United States and Canada
- Available with T-1, ISDN PRI, and channel access and ADVANTAGE T
- Optional easy-to-remember vanity numbers
- Optional national toll-free directory listings
- Maximizes use of customer access facilities, reducing costs
- Can be combined with other US LEC services for volume pricing
- Billed on same invoices as other US LEC services

Top

Local Toll-Free™ service
Local Toll-Free service allows your customers in another city to make a local call to you. US LEC's Local Toll-Free service lets you establish local phone numbers across the US LEC footprint. This unique inbound calling service allows anyone to place a "free" local call to you from anywhere within US LEC's territory, with you picking up the charges at a lower cost.

Top

Enhanced Toll-Free™ service
US LEC provides the Toll Free services that are so important to your business, including Dialed Number Identification Service (DNIS), Automatic Number Identification (ANI), and Account Codes, just to name a few. Plus, US LEC Toll Free service is backed by our unsurpassed service and competitive pricing to meet your business' needs.

Top

Account codes
US LEC offers clients the ability to identify and track calls by user or department account codes. We offer verified and non-verified account codes. Verified account codes allow customers to track calls by individual user. Non-verified account codes allow customers to track calls by project or department.

Top

Directory assistance and operator services
Dialing 411 brings white-page listings help for either local or long distance. Operator assistance allows a US LEC customer to place 0+ or 0- calls.

Top

PIC'd LD
Customers and their employees can now choose US LEC to carry their long distance calls from many locations. Customers save money by combining long distance call volumes from sites without a T-1, with volumes from their T-1-served locations.

Top

Calling cards
US LEC's calling card allows customers to call from anywhere within the United States to anywhere in the world. Our calling cards include easy-to-follow instructions with no surcharges (only a $0.24 pay phone surcharge, when applicable). Personalized cards are available at no extra cost. All US LEC services are itemized on one convenient monthly invoice.

Top

Dedicated (T-1 facilities) 1+ long distance
US LEC offers excellent rates on intrastate, interstate and international calling with the benefit of the Advantage Cities calling plan.

Top

Local services

- Local network access (dial-tone)
- Local calling
- Line features
- Enhanced local services

Featured
ADVANTAGE T
Local
Long distance and toll-free
Internet and enhanced
Additional
Satisfaction guarantee and SLAs
Back to products

Local network access (dial-tone)
Our local network access provides a high-quality, clear voice or data business line, and allows businesses to secure the minimum number of lines necessary as well as the capacity to expand service and add features as they grow. Customers can keep their existing telephone numbers when they switch to US LEC. Local network access facilities are available in four types:

- T-1 access
- Channel access (DS0)
- ISDN PRI (primary rate interface)
- Advantage T

Multiple local access services are available for above facilities:

- Business lines
- Data lines
- Key system lines
- PBX trunks
- Foreign exchange

The US LEC network comprises a variety of trunking configurations, enabling single and multiple voice and data transmissions between two network elements. Our local trunks offer connectivity flexibility so customers can customize specific traffic patterns based on their needs, such as one-way outbound calling only or two-way calling.

Top

Local calling
US LEC completes local calls over its all-digital network. US LEC local service provides:

Local calling area coverage at least the size of the incumbent

VZ-6

- telephone company.
- 411
- 911
- Operator assistance
- Directory listing
- White-page listing
- Yellow-page listing

Top

Line features

- Call forwarding
- Call forward busy
- Call forward no answer
- Remote access to call forwarding
- Call transfer
- 3-way calling
- Call waiting
- Toll denial
- Call hold
- Caller ID

Top

Enhanced local services

- DID - US LEC's DID trunks provide greater user productivity by eliminating the need for assistance, reducing incoming call "traffic jams" and offering the caller a speedy connection to the desired party.
- EAS (Expanded Area Service) - This service provides a greater free local calling area than the ILEC, and an extended local calling area.
- ANI - Automatic number identification is used to identify the responsible party to be billed for the call.
- Foreign exchange - This service involves an inbound-only call, toll-free to the calling party, which is paid for by the called party. If desired, the service includes a listing in the "foreign" white and yellow pages of the ILEC directory.
- Co-location - US LEC's co-location packages provide the placement of the customer's equipment and connectivity to telecom services. As part of the placement agreement, US LEC also provides access to the physical space, utility support such as power and temperature/humidity control and security, among other benefits.

Top

APPLICATION OF MFS INTELENET OF PENNSYLVANIA, INC.; **APPLICATION** OF TCG PITTSBURGH; **APPLICATION** OF MCI METRO ACCESS TRANSMISSION SERVICES, INC.; **APPLICATION** OF EASTERN TELELOGIC CORP.

Docket No. A-310203F0002; Docket No. A-310213F0002; Docket No. A-310236F0002; Docket No. A-310258F0002

PENNSYLVANIA PUBLIC UTILITY COMMISSION

1996 **Pa.** PUC LEXIS 196

July 31, 1996

CORE TERMS: network, unbundled, loop, unbundling, phase, interconnection, unbundle, customer, interim, wholesale, revised, recommendation, tariff, termination, transport, carrier, recommended, negotiation, competitive, resale, broadband, ported, port, Telecommunications Act, telecommunications, co-carrier, switched, retail, reciprocal, technology

[*1] Commissioners Present: John M. Quain, Chairman *; Lisa Crutchfield, Vice Chairman, Concurring & Dissenting in part *; John Hanger, Concurring & Dissenting in part; David W. Rolka, Concurring & Dissenting in part *; Robert K. Bloom, Dissenting in part

* Statements attached.

OPINION: OPINION AND ORDER - SHORT FORM

BEFORE THE COMMISSION:

Before us for consideration are the Exceptions and Replies thereto, to the Recommended Decision ("R.D.") of Administrative Law Judge ("ALJ") Michael C. Schnierle issued June 17, 1996 in this, the second phase of the above-captioned **application** proceedings. In these consolidated **applications,** filed pursuant to Section 3009 of the Public Utility Code, 66 **Pa.** C.S. § 3009, we have authorized competitive local exchange service in the Commonwealth of **Pennsylvania.**

Because of our desire to act expeditiously to implement the terms and conditions of interconnection, etc., we shall issue the instant Opinion and Order in Short Form. Our customary Long Form Opinion and Order containing a comprehensive disposition of the positions of the parties and related analysis shall be issued at a later date.

DISCUSSION

In the Phase I portion of this proceeding, we **[*2]** ordered Bell Atlantic - **Pennsylvania,** Inc. ("BA-**PA**" or "Bell" hereafter) to file a proposal in Phase II addressing issues of co-carrier access to BA-**PA's** databases, network access interconnections and interoperability standards, use of BA-**PA's** billing records by co-carriers, and "all other relevant technical matters pertaining to the provision of local exchange service by a co-carrier." **MFS** I Order at 93-94.

On December 1, 1995, BA-**PA,** in accordance with our directives, filed its Phase II Proposal ("BA-**PA** Proposal") with the Commission. On December 5, 1995, ALJ Michael C. Schnierle was assigned to preside over the Phase II proceeding.

The issues considered by this proceeding as specified in the **MFS** I Order include the following: (1) Unbundling; (2) Numbering Assignments; (3) Interim Number Portability ("INP"); (4) Directory Listings; (5) Interoffice Trunking, Signaling Arrangements, Tandem Subtending; and (6) Database Access, Technical Standards, Billing Record Arrangements.

On June 17, 1996, the R.D. of ALJ Schnierle was issued. Exceptions and Replies to Exceptions were filed by various parties. Our disposition of the issues is as follows:

I. The Stipulation

As recommended **[*3]** by ALJ Schnierle, we, hereby, adopt the Stipulation filed April 15, 1996 by the signatory parties relative to the following issues:

1. Numbering Administration.

2. 911 Service.

3. *Connections with Independent Telephone Companies.*

4. Signaling.

5. Operator Services.

6. Directories and Directory Listings.

We note that we are accepting all of the terms of the Stipulation here, including the declarations and caveats regarding the limited precedential impact of its terms, and the fact that no party is precluded from raising challenges to the terms of the Stipulation in other proceedings.

II. Burden of Proof

Several parties criticized and disputed BA-**PA's** cost studies before the ALJ. Among those challenges, the most critical is that BA-**PA's** cost studies used Bellcore computer models which are considered proprietary to Bellcore, and, consequently, were not made available to the parties for review.

Concerning the proper placement of the burden of proof in this matter, we agree with the position of the Office of Consumer Advocate ("OCA") and that of AT&T Communications of **Pennsylvania,** Inc. ("AT&T") in their Exceptions on this issue. As stated therein, **[*4]** this Phase II proceeding was initiated by this Commission in the October 4, 1995 Opinion and Order in Phase I. Included in that directive was our requirement that BA-**PA** provide pricing proposals on its unbundled services. Accordingly, Section 315(a) of the Public Utility Code, 66 **Pa.** C.S. § 315(a), controls and assigns the burden of proof on this issue to BA-**PA.**

III. Wholesale Rates for Resold Services.

The ALJ concluded that this record was insufficient upon which to base a wholesale rate determination. On our review of the record herein, there were 24 filed written statements of testimony, and in excess of 1000 pages of transcript. However, we find no evidence as to the marketing, billing, collection, and other costs that would be avoided by BA-**PA,** the incumbent Local Exchange Company ("LEC"). Without this evidence of record, we are unable, at this time, to establish wholesale rates in this matter. We shall, therefore, defer our decision until further action in the pending Bell tariff proceeding at Docket No. R-00963578.

IV. Scope of Unbundling

In this proceeding, BA-**PA** proposed to unbundle the local exchange network into loop and port elements. For any further unbundling, **[*5]** BA-**PA** proposed implementation of a "Bona Fide Request" ("BFR") procedure whereby a Competitive Local Exchange Company ("CLEC") desiring to procure or use a further unbundled element would have to formally request BA-**PA** to unbundle that element. All other parties disagreed with the sufficiency of Bell's unbundling proposal.

ALJ Schnierle concluded that, but for the proximity of the FCC rulemaking, he would have recommended that BA-**PA** be directed to immediately develop a proposal to unbundle most, if not all, of the elements listed by AT&T in its Brief. R.D. at 28. However, because the Federal Communications Commission ("FCC") appeared ready to take a similar step, ALJ Schnierle recommended, instead, that this Commission await the FCC rulemaking before taking action on unbundling.

On consideration of the record and the Exceptions of the parties, we conclude that effective competition in the local exchange market requires this Commission to affirmatively direct unbundling of Bell's local exchange network at this time, consistent with the Telecommunications Act of 1996 ("Act"). See 47 U.S.C. § 251(c)(3).

Bell's proposal to limit the unbundling to **[*6]** the local loop and port is inadequate. New entrants into the local exchange market must have access to other network elements in addition to those proposed by Bell. MCI suggests that this Commission require Bell to unbundle immediately, at a minimum, the loop, switch and transport elements of its network as required by the Act. See MCI Exc., p. 6. On consideration of the Exceptions of the parties, we believe that this proposed level of unbundling is appropriate and shall direct that Bell take such action.

IV. Other Unbundling Issues

A. BA-PA's Bona Fide Request ("BFR") Procedure

On consideration of this issue, ALJ Schnierle recommended rejection of BA-**PA's** BFR procedure as that procedure is not consistent with the requirements of the Act; that the Act itself provides specific procedures that will accomplish the major objectives of the BFR process (negotiation, mediation, and arbitration pursuant to Section 252 of the Act); and that the FCC is likely to issue its own rules on this in the immediate future.

On consideration of the ALJ recommendation, we shall adopt it. The BFR proposal is, hereby, rejected, consistent with the discussion contained in this Opinion and Order. **[*7]**

B. Reciprocal Unbundling.

BA-**PA,** with the concurrence of the Office of Trial Staff ("OTS") and the OCA, argued that the Commission should require the CLECs to unbundle their networks in the same way that BA-**PA** is required to unbundle its network. R.D., p. 34. In general, the other parties, and the CLECs who would have to unbundle under such a rule, in particular, disagreed.

ALJ Schnierle agreed with Bell that, as a matter of policy, reciprocal unbundling would probably be in the public interest. Nevertheless, he rejected BA-**PA's** proposal for the reasons that: (1) the FCC has this issue under consideration in its Interconnection Notice of Proposed Rulemaking ("NPRM") at FCC Docket No. CC 96-98 and a Commission ruling now in BA-**PA's** favor could be premature; and (2) he was persuaded by those arguments advanced by Eastern Telelogic Corporation ("ETC") and TCG Pittsburgh, Inc. ("TCG") in their Reply Briefs, namely that because the Act requires only Incumbent Local Exchange Companies ("ILECs") to unbundle their networks, CLECs cannot be required to unbundle under the federal appellate court decision in Bell Atlantic Telephone Companies et. al. v. FCC, et. al., 24 F.3d 1441 (D.C. Cir. 1994). **[*8]**

We find Bell Atlantic Telephone Companies et. al. v. FCC, et. al., 24 F.3d 1441 (D.C. Cir. 1994) does not control the disposition of this issue. We conclude that it is appropriate, and in the public interest, that this Commission require CLECs to unbundle their network elements in the same manner that the ILECs are so required. Such a requirement will promote fair and equal treatment for all providers of local exchange service and it will ensure that no carrier engages in anti-competitive practices.

This Commission has supported the notion of regulatory parity for LECs to the extent that it is consistent with Chapter 30. Specifically, in our October 4, 1995 Opinion and Order at these dockets, we endorsed the principle of regulatory parity. See **MFS** I Order, Slip Op. at 86, and Ordering Paragraph Nos. 3; 10; 18. Additionally, Chapter 30 of the Public Utility Code requires that the Commission ensure that companies provide "reasonable nondiscriminatory access to competitors for all service and facilities necessary to provide competing service to consumers." 66 **Pa.** C.S. § 3005(b).

Although the Telecommunications Act of 1996 does not expressly require **[*9]** CLECs to unbundle, no legal or constitutional prohibition exists that prevents this Commission from establishing reciprocal unbundling requirements. The Public Utility Code authorizes this Commission to establish the terms and conditions under which public utilities will operate in the Commonwealth. As pointed out by the Commission's OTS in its Main Brief and in its Exceptions, the Act does not preempt state commissions from establishing reciprocal unbundling requirements.

Accordingly, all providers of local exchange service shall be under an obligation to unbundle. This does not mean that the CLECs must immediately price out the network elements. If a request is made to a CLEC, the parties must engage in good faith negotiations to resolve unbundling issues.

C. The 25 Loop per Week Initial Limitation.

BA-**PA** proposed that during the first three months that its unbundled loop tariff is in effect, BA-**PA** be required to provide no more than 25 loops per week per Local Access and Transport Area ("LATA") to each co-carrier. Essentially, BA-**PA** maintained that this limitation was necessary to provide a learning period for the service. (Tr. 927-928).

As pointed out by MCI in its Exceptions, **[*10]** Bell offered insufficient justification for the 25 loop limitation. We, consequently, agree with the position of MCI that such a limitation is arbitrary, and unsupported by the record. We shall, therefore, grant the Exceptions of MCI on this issue, and reverse the ALJ consistent with said Exceptions. We conclude that the proposed 25 loop per week limitation of Bell is rejected.

D. Facilities and Technology Used to Provide Unbundled Loops.

ALJ Schnierle, based on the arguments of the OCA, recommended the rejection of the requirement that Bell maintain some degree of discretion over the technical parameters that all unbundled loops should meet for interconnection.

We find the ALJ recommendation to be consistent with the federal Act and Chapter 30. We shall, hereby, adopt the ALJ recommendation and deny Bell's Exceptions consistent therewith.

VI. Unbundled Loop Rate Issues

A. Recurring Charges

In the **MFS** I Order we directed BA-**PA** to propose rates for the unbundled elements of its local loop facilities reflecting the Total Service Long Run Incremental Cost ("TSLRIC") of the unbundled facilities plus a proportionate share of joint and common costs, as well as other legitimate **[*11]** costs. BA-**PA** proposed unbundled loop and port rates based upon the TSLRIC of providing those facilities plus a proportionate allotment of shared costs, plus a markup for common costs based upon the markup embedded in the approved rates for the most analogous existing service. R.D. at 41.

Only one other party submitted a cost study in this proceeding - the OCA. ALJ Schnierle recommended that we not rely on the study sponsored by the OCA because, in his view, it was based on apparently contradictory assumptions.

Consequently, ALJ Schnierle, having rejected the use of an imputation test, and having found the OCA cost study to be based on contradictory assumptions, and having no other cost study in the record, used BA-**PA's** cost study despite certain reservations. With appropriate adjustments, he concluded that rates based on BA-**PA's** study should serve as interim rates pending the outcome of the FCC rulemaking.

On consideration of the positions of the parties, we shall adopt ALJ Schnierle's recommendations that the rates based on BA-**PA's** cost study be used with appropriate adjustments and serve as interim rates.

i. Procedure for Determining Permanent Rates for Unbundled Services

Bell **[*12]** is directed to file revised cost studies for use by the parties and this Commission in fashioning permanent rates for unbundled services. The revised cost studies must incorporate the adopted revisions and adjustments made to the cost

studies in this phase of the proceeding and any relevant adjustments that may stem from this Commission's disposition of the Universal Service Investigation.

During the last few months that the various dockets addressing telecommunications competition issues have been presented for action, we have strived to coordinate the outcomes in a consistent and cohesive fashion. We shall continue such coordination efforts. In the current phase of this docket, Bell's cost studies for the loop and port elements were adjusted by the ALJ for various concerns that the parties raised and which he found to be convincing. These adjustments should be accepted and Bell's studies should be used on an interim basis. Revised cost studies must be developed and submitted in the next phase of this proceeding.

First, since the Commission decided to direct that further unbundling be undertaken, revised cost studies which further disaggregate the elements of Bell's network must **[*13]** be developed.

Second, the adjustments accepted by the ALJ and adopted by this Commission should be incorporated into the revised studies.

Third, any relevant findings from the Commission's action in the Universal Service Investigation should be reflected in the revised studies, such as the method adopted for allocating joint and common costs.

To accommodate the timing of the anticipated disposition of the Universal Service Investigation and to allow sufficient time to develop the unbundled network element cost studies, Bell shall be directed to submit the revised cost studies within ninety (90) days of the entry date of this Opinion and Order for this phase of the proceeding. For the next 45 days following the submission of Bell's cost studies, the parties shall periodically meet in a workshop setting, rather than a conventional hearing setting, to discuss and resolve the unbundling proposals and work out the technical and operational specifics of unbundling. The Office of Administrative Law Judge ("OALJ") shall schedule the workshops and preside over them. The sessions shall be transcribed and open to the public, to the extent feasible in light of anticipated proprietary concerns **[*14]** regarding the cost studies. The OALJ must certify the record of the sessions to the Commission within 10 days of the final session for further action by the Commission. Further briefing, if the parties desire, should be accomplished within the 55-day period (45 + 10).

Additionally, the parties are directed to consider the extent to which unbundled rate elements may be combined by a CLEC to provide competitive local exchange service, versus requiring the CLEC to purchase wholesale service for resale to end user customers.

Finally, each individual Commissioner shall be added to the service list as of the entry date of the instant Opinion and Order, and copied on all record documents submitted in the next phase of the proceeding.

Other Individual Cost Components

With the exception of our consideration of broadband network costs, and implementation costs, we shall, in the interim, adopt the ALJ recommendations concerning the individual cost elements included by Bell.

iii. Implementation Costs

The appropriate question before the Commission is not whether these "implementation costs" are in fact legitimate costs. Rather, the pertinent question is whether these costs are incremental **[*15]** costs associated with the TSLRIC unbundled loop study adopted herein, or whether these costs are more properly categorized as joint and common and, therefore, to be recovered from all customers. The ALJ concluded that all customers who benefit should pay for the implementation costs.

On review of the record before us we are convinced that these claimed costs are legitimate one-time start-up costs needed to facilitate BA-**PA's** offering the unbundled local exchange elements. We agree with **MFS'** secondary position that the implementation cost should be considered as common costs and apportioned accordingly.

Although we share to some extent the concerns of the OCA, we do not know how BA-**PA** can segregate the rural customers in the allocation process of common costs for the recovery of implementation costs. In addition, we believe that the financial impact to these customers will be de minimis and, therefore, we shall deny the OCA's Exceptions

In conclusion, we adopt the position of the ALJ concerning the recovery of BA-**PA's** implementation costs through the prescribed common cost allocation process.

v. Broadband Network Costs

BA-**PA's** TSLRIC cost studies used forward looking broadband **[*16]** technology as one input to the study. Numerous parties objected, contending that BA-**PA** should have used copper technology since that is all that is needed to provide the voice-grade service capability that they seek to obtain via purchase of BA-**PA's** network unbundled elements. We hereby conclude that the use of broadband technology is consistent with BA-**PA's** present network deployment strategy to meet its network modernization obligations under Chapter 30 and our Alternative Regulation Order, Docket No. P-0930715 (Order entered June 28, 1994). However, the existing network may not support broadband **applications** in all instances.

To reconcile seemingly contradictory policy considerations, the cost studies should be based on broadband technology consistent with the principle that the TSLRIC cost studies should be forward looking in nature. If, however, the parties' negotiations, mediation, and/or arbitrations center on the purchase of network unbundled elements that are not broadband capable, this important factor must be considered in using the network unbundled rate elements as a benchmark for evaluating negotiated agreements or facilitating mediation or arbitrating related issues. **[*17]** In other words, some consideration should be given to the new entrant when unbundled elements are requested from the ILECs and existing broadband technology is not available. Because negotiations, mediation, and arbitrations are private arrangements, we do not today set forth what specific considerations should be offered. We therefore adopt the ALJ's recommendation not to make an adjustment to BA-**PA's** TSLRIC to remove costs associated with broadband deployment, and we therefore deny the Exceptions of the parties, consistent with the above discussion.

B. Nonrecurring Charges

We, hereby, adopt the ALJ conclusions and reasoning with respect to his determination of issues of nonrecurring charges, specifically his resolution of the appropriate levels for coordinated cut-over charge. Issues B(i)-B(ii) of the R.D., pp. 58-61.

MFS argued that BA-**PA's** proposed charge for "coordinated cutover" should be rejected, both on policy grounds and due to insufficient cost support. The ALJ agreed with **MFS** that, because a coordinated cut-over charge is so closely associated with the changing of carriers, the charge should be borne by all LECs so as not to discourage customers from switching carriers. **[*18]** The ALJ further found BA-**PA's** cost information unconvincing.

C. Joint and Common Costs

We conclude that the prices for network unbundled elements should be based on TSLRIC, plus a reasonable allocation of joint and common costs. This principle was stated in the first phase, or **application** stage of this proceeding. The standard is also being used in our Universal Service Investigation. This approach enables the Commission to adopt a consistent pricing methodology for universal services to be offered to retail customers and those to be offered to competitors through interconnection and resale. It also allows for coordinated implementation of local exchange competition in a manner that is consistent with and in furtherance of universal service.

We, hereby, adopt the ALJ conclusions and reasoning with respect to his determination of issues of nonrecurring charges and joint and common costs. Issues B-C of the R.D., pp. 58-64.

D. Unbundled Ports.

We, hereby, adopt the ALJ recommendation concerning BA-**PA's** proposal for making separately available the port termination at its central office switch. We note that this is an interim step, subject to any modifications made after completion **[*19]** of the FCC Interconnection rulemaking.

VII. Interconnection Issues

There are four matters involving interconnection in this proceeding. These are the Points of Interconnection and Tandem Subtending, Trunking Arrangements, and Service Order Processing for Trunks.

A. Points of Interconnection

Upon consideration, we agree with MCI's position on interconnection. MCI properly recognized the ALJ's recommendation. That is, that end office and tandem interconnection be provided post haste, with subsequent negotiations to ensue in order to facilitate interconnection "at any technically feasible point" as required by the Act. This is a viable way to immediately secure the interconnection needed to facilitate competition as required by Chapter 30 and the Act.

We agree with MCI's position because it is premised on the requirement that negotiations between BA-**PA** and the CLECs will proceed from the equal co-carrier

relationship that exists between the ILECs when they negotiate interconnection points with each other.

B. Trunking Arrangements

Upon consideration, we agree with the ALJ that no specific trunking requirements should be imposed by the Commission. The process used by the parties **[*20]** and reviewed by this Commission must be guided by the Act's requirements that such trunking interconnection: (1) be available at any technically feasible point; (2) be subject to at least the same technical standards that incumbent LECs afford to each other now, as well as future interconnection standards; (3) be reciprocal and enforceable concerning ordering, testing, and provisioning; (4) allow for the exchange of all types of traffic; and (5) be accomplished in the most technically efficient manner, without any restriction upon the nature of the interconnecting carrier's route. 47 U.S.C. § 251(c)(2).

For these reasons, we adopt the ALJ's recommendation rejecting any specific trunking arrangements under Chapter 30 and the Act.

C. Tandem Subtending

The ALJ agreed with BA-**PA** and concluded that tandem subtending was governed by tariff. The ALJ did so because BA-**PA** did not bear the burden of proof on showing the unreasonableness of the tariff. There was no record showing that BA-**PA's** access tandem switching and tandem transport rates are unreasonable. There was no record evidence supporting the rate suggested by **MFS.** The ALJ concluded that BA-**PA's** **[*21]** tariff must stand with respect to these rates. R.D., pp. 68-69.

We see no reason to disturb the ALJ's recommendation on tandem subtending since the recommendation was premised on the governing provisions unless and until the Commission may have to revisit the matter based on subsequent developments in regard to Section 252 negotiations or FCC action in the NPRM regarding interconnection, FCC Docket No. CC 96-98. R.D., pp. 68-69.

D. Service Order Processing for Trunks.

The ALJ agreed with BA-**PA** that, given the absence of any record evidence that established how the ASR/EXACT processes are inadequate to meet the needs of the CLECs, the current EXACT process is acceptable. The ALJ denied the ETC/TCG request. R.D. at 71. We see no reason to disturb that determination.

VII. Interim Number Portability.

A. Rates

ALJ Schnierle concluded, as follows, with regard to the proposed revised charge for INP via Remote Call Forwarding ("RCF"):

> * * *
>
> Accordingly, I recommend that the rate for INP provided by RCF be set at $ 0.001 per minute, with a minimum charge of $ 1.25 per month per line. This will ensure that BA-**PA** will receive at least the direct cost of

> the service with a contribution **[*22]** toward shared cost for all lines, including those with low usage, while not imposing higher costs on low usage lines. This is a reasonable compromise for this problem, which is expected to be solved permanently within one year, and which may be subject to FCC action even before the year has passed.

R.D. at 75.

After consideration of the positions of the parties, we shall adopt a flat rate as the appropriate rate structure that is most consistent with the underlying cost causation principles applicable to a RCF interim numbering portability strategy. A rate of $ 1.50 per month/per ported number is consistent with BA-**PA's** costs and includes a reasonable allocation of joint and common costs which is acceptable as an interim solution.

B. Access Charges

The **MFS** I Order directed BA-**PA** to "propose a method for allocating the access charges related to RCF services . . . structured in a non-discriminatory manner." **MFS** I Order at 88. BA-**PA** proposed that it and the CLEC keep the access charges that correspond to the respective call termination functions they each perform in completing a ported call.

Under the BA-**PA** proposal, when BA-**PA** forwards an interexchange call to a co-carrier, **[*23]** BA-**PA** will retain the portions of the access charges that correspond to BA-**PA's** actual termination functions, and it will pass on to CLECs the portion of the access charges commensurate with the local termination functions they perform. R.D. at 76.

The ALJ recommended adoption of the proposal made by ETC and TCG, which would require that the local transport charges be divided between BA-**PA** and the CLEC in proportion to the extent that each provides local transport over its own facilities. R.D. at 81. ETC and TCG also recommended that BA-**PA** receive a credit for any terminating local interconnection charges that it incurs as a result of handing off a toll call to a CLEC for termination to a customer with a ported number. However, IXCs, who must send calls to a CLEC customer via INP, should not have to pay any more for switched access than the CLEC charges. Under this proposal, if a CLEC's switched access rates are less than the ILEC's switched access rate, an IXC terminating a call to the CLECs should not have to pay the ILEC's higher switched access rate. Likewise, a CLEC should not receive less than its tariffed switched access rate. R.D. at 80.

Therefore, the ALJ concluded that the **[*24]** ETC/TCG proposal should be adopted because the allocation of access charges recommended by ETC and TCG most closely corresponds to the functions performed by the ILEC and CLECs during an RCF ported call. The ALJ determined that the ILEC, like the CLEC, should receive the access charges to which it would be entitled in connection with INP. R.D. at 81.

On consideration of the positions of the parties, we shall, hereby, adopt the ALJ resolution of this issue as an interim solution. The allocation of access charges recommended by ETC/TCG most closely corresponds to the functions performed by the ILEC and CLECs during an RCF ported call. The allocation of local transport charges shall be divided between BA-**PA** and the CLEC in proportion to the extent that

each provides local transport over its own facilities. In addition, BA-**PA** shall receive a credit for any terminating local interconnection charges that it incurs as a result of handing off a toll call to a CLEC for termination to a customer with a ported number. However, IXCs who must send calls to a CLEC customer via INP, should not have to pay any more for switched access than the CLEC charges.

VIII. Assignment of NXX Codes.

BA-**PA** **[*25]** 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** contended 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. R.D. at 82.

The ALJ's analysis reviewed the **MFS** proposal in the R.D. noting that **MFS** proposed, inter alia, that NXX codes in the Philadelphia and Pittsburgh metropolitan areas be assigned based on toll, rather than local rating points.

The ALJ concluded that BA-**PA's** position on this issue should prevail for now, noting that there is no evidence that BA-**PA's** proposal will lead to number exhaustion in the immediate future. The ALJ further concluded that 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 **[*26]** 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 ALJ recommended that the Commission reject **MFS'** proposal on NXX assignments at this time. R.D., pp. 82-83.

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

IX. Service Quality Standards.

We, hereby adopt the ALJ reasoning and conclusions concerning this issue.

X. Interstate Common Carrier Line

The ALJ directed BA-**PA** to deduct the **[*27]** total of all interstate Common Carrier Line ("CCL") revenues from the costs used to establish the rates for network unbundled elements, pursuant to Ordering Paragraph No. 4 of the R.D. BA-**PA** excepted to the R.D. contending that such a directive was premature because the FCC has not yet acted on its petition to recover these interstate charges from subscribers of unbundled loops, and because the charges are an explicit subsidy mechanism

intended to recover 25% of embedded, non traffic-sensitive costs of the network.

We agree with and accept the ALJ's disposition of this matter. BA-**PA's** Exception does not invalidate the ALJ's rationale for this recommendation. The CCL revenues recoup costs associated with the local loop, and therefore, it is appropriate to deduct these sums from the local loop costs that are used to develop the TSLRIC cost studies for network unbundled elements.

CONCLUSION

Consistent with the instant Short Form Opinion and Order, Bell is directed to implement the Phase II proposal for interconnection and related issues in accordance with the directives contained herein; **THEREFORE,**

IT IS ORDERED:

1. That the Recommended Decision of Administrative Law **[*28]** Judge Michael C. Schnierle is, hereby, adopted except as modified by this Opinion and Order.

2. That the BA-**PA** Proposal filed in this proceeding on December 1, 1995, as modified by the Stipulation filed on April 15, 1996, and as further modified by BA-**PA** during the course of the proceeding, is approved in part and rejected in part consistent with the Recommended Decision and the instant Opinion and Order. That within thirty (30) days of the entry date of this Opinion and Order, BA-**PA** shall submit compliance tariffs to govern in the interim pending the disposition of the next phase of these proceedings.

3. That the Bona Fide Request procedure set forth in the BA-**PA** Proposal for the processing of unbundling requests is rejected.

4. That the BA-**PA** Proposal provision that accords to BA-**PA** the sole discretion to provide an unbundled loop over any of its available serving technologies is rejected.

5. That Bell Atlantic - **Pennsylvania,** Inc. is, hereby, directed to immediately unbundle its loop, switch and transport elements.

6. That competitive Local Exchange Companies shall be under an obligation to reciprocally unbundle their networks in the same manner in which Bell Atlantic - **Pennsylvania, [*29]** Inc. is required to unbundle and must, upon request, engage in good faith negotiations to resolve unbundling issues.

7. That the Commission, hereby, initiates the next phase of this proceeding, and directs that Bell shall file revised cost studies for use by the parties and this Commission in fashioning permanent rates for unbundled services. The revised cost studies must incorporate the adopted revisions and adjustments made to the cost studies in this phase of the proceeding and any relevant adjustments that may stem from this Commission's disposition of the Universal Service Investigation.

> (a) To accommodate the timing of the anticipated disposition of the Universal Service Investigation and to allow sufficient time to develop the unbundled network element cost studies, Bell shall be directed to submit the cost studies within ninety (90) days of the entry date of this

Opinion and Order for this phase of the proceeding. For the next 45 days following the submission of Bell's cost studies, the parties shall periodically meet in a workshop setting, rather than a conventional hearing setting to discuss and resolve the unbundling proposal and work out the technical and operational **[*30]** specifics of unbundling. The OALJ should schedule the workshops and preside over them. The sessions should be transcribed and open to the public, the extent feasible in light of anticipated proprietary concerns regarding the cost study. The OALJ must certify the record of the sessions to the Commission within 10 days of the final session for further action by the Commission. Further briefing, if the parties desire, should be accomplished within the 55-day period (45 + 10).

(b) The parties are directed to consider the extent to which unbundled rate elements may be combined by a CLEC to provide competitive local exchange service, versus requiring the CLEC to purchase wholesale service for resale to end user customers.

(c) The Commissioners shall be added to the service list as of the entry date of the instant Opinion and Order, and copied on all record documents submitted in the next phase of the proceeding.

8. That pending the establishment of permanent rates for unbundled loops, the interim rates shall be the rates proposed by BA-**PA** in its Proposal, as further modified during this proceeding, with the following adjustments:

(a) BA-**PA** shall subtract the total of all interstate **[*31]** common line rate elements imposed on unbundled loop service from the cost-based rate established in this proceeding, and if such charges are approved by the FCC in the future, BA-**PA** shall revise its intrastate tariffs to offset loop charges imposed by the Federal jurisdiction.

(b) BA-**PA** shall remove from its loop rates the cost of adjunct mechanized loop testing. BA-**PA** may file a tariff imposing a charge, based on TSLRIC plus a proportionate share of joint and common costs, for optional testing of, and service calls to repair, unbundled loops.

(c) BA-**PA** shall remove from its unbundled loop rates any implementation costs charged as direct costs of unbundled loops. BA-**PA** may include these costs in common costs to be recovered from unbundled element service in the same proportion that it is allowed to recover joint and common costs from unbundled service.

(d) BA-**PA** shall remove from its unbundled element rates gross receipts tax.

(e) BA-**PA** shall not charge a coordinated cut over charge in connection with the transfer of loops to competitive providers.

(f) That the rate for INP provided by RCF shall be a flat charge of $ 1.50 per month per ported number.

(g) For INP provided **[*32]** by RCF, local transport charges shall be

divided between BA-**PA** and the CLEC in proportion to the extent that each provides local transport over its own facilities. BA-**PA** shall receive a credit for any terminating local interconnection charges that it incurs as a result of handing off a toll call to a CLEC for termination to a customer with a ported number; however, IXCs, who send calls to a CLEC customer via INP, shall not be required to pay any more for switched access than the CLEC access tariff rates.

9. That BA-**PA** be, and hereby is, required to provide end office and tandem interconnection immediately with subsequent negotiation, premised on equal co-carriers status, to ensue between the parties with regard to interconnection "at any technically feasible points" as required by the Telecommunications Act of 1996.

10. That the ALJ recommendations on Trunking, Tandem Subtending, and Service Order Processing for Trunks, be, and hereby are, adopted, consistent with this Opinion and Order.

11. That for the assignment of NXX codes, BA-**PA's** toll rating points will be utilized for the basis of assigning NXX codes. However, each CLEC will comply with BA-**PA's** local calling areas. This **[*33]** will fairly prescribe the boundaries for termination of a local call and the incurrence of a transport or termination charge.

12. That the Exceptions of the parties are granted or denied consistent with this Opinion and Order.

BY THE COMMISSION

STATEMENT OF CHAIRMAN JOHN M. QUAIN

Issue No. 1: Wholesale Rates for Resold Services

I am extremely disappointed today that the voluminous record in this proceeding does not permit the Commission to set an interim wholesale rate for the resale of Bell Atlantic - **Pennsylvania's** (Bell's) services.

I assure you that my reluctance to set such a rate today is not due to a lack of intention on the part of this Commission, but due solely to a lack of sufficient evidence in this record.

Section 252(d)(3) of the Telecommunications Act of 1996 provides that state commissions shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested. This Commission is anxious to fulfill its statutory obligation under the Act. However, any interim rate we choose must be based on evidence of record. Therefore, it appears that we will have to wait until the completion of the proceeding **[*34]** we initiated in our Bell Interim Resale Tariff Order n1 to set a permanent resale rate.

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n1 Entered May 31, 1996 at Docket No. R-00963578.

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

7-18-96

DATE

JOHN M. QUAIN, CHAIRMAN

CONCURBY: Lisa Crutchfield, Vice Chairman; David W. Rolka, Commissioner

DISSENTBY: Lisa Crutchfield, Vice Chairman; David W. Rolka, Commissioner

STATEMENT OF VICE CHAIRMAN LISA CRUTCHFIELD

Issue No. 1 Wholesale Rates for Resold Services

New entrants to the market have the option of providing local service by accessing Bell Atlantic-**Pennsylvania,** Inc. ("Bell") unbundled network elements or by reselling at wholesale rates telecommunications services Bell offers to its retail customers. The setting of wholesale rates for telecommunications services will significantly effect the manner in which competition will proceed in the local exchange market. Unfortunately, the record developed in Phase II of this case does not provide me with the necessary information to set wholesale rates for Bell's services at this time.

The federal Telecommunications **[*35]** Act of 1996 ("Act") requires incumbent local exchange carriers ("LECs"), such as Bell, to offer resale at wholesale rates "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers" and it prohibits Bell from imposing unreasonable or discriminatory conditions or limitations on the resale of such services. 47 U.S.C. § 251(c). The Act further requires the Commission to determine the wholesale rate based on the "retail rates charged to subscribers for the telecommunications service requested, excluding the portion, thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." 47 U.S.C. § 252(d)(3).

The only proposal for measuring Bell's avoided cost was offered by AT&T. The Company suggested a 36% discount or reduction in the retail rates charged by Bell for its resold services. This proposal, however, was challenged by several parties in this proceeding. I believe that there is some merit to the parties arguments. Without sufficient data and information to determine Bell's avoided cost **[*36]** as required by the federal Act, I cannot set the appropriate wholesale rate. Accordingly, I will await the outcome of the pending Bell tariff proceeding, at Docket No. R-00963578, which is scheduled for Commission consideration at the December 12, 1996 Public Meeting.

I would note that **MFS Intelenet of Pennsylvania,** Inc. ("**MFS**") and Bell filed on July 17, 1996, a Joint Petition for Approval of Agreement for Network Interconnection and Resale. The two companies agreed to the resale of Bell's services for a wholesale discount of 8% for residential customers and 8.5% for business customers. I commend the parties for reaching an amicable resolution to this issue.

7/17/96

DATE

LISA CRUTCHFIELD, VICE CHAIRMAN

STATEMENT OF COMMISSIONER DAVID W. ROLKA

Issue No. 1: Wholesale Rates for Resold Services

The wholesale rate issue is also pending in a separate tariff proceeding at Docket No. R-963578, which is expected to be taken up by the Commission at the December 12, 1996 public meeting. In the interim period, it would be inappropriate to await the outcome of the FCC's Interconnection Proceeding (CC Docket No. 96-98). Such an approach inappropriately implies that there **[*37]** is no state responsibility to act in this area. The PUC's Comments submitted in the FCC docket substantiate the view that state commissions have authority to set pricing rules to apply to interconnection, including the establishment of wholesale rates. We must act consistent with our views and demonstrate our willingness and commitment to promptly implement the new Act as well as the parallel provisions of Chapter 30.

AT&T proposed a 36.1% discount rate which was criticized by numerous parties. The articulated concerns appear to have some merit. However, no other party submitted a specific actual cost study. In order to establish an interim rate for wholesale service, it would therefore be necessary to identify whether there is a legitimate proxy that can be used. The Illinois Commerce Commission recently issued an Order which established a methodology that set the average discount at 20%. Other recent state determinations by the Georgia Public Service and Tennessee Public Service Commissions range between 20% and 25%. Recognizing that an interim rate would be subject to comprehensive scrutiny by the parties in the pending Bell tariff proceeding, a proxy rate based on other states' **[*38]** analysis of this issue, in the range of 20 - 25%, might be of limited value. Such a benchmark would however have proven useful to guide the recently filed arbitration request submitted by AT&T.

July 17 1996

DATED

DAVID W. ROLKA, COMMISSIONER

STATEMENT OF VICE CHAIRMAN LISA CRUTCHFIELD

Issue No. 2 Scope of Unbundling

Effective competition in the local exchange market requires network unbundling. One of the major issues in Phase II of these dockets is the level of unbundling of Bell Atlantic-**Pennsylvania,** Inc.'s ("Bell") network elements. The federal Telecommunications Act of 1996 ("Act") requires the unbundling of the local exchange network to advance facilities based local competition. 42 U.S.C. § 251(c)(3).

Bell's offer to unbundle the local loop and switch port is inadequate. The Company's proposal will stifle and may delay local competition. New entrants to the local exchange market must have access to other network elements. MCI suggests that the Commission require Bell to "unbundle immediately, at a minimum, the loop, switch and transport elements of its network as required by the Telecommunications Act of 1996." MCI **[*39]** Exceptions, p. 6. I believe that this proposed level of unbundling

is appropriate and recommend that the Commission order Bell to take such action.

7/18/96

DATE

LISA CRUTCHFIELD, VICE CHAIRMAN

STATEMENT OF VICE CHAIRMAN LISA CRUTCHFIELD

Issue No. 3 Other Unbundling Issues-Reciprocal Unbundling

It is appropriate and in the public interest for the Commission to require competitive local exchange carriers ("LECs") to unbundle their network elements. Such a requirement will promote fair and equal treatment for all providers of local exchange service and it will ensure that no carrier engages in anti-competitive practices. The Commission has supported the notion of regulatory LEC parity to the extent that it is consistent with Chapter 30. Specifically, in our October 4, 1996 Opinion and Order at these dockets ("**MFS** I Order"), the Commission endorsed the principle of regulatory parity. See, **MFS** I Order, p. 86, and Ordering Paragraph Nos. 3, 10, and 18. Additionally, Chapter 30 of the Public Utility Code requires the Commission to ensure that companies provide "reasonable nondiscriminatory access to competitors for all services and facilities necessary to provide **[*40]** competing services to consumers." 66 **Pa.** C.S. § 3005(b).

Although the Telecommunications Act of 1996 ("Act") does not expressly require competitive LECs to unbundle, no legal or constitutional prohibition exist that prevents this Commission from establishing reciprocal unbundling requirement. The Public Utility Code authorizes the Commission to establish the terms and conditions under which public utilities will operate in the Commonwealth. As pointed out by the Office of Trial Staff ("OTS") in their Main Brief and Exceptions, the Act does not preempt state commissions from establishing reciprocal unbundling requirements. Accordingly, all providers of local exchange service should be under an obligation to unbundle. This does not mean that the competitive LECs must immediately price out their network elements. If a request is made to a competitive LEC, the parties must engage in good faith negotiations to resolve unbundling issues.

7/18/96

DATE

LISA CRUTCHFIELD, VICE CHAIRMAN

STATEMENT OF VICE CHAIRMAN LISA CRUTCHFIELD

Issue No. 6 Unbundled Loop Rate Issues-Recurring Charges

The ultimate goal, in this proceeding, is to allow competitive local exchange carriers **[*41]** (LECs) access to Bell Atlantic-**Pennsylvania,** Inc.'s ("Bell") unbundle network elements. In order to achieve this goal, we must obtain the pure cost pricing of the network elements. Rate rebalancing allows Bell to do pure cost pricing.

Administrative Law Judge Michael C. Schnierle rejected the use of the Office of

Consumer Advocate's ("OCA") cost study having found that the study was based on contradictory assumptions. I support the ALJ's conclusion. The ALJ relies on Bell's cost study for the loop and port network elements but makes adjustments to the study. I support, on an interim basis, the use of Bell's cost study as adjusted by the ALJ.

7/18/96

DATE

LISA CRUTCHFIELD, VICE CHAIRMAN

STATEMENT OF COMMISSIONER DAVID W. ROLKA

Issue No. 6: Unbundled Loop Rate Issues - Recurring Charges

The prices for network unbundled elements should be based on total service long run incremental costs, or TSLRIC, plus a reasonable allocation of joint and common costs. This principle was stated in the first phase, or **application** stage, of this proceeding. The standard is also being used in the Universal Service Investigation. This approach enables the Commission to adopt a **[*42]** consistent pricing methodology for universal services to be offered to retail customers and those to be offered to competitors through interconnection and resale. It also allows for coordinated implementation of local exchange competition in a manner that is consistent with and in furtherance of universal service.

In the current phase of this docket, Bell's cost studies for the loop and port elements were adjusted by the ALJ for various concerns that the parties raised and which he found to be convincing. These adjustments should be accepted and Bell's studies should be used on an interim basis. Revised cost studies must be developed and submitted in the next phase of this proceeding. First, if the Commission decided to direct that further unbundling be undertaken, revised cost studies which further disaggregate the elements of Bell's network must be developed. Second, the adjustments accepted by the ALJ should be incorporated into revised studies. Third, any relevant findings from the Commission's action in the Universal Service Investigation should be reflected in the revised studies, such as the method adopted for allocating joint and common costs.

Third, because of differences **[*43]** in the timing and inputs to the cost studies submitted in this proceeding and in the Universal Service proceeding, there are different results in each docket that are not necessarily consistent with one another. It makes little sense that in the Universal Service docket, cost studies there produce a dial tone line rate that is less than the unbundled loop rates produced in this docket. Accordingly, an imputation limitation should be imposed here to act as an interim measure to evaluate the reasonableness of the TSLRIC network unbundled element studies in this proceeding. On an interim basis, when and if the TSLRIC rate for the unbundled loop exceeds the corresponding effective dial tone line rate, the DTL rate should be used as an interim cap on the unbundled loop rate charged to CLECs. This cap should be eliminated once the revised cost studies are submitted and approved in the next phase of this proceeding.

I THEREFORE MOVE THAT:

The Final Opinion and Order should be drafted in a manner consistent with this Motion.

July 18 1996

DATED

DAVID W. ROLKA, COMMISSIONER

virtual KRK notebook

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held August 17, 2000

Commissioners Present:

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

Petition of Focal Communications Corporation of Pennsylvania For Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc.	A-310630F0002

OPINION AND ORDER

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BY THE COMMISSION:

Before the Commission for consideration are the Exceptions filed on June 22, 2000, by Bell Atlantic-Pennsylvania, Inc. (BA-PA)[1] to the Recommended Decision of Administrative Law Judge (ALJ) Herbert Smolen, which was issued on June 6, 2000. Replies to Exceptions were filed by Focal Communications Corporation of Pennsylvania (Focal) on June 30, 2000. This matter is an arbitration proceeding conducted pursuant to the federal Telecommunications Act of 1996 (TA-96), 47 U.S.C. §252, the Commission's *Implementation Order,*[2] and related provisions of the Public Utility Code, 66 Pa. C.S. §101-3316.

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[1] We take administrative notice of the change of corporate name to Verizon Pennsylvania effective after the institution of this proceeding, August 1, 2000.

[2] Re *Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (Order entered June 3, 1996; *Order on Reconsideration* entered September 9, 1996).

I. HISTORY OF THE PROCEEDING

On March 8, 2000, Focal filed a Petition for Arbitration of interconnection rates, terms and conditions pursuant to 47 U.S.C. §252(e). The Arbitration Petition originally contained four (4)1 issues which Focal and BA-PA had been unable to resolve up to that time.

On March 21, 2000, ALJ Smolen held a Pre-Arbitration conference, at which time an arbitration schedule, including a discovery timetable, was established. In addition, Focal filed a letter agreeing to an extension of the time within which the Commission was required to act upon the Arbitration Petition to August 17, 2000. Thereafter, Focal and BA-PA resolved two (2) of the issues, leaving only two issues remaining for consideration.

Prior to the scheduled arbitration hearing on May 2, 2000, Focal amended Issue One of its Petition (reciprocal compensation) to which BA-PA objected; the Amendment was authorized; BA-PA filed an Answer to the Petition; and the Parties exchanged written testimony.

At the Arbitration hearing, admissions pro hac vice were granted to non-Pennsylvania counsel. Focal presented three (3) witnesses and introduced two (2) exhibits. BA-PA presented five (5) witnesses and introduced eight (8) exhibits. The record consists of 341 pages of transcript and the aforesaid exhibits. Briefs and Reply Briefs were filed.

On June 6, 2000, the Recommended Decision of ALJ Herbert Smolen, acting as arbitrator, was issued. As noted, on June 22, 2000, BA-PA filed Exceptions to the Recommended Decision. Replies to Exceptions were filed on June 30, 2000, by Focal.

On July 13, 2000, the Commission received a letter and attachment submitted by BA-PA and responsive to the Replies to Exceptions of Focal. BA-PA requests that the Commission consider this letter and attachments when resolving the issue of the location of Focal's Interconnection Points.[3]

[3] We have determined that the letter and attachment are extra-record information which we will not consider in our disposition of this matter.

II. DISCUSSION

A. The Recommended Decision

The two (2) outstanding issues for consideration in this proceeding concern the following:

1. The inter-carrier compensation rates to be paid for ISP (Internet Service Provider)-bound traffic;[4] and,

2. The terms and conditions for location of Geographically Relevant Interconnection Points (GRIPS).

(R.D., p. 2).

With regard to the first issue, BA-PA's position, as summarized on pp. 2-4 of the Recommended Decision, is premised on its TELRIC study that was originally prepared for the *MFS Phase III* proceeding with certain adjustments related to different cost characteristics for delivery of ISP traffic and Focal's network. (BA-PA Brief, pp. 16-18). Specifically, BA-PA removed the following costs from its cost study: (1) Line CCS costs (CCS stands for Cost per Centum (hundred) Call Seconds) because the typical network paths associated with an ISP-bound call for an efficient carrier is not traffic sensitive and should be recovered along with other non-traffic sensitive (NTS) items in a monthly port rate charged to an end-user, and (2) Tandem Switching costs because Focal's only switch located in Philadelphia is not a tandem switch, does not serve a geographic area comparable to BA-PA's tandem switch and does not meet industry definition of a tandem switch because it does not connect to any other Focal switch (BA-PA Reply Brief, pp. 27-30). As such, and in order to address the imbalance in traffic between BA-PA and Focal due to ISP-bound traffic, BA-PA proposed that the Commission-mandated reciprocal compensation rates (*i.e.*, $0.001723 per MOU for end

[4] BA-PA has appealed this aspect of the *Global Order*. Said appeal does not

office termination and $0.002814 per MOU for termination at a tandem) in BA-PA's Tariff No. 216 apply until such time that the originating traffic of either carrier exceeds the originating traffic of the other carrier by a ratio of 3:1, at which time the lower rate of $0.000647 derived from BA-PA's adjusted cost study would apply.

The ALJ disagreed with BA-PA's position and agreed with the position advocated by Focal.[5] Therefore, he recommended that the Commission adopt Focal's position in light of the following:

(a) In the *Global Order*,[6] the Commission ruled that calls to ISP providers are considered local calls.[7]

(b) In the *Global Order*, the Commission determined that calls to ISP providers, as local calls, are subject to reciprocal compensation in all future interconnection agreements.[8]

(c) Upon careful review of BA-PA's *MFS III*[9] TELRIC [total element long-run incremental cost] cost study, competitors comments thereon,

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affect the instant proceeding.

[5] Focal takes the position that the Commission-mandated reciprocal compensation rates contained in BA-PA's Tariff No. 216 (Section 6, 3rd Revised Sheet 12) (*i.e.*, $0.001723 per MOU for end office termination and $0.002814 per MOU for termination at a tandem) should apply to all local traffic, including ISP-bound traffic.

[6] *See Joint Petition of Nextlink Pennsylvania, Inc,. et al., for Adoption of Partial Settlement Resolving Pending Telecommunications Issues and Joint Petition of Bell Atlantic-Pennsylvania, Inc., et al., for Resolution of Global Telecommunications Proceeding*, Docket Nos. P-00991648, P-00991649 (Order entered September 30, 1999) (*Global Order).*

[7] *Global Order*, p. 200.

[8] Id.

[9] *Application of MFS Intelenet of Pa., Inc.*, et al. Docket No. A-310203F0002, et al. (Order entered in Phase III of said proceedings August 7,

and the subsequent adjustments to that study reviewed in connection with the Global Order in 1999, the Commission set reciprocal compensation rates at $.001723 per minute for end office termination and $.002814 per minute for termination at a tandem, effective December 31, 1999.[10]

(d) By reason of the Commission's recent *Global Order* (adopted September 30, 1999 with reciprocal compensation rates effective December 31, 1999 and public policy pronouncement that ISP calls shall continue to be treated as local calls for the purpose of intercarrier compensation), it is appropriate that BA-PA's "less cost" theory advanced in the instant matter, be considered and tested in a separate proceeding where the Commission could decide whether the issue deserves consideration, and if so, extend to all interested parties an opportunity to participate and ample time to review the cost studies and the principles, assumptions and underlying data supporting such studies.[11]

1997).

[10] See excerpt from BA-PA tariff attached to Focal Main Brief.

[11] The ALJ notes that the Illinois Commerce Commission, after finding that ISP-bound calls are local and should be due reciprocal compensation, and in order to ensure that just and reasonable rates are in place in Illinois, reached the following conclusion: ". . . since the issues raised here related to reciprocal compensation are likely to be very similar to those raised in other arbitration proceedings and other market participants have not been party to this proceeding, we conclude that this arbitration decision is not the proper place for the Commission to adopt a position which will have far-reaching competitive and economic effects upon the telecommunications marketplace. Therefore, the Commission hereby directs Staff to initiate a proceeding in order to further address the issue of reciprocal compensation." (Focal Communications Corp. of Illinois, Petition for Arbitration to Establish an Interconnection Agreement with Illinois Bell Tel. Co., d/b/a Ameritech Illinois. Illinois Commerce Commission No. 00-0027, p. 12 [May 8, 2000] (Exhibit B attached to PA-PA Reply Brief)).

(R.D., pp. 9-10).

Therefore, in light of the above, the ALJ recommends that the Commission-determined reciprocal compensation rates be incorporated in the Interconnection Agreement between Focal and BA-PA and shall apply to all local traffic, including ISP-bound traffic. (R.D., p. 17, Ordering Paragraph 1).

With regard to the second unresolved issue above pertaining to the terms and conditions for GRIPS, the ALJ recommends rejection of BA-PA's modified proposal[12] and adoption of Focal's compromise proposal, set forth on pages 9-12 of

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[12] Attached to Exhibit A to BA-PA's witness D'Amico's testimony (BA-PA St. 1, pp. 4-5) was BA-PA's modified proposal with regard to the location of GRIPS which includes the following terms:

(a) In LATAs in which Focal and BA-PA have existing IPs (Interconnection Points), their respective IPs will be retained; however, BA-PA may request, and Focal shall provide, within a commercially reasonable period of time, a Focal-IP at one or more BA-PA Tandems in the LATA.

(b) For LATAs in which Focal has not established an IP already (i.e., the parties have not yet interconnected their networks), BA-PA may request, and Focal shall provide, within a commercially reasonable period of time, a Focal-IP at one or more BA-PA Tandems in the LATA.

(c) BA-PA may request, and the parties shall negotiate in good faith, additional Focal-IPs within a LATA at centralized locations (*e.g*, a BA-PA end office). If the parties do not reach agreement regarding any such BA-PA request, the matter could be taken to dispute resolution. In the event that parties do not reach agreement, the standards for resolution would include the two standards Focal cited in its Petition, namely, "traffic patterns" and "prudent engineering practices."

(d) If Focal is collocated at a BA-PA end office, BA-PA has the right to move Focal's IP to that end office.

Focal's Statement No. 2, and pages 12-14 of the Recommended Decision. Focal's compromise proposal is as follows:

I. Existing interconnection architecture to remain in place, except as groomed by mutual agreement.

II. Future end office interconnection architecture

A. When traffic between Focal and a specific BA-PA end office exceeds 200,000 minutes per month the Parties will make reasonable best efforts to establish a primary direct trunk group for such BA-PA end office, with overflow traffic to be routed through the BA-PA tandem subtended by such BA-PA end office.

B. The Parties shall utilize two-way trunks upon Focal's request. Such two-way trunks shall be provisioned end-to-end between the relevant switches, traversing a mutual interconnection point (IP) between the Parties. The IP refers to the physical point beyond which each party shall be responsible for transport.[13]

C. Focal may use multiple transport providers at any single IP.

D. For direct end office interconnection, Focal and BA-PA will utilize a "geographically-relevant" IP (GRIP) to the extent possible, subject to the following:

i) Focal recognizes BA-PA's desire that the physical IP be located within reasonable geographic proximity to the terminating

[13] Section 1.38 of the draft Interconnection Agreement between BA-PA and Focal defines IP as follows: "IP" or "Interconnection Point" means the point at which a Party who receives traffic originating on the network of another Party assesses Reciprocal Compensation charges for the further transport and termination of that traffic."

end office, as defined by the LERG with reference to the terminating NPA-NXX.

ii) BA-PA recognizes Focal's desire to self-provision transport, or use transport provided by top-tier Competitive Access Providers (CAPS) where feasible.

iii) To reconcile the above concerns, the Parties will work cooperatively to establish a physical IP within every rate center where terminating traffic volume merits a direct end office trunk group, if technically feasible.

iv) Rate center boundaries are with reference to BA-PA's rate centers.

v) When Focal can reasonably self-provision or lease top-tier 3rd party CAP facilities within such rate center boundary, it will do so in order to establish an IP within such rate center boundary.

vi) When Focal or top-tier 3rd party CAP facilities are not available within such rate center boundary, the Parties shall co-operate to identify a suitable alternative IP, subject to mutual facilities concerns. However, in no event shall the IP be located further from the rate center than the BA-PA tandem office subtended by such BA-PA rate center.

III. Future Tandem Architecture

A. Tandem interconnection will be utilized as an overflow for end office trunk groups and as a primary route for rate centers and or end officer where traffic volume does not warrant direct end-office trunk groups per the 200,000 MOU per month criteria.

B. Tandem interconnection trunks shall be configured as two-way, and each Party shall be responsible for 50% of the tandem interconnection facilities.

C. Focal shall be entitled to use multiple facilities providers at BA-PA tandem offices.

D. BA-PA tandem interconnection facilities shall terminate at a BA-PA-provided FOT at Focal's switch facility.

B. Exceptions/Reply Exceptions – Compensation for Termination of ISP Traffic

1. BA-PA Excepts To The Arbitrator's Conclusion That The *Global Order* Requires That Focal Be Paid The Same Level Of Compensation For Handling All Types of Calls

BA-PA argues that while it is clear that the ALJ felt bound by certain findings contained in the *Global Order*, the *Global Order* does not require the result reached by the ALJ. BA-PA asserts that nowhere does the *Global Order* require that Focal receive the same level of compensation for handling all calls classified as "local" under that order. (BA-PA Exc., pp. 1-2).

BA-PA argues that although the *Global Order* did require that ISP-bound calls should be considered "local calls," and that the terms requiring compensation for delivering those calls should be included in future interconnection agreements, none of the parties in the proceeding which led to the *Global Order* addressed the issue relating to the appropriate level of compensation for delivering ISP-bound traffic. BA-PA asserts that, unlike in this instant proceeding, the *Global* proceeding did not address any TELRIC study that demonstrates the lower per minute cost to deliver ISP-bound traffic. (BA-PA Exc., pp. 5-6).

BA-PA submits that this proceeding is the first opportunity for the Commission to address the issue of the appropriate level of compensation for delivering ISP-bound traffic in a litigated proceeding and that nothing in the *Global Order* prevents the Commission from adopting BA-PA's proposal that "the cost to deliver ISP-bound traffic is substantially less than the cost to terminate ordinary local traffic." (BA-PA Exc., p. 6). Therefore, BA-PA argues that the ALJ's conclusion, that the Commission-mandated reciprocal compensation rates resulting from the *Global Order* be incorporated in the Interconnection Agreement between Focal and BA-PA, should be reversed. (BA-PA Exc., p. 7).

In response to BA-PA's Exceptions, Focal argues that the ALJ's ruling is the only logical way to interpret the *Global Order*. Focal asserts that in the *Global Order* the Commission established one (1) reciprocal compensation rate for end office termination and one (1) reciprocal compensation rate for tandem termination at the very same time it determined that reciprocal compensation is due for termination of ISP-bound traffic. As such, Focal opines that the only logical inference to be drawn from such a ruling is that ISP-bound traffic is to be compensated at the rates established by the *Global Order* – just as all other local traffic is. (Focal R.Exc., pp. 3-4).

2. BA-PA Excepts to the Arbitrator's Failure to Recognize That The Per Minute Cost To Deliver ISP-Bound Traffic Is Substantially Lower Than The Cost To Terminate Ordinary Local Exchange Traffic

BA-PA submits that the ALJ's conclusion, that the *Global Order* requirement that Focal be compensated at the same level for delivering ISP-bound and similar traffic, wholly ignores BA-PA's evidence that it costs far less to deliver ISP-bound traffic. BA-PA contends that it has demonstrated in this proceeding that the cost for delivering ISP-bound traffic is $0.000647 per minute of use, which is substantially

lower than the Commission-determined local call termination rates of $0.001723 per minute of use (end-office) and $0.002814 per minute of use (tandem office) set forth in the *Global Order*. (BA-PA Exc., p. 7).

BA-PA alleges that all of the record evidence demonstrates that calls to ISPs and other high-volume convergent traffic are fundamentally different from conventional plain old telephone service (POTS) local calls. First, BA-PA argues that a POTS call originates from a subscriber in an end-office (Class 5) switch and terminates to another subscriber in either the same end office switch (known as an intra-office call) or terminates on a different end-office switch (known as an inter-office call), whereas an ISP call originates in an end office (Class 5) switch and terminates in an ISP's network.[14] Second, a POTS call usually transmits a voice signal whereas an ISP call is made to transmit data.[15] Third, the average holding time of an ISP-bound call is substantially longer (27-31 minutes) than that of a typical POTS call (1-5 minutes).[16] Fourth, normal POTS traffic terminates on the line side of the office switch at a concentration ration of approximately six (6) to one (1)[17] whereas ISP traffic typically uses an ISDN Primary Rate Interface (PRI) port, which employs one-to-one concentration, or no concentration.[18] These differences, as propounded by BA-PA, are summarized in the table below:

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[14] Sanford Direct, p. 3.

[15] Sanford Direct, p. 3.

[16] Sanford Direct, p. 4; Tr., pp. 206-207 (Sanford).

[17] This means that for every six (6) lines connected to the switch there is one (1) path through the switch. Traffic terminating on the line side of the switch is concentrated, meaning that there is no path through the switch for every single customer line because calls are not made simultaneously.

[18] Sanford Direct, p. 6.

Characteristic of Call	POTS Calls	ISP Calls
Origination	End Office (Class 5) Switch	End Office (Class 5) Switch
Termination	Terminates to another subscriber in the same end office switch (intraoffice call) Or Terminates to another subscriber in a different end office switch (interoffice call)	Terminates in an ISP's network
Medium Transmitted	Usually transmits voice signals	Transmits data – usually from the subscriber's computer to and from the Internet
Average Holding Time	Typically 1-5 minutes	Typically 27-31 minutes
Use of Network Elements	Terminates on line side of the office switch typically at a level of concentration ratio of 6:1	Uses ISDN Primary Rate Interface (PRI) ports and employs a level of concentration ratio of 1:1 (*i.e.*, no line concentration)
Network Path Connection	Traffic-sensitive	Non-traffic sensitive

BA-PA argues that where competitive local exchange carriers (CLECs) use ISDN PRIs to deliver traffic to ISPs, each line has a dedicated network path. Since the dedicated network path cannot be used by another line (even when it is idle) and calls over the network path cannot be blocked, the network paths connected to a PRI unit are not traffic sensitive and the cost for this connection is fixed with respect to the amount of traffic it carries. As such, BA-PA asserts that it is proper to exclude the non-traffic sensitive cost associated with the PRI's dedicated network path from the cost recovered through a per-minute inter-carrier compensation rate. (BA-PA Exc., p. 9).

BA-PA asserts that the ALJ failed to acknowledge that the differences between POTS and ISP calls outlined above have a direct impact on the cost to handle ISP-bound traffic. However, BA-PA contends that its ISP TELRIC study in Attachment A of its Witness Gary E. Sanford's Direct Testimony, represents the lower

costs related to delivering traffic to ISPs -- or any other type of customer that has a relatively high volume of long holding time traffic. (BA-PA Exc., p. 9).

Focal disagrees with BA-PA that ISP-bound calls are "different" than other calls. As such, Focal is of the opinion that BA-PA's Cost Study was based on fictitious distinctions between ISP-bound calls and other local calls. Focal asserts that BA-PA's theory that a POTS call terminates on an end office switch and an ISP-bound call terminates in an ISP's network[19] was rejected by the D.C. Circuit when that court vacated the Federal Communication Commission's (FCC's) *Declaratory Judgment* and specifically ruled that the ISP is the called party and that an ISP's subsequent communication to websites is not a continuation of the initial call placed to the ISP.[20] Therefore, Focal argues that an ISP-bound call, like a POTS call, terminates on an end office switch. (Focal R.Exc., p. 10).

With regard to BA-PA's argument that ISP-bound calls are distinct because the average duration of an ISP call is longer than that of a POTS call,[21] Focal responds that this is a distinction without merit because the whole purpose of setting TELRIC rates based on the *average* call is the recognition that some calls will be longer than others. Focal contends that the current Commission-approved reciprocal compensation rates, which were calculated in studies including both ISP and non-ISP calls, reflect an averaging of call lengths. As such, Focal submits that those rates reflect the fact that some calls are short and

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19 *See Exceptions, pp.* 7-8.

20 *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1, 6-7 (D.C. Cir. 2000).

21 *See Exceptions* at 8.

some are long. Furthermore, Focal states that BA-PA's proposal does not apply differing rates based on the length of a call. Focal asserts that BA-PA's proposal would assesses a non-compensatory rate based on the identity of the called party. (Focal R.Exc., pp. 10-11).

Focal continues to point out flaws in BA-PA's proffered study. Focal asserts that BA-PA's removal of tandem costs in its cost study was impermissible because the FCC has determined that CLECs should not be penalized on a rate basis merely because their networks do not replicate the tandem/end office architecture developed by the incumbent local exchange carrier (ILEC).[22] (Focal R.Exc., p. 11).

Focal also finds fault with BA-PA's assumption in its cost study that network elements are used differently to deliver ISP-bound calls than to terminate other local exchange traffic.[23] Focal submits that the last point of switching on the carrier's network to the ISP's premises is irrelevant to the issue of reciprocal compensation because "costs associated with carrying traffic from the last point of switching on the carrier's network to the customer's premises are not included by an ILEC in an appropriately conducted TELRIC study for reciprocal compensation pursuant to paragraph 1057 of the FCC's *First Report and Order*." (*See* Focal R.Exc., pp. 11-12 citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶ 1057 (1996)).

Furthermore, Focal disagrees with BA-PA's argument that ISP traffic is delivered via a "dedicated path," while POTS traffic is not. Focal states that, in reality, the

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[22] Focal cites 47 C.F.R. § 51.711, wherein the FCC has ruled that when a CLEC switch serves a geographic area comparable to that served by an ILEC's tandem switch, as does Focal's switch here, then the CLEC switch shall be considered equivalent to a tandem switch.

[23] *See Id.*

"dedicated path" on which BA-PA justified its exclusion of significant termination costs in its "study" (namely a PRI trunk) is the last point of switching on the carrier's network to the ISP's premises,[24] and that as its witness Michael Starkey explained, "this is no different than the higher capacity lines ILECs and CLECs often employ to support their customers' PBX facilities used to originate and terminate large volumes of traffic."[25] (Focal R.Exc., p. 12).

Focal argues that both BA-PA and Focal are in agreement that ISP-bound calls are indistinguishable from all other local calls in their use of the networks. Focal states that BA-PA's witness, Mr. Gillis, readily acknowledged that he would not be able to tell whether a BA-PA switch was full of ISPs or not,[26] and Bell Atlantic's witness, Mr. West, didn't want to "sign up" for whether ISP usage is capable of separate identification from other local calls.[27] As such, Focal contends that the ALJ correctly recognized the identity of network use between ISP-bound and other local calls and refused to entertain the tainted cost study that BA-PA advanced. (Focal R.Exc., p. 12).

BA-PA also believes that it is appropriate to adopt its ISP TELRIC cost study proposed in the instant proceeding because at the time the Commission approved BA-PA's local call termination TELRIC study, the conventional wisdom was that CLEC's networks and traffic flows would mirror that of BA-PA. As a result, BA-PA states that it submitted its TELRIC study to the Commission in the MFS III proceeding using the assumptions that the CLEC's mix of traffic would be similar to BA-PA's, a majority of the traffic would be POTS traffic, and that calls would be delivered with line concentration. (BA-PA Exc., pp. 9-10).

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[24] *See* Starkey Responsive, Focal Statement 1.1, p. 13.

[25] *Id.*

[26] Gillis, Tr., p. 312, lines 24-25, and 313, lines 1-9.

[27] West, Tr., p. 264 lines 3-7.

In response, Focal argues that BA-PA's proposed reciprocal compensation rates ignore the "symmetrical requirements" imposed by law and argues that the flaws in BA-PA's cost study and its compensation proposal provide an independent justification that the Recommended Decision should be adopted. (Focal R.Exc., pp. 6-7).

BA-PA argues in its Exceptions that Focal failed to produce any factual evidence to support its contention that it incurs the same cost in delivering ISP traffic and terminating voice traffic. Furthermore, BA-PA contends that Focal failed to produce any evidence concerning its own network configuration related to switch engineering and traffic characteristics. Therefore, BA-PA asserts that the Recommended Decision must be reversed because there is no support in the *Global Order* or any other Commission Order for mandating that BA-PA compensate Focal "far in excess of its cost to deliver ISP-bound traffic" and the Recommended Decision fails to acknowledge the cost difference. (BA-PA Exc., p. 11).

Focal disagrees with BA-PA's argument that the ALJ should have adopted BA-PA's cost study because Focal did not provide its own cost studies. Focal contends that its own costs are irrelevant to determining reciprocal compensation rates in this proceeding because the FCC has held that reciprocal compensation rates must be "based on the *incumbent LEC's* [emphasis by Focal] costs for transport and termination of traffic when arbitrating disputes under section 252(d)(2)....".[28] As such Focal confirms that reciprocal compensation rates must be based on a TELRIC study which reflects the incumbent LEC's "forward looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element...."[29] (Focal R.Exc., pp. 12-13).

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[28] 11 FCC Rcd 15, 499 at ¶ 1089.

[29] 47 C.F.R. §51.505(b).

Focal argues that it was impossible for Focal, with its limited resources, to conduct an exhaustive review of BA-PA's cost study to identify its many errors, given the short time that BA-PA made its cost study available, and its failure to provide the underlying data. Focal points out that BA-PA's witness, Mr. Sanford, even admitted that Focal's expert witness, Mr. Starkey, was right in certain criticisms which required corrections to BA-PA's study. Focal notes that BA-PA waited until the arbitration hearing to inform Focal that Mr. Starkey was right. (Focal R.Exc., p. 5; Sanford, Tr., p. 235, line 2 – p. 236, line 8).

Focal is also of the opinion that BA-PA's cost study should not be adopted because it is in violation of Section 252(d)(2)(A) of TA-96, 47 U.S.C. §252(d)(2)(A), which requires a state commission to set cost-based reciprocal compensation rates. Focal further notes that Section 252(c) of TA-96 requires a state commission to ensure that all issues raised in an arbitration are resolved so as to meet the requirements of Section 251 of TA-96, including the regulations pertaining to symmetrical rates prescribed by the FCC at 47 CFR §51.71(a). This regulation provides as follows:

> (a) Rates for transport and termination of local telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section.[30]

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[30] Focal contends that these exceptions to the symmetrical rate requirement are not applicable here because Section 51.711(b) permits a state commission to establish an asymmetrical rate only where a CLEC believes that its costs for transport and termination will be *greater* than those of the ILEC and affirmatively produces a cost study to justify its alleged greater costs and, therefore, its entitlement to a higher rate than which it will pay the ILEC. Section 51.711(c) is not applicable because it pertains to the rates that wireless carriers may assess upon other carriers for the transport and termination of local telecommunications traffic.

> (1) For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

In light of the above FCC regulation, Focal argues that the proposed reciprocal compensation rate proposal by BA-PA is not symmetrical and, thus, could never have been accepted by the ALJ. Additionally, Focal contends that Bell's witness Sanford admitted that BA-PA's proposed cost study was based on the costs that efficient carriers allegedly "incur to receive and hand off calls to their *ISP providers*."[31] Focal notes that based on this "study," BA-PA claims that Focal's cost to deliver ISP traffic is $.000647.[32] However, Focal emphasizes that from this "study," BA-PA then made the illogical leap to its proposal that the .000647 rate be paid for all traffic terminated by Focal for BA-PA that exceeds a 3:1 ratio of traffic terminated by BA-PA for Focal. (Focal R.Exc., pp. 8-9).

Focal continues its argument by noting that while BA-PA's cost study purported to be one for termination of ISP-bound traffic, its compensation proposal was "*ISP oblivious*." (Focal R.Exc., p. 9). Focal avers that BA-PA's witness West admitted that the .000647 rate would be applied regardless of the kind of call that the carrier terminated after the three-to-one ratio was reached.[33] In order to portray why BA-PA's

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[31] Tr., p. 209, lines 21-24; *see also*, Tr., p. 224, lines 7-8 ("...I was developing the cost of calls that are handed off to an ISP provider.").

[32] Sanford, Tr., p. 234, lines 4-6 (correcting amount from .000629 to .000647 as a result of adjustments first disclosed during "oral surrebuttal" examination).

[33] Tr., p. 259, lines 3-6.

proposal is "ISP oblivious," Focal submitted the following hypothetical example from the record:

> As BA-PA's Mr. West admitted, the $0.000647 rate BA-PA advocated would be applied regardless of the kind of call that the carrier terminated after the three-to-one ratio was reached.[15] Mr. West further confirmed this when asked to consider a hypothetical where Focal sends 1,000 minutes a month to BA-PA to terminate and Bell Atlantic sends 4,000 minutes a month to Focal to terminate.[16] Under BA-PA's proposal, in that situation, even if all 1,000 minutes sent by Focal to BA-PA for termination were ISP-bound, BA-PA would receive the Commission-approved reciprocal compensation rates of .002814 for tandem and .001723 for end office termination. **Conversely, however, Focal would receive only .000647 for the last thousand minutes it terminated for BA-PA, even though those thousand minutes were "Happy Mother's Day" calls to grandmothers, mothers and sisters.**[17]
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> [15] Tr., p. 259, lines 3-6.
> [16] Tr., p. 259, lines 10-17.
> [17] Tr., p. 260, lines 2-9, and p. 263, lines 12-17.

(Focal R.Exc., p. 9) (Emphasis supplied).

3. BA-PA Excepts To The Arbitrator's Failure To Consider The Substantial Public Policy Reasons For Adopting BA-PA's Proposal

BA-PA subsequently argues that there are numerous compelling public policy reasons why the Commission should not force BA-PA to sign a new Interconnection Agreement using the local call termination rates that were established using the *MFS III* cost studies. BA-PA alleges that the *MFS III* cost studies reflected BA-PA's own traffic mix rather than the mix of traffic Focal experiences today. Furthermore, BA-PA asserts that the *MFS III* cost studies were premised upon the assumption that CLECs would serve all customers, including residential and small business customers.

However, BA-PA notes that Focal tailors its services to market segments that do not originate many calls (*i.e.*, ISPs and large corporations with telecommuting employees), rather than to residential and small business customers that would cause Focal to pay, rather than receive, reciprocal compensation. In reality, BA-PA states that about 72% of Focal's access lines are ISP lines[34] and a very large percentage of the traffic delivered by BA-PA has the characteristics of ISP-bound data traffic.[35] (BA-PA Exc., p. 12). It is because of this inequity that BA-PA believes that Focal should not receive "excess compensation" at rates that are based upon cost assumptions that are clearly inapplicable to Focal's business plan. (BA-PA Exc., p. 13).

In response, Focal argues that there is no record evidence to support BA-PA's mischaracterization of Focal's customer market. Rather, Focal believes that it is BA-PA's theory that violates public policy because federal law mandates that the "rates that an incumbent LEC assesses for elements shall not vary on the basis of the *class of customers* served by the requesting carrier, or on the type of services that the requesting carrier purchasing such elements uses them to provide."[36] Therefore, Focal argues that what BA-PA advocates in its Exceptions is precisely what the law forbids. (Focal R.Exc., p. 14).

In it Exceptions, BA-PA also argues that the current method of compensating ISPs for ISP-bound traffic discourages the deployment of, and demand for, advanced services. BA-PA alleges that since CLECs can receive compensation for ISP-bound traffic only for dial-up traffic, but not for traffic carried over dedicated, high bandwidth services like xDSL, CLECs can be compensated far in excess of the cost to deliver ISP-bound traffic and this encourages CLECs to keep high volume ISP traffic on the public switched telephone network (PSTN). As such, BA-PA asserts that this practice

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[34] Focal's 10-K for fiscal year ended December 31, 1999, at 25 (filed with the SEC on March 10, 2000).

[35] BA-PA 2.0 (Gillis Direct), p. 5.

results in PSTN congestion and creates a disincentive to invest in the deployment of advanced services as CLECs strive to preserve their reciprocal compensation windfall profits.[37] (BA-PA Exc., p. 14).

BA-PA additionally argues that the current reciprocal compensation structure creates a powerful financial disincentive for CLECs to serve small business and residential customers. BA-PA complains that while Focal can elect not to serve residential customers, BA-PA cannot simply decline to provide services to these groups of customers. As a result, BA-PA claims that this practice effectively results in BA-PA subsidizing Focal and its large business customers and, as such, the Recommended Decision which maintains this practice, is an anathema to the universal service and pro-competition policies of this Commission. (BA-PA Exc., pp. 14-15).

In response to BA-PA's second "public policy" argument that compensating carriers in excess of the cost to deliver ISP-bound traffic will discourage the deployment of and demand for advanced services, Focal submits that there is absolutely no evidence that there is excess compensation involved here. Focal notes that the rates enforced by ALJ Smolen were based on BA-PA's TELRIC study which averaged the cost of terminating ISP calls with the costs of terminating all other local calls. Second, Focal contends that market forces, such as consumer demand, and innovations in technology, will dictate what type of services will be provided. (Focal R.Exc., p. 15).

In Exceptions, BA-PA also points out that since the *Global Order* has been entered, BA-PA has agreed with three (3) other CLECS to establish inter-carrier compensation structures at rates lower than the Commission-approved local call

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[36] 47 C.F.R. §51.503(c) (emphasis by Focal).

[37] BA-PA 5.0 (West Direct), p. 6, n. 6.

termination rates.[38] BA-PA opines that this is compelling evidence that CLEC costs are well below the Commission mandated inter-carrier compensation rates and the efficiently-incurred costs of delivering ISP traffic are also well below this rate because these three (3) CLECs have business plans that are comparable to Focal's business plans. (BA-PA Exc., p. 15). Additionally, BA-PA notes that BellSouth recently entered into an agreement with ICG, covering its entire region for the period January 1, 2000, through December 31, 2002. The rates agreed to by those two (2) companies are $0.002 per minute of use for 2000, $0.00175 per minute of use for 2001, and $0.0015 per minute of use for 2002. (*See* BA-PA Exc., p. 15 and citations).

In response to BA-PA's reference to interconnection agreements with three (3) other CLECs (Level 3, PaeTec and Conectiv), Focal states that those agreements were the product of negotiation and reflect bargain and compromise. As such, Focal notes that the concessions in those cases are not germane to the instant arbitration. (Focal R.Exc., pp. 15-16).

4. BA-PA Excepts To The Arbitrator's Recommendation That BA-PA's Inter-Carrier Compensation Proposal Only Be Considered In Separate Generic Proceeding

BA-PA argues that the ALJ, without providing any discussion of its inter-carrier proposal, suggests that BA-PA's inter-carrier compensation proposal should be addressed in a generic proceeding.[39] However, BA-PA believes that there is no reason to delay adopting its proposal pending some future, uncertain resolution of a generic proceeding given that the record demonstrates that the per minute costs to deliver ISP-bound traffic are much lower than those to terminate local traffic and it is economically

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[38] The three (3) companies and the associated filing dates of the associated interconnection agreement for each are as follows: Connectiv – June 16, 2000; Level 3 – January 13, 2000, and PaeTec – January 28, 2000.

inefficient and harmful to the development of competitive telecommunications markets to require BA-PA to continue to subsidize Focal's business plans. (BA-PA Exc., p. 17).

BA-PA also believes that the Commission should adopt BA-PA's inter-carrier compensation rates for use in the proposed interconnection agreement between itself and Focal based on the record evidence it produced in this proceeding and the lack of Focal-specific cost information. In the alternative, BA-PA requests that if the Commission decides to adopt the ALJ's suggestion to address BA-PA's proposal in a generic proceeding, the Commission's final order should include the requirement that a generic proceeding be immediately instituted along the lines suggested in the Recommended Decision and that any compensation paid for the delivery of ISP-bound traffic under the terms of the new BA-PA/Focal agreement be on an interim basis, subject to tracking, true-up, and refund based upon the results of such generic proceeding. (BA-PA Exc., p. 18).

In response to BA-PA's Exception, Focal asserts that BA-PA cannot now retreat from the rates established by the *Global Order* and it was entirely reasonable for the ALJ to apply the established rates of compensation, and also to recognize that if the Commission decides to apply different rates to ISP traffic, it should do so in the context of a "global proceeding" in which all affected carriers can participate, as opposed to this arbitration between BA-PA and a solitary CLEC. (Focal R.Exc., p. 4).

Focal disagrees with BA-PA's proposal that if the Commission decides to adopt the ALJ's suggestion to address BA-PA's proposal in a generic proceeding, it should be done on an expedited basis, and all of the reciprocal compensation that Focal receives for ISP traffic should be subject to tracking and true-up. Focal asserts that if BA-PA wishes to seek a generic proceeding, it should petition the Commission so that the

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[39] R.D., p. 10.

Commission can decide whether the issue deserves any consideration at all. Furthermore, Focal contends that since BA-PA chose not to advance its proposal in an appropriate context, it is not appropriate for it to seek "retroactive" application of the reciprocal compensation rate. Focal also submits that, as the record in this proceeding conclusively demonstrates, it would be difficult to track actual ISP traffic for potential true-up because neither BA-PA, Focal, or any other LEC currently has the ability to accurately determine which of the traffic it terminates is ISP-bound and which is not. (Focal R.Exc., p. 6).

C. Disposition – Compensation for ISP Traffic

On consideration of the record, we shall adopt ALJ Smolen's recommendation on this issue, consistent with our discussion herein. The threshold consideration presented by this unresolved issue is whether the rates included in the *Global Order* should be given preclusive effect or whether BA-PA has, based on this record, rebutted their applicability to use in the present arbitration. BA-PA argues that "[t]he issue of the appropriate level of compensation for delivering ISP-bound traffic, however, was not addressed by any party in the proceedings which led to the *Global Order*. . . . As a result, nowhere does the *Global Order* require that CLECs must be compensated at the same level for all traffic classified as "local" by that order." (BA-PA Exc., pp. 5-6).

On review of the *Global Order*, BA-PA is accurate to the extent it claims a right to rebut the level of compensation of rates set for the reciprocal compensation of local traffic.[40] However, such rates are Commission-made rates and carry a rebuttable

[40] Our Order stated, in pertinent part, " Carriers must continue to abide by the current interconnection agreements regarding reciprocal compensation for the local treatment of ISP calls, consistent with the FCC Order and this determination. In addition, we direct that calls to local ISPs shall be considered local and that reciprocal compensation shall be applied on all ISP traffic for all future interconnection agreements filed with

presumption of reasonableness.[41] (66 Pa. C.S. §315; 332(a)). BA-PA, as the proponent of a rate other than those set forth in the *Global Order* is the party having the burden of proof. Notwithstanding that BA-PA submitted a cost study attempting to show that the rates prescribed in the *Global Order* should not be adopted for the instant interconnection agreement, it has not met its burden of proof. BA-PA has failed to convince us that the rates for the termination of ISP traffic are not consistent with TA-96, the FCC rules interpreting TA-96, or the Public Utility Code. Neither has BA-PA convinced this Commission that said rates should be reevaluated based on policy considerations.

BA-PA relies upon its cost study to support its contention that the rates established in our *Global Order* over-compensate carriers for the termination of ISP-related traffic. We emphasize that BA-PA's proposal, while targeting ISP-bound traffic, actually includes "ISP-bound or *similar* one-way convergent traffic." (*See* R.D., p. 3; emphasis added). Consequently, as pointed out by Focal, BA-PA's proposal targets for a lesser rate, both ISP-related calls and otherwise, normal POTs calls which just happen to exceed a specified length of time.

The assumption, as noted by Focal, is not based on a technological distinction with respect to ISP calls versus non-ISP calls. (*See* R.D., p. 5). Rather, such distinction is based on the use of a 3:1 ratio of exchanged traffic. This means that whenever traffic originates on the BA-PA network and terminates on the Focal network, and exceeds three (3) times the amount of traffic terminating on the BA-PA network from Focal, BA-PA should be allowed to compensate Focal at a rate of $0.000629 per minute for all additional minutes exceeding the 3:1 ratio. (West Direct Testimony, p. 3, lines 6-20). We find the use of this 3:1 ratio is not supported by the record.

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this Commission. (*Global Order*, Section XIV).

[41] See Cheltenham & Abington Sewerage Co. v. Pa. PUC, 344 Pa. 366, 25 A.2d 334 (1942).

Dial-up ISP-bound traffic is intermingled with all other CLEC traffic on the local switched network. It uses the same equipment and facilities as that used by all other types of local traffic. Since there is currently no way to separately identify ISP-bound traffic, BA-PA has proposed the 3:1 ratio. In the Responsive Testimony of Michael Starkey, p. 10, lines 12, however, it is noted that "[t]o separately identify ISP-bound traffic without also separately identifying other types of traffic whose characteristics are likely to differ significantly from the average local call (such as traffic terminated on behalf of cellular carriers, traffic terminating to high capacity PBX lines and traffic terminated to calling centers and other customers who likely generate larger volumes of traffic and longer than average holding times), simply serves to discriminate against CLECs for being particularly successful in serving a particular customer base (*i.e.*, ISPs)." Thus, this record does not support BA-PA's position.

Based on the foregoing reasons, we shall adopt the recommendation of the ALJ. We do not, at this time, further consider the propriety of a generic investigation as suggested by the ALJ and BA-PA. (*See* BA-PA Exc., p. 3). We take administrative notice of pending proceedings before the FCC, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; and *Inter-Carrier Compensation of ISP-Bound Traffic*, CC Docket No. 99-68, Public Notice (June 23, 2000), and the trade reports of potential federal legislative action addressing inter-carrier compensation for ISP traffic. At present, BA-PA has not presented sufficient policy reasons for this Commission to reassess the determinations of the *Global Order*.

D. Exceptions/Reply Exceptions – Interconnection Points

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

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

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

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

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

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

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

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

BA-PA notes that Focal witness Tatak acknowledged that Focal assigns telephone numbers to customers using NXX codes that do not correspond to the rate centers in which the customers' premises are physically located.[44] (BA-PA Exc., p. 22). BA-PA also notes that Focal's "Virtual Office" product involves the assignment of NXX codes to customers that are not located in the rate center to which the code is assigned. BA-PA contends Focal's practice of misassigning NXX codes harms BA-PA financially because it deliberately expands the geographic scope of BA-PA's local calling area[45] without the permission of BA-PA or the Commission, and forces BA-PA to provide free

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

[44] Tr., p. 66-70 (Tatak).

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

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

BA-PA argues that Focal even admits that it never sought the Commission's permission to expand BA-PA's local calling area[48] and asserts that Focal's unilateral expansion of BA-PA's local calling areas is a blatant violation of the Commission's directive in *MFS Phase II* that CLECs comply with BA-PA's local calling areas as stated below. BA-PA references page 19 of the *MFS Phase II Order*[49] which it submitted as Exhibit 3 in this proceeding, and which states, in pertinent part:

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

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

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

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

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

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

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

BA-PA also argues that Focal's current network configuration illustrates the unfairness of requiring BA-PA to subsidize transport costs of Focal's large corporate and ISP customers. BA-PA notes that Focal currently has assigned 50 NXX codes to its switch in Philadelphia[51] and this means that BA-PA must transport all calls from BA-PA customers to Focal's customers, regardless of how far it might be from the BA-PA customer to the Focal IP in Philadelphia. When a BA-PA customer calls any Focal customer that is assigned one (1) of the 50 NXX codes, BA-PA does not receive toll compensation for those calls which would otherwise be assessed toll charges. As such, BA-PA argues that Focal and its customers cause the costs and reap the financial reward while BA-PA bears the cost. (BA-PA Exc., p. 26). Therefore, BA-PA believes that the

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

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

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

In response to BA-PA's Exceptions concerning the GRIPS proposals, Focal argues that the ALJ was correct in rejecting BA-PA's proposal as plainly contrary to law and that the ALJ acted reasonably in adopting Focal's compromise plan. (R.Exc., p. 16). Focal believes that BA-PA's accusations that its "Virtual Office" product is unlawful[52] are made in bad faith because BA-PA provides FX service, which Focal alleges is a product very similar to Virtual Office, to its customers. (R.Exc., p. 17).

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

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

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[52] *See Id., p.* 19.

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

concept of geographical relevance for IPs[54] but objected to BA-PA's initial proposal that would require Focal, at BA-PA's request, to establish an IP within 25 miles of the rate center point of the NXX assigned to the Focal customer. (BA-PA Exc., p. 27). Since this was Focal's only objection to BA-PA's initial proposal,[55] BA-PA notes that its modified proposal removes the 25-mile radius limitation and significantly expands the geographic area in which Focal could establish its IP while retaining the important concept of geographical relevance. (BA-PA Exc., p. 27). Additionally, BA-PA states that its modified proposal would maintain the same current network configuration except that BA-PA would have the right to ask Focal to move its one (1) IP from its switch to the BA-PA tandem switch in Philadelphia.[56] In addition, BA-PA would be able to request, but not require, that Focal establish an IP that is in a centralized location to the rate center assigned to the NXX Focal has given its customer. (BA-PA Exc., p. 28).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[59] *See* Tatak Cross, Tr., p. 73.

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

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

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

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

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

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

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

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

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

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

62 *Recommended Decision, p.* 15.

63 *See Id., p.* 15.

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

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

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

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

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

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

problems if incorporated into the Interconnection Agreement" (BA-PA Exc., p. 33) and urges the Commission to refuse to adopt Mr. Tatak's language for the following reasons, which we have summarized below:

- Mr. Tatak's language is only a working proposal that does not constitute a full-fledged proposal that can be lifted from his direct testimony and inserted into the Interconnection Agreement. (BA-PA Exc., p. 34).

- Many of the central provisions in Mr. Tatak's language are vague and do not address the rights and responsibilities of the Parties which could result in potential future disagreements. (BA-PA Exc., p. 34).

- The language in Mr. Tatak's direct testimony concerns interconnection architecture involving IPs which is not an issue in this proceeding. (BA-PA Exc., pp. 34-35).

- Mr. Tatak's direct testimony concerns numerous issues on which the Parties have reached agreement and have reflected their agreement in language in the Interconnection Agreement.

- The language in Mr. Tatak's direct testimony concerns numerous issues which conflict with the Parties' negotiated agreement which are already reflected in the Interconnection Agreement. (BA-PA Exc., p. 35).

With regard to the last issue stated above, BA-PA specifically points out the following significant conflicts between the terms and conditions agreed to by the Parties and reflected in language in the Interconnection Agreement, and Mr. Tatak's language as stated below:

- **Section II.A.** Mr. Tatak's language states that "[w]hen traffic between Focal and a specific BA end office exceeds 200,000 minutes per month the Parties will make reasonable best efforts to establish a primary direct trunk group for such BA end office, with overflow traffic to be routed through the BA tandem subtended by such office."[93] This provision, however, concerns direct trunking, not Focal's IP, and is already addressed in Section 5.2.4 of the Interconnection Agreement. Section 5.2.4 conflicts with Mr. Tatak's language because, while Mr. Tatak's language states that the Parties will make "best efforts," Section 5.2.4 states that the Parties "will establish."[94]

- **Section II.B.** This language concerns two-way trunking, not Focal's IPs. Also, Mr. Tatak's language – "The parties shall utilize two-way trunks upon Focal's request"[95] – does not match the terms and conditions BA-PA and Focal have already agreed on two-way trunking.[96] In addition, Mr. Tatak's language that "two-way trunks shall be provisioned end-to-end between the relevant switches, traversing a mutual interconnection point (IP) between the parties,"[97] conflicts with Section 4.2.2 of the Interconnection Agreement, which identifies BA's IP as the tandem or end office serving the end user. Focal and BA-PA have agreed to the language in Section 4.2.2.

- **Section II.C.** As written, Mr. Tatak's language – "Focal may use multiple transport providers at any single IP"[98] – has nothing to do with establishing Focal's IPs and, also, is unnecessary because it imposes no legal obligations on BA-PA. If Mr. Tatak means, however, that BA-PA is required to hand off traffic to Focal at multiple points, this is a trunking/translations issue, and is already addressed in other parts of the Interconnection Agreement.

- **Section III.B.** Mr. Tatak states: "Tandem interconnection trunks shall be configured as two-way, and each party shall be responsible for 50% of the tandem interconnection facilities."[99] The terms and conditions for

two-way trunking, which are already agreed on by the Parties, provide that the billing factor for the facilities (known as PPU, which stands for proportionate percentage of utilization) will apply to the facilities between the respective IPs and will initially be 50%. Although Mr. Tatak apparently means that Focal's IP is at the BA tandem, as currently stated this provision is ambiguous.[100]

- **Section III.C.** Mr. Tatak's language provides that "Focal shall be entitled to use multiple facilities providers at BA tandem offices."[101] As written this appears to concern trunking/translation issues, not IP/GRIP.

- **Section II.D.** Mr. Tatak states: "BA-tandem interconnection facilities shall terminate at a BA-provided FOT at Focal's switching facility." The term "FOT" is nowhere defined and BA-PA does not know what legal obligations this language seeks to impose.

[93] *Id.*, p. 12.

[94] Instead, the Parties agreed to the following language for Section 5.2.4: "In the event the traffic volume between any two (2) Central Office Switches at any time exceeds the CCS busy hour equivalent of one (1) DS-1, the originating Party will establish new direct trunk groups t the applicable End Office(s) consistent with the grade of service and quality parameters set forth in the Joint Process."

[95] R.D., p. 12.

[96] Focal sent the language contained in Mr. Tatak's direct testimony to BA-PA on March 31, 2000. At the time, the issue of two-way trunking was still in the arbitration. Shortly thereafter, the parties resolved their dispute concerning two-way trunking, and, on April 14, Focal removed the issue from the arbitration. (*See* Focal Amendment to Petition (filed April 14)).

[97] R.D., p. 12.

[98] *Id, p.* 13

[99] *Id,* p. 14.

[100] In the New Jersey proceeding, Mr. Tatak made clear that Focal's "default" IP would be the BA tandem.

[101] R.D., p. 14.

Finally, BA-PA argues that Mr. Tatak's language for establishing Focal's IPs also does not provide for a fair allocation for transport costs between BA-PA and Focal. BA-PA specifically argues that Section I states that "Existing interconnection

architecture to remain in place, except as groomed by mutual agreement." BA-PA disagrees with this language because it believes it is highly unlikely that Focal will ever voluntarily agree to move its existing IP from its Philadelphia switch. Therefore, BA-PA believes that at a minimum, and as proposed in its modified proposal, it should have the right to ask Focal to move its IP, to require Focal to negotiate a different location, and to seek arbitration under the Alternative Dispute Resolution provisions of the Interconnection Agreement if negotiations fail. BA-PA believes that this will help alleviate problems with the current network architecture where BA-PA is forced to transport 100% of Focal's traffic to Focal's IP in Philadelphia for which no compensation is received. (BA-PA Exc., p. 37).

Focal argues that BA-PA's Exceptions identify alleged inconsistencies that were never raised before the ALJ and that this tack is meant to distort the ALJ's Recommended Decision. Focal asserts that the ALJ's Recommended Decision is clear on its face when it recommends that Focal's compromise proposal be adopted.[66] Focal avers that the Recommended Decision says nothing about "lifting" language directly from Mr. Tatak's testimony and inserting it in an agreement. Instead, Focal contends, it embraces the spirit and the substance of Focal's compromise and the final contract language that reflects this proposal is a mere formality. (Focal R.Exc., p. 22).

E. Disposition – Interconnection Points

Upon our review of the Exceptions, we are of the opinion that the ALJ has properly concluded that Focal's compromise proposal "fairly and evenly distributes the facilities burden on both parties," and ensures "that Focal will not be required to establish an abundance of IPs where the traffic volume does not warrant such investment, or when

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[66] *Recommended Decision, p.* 15.

suitable transport facilities are not available." (R.D., p. 17). Therefore, we shall adopt the ALJ's recommendation on this issue and deny BA-PA's Exceptions.

With regard to BA-PA's argument that Focal escapes any obligation to pay for the use of BA-PA's transport network by assigning its customers telephone numbers with NXXs that misrepresent the actual locations of those customers, we agree with Focal that the alleged transport concerns raised by BA-PA are irrelevant in this proceeding because they are advanced as examples under the existing interconnection agreement between BA-PA and Focal, and not under the agreement that is being arbitrated. (Focal R.Exc., p. 17). At the same time, however, we are of the opinion that if the allegations by BA-PA concerning any abuse by Focal in assigning telephone numbers to customers using NXX codes that do not correspond to the rate centers in which the customers' premises are physically located are true, then we admonish Focal to comply with the directives in our *MFS II Order* and to refrain from this practice.[67] At any rate, it is more appropriate to address the specifics of violation issues in a separate proceeding.

We note that BA-PA has argued that the ALJ's rejection of BA-PA's proposal rests on plain legal error because the FCC's rules govern the physical interconnection of networks applicable to the delivery of traffic only from BA-PA to Focal, and not from Focal to BA-PA. While it can be interpreted that the FCC's physical network interconnection rules may not apply to the delivery of traffic from Focal to BA-PA, the net result of BA-PA's modified proposal, based on this argument, would be that BA-PA would have the exclusive authority to determine both where the Parties establish a point or points of interconnection on BA-PA's network, and how many

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[67] Failure to comply with this directive will be deemed as a direct violation of this Order and our *MFS II Order* and will be subject to Civil Penalties for Violations under Section 3301 of the Public Utility Code, 66 Pa. C.S. §3301.

interconnection points the Parties will be required to establish.[68] This, in our opinion, is contrary to Section 251(c)(2) which gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points. In this regard, we agree with the ALJ that BA-PA's proposal would be in violation of the FCC's requirement that CLECs, rather than ILECs, have the right to choose interconnection points, subject only to the limitation of technical feasibility.[69]

We also note that BA-PA objected to the language in Mr. Tatak's Direct Testimony concerning the establishment of Focal IPs. As was previously discussed, BA-PA argues that Mr. Tatak's language is ambiguous and was never intended as contract language. Furthermore, BA-PA argues that many of the provisions are either vague; concerns numerous issues which conflict with the parties' negotiated agreements that have already been reflected in the Interconnection Agreement; or concerns numerous issues on which the parties have reached agreement and have already been reflected in their agreement in language in the Interconnection Agreement.

We agree with Focal that the Recommended Decision is silent regarding "lifting" language directly from Mr. Tatak's testimony and inserting it in the agreement. Rather, Mr. Tatak's language "embraces the spirit and the substance of Focal's compromise and the final contract language that reflects this proposal is a mere formality." (Focal R.Exc., p. 22). Therefore, we shall direct the Parties to convert the language in

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[68] *Recommended Decision*, p. 15.

[69] The FCC's *Interconnection Order* concluded that the term "technically feasible" ". . . refers solely to technical or operational concerns, rather than economic, space or site considerations," and that ". . . incumbent LECs must prove to the appropriate state commission that a particular interconnection or access point is not technically feasible."

Mr. Tatak's testimony to contractual language and submit it to the Commission for approval within thirty (30) days after the entry date of this Opinion and Order. As further guidance, we note that whatever has already been agreed upon in negotiations between the Parties and is already reflected in the Parties' negotiated agreement shall prevail over the language in Mr. Tatak's testimony. The remaining language shall be revised consistent with our disposition of the issues in the Recommended Decision and this Opinion and Order. Furthermore, we encourage the Parties to set forth a good faith and best effort in preparing the contractual language.

III. CONCLUSION

Based on the foregoing, we shall reject in part, and grant, in part, BA-PA's Exceptions and modify the ALJ's Initial Decision as our final action in this proceeding, solely to the extent consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed on June 22, 2000, by Bell Atlantic-Pennsylvania, Inc., to the June 6, 2000 Recommended Decision of Administrative Law Judge Herbert Smolen, are denied in their entirety, consistent with this Opinion and Order.

2. That the Recommended Decision on the unresolved issue pertaining to the compensation for Internet Service Provider-bound traffic is adopted, consistent with this Opinion and Order.

3. That the Commission-mandated reciprocal compensation rates shall be incorporated in the interconnection agreement between Focal Communications Corporation of Pennsylvania and Bell-Atlantic-Pennsylvania, Inc., and shall apply to all local traffic, including Internet Service Provider-bound traffic.

4. That the Recommended Decision concerning the unresolved issue of Geographically Relevant Interconnection Points is adopted, consistent with this Opinion and Order.

5. That the Focal Communications Corporation of Pennsylvania proposal for the treatment of Geographically Relevant Interconnection Points shall be used in the interconnection agreement.

6. That within thirty (30) days after the entry date of the instant Opinion and Order, the Parties shall file, or cause to be filed, with this Commission for approval, an interconnection agreement consistent with this Opinion and Order.

7. That upon approval by the Commission of the interconnection agreement filed by the Parties pursuant to this Opinion and Order, this proceeding shall be marked closed.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: August 17, 2000

ORDER ENTERED:

Virtual NXT website

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held January 24, 2001

Commissioners Present:

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

Re: 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 No. A-310630F0002

OPINION AND ORDER

BY THE COMMISSION:

This matter involves this Commission's consideration, pursuant to Section 252(e) of 47 U.S.C. § 252(e), of the federal Telecommunications Act of 1996 (TA-96), of two versions of an Interconnection Agreement between Focal Communications Corporation of Pennsylvania (Focal) and Verizon Pennsylvania Inc. f/k/a/ Bell Atlantic-Pennsylvania, Inc. (Verizon) arrived at through compulsory arbitration. *See* Order entered August 17, 2000, at the above-captioned docket.

On August 17, 2000, the Commission entered a final Opinion and Order which adjudicated two (2) unresolved issues consistent with the directives of TA-96, 47 U.S.C.§ 252(d), and this Commission's Order in I*n Re: Implementation of the*

Telecommunications Act of 1996, Docket No. M-00960799 (Order entered June 3, 1996; *Order on Reconsideration* entered September 9, 1996)(*Implementation Orders).* However, Focal and Verizon have been unable to agree on appropriate contract language relating to two (2) Sections of the proposed Interconnection Agreement. The disputed Sections are Section 4.2.3.2(b) and Section 5.7.1.

Based on the foregoing, we shall direct that the Parties submit an executed Interconnection Agreement containing the proposed language directed by this Opinion and Order. In light of the failure of the Parties to submit an executed Interconnection Agreement for Commission review, we conclude that the appropriate time periods established in TA-96 shall not apply until an executed agreement consistent with this Order is submitted.[1]

Background

The two unresolved issues which were before this Commission for arbitration were: (1) the terms and conditions for location of Geographically Relevant Interconnection Points (GRIPS); and (2) the inter-carrier compensation rates to be paid for ISP (Internet Service Provider)-bound traffic. *See* August 17, 2000 Order, slip op., p. 4.

Our final Order resolved the GRIPS dispute issue as follows:

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[1] Section 252(e)(4), 47 U.S.C.§ 252(e)(4), provides in pertinent part ". . . [i]f the State commission does not act to approve or reject the agreement . . . within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b), the agreement shall be deemed approved."

5. That the Focal Communications Corporation of Pennsylvania proposal for the treatment of Geographically Relevant Interconnection Points shall be used in the interconnection agreement.

(Slip op., p. 46).

Regarding the inter-carrier compensation rates for ISP traffic, we concluded:

2. That the Recommended Decision on the unresolved issue pertaining to the compensation for Internet Service Provider-bound traffic is adopted, consistent with this Opinion and Order.

3. That the Commission–mandated reciprocal compensation rates shall be incorporated in the Interconnection Agreement between Focal Communications Corporation of Pennsylvania and Bell Atlantic-Pennsylvania, Inc., and shall apply to all local traffic, including Internet Service Provider bound traffic.

(Slip op., p. 46).

We then directed Verizon and Focal to file within thirty (30) days after the entry date a revised Interconnection Agreement which: (1) incorporates the reciprocal compensation rates established by our *Global Order* entered September 30, 1999, at Docket Nos. P-00991648 and P-00991649; and (2) incorporates contractual language concerning Focal's Interconnection Points based on Mr. Tatak's testimony in the proceeding. As was stated on page 45 of the August 17, 2000 Order, both Parties were encouraged to engage in a "good faith and best effort in preparing the contractual language."

On September 18, 2000 and September 19, 2000, Focal and Verizon, respectively, filed letters, informing the Commission that they were unable to reach a mutual agreement with regard to contract language for Sections 4.2.3.2(b) and 5.71 of the proposed Interconnection Agreement. Attached to each of the letters was a copy of a proposed Interconnection Agreement containing each Party's suggested contractual language.

Focal's Interconnection Agreement that was submitted under cover letter of September 18, 2000, did not bear the signature of a Verizon representative. Focal asserts that its Interconnection Agreement submitted September 18, 2000, reflects fully and completely all of the conclusions reached by this Commission in our final Order regarding unresolved issues.

On September 19, 2000, Verizon submitted a complete, proposed, Interconnection Agreement, which did not bear the signature of a Focal representative. Verizon asserts that its proposed Interconnection Agreement contains language which is consistent with and mandated by our final Order in this matter.

As noted previously, the two (2) versions of a proposed Interconnection Agreement differ only with respect to Section 4.2.3.2(b) and Section 5.7.1.

By correspondence dated September 28, 2000, Focal replied to the September 19, 2000 submittal of Verizon.

Discussion

A. Section 4.2.3.2(b) – Interconnection Points

Verizon's proposed language reads as follows:

The Parties will establish two-way Tandem Interconnection Trunk groups as an overflow route for End Office direct truck groups and as a primary route for rate centers and/or End Offices where traffic volume does not warrant direct End Office trunk groups (i.e., the 200,000 MOU per month criteria set forth above). The Verizon Tandem office shall be designated as both a Verizon-IP and a Focal-IP; provided, however, that each Party shall be responsible for fifty percent (50%) of the two-way Tandem Interconnection facilities. Focal shall be entitled to use multiple facilities providers at Verizon Tandem offices.

Focal's proposal (disputed language in bold), states the following:

The Parties will establish two-way Tandem Interconnection Trunk groups as an overflow route for End Office direct trunk groups and as a primary route for rate centers and/or End Offices where traffic volume does not warrant direct End Office trunk groups (i.e., the 200,000 MOU per month criteria set forth above). The Verizon Tandem office shall be designated as both a Verizon-IP and a Focal-IP; provided, however, that each Party shall be responsible for fifty percent (50%) of the two-way Tandem Interconnection facilities. Focal shall be entitled to use multiple facilities providers at Verizon Tandem offices. **BA [sic] tandem interconnection facilities shall terminate at a BA-provided [sic] fiber-optic terminal located at Focal's switch facility, if Focal's switch facility is located in the relevant LATA. In instances where Focal's switch facility is not located in the relevant LATA, BA's [sic] tandem interconnection facilities shall terminate at a mutually agreed upon IP located with the LATA.**

The dispute here centers upon Verizon's assertion that the language proposed by Focal which provides, in pertinent part, "Verizon Tandem interconnection facilities **shall** terminate at a Verizon-provided fiber-optic terminal located at Focal's switch facility, if Focal's switch facility is located in the relevant LATA," conflicts with the two-way trunking terms negotiated by the parties and agreed to in Section 4.2.4(1) of the proposed agreement and which was incorporated into a Memorandum of Understanding on two-way trunking that the Parties executed in July 2000 at Focal's request. (September 19, 200 letter).[2] The language at Section 4.2.4(1) of the proposed agreement states, in pertinent part, "Two-way Traffic Exchange Trunks shall be from a Verizon End Office or Tandem to a ***mutually agreed*** upon POI." (Emphasis Verizon).

Verizon argues that Focal's language takes away an important contractual right that it bargained for, and which Focal accepted in the context of the Memorandum of Understanding. Verizon complains that if Focal's proposed language is adopted, it would have no choice but to terminate tandem two-way trunking at Focal's switch facilities, thereby nullifying its existing contractual right expressed at Section 4.2.4(1) to have two-way trunking facilities terminate to a mutually agreed upon POI. Verizon references a written exchange between the Parties of April 14, 2000, and affirmation of that writing in the Memorandum of Understanding executed in July 2000 (attached as Attachment D to its letter).

In its response of September 28, 2000, Focal explains that the agreement the Parties reached in July 2000 deals with the "general" situation of two-way traffic

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[2] Verizon states that Focal, in fact, filed an amendment to its Petition on April 14, 2000, removing two-way trunking issues from this arbitration. *See* Attachment C to September 19, 2000 letter.

exchange trunks extending from a Verizon End Office or Tandem to a mutually agreed upon POI. In contrast, observes Focal, the language that it proposes for the Interconnection Agreement addresses a very specific situation – where Focal has a switch facility in a particular LATA. In that circumstance, states Focal, its language proposes precisely where Verizon's interconnection facilities will terminate – at that switch facility. Focal notes that there may be other locations at which the Parties will exchange traffic and, pursuant to the July agreement, that will occur at mutually agreed upon points. However, Focal clarifies that those other places where traffic is exchanged are in addition to the termination at Focal's switch facility, not in place of that termination. Focal further concludes its response with the following:

> Focal's proposed contract language . . . does not "directly and unambiguously conflict with a critical term for two-way trunking", nor does it "take away a contractual right that Verizon bargained for" . . . Instead, it **harmonizes** with the July agreement so that all relevant circumstances are covered. Moreover, Focal wishes to point out that, notwithstanding the parties' July agreement, the parties still pursued the issue of Interconnection Points through the arbitration and the Commission ultimately ruled in Focal's favor on the precise issue Focal now proposes to include in the contract.

(Focal September 28, 2000 letter) (Emphasis supplied).

Disposition

On consideration of the positions of the Parties, we shall direct that Verizon's language be incorporated into the final Interconnection Agreement which shall be submitted for approval under 47 U.S.C. § 252(e). We disagree with Focal that the dispute which Verizon raises now is precisely the issue that was considered in the final

Order's resolution of Interconnection Points. *See* August 17, 2000 Order, slip op., p. 32; 34; and 40. We are concerned, however, with the degree of overlap relative to this issue and the extent of contentiousness arising with regard to Interconnection Points and POI.

Verizon's position is that the specificity of the location of its facilities where Focal maintains a switch facility in a particular LATA was an item preserved for subsequent, mutual negotiation and was expressed in the July 2000, Memorandum of Understanding.

Our review of the July 2000 Memorandum of Understanding and the related Schedules 4.1 and 4.2 of the proposed Interconnection Agreement, lead us to conclude that Verizon has the better position. Particularly, the Memorandum of Understanding provides for the conduct of a joint planning meeting between the Parties wherein each Party is to provide, *inter alia*, interface specifications at the POI. Further, Section 1(l) of the Memorandum of Understanding provides that "Two-way Traffic Exchange Trunks shall be from a BA End Office or Tandem to a mutually agreed upon POI."

Based on the foregoing, we discern an intent to preserve the location of Verizon's tandem interconnection facilities until subsequent to a collaborative process involving the POI. The controversy appears to center around whether this collaborative was to be obviated if Focal maintained a switch in a Verizon LATA. Notwithstanding Focal's position that the Memorandum of Understanding pertains to a "general" category of two-way exchange trunks as compared to the specific location of said trunks it now addresses, we conclude that Verizon's language should be adopted. We conclude that the Memorandum of Understanding and other contractual provisions related to the issue are silent with respect to the specific circumstance sought to be addressed by Focal's language at present. In light of the clear intent of the Parties for subsequent mutual negotiation, we adopt the language at Section 4.2.4(1) as controlling.

Based on the foregoing, we direct the language submitted by Verizon shall be incorporated into a final interconnection agreement.

B. Section 5.7 – Reciprocal Compensation

The dispute over ISP traffic has a long and storied history.[3] At this point, Verizon has inserted a definition of local traffic that is eligible for reciprocal compensation based on the calling and called parties' *physical premises*. This is in contrast to the definition of local traffic which is, according to Focal's proposal, denoted by the NPA-NXX code Focal itself assigns to its customer.

Verizon's proposed language states the following:

> . . . the designation of traffic as Local Traffic for purposes of Reciprocal Compensation shall be based on the actual originating and terminating points of the complete end-to-end communication (such terminating points, in the case of Internet Traffic, being at the location of the physical premises in which the Internet service provider's applicable equipment is located).

Focal's language is as follows:

> . . . the designation of traffic as Local Traffic for purposes of Reciprocal Compensation shall be based on the V&H coordinates of the calling party's NXX and the V&H coordinantes of the called party's (or in the case of Internet Traffic, the internet service provider's) NXX.

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[3] *See* generally our *Global Order* at Docket Nos. P-00991648 and P-00991649. *See Joint Petition of Nextlink, et al.; Joint Petition of Bell Atlantic-Pennsylvania, Inc., et al,* respectively.

Verizon's position is that Focal should have no "legitimate" reason to insist that both ordinary voice and ISP-bound traffic be defined as eligible for reciprocal compensation without reference to where the calling and called parties' physical premises are actually located. (Verizon September 19, 2000 letter). In essence, Verizon vigorously maintains that regardless of whether the called party is a residential customer, corporation, or ISP, to be local for purposes of reciprocal compensation, the called party must have a local physical presence. *Id.*

Focal refutes each and every allegation of Verizon. Particularly, it opposes the notion that its service, Virtual Exchange, is improper under *MFS-II* and interprets Verizon's imposition of a "physical presence" criteria in the definition of local traffic as an attack on this tariffed service. Focal counters that its Virtual Exchange service is identical to the FX service provided by Verizon. (September 28, 2000 letter). Focal asserts that there is no effort to flaunt any Commission order or attempt to trick Verizon or its switches. Further, it states that there is no misassignment of NXX's involved. In short, Focal avers that Verizon's language is nothing more than another effort to avoid the legal obligation to compensate Focal for transporting and terminating calls. *Id.*

Disposition

On consideration of the positions of the Parties, we shall direct that the language submitted by Focal be used in the final interconnection agreement. Verizon's definition, on its face, appears to anticipate the concerns which it alluded to in the final Order. These were concerns relative to allegations of the misuse of NPA-NXX Codes by Focal in its business operations. *See* August 17, 2000 Order, slip op., p. 43. In the final Order, we were clear that the misuse of NXX Codes would be the subject of a separate proceeding should Verizon have cause to proceed forward with such allegations. We agree with Focal that it is improper from a matter of procedure, separate and apart from

the substantive harm which Verizon seeks to avert, to inject this qualification of local traffic at this stage of the proceedings. At the same time, we note that as long as Focal is in compliance with our *MFS II* directive that requires assignment of its customers' telephone numbers with NXX codes that correspond to the rate centers in which the customers' premises are physically located, then we have no problem with the language proposed by Focal in Section 5.7.1.[4] Otherwise, Verizon has the option of filing a Formal Complaint against Focal and the details of the allegations by Verizon on this matter should be handled as a separate proceeding. Therefore, in light of the above, we shall direct that the final Interconnection Agreement incorporate the terms of Section 5.7.1. as proposed by Focal.

Conclusion

Based on the foregoing, we direct that a final interconnection agreement, consistent with this Order shall be filed by the Parties; **THEREFORE,**

IT IS ORDERED:

1. That a final Interconnection Agreement incorporating the language proposed by Verizon Pennsylvania Inc. for Section 4.2.3.2(b) shall be submitted for review under 47 U.S.C. § 252(e), within 10 (ten) days after the date of entry of this Opinion and Order.

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[4] We note, parenthetically, that this Commission has determined that only **local** calls to ISPs are eligible for reciprocal compensation and we emphasize that long distance calls to ISPs are not eligible for reciprocal compensation since settlement for those types of calls are normally compensated on an access charge basis.

2. That a final Interconnection Agreement incorporating the language proposed by Focal Communications of Pennsylvania, for Section 5.7 shall be submitted for review under 47 U.S.C. § 252(e), within 10 (ten) days after the date of entry of this Opinion and Order.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: January 24, 2001

ORDER ENTERED: January 29, 2001

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held October 12, 2001

Commissioners Present:

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

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

A-310183F0002

OPINION AND ORDER

BY THE COMMISSION:

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I. HISTORY OF THE PROCEEDINGS

This matter is the arbitration of unresolved issues requested pursuant to the negotiation of an interconnection agreement between Sprint Communications Company, L.P. (Sprint) and Verizon Pennsylvania Inc. and Verizon North, Inc. (collectively Verizon). On May 15, 2001, Sprint filed a Petition requesting arbitration of interconnection agreements with Verizon. The Petition was filed pursuant to 47 U.S.C. §252(b) (the Telecommunications Act of 1996 or alternately TA-96), and the Commission's *Implementation Orders*[1] and listed approximately twenty-eight issues. Subsequently, Verizon filed an Answer to the Petition. The Answer listed approximately twenty-two unresolved issues.[2]

The matter was, thereafter, assigned to presiding Administrative Law Judge (ALJ) Marlane R. Chestnut acting as arbitrator. Pursuant to the schedule adopted at the pre-arbitration conference conducted June 8, 2001, both parties submitted Initial Offers on July 5, 2001. An arbitration conference was held July 11-12, 2001, in Philadelphia. Each party presented witnesses and introduced exhibits, which were admitted into the record. On July 20, 2001, the parties submitted their Final Offers (FO hereafter). Accompanying Sprint's FO were additional exhibits, which were admitted by ALJ Chestnut. Further, Verizon, in response to the request of ALJ Chestnut, supplied responses to Sprint Exhibit 4, and an affidavit, which responded to Sprint Exhibit 12. These supplemental exhibits were admitted in the record.[3]

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[1] *In re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (Order entered June 3, 1996; Order on Reconsideration entered September 9, 1996).

[2] Certain of the unresolved issues listed by Verizon in its Answer, either overlap the issues presented by Sprint or present sub-issues related thereto.

[3] Appendix A to the Recommended Decision lists the witnesses and exhibits.

On August 13, 2001, the Recommended Decision (R.D.) of ALJ Chestnut was issued. The Recommended Decision addressed and provided recommendations on the unresolved issues.[4] On August 28, 2001, Verizon filed Exceptions to the Recommended Decision. Accompanying Verizon's Exceptions to the Recommended Decision was a Motion to Supplement the Record (Motion). Verizon's Motion requested permission to supplement the record with certain documents produced in a Maryland arbitration proceeding. Verizon asserted the information in this proceeding purported to support Sprint's oral representations and positions on certain issues litigated in the instant proceedings. The supplemental information was proffered for consideration in this proceeding. Also, Verizon's Exceptions included Appendices A through D and "Supplemental Appendix E" which are extensive reproduced record citations references.[5]

On August 28, 2001, the Exceptions of Sprint were also received. Subsequently, on August 31, 2001, Sprint filed an Answer to the Verizon Motion, as well as a Motion to Strike certain proffered documents.

By Secretarial Letter dated August 31, 2001, the parties were advised of the submission of an August 30, 2001, letter whereby Sprint and Verizon jointly agreed to extend the date for issuance of a decision ("Day 270" pursuant to the Commission's *Implementation Order*) in the above-referenced matter to September 19, 2001. Additionally, the August 31, 2001 letter advised the parties that they were afforded an opportunity to file Reply Exceptions in this matter on or before the close of business on September 6, 2001. Thereafter, the extension until September 19, 2001, was further extended by agreement of the parties until September 28, 2001, and then again until October 15, 2001.

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[4] The issues enumerated in the Recommended Decision proceed from Issue No. 1 to Issue No. 28. The actual number of issues presented and addressed is fifteen.

[5] Given the expedited time schedule, these references materially aided in this Commission's consideration of the unresolved issues in this proceeding.

On September 6, 2001, Replies to Exceptions were received from Verizon and Sprint. The proceeding is now ripe for disposition by the Commission.

By letters dated September 10, 2001 and September 13, 2001, Sprint lodged objections to Verizon's representations and attachments contained in reply pleadings.

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

a. Positions of the Parties

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

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

(Sprint Petition, p. 57).

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

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29 Sprint Arbitration Petition, p. 57.

30 *See* VZ FOR, pp. 48-61.

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

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

b. ALJ Recommendation

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

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31 *See* Sprint FO, pp. 41-46.

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

c. Exceptions and Replies

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

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32 Sprint FO, p. 43.

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

34 R.D., p. 20.

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

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

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

d. Disposition

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

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

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

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36 *See* Tr., pp. 149 – 171.

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

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

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

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

a. Position of the Parties

Three sub-issues – Unresolved Issue Nos. 14(A), 14(C) and 14(D) -- were originally raised by Verizon in its Answer to Sprint's Petition and concern, respectively, Transport Distance Sensitive Charges, Termination Blocking Rights and Bill Dispute Resolution. Verizon incorporates by reference to its Best Final Offer[39] all of its arguments on these three issues. In light of the fact that the ALJ did not address these issues, Verizon urges the Commission to order the parties to adopt Verizon's proposed language for the reasons stated in its Best Final Offer. (VZ Exc., p. 37).

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

[39] *See* Verizon FO, pp. 61-67.

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 overnight mail.

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Dated: August 2, 2002

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