ORIGINAL

Kimberly Caswell
Vice President and General Counsel, Southeast
Legal Department

verizon

FLTC0007
201 North Franklin Street (33602)
Post Office Box 110
Tampa, Florida 33601-0110

Phone 813 483-2606
Fax 813 204-8870
kimberly.caswell@verizon.com

August 2, 2002

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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

Dear Ms. Bayo:

Please find enclosed for filing in the above matter an original and 15 copies of the Direct Testimonies of Peter J. D'Amico and Terry Haynes on behalf of Verizon Florida Inc. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this matter, please contact me at 813-483-2617.

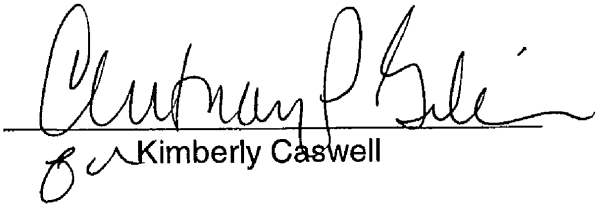
Sincerely,

Kimberly Caswell

KC:tas
Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Direct Testimonies of Peter J. D'Amico and Terry Haynes on behalf of Verizon Florida Inc. in Docket No. 020412-TP were sent via U.S. mail on August 2, 2002 to the parties on the attached list.



Kimberly Caswell

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Kenneth Hoffman
Martin McDonnell
Rutledge Law Firm
215 S. Monroe Street, Suite 420
Tallahassee, FL 32301

Richard Rindler
Michael L. Shor
Swidler Berlin Law Firm
3000 K Street, NW
Washington, DC 20007

Wanda Montano
US LEC of Florida Inc.
6801 Morrison Boulevard
Charlotte, NC 28211-3500

Gregory Romano
Verizon
1515 N. Courthouse Road
Suite 500
Arlington, VA 22201

Aaron M. Panner
Scott H. Angstreich
Kellogg Huber Law Firm
1615 M Street, NW
Suite 400
Washington, DC 20036

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

Petition of US LEC of Florida Inc. for Arbitration with Verizon Florida Inc. pursuant to 47 U.S.C. § 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996	)	Docket No. 020412-TP

DIRECT TESTIMONY
OF TERRY HAYNES ON BEHALF OF
VERIZON FLORIDA INC.

August 2, 2002

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION WITH VERIZON.

A. My name is Terry Haynes. My current business address is 600 Hidden Ridge, Irving, Texas 75015. I am a manager in the State Regulatory Policy and Planning Group supporting the Verizon states formerly associated with GTE. I am testifying here on behalf of Verizon Florida Inc. ("Verizon").

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I received a Bachelor of Arts Degree in Philosophy from the University of South Carolina in 1973. Since 1979, I have been employed by Verizon and its predecessor companies. I have held positions in Operations, Technology Planning, Service Fulfillment and State and Federal Regulatory Matters.

Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.

A. I will address US LEC's Issue 6, which asks "Should the parties be obligated to compensate each other for calls to numbers with NXX codes associated with the same local calling area?" This issue addresses contract language in Verizon's Glossary section 2.56 and its Interconnection Attachment section 7.2.

I will explain why reciprocal compensation does not apply to calls that originate and terminate in different local calling areas, defined by

reference to the actual originating and terminating points of the complete end-to-end communication. I will also explain why US LEC's proposal – to require payment of reciprocal compensation by reference to the NPA-NXX of the called number, rather than the terminating point of the complete communication – is inconsistent with this Commission's ruling on the same issue in its generic reciprocal compensation docket, as well as the FCC's rules and sound regulatory policy. To aid in understanding the issues associated with these questions, I will provide a detailed description of the nature of so-called "virtual NXX" or "virtual FX" traffic. I will explain why virtual FX traffic should not be subject to reciprocal compensation. I will also describe US LEC's "Local Toll Free" service, an interLATA, interstate FX-type service that US LEC offers its customers. US LEC's proposed contract language would require Verizon to pay reciprocal compensation on such interstate, interexchange calls, even though US LEC should be paying interstate access charges for them.

I will also explain why the Commission need not address the application of intrastate access charges to virtual FX traffic. In fact, application of access charges to such traffic is justified, because US LEC is using Verizon's local exchange facilities when a customer initiates an interexchange call that would be subject to toll charges, if not for the virtual FX arrangement. The proposed agreement, however, does not govern access charges, which are instead governed by the parties' tariffs.

Finally, I will address Verizon's recommended approach to determining the volume of FX and virtual FX traffic that carriers exchange.

Q. BEFORE DISCUSSING THE VIRTUAL FX ISSUE, PLEASE DEFINE THE TERMS RELEVANT TO THE DISCUSSION.

A. Several terms and concepts discussed in my testimony, though commonly used, are often misapplied or misunderstood. As a foundation for understanding the virtual FX discussion, I use the following definitions:

An "**exchange**" is a geographical unit established for the administration of telephone communications in a specified area, consisting of one or more central offices together with the associated plant used in furnishing communications within that area.

An "**exchange area**" is the territory served by an exchange.

A "**rate center**" is a specified location (identified by a vertical and horizontal coordinate) within an exchange area, from which mileage measurements are determined for the application of toll rates and private line interexchange mileage rates.

An "**NPA**," commonly known as an "area code," is a three-digit code that occupies the first three (also called "A, B and C") positions in the 10-digit number format that applies throughout the North American Numbering Plan ("NANP") Area, which

includes all of the United States, Canada, and the Caribbean islands. There are two kinds of NPAs: those that correspond to discrete geographic areas within the NANP Area, and those used for services with attributes, functionalities, or requirements that transcend specific geographic boundaries (such as NPAs in the N00 format, *e.g.*, 800, 500, etc.).[1]

An "**exchange code**" is a three-digit code – also known as an "NXX," an "NXX code," a "central office code" or a "CO code" – that occupies the second three ("D, E and F") positions in the 10-digit number format that applies throughout the NANP Area.[2] Exchange codes are generally assigned to specific geographic areas. However, some exchange codes are non-geographic, such as "N11" codes (411, 911, etc.) and "special codes" such as "555." An exchange code that is geographic is assigned to an exchange located, as previously mentioned, within an area code.

When a four-digit line number ("XXXX") is added to the NPA and exchange code, it completes the 10-digit number format used in the NANP Area and identifies a specific customer located in a specific exchange and specific state (or portion of a state, for those states with multiple NPAs). This 10-digit number is also known as a customer's unique telephone number or "address."[3]

Q. WHY IS A CUSTOMER'S 10-DIGIT ADDRESS SIGNIFICANT?

A. A customer's telephone number or address serves two separate but

related functions: proper call routing and rating. Each exchange code or NXX within an NPA is typically assigned to ***both a switch,*** identified by the Common Language Location Identifier ("CLLI"), ***and a rate center.*** As a result, telephone numbers provide the network with specific information (*i.e.*, the called party's end office switch) necessary to route calls correctly to their intended destinations. At the same time, telephone numbers traditionally identify the exchanges of both the originating caller and the called party to provide for the proper rating of calls – *i.e.*, the determination of whether and how much the calling party should be billed for a call.

Q. CAN YOU EXPLAIN THE BASIC PRINCIPLES GOVERNING THE MANNER IN WHICH CUSTOMERS ARE CHARGED FOR THE CALLS THAT THEY MAKE?

A. Yes. One basic principle is the distinction between local calls and toll calls. The basic telephone exchange service rate typically includes the ability to make an unlimited number of calls within a confined geographic area at modest or no additional charge. This confined geographic area consists of the customer's "home" exchange area and additional surrounding exchanges, together designated as the customer's "local calling area." Calls outside the local calling area, with limited exceptions noted in the paragraph below, are subject to an additional charge, referred to as a "toll" or Message Telecommunications Service ("MTS") charge. Toll service is generally priced at higher rates, on a usage-sensitive basis, than local calling. The local/toll distinction is rooted in

the decades-old public policy goal of assuring the widespread availability of affordable telephone service.

A second industry pricing convention is the principle that, generally, the calling party pays to complete a call – with no charge levied on the called party. There are a few exceptions, such as where a called party agrees to pay toll charges in lieu of applying those rates on the calling party (*e.g.*, 800/877/888-type "toll-free" service, "collect" and third-party billing, and FX services).

Q. HOW DOES THE TELEPHONE NUMBER OR ADDRESS PLAY A ROLE IN RATING AN INDIVIDUAL CALL?

A. Local exchange carriers' ("LECs'") retail tariffs and billing systems use the NXX codes of the calling and called parties to ascertain the originating and terminating rate centers/exchange areas of the call. This information, in turn, is used to properly rate the call for purposes of billing the calling party. If the rate center/exchange area of the called party, as determined by the called number's NXX code, is included in the originating subscriber's local calling area, then the call is established as a local call. If the rate center/exchange area of the called party – again determined by the NXX code of the called number – is outside the local calling area of the caller, then the call is determined to be toll. Thus, the rate centers of calling and called parties, as expressed in the unique NXX codes typically assigned to each rate center/exchange area, enable LECs to properly rate calls as either local or toll.

Q. WHAT IS VIRTUAL FX SERVICE, AND WHAT IS A VIRTUAL NXX?

A. A CLEC establishes virtual FX service whenever it assigns a customer a telephone number with an NXX code designated by the carrier for a rate center/exchange area other than the one in which its customer is physically located; such an NXX is called a virtual NXX. Indeed, the carrier may obtain an entire exchange code solely for the purpose of designating it for a rate center/exchange area in which the carrier has no customers of its own, or facilities to serve customers of its own. Instead, the exchange code is used by the carrier for the sole purpose of assigning telephone numbers to its end users physically located in exchanges other than the one to which the code was assigned.

Q. HOW DOES THE EXISTENCE OF SO-CALLED VIRTUAL FX SERVICE AFFECT EITHER THE ROUTING OR RATING OF TELEPHONE CALLS?

A. A CLEC's assignment of numbers to end users not physically located in the exchange area associated with that NXX does ***not*** affect the routing of the call from the caller to the called party. The ILEC's network recognizes the carrier-assigned NXX code and routes the call to that carrier's switch for delivery by the carrier to its end user, the called party.

The NXX assignment does, however, affect the rating of the call. The CLEC typically assigns virtual NXX codes to its customers that are expected to receive a high volume of incoming calls from ILEC customers within the exchange of that NXX, and the CLEC's virtual NXX

arrangement allows such calls to be made without the imposition of a toll charge on the calling party. In one common arrangement, a CLEC allows an ISP to collocate with its switch, and then assigns that ISP telephone numbers associated with every local calling area within a broad geographic area (potentially a LATA). The ISP would then be able to offer all of its subscribers a locally rated access number without having to establish a single physical presence in that geographic area. If the ISP had been assigned an NXX associated with the calling area in which it is physically located, many of those calls would be rated as toll calls.

Q. HAVE NXX CODES TRADITIONALLY BEEN USED TO GOVERN INTERCARRIER COMPENSATION?

A. No. To the extent that US LEC makes this argument, it is confusing the rating of calls for the purpose of assessing end-user charges and the treatment of calls for intercarrier compensation purposes. Before the widespread introduction of local competition following the adoption of the 1996 Act, the most important type of intercarrier compensation was the access charges that interLATA long distance carriers paid to local telephone companies. Such intercarrier compensation has always been governed by the originating and terminating points of the end-to-end call, not the NPA-NXX of the calling and called party.

For example, AT&T has offered customers interLATA FX service, described by the FCC as one "which connects a subscriber ordinarily

served by a local (or 'home') end office to a distant (or 'foreign') end office through a dedicated line from the subscriber's premises to the home end office, and then to the distant end office." *AT&T Corp. v. Bell Atlantic-Pennsylvania*, 14 FCC Rcd 556, 587, ¶ 71 (1998) ("*AT&T v. BA-PA*"), *reconsideration denied*, 15 FCC Rcd 7467 (2000). An airline with a reservation office in Atlanta could provide customers in Charleston a locally rated number, but all calls would still be routed to Atlanta. The FCC ruled, in that situation, that AT&T was required to pay access charges for the Charleston end of that call – even though the call was locally rated for the caller, because AT&T was still using access service to complete an interLATA call to the called party. *Id.* at 590, ¶ 80. The fact that the calling party and the called party were assigned NPA-NXX's in the same local calling area was totally irrelevant to the proper treatment of the call for intercarrier compensation purposes. In this regard, I note that US LEC itself advertises what appears to be an interLATA FX service – which US LEC refers to as "Local Toll-Free Service" – on its website. I have attached a print-out of the website to my testimony. (See Exhibit No. 1)

Another example is "Feature Group A" access, one method that interexchange carriers ("IXCs") use to gain access to the local exchange. In that arrangement, the caller first dials a seven-digit number to reach the IXC, and then dials a password and the called party's area code and number to complete the call. Notwithstanding this dialing sequence, the service the LEC provides is considered *interstate*

access service, not a separate local call, and the IXC must pay access charges.

Q. DOES THE PRINCIPLE THAT INTERCARRIER COMPENSATION IS GOVERNED BY THE ORIGINATING AND TERMINATING POINTS OF THE END-TO-END COMMUNICATION APPLY TO RECIPROCAL COMPENSATION?

A. Yes. The FCC has always held that reciprocal compensation does not apply to interexchange traffic, whether interstate or intrastate, but only to traffic that remains within a single local calling area. The FCC confirmed this in its April 2001 *ISP Remand Order*,[4] when it ruled that reciprocal compensation does not apply to "exchange access, information exchange access, or exchange services for such access." 47 C.F.R. § 51.701(b)(1). As the FCC has made clear, this includes all "provision of exchange services for the purpose of originating or terminating interexchange telecommunications." 16 FCC Rcd at 9158, ¶ 37 n.65. Whether a particular call is interexchange does not depend on the telephone number, it depends on whether the call remains within the local calling area or travels outside it.

Q. DOES THIS COMMISSION AGREE THAT RECIPROCAL COMPENSATION DEPENDS ON THE PHYSICAL ORIGINATING AND TERMINATING POINTS OF A CALL?

A. Yes. The Commission already ruled on this issue in its generic reciprocal compensation docket (number 000075-TP). There, the

Commission agreed with its Staff's assessment that "classification of traffic as either local or toll has historically been, and should continue to be, determined based upon the end points of a particular call."[5] It squarely held that reciprocal compensation depends on where a call physically originates and terminates – not on "the NPA/NXXs assigned to the calling and called parties."[6] The Commission, therefore, concluded that virtual NXX traffic is not subject to reciprocal compensation because it does not physically terminate in the same local calling area in which it originates[7]: "calls to virtual NXX customers located outside of the local calling area to which the NPA/NXX is assigned are not local calls for purposes of reciprocal compensation."[8]

Q. IS IT IMPROPER FOR US LEC TO ASSIGN VIRTUAL NXX CODES TO THEIR CUSTOMERS?

A. US LEC's ability to assign telephone numbers to its customers in any way that is consistent with regulatory requirements is not at issue here. Rather, Verizon wants to ensure that the parties' agreement does not require payment of reciprocal compensation for any interexchange traffic, including virtual FX calls. Such calls are not subject to reciprocal compensation under the FCC's current rules.

Q. DO YOU HAVE ANY OTHER CONCERNS ABOUT VIRTUAL NXX TRAFFIC?

A. Yes. Another concern is related to interconnection architecture. In this proceeding, US LEC is insisting that it has a right to interconnect with

Verizon at any point within a LATA and require Verizon to bear the cost of transporting traffic to that point of interconnection.

The use of virtual NXXs by CLECs makes calls appear local that are actually toll service from the Verizon customer's physical location to the CLEC customer's physical location, thereby denying Verizon the opportunity to collect just compensation for the transport it provides to the CLECs on the call. When an ILEC's customer initiates a call to a CLEC virtual NXX, the ILEC's switch sees the NXX code as being assigned to the exchange area/rate center of the originating caller or to an exchange area within the originating caller's local calling area and, therefore, does not rate the call as a toll call. In fact, the call is delivered by the CLEC to its end user located ***outside*** the local calling area of the originating customer, and toll charges properly apply and would be assessed save for the assignment of virtual NXX codes. The CLEC, however, does not terminate the call within the local calling area of the originating caller. Rather, the CLEC simply takes the traffic delivered to its switch and delivers the calls to its virtual FX subscriber, often located in the same exchange as its switch – if not physically collocated with the CLEC at its switch.

In short, the CLEC gets a free ride for interexchange traffic on the incumbent's interoffice network. Verizon incurs essentially all of the transport costs, yet is denied an opportunity to recover its costs either from its originating subscriber or from the CLEC. There can be little

doubt why some CLECs have embraced virtual FX service to the exclusion of other service arrangements. I should emphasize, however, that this concern is somewhat attenuated so long as the Commission adopts Verizon's proposals concerning interconnection architecture. So long as US LEC bears the cost of transporting the traffic that it receives from Verizon beyond the local calling area where that traffic originated, US LEC will have less opportunity to shift transport costs to Verizon. But US LEC has refused to accept an agreement that would require US LEC to bear these transport costs. Interconnection architecture issues are discussed in greater detail in the testimony of Mr. Peter D'Amico.

Q. US LEC ARGUES THAT IT IS PROVIDING VERIZON'S CUSTOMERS A VALUABLE SERVICE THROUGH VIRTUAL NXX ARRANGEMENTS. DO YOU AGREE?

A. No. By providing a virtual NXX arrangement, US LEC is giving its own customers the ability to receive locally rated calls from end-users located in a different local calling area – much like a toll-free 800 service. CLECs have heavily marketed virtual FX arrangements and are compensated by their customers for providing this functionality. Although I do not know what US LEC charges its customers for this service in Florida, I know that in Pennsylvania they charge their customers many hundreds of dollars a month for this service.

That is part of the reason that US LEC's effort to collect reciprocal compensation for this traffic is particularly inappropriate as a matter of

sound regulatory policy. US LEC is already being compensated by its own customer for the receipt of these calls, just as an ILEC is compensated for providing a customer a traditional FX arrangement, and just as a long-distance carrier is compensated for providing a customer a toll-free number. It does not make sense to require Verizon to bear the costs of this arrangement, but that is what US LEC is seeking to achieve.

Q. IT SOUNDS LIKE VERIZON IS PROVIDING US LEC'S CUSTOMER A VALUABLE SERVICE. DO YOU AGREE?

A. Yes. Verizon is providing the service of originating the call for transport to the called party's carrier. By definition, in a virtual NXX arrangement, a subscriber is willing to pay its carrier for a "virtual presence" in a distant exchange. The ability to receive calls from that exchange – calls originated on Verizon's network – is therefore valuable to US LEC's subscriber. And, of course, US LEC is able to offer that service only by virtue of Verizon's network – US LEC may have no facilities at all in the relevant local calling area.

Q. DO YOU AGREE WITH US LEC'S CLAIM THAT VIRTUAL NXX CODES ALLOW CUSTOMERS TO TAKE ADVANTAGE OF STATE-OF-THE ART TECHNOLOGY?

A. No. Virtual FX service is hardly a state-of-the-art technology and is certainly not necessary to provide customers toll-free calling. Telephone companies have been offering toll-free service for decades. The fact is

that the CLEC number assignment causes originating ILECs like Verizon to treat the call at the originating switch as a local call for end-user billing and switch routing purposes. This is much like how Verizon would transport a toll call or an originating access call – existing services for which Verizon would be compensated by the originating toll user or the interexchange access customer, respectively. The only thing that's "new" here is the scheme to manipulate intercarrier transport and compensation in a manner to shift the costs of providing this toll-free number service to the originating ILEC. There is no aspect of the virtual NXX service that can be considered new or state-of-the-art from a technology perspective.

Q. DO YOU AGREE WITH US LEC'S CLAIM THAT ENFORCING THE FCC'S RECIPROCAL COMPENSATION RULES WITH RESPECT TO VIRTUAL FX TRAFFIC WOULD IMPEDE COMPETITION?

A. No. Enforcing the FCC's rules will promote competition, not impede it. US LEC will remain free to market its virtual NXX service and receive whatever compensation for that service that its end-users are willing to pay. But Verizon should not be required to subsidize that service by paying reciprocal compensation on traffic that is interexchange. In other words, Verizon's local customers should not have to defray the costs of providing this service to end-users who are located outside the exchange. Enforcing the rules will simply prevent US LEC from exploiting a potentially lucrative regulatory arbitrage opportunity, to the detriment of competition.

Q. WOULD VERIZON'S POSITION RESTRICT US LEC'S ABILITY TO OFFER THIS SERVICE OR REDUCE ITS UTILITY TO US LEC'S CUSTOMERS?

A. No. US LEC could offer the service, and it would continue to provide the same benefits to US LEC's customers. But US LEC could not collect reciprocal compensation for such traffic, compensation to which it has no right under the FCC's rules.

Q. IS VERIZON CLAIMING ACCESS CHARGES FOR THIS TRAFFIC?

A. The parties' agreement makes clear that access charges are governed by their intrastate and interstate access tariffs, so the issue is not strictly presented in this proceeding. That said, it is clear that US LEC should pay originating access charges for this traffic, because it is a type of toll-free interexchange traffic. Even though a Verizon customer is placing an interexchange call, Verizon cannot impose toll charges because of the way in which US LEC has assigned telephone numbers to its customers. Instead, US LEC receives compensation from *its* customer. There is nothing necessarily wrong with that, but US LEC must compensate Verizon for this originating access service. Access charges have always been applied to toll-free traffic. In fact, this Commission approved its Staff's logic that "it seems reasonable to apply access charges to virtual NXX/FX traffic that originates and terminates in different local calling areas."[9] In addition, I note that if the virtual NXX customer were located in another LATA and another state from the

calling party, *interstate* access charges would apply – even though the call would be rated as local for the calling party.

Q. BUT US LEC CLAIMS THAT VERIZON'S COSTS DO NOT JUSTIFY SUCH CHARGES.

A. Verizon's access charges are set by state and federal regulators and are simply not at issue in this proceeding. If US LEC uses a Verizon access service, as it does in the "virtual FX" arrangements at issue here, it must pay the tariffed rate. And, in any event, the only issue actually presented here is whether Verizon should pay US LEC when Verizon originates an interexchange call that US LEC delivers to its customer and for which US LEC is compensated by its customer. The FCC's rules, decades of consistent regulatory policy, and sound economics all dictate the same answer – Verizon should not be required to pay reciprocal compensation on this traffic.

Q. DO YOU HAVE ANY OTHER CONCERNS ABOUT US LEC'S PROPOSED CONTRACT LANGUAGE?

A. Yes. It has come to my attention that US LEC offers an interstate, interLATA FX-type service, in which US LEC assigns a customer located in one state (say, Maryland) telephone numbers associated with various local calling areas across US LEC's 14-state footprint. Based on US LEC's description of this service in other proceedings, I infer that US LEC has set up this arrangement so that Verizon (or another incumbent LEC) delivers the traffic to US LEC's switch as though it were

local traffic; US LEC may even bill reciprocal compensation for such traffic. But such traffic is interstate, interexchange traffic, and US LEC should be paying interstate access charges on such traffic.

Q. WHAT IS THE BASIS FOR YOUR STATEMENT THAT THIS SERVICE IS LIKE INTERLATA FX SERVICE?

A. I do not know the details of the manner in which US LEC provisions its "Local Toll Free" Service, but from the point of view of regulatory policy, this type of traffic is indistinguishable from interstate FX service – it provides the same functionality to the customer, at least with respect to in-bound calls. US LEC's "Local Toll Free" service is also reminiscent of Feature Group A ("FGA") access, an access arrangement used by interexchange carriers in the early days of long-distance competition, and an access service that is still available today. With a FGA arrangement, a caller dials a "local" number assigned to the interexchange carrier's FGA service, enters a PIN, and then places a long-distance call. The initial "local" call is, of course, not local at all – it is simply one leg in an interstate, interexchange call.[10] US LEC's "Local Toll Free" service fits this mold. In fact, under the interstate access charge regime, the FCC has repeatedly made clear that intermediate switching is entirely irrelevant to the question of where a call terminates. The fact that a switch may "answer" a call and then "forward" it to another location does not mean that there are two calls – there is only one call for access charge purposes.[11]

Q. WHAT IS THE SIGNIFICANCE OF US LEC'S LOCAL TOLL FREE SERVICE FOR THE COMMISSION'S RESOLUTION OF ISSUE 6?

A. It makes clear that the Commission cannot accept any proposal that makes the payment of intercarrier compensation turn on the NPA-NXX of the dialed number, because the customer to which the NPA-NXX is assigned could be located literally anywhere in the world, let alone anywhere in the LATA. Instead, intercarrier compensation must turn on the physical location of the called party. Any other result would elevate form (*i.e.*, the number assigned to the customer) over substance (*i.e.* the customer's physical location).

Q. YOU'VE ALREADY DISCUSSED THIS COMMISSION'S VIRTUAL NXX RULING. HAVE OTHER STATE COMMISSIONS ADDRESSED THIS ISSUE?

A. Yes. The South Carolina Commission, for example, has squarely held that "reciprocal compensation is not due to calls placed to 'virtual NXX' numbers as the calls do not terminate within the same local calling area in which the call originated."[12] The Commission correctly determined that compensation for traffic depends on the end points of the call – that is, where it physically originates and terminates: in rejecting the claim that "the local nature of a call is determined based upon the NXX of the originated and terminating number," the Commission noted that, "[w]hile the NXX code of the terminating point is associated with the same local service area as the originating point, the actual or physical termination point of a typical call to a 'virtual NXX' number is not in the same local

service area as the originating point of the call."[13]

A number of other state commissions have also held that reciprocal compensation does not apply to virtual NXX traffic because it does not physically originate and terminate in the same local calling area. These state commissions include those in Ohio,[14] Connecticut,[15] Illinois,[16] Texas,[17] Tennessee,[18] Georgia,[19] and Missouri.[20]

Q. ARE YOU AWARE OF ANY STATE COMMISSIONS THAT HAVE ADDRESSED THE ISSUE OF ASSIGNMENT OF TELEPHONE NUMBER TO END USERS LOCATED OUTSIDE OF THE RATE CENTER TO WHICH THEY ARE HOMED?

A. Yes. For example, the Pennsylvania Commission has required CLECs to assign its customers "telephone numbers with NXX codes that correspond to the rate centers in which the customers' premises are physically located."[21] That Commission had explained its rationale as follows:

> [E]ach 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.[22]

To cite another example, on June 30, 2000, the Maine Public Utility

Commission ordered a CLEC, Brooks Fiber, to return 54 NXX codes which it was using in a "virtual NXX" capacity and rejected Brooks' proposed "virtual NXX" service. The Commission found that Brooks had no facilities deployed in any of the locations to which the 54 NXX codes were nominally assigned. As such, it rejected Brooks' arguments that it was using the codes to provide local service, and concluded that Brooks' activities had "nothing to do with local competition."[23] It found that Brooks' "extravagant" use of the 54 codes "solely for the rating of interexchange traffic" was patently unreasonable from the standpoint of number conservation.[24] The Commission further observed that Brooks' likely reason for attempting to implement an "FX-like" service, instead of a permissible 800 or equivalent service, was Brooks' "hope that it might avoid paying Bell Atlantic for the interexchange transport service provided by Bell Atlantic."[25]

Q. DOES THE FCC'S *ISP REMAND ORDER* ALLEVIATE VERIZON'S CONCERNS WITH VFX?

A. No. The FCC's *ISP Remand Order* addresses only termination rates, and only with regard to Internet-bound traffic. It does not resolve lost toll revenue and transport cost issues associated with virtual NXX assignments. As I previously explained, these issues are not limited to Internet-bound traffic and are not directly related to termination rates. Virtual NXX assignment shifts transport costs to Verizon and makes toll calls to which toll charges properly apply appear as though they are local calls.

Q. US LEC CLAIMS THAT THE FCC'S *TSR WIRELESS ORDER* SUPPORTS ITS POSITION HERE. DO YOU AGREE?

A. No. The *TSR Wireless Order*[26] actually supports Verizon's position. In that order, the FCC held merely that an incumbent LEC could not charge for existing facilities used to deliver *local* traffic originated on the incumbent's network to a paging carrier's switch. It did not decide any issue related to interconnection architecture or reciprocal compensation, nor did it in any way suggest that an incumbent LEC has any obligation to deliver *non-local* traffic without charge. Moreover, the FCC held that the incumbent *could* charge the paging carrier for a service known as "wide area calling," a service that permits individuals located outside the local calling area in which the paging carrier's facilities to call the paging carrier without incurring toll charges. That service is quite comparable to some virtual NXX arrangements.

Q. THE FCC'S WIRELINE COMPETITION BUREAU RECENTLY DETERMINED, IN AN INTERCONNECTION ARBITRATION, THAT RECIPROCAL COMPENSATION SHOULD BE DETERMINED BASED ON THE NPA-NXX CODES, NOT THE PHYSICAL LOCATION OF THE CALLING PARTY AND THE CALLED PARTY.[27] DO YOU HAVE ANY COMMENT ON THAT ORDER?

A. Yes. The Bureau did not rule that reciprocal compensation is required for virtual FX traffic. Rather, what the Bureau said, considering the evidence in that particular proceeding, was that paying reciprocal

compensation based on the physical location of the calling party and the called party – as Verizon proposes here – would raise "billing and technical issues that have no concrete, workable solutions at this time." *Bureau Arbitration Order* ¶ 301. The Bureau's decision was based on the perceived practical difficulty of accurately tracking and billing FX and virtual FX traffic as non-local traffic for reciprocal compensation purposes. But billing reciprocal compensation for virtual FX traffic and FX traffic based on the geographic location of the calling party and the called party poses no significant practical problem. In fact, Verizon has already identified a concrete, workable solution to ensure that FX and virtual FX traffic is properly treated as interexchange traffic for reciprocal compensation and access charge billing purposes, even though such calls are rated as local to the calling party.

Q. WOULD YOU DESCRIBE THE MANNER IN WHICH VERIZON EXCLUDES FX TRAFFIC AND FX-LIKE TRAFFIC FROM RECIPROCAL COMPENSATION BILLING?

A. Yes, but first I would like to offer a bit of background. Verizon's billing system, for purposes of billing reciprocal compensation, was designed to compare the NPA-NXX codes of the calling party and the called party to determine whether a call is in fact local. That is a reasonable method, because the volume of CLEC originated traffic sent to a FX number on Verizon's network – for which that method would not yield a correct answer from the point of view of intercarrier compensation billing – is very small. Based on the traffic study Verizon performed in Florida,

such traffic makes up less than one-half of one percent of the CLEC originated traffic delivered to Verizon for termination to its customers.

But Verizon has learned, since the advent of local competition, that the assumption that a customer's assigned NPA-NXX code most likely corresponds to the customer's physical location is often not a valid assumption in the case of traffic delivered to CLECs. To the contrary, the volume of locally rated interexchange traffic being delivered to some CLECs makes up a significant percentage of the traffic delivered to those CLECs – in fact, I am aware of situations where almost *all* of the traffic that Verizon delivers to certain CLECs is Virtual FX traffic.

To deal with this issue, Verizon has recently taken steps to develop methods to accurately measure the volume of CLEC traffic terminated to Verizon FX numbers. Verizon conducted an inexpensive study to identify those calls that were originated by CLEC customers and terminated to Verizon FX numbers. The study amounted to nothing more elaborate than matching call records that Verizon creates on calls originated from facility based CLEC's to a list of telephone numbers that Verizon assigned to FX service lines. This study was conducted with the intent of providing a means for Verizon to properly estimate the access revenue that CLECs would be entitled to for CLEC originated calls terminated to Verizon FX numbers. At the same time, Verizon considered what approach would be required to properly account for traffic originated by Verizon customers which terminated on CLEC

virtual FX numbers. Two options were identified. One option would be for the CLEC to conduct a study, similar to the one performed by Verizon, to quantify the number of Verizon customer originated minutes that were delivered to the CLEC virtual FX numbers. The other option would be for the CLEC to notify Verizon of the numbers it has assigned as virtual FX numbers. In this scenario, Verizon would modify its traffic data collection system to capture all traffic delivered to the NPA-NXXs associated with the virtual FX numbers. A data query could then be run to identify what portion of the traffic delivered to the NPA-NXXs was actually virtual NXX traffic. A billing adjustment would then be entered into each parties' billing system to properly account for the Verizon traffic delivered to the CLEC virtual FX numbers. For example, US LEC would credit from its reciprocal compensation billing to Verizon all amounts associated with these Virtual FX minutes, while Verizon would bill US LEC access charges for those minutes at whatever rate is found to be appropriate. Verizon is prepared to work with US LEC to implement one of these options so that traffic can be properly billed.

Q. HOW DOES VERIZON RECOMMEND THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should adopt Verizon's proposed contract language, which is consistent with the Commission's generic ruling that reciprocal compensation does not apply to any traffic that is interexchange, defined by reference to the actual originating and terminating points of the complete end-to-end call.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

ENDNOTES

[1] *See* "NPA" in the *Glossary of the "Central Office Code (NXX) Assignment Guidelines,"* INC 95-0407-008, April 11, 2000.

[2] *See id.*, "exchange code."

[3] *See id.*, "NANP."

[4] Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 16 FCC Rcd 9151 (2001), *remanded*, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). Although the D.C. Circuit remanded the *ISP Remand Order* to permit the FCC to clarify its reading, it left the order in place as governing federal law. *See WorldCom*, 288 F.3d at 434.

[5] Staff Memorandum, *Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecomm. Act of 1996*, Issue 15, at 93 (Nov. 21, 2001) ("Reciprocal Compensation Recommendation"), approved at the Commission's Dec. 5, 2002 Agenda Conference.

[6] *Id.* at 88-92.

[7] *See id.* at 68, 71.

[8] *Id.* at 94.

[9] Reciprocal Compensation Recommendation at 95.

[10] *See ISP Remand Order* ¶ 61.

[11] *See* Memorandum Opinion and Order, *Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corp.*, 7 FCC Rcd 1619, 1620-22 & n.44 (1992); Order Designating Issues for Investigation, *Southwestern Bell Tel. Co.*, 3 FCC Rcd 2339, 2341 (1988).

[12] *See* Order on Arbitration, *Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Docket No. 2000-516-C, Order No. 2001-045, at 7 (S.C. PUC Jan. 16, 2001) ("*Adelphia Order*").

[13] *Id.* at 8.

[14] Arbitration Award, *Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Co. of Ohio dba Sprint*, Case No. 01-2811-TP-ARB (Ohio Pub. Utils. Comm'n May 9, 2002) ("To the extent that the call to a customer utilizing virtual NXX service originates or terminates outside . . . [the] local calling area, . . . the call is considered toll or interexchange. Compensation is based on the originating or terminating party's access charges.").

[15] Decision, *DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities*, Docket No. 01-01-29, at unnumbered page 43 (Conn. Dept. of Pub. Util. Control Jan. 30, 2002) ("The purpose of mutual compensation is to compensate the carrier for the cost of terminating a local call "*and" since these calls are not local*, they will not be eligible for mutual compensation.") (emphasis added).

[16] Arbitration Decision, *TDS Metrocom, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Illinois Bell Telephone Co. d/b/a Ameritech-Illinois Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 01-0338, at 48 (Ill. Comm. Comm'n Aug. 8, 2001); Arbitration Decision, *Level 3 Communications, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Docket No. 00-0332 (Ill. Comm. Comm'n Aug. 30, 2001) ("FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation.").

[17] Revised Arbitration Award, *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Docket No. 21982, at 18 (Tex.

PUC Aug. 31, 2000) (finding FX-type traffic "not eligible for reciprocal compensation" to the extent it does not terminate within a mandatory local calling scope).

[18] Interim Order of Arbitration Award, *Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00948, at 42-44 (Tenn. Regulatory Util. Comm'n June 25, 2001).

[19] Final Order, *Generic Proceeding of Point of Interconnection and Virtual FX Issues*; Docket No. 13542-U, at 10-12 (Ga. PSC July 23, 2001) ("The Commission finds that reciprocal compensation is not due for Virtual FX traffic.").

[20] Arbitration Order, *Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc., for Compulsory Arbitration of Unresolved Issues With Southwestern Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. TO-2001-455, at 31 (Mo. PSC June 7, 2001) (finding VFX traffic "not be classified as a local call").

[21] Opinion and Order, *Petition of Focal Communications Corp. 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, at 10-11 (Pa. PUC Jan. 29, 2001).

[22] Order, *Application of MFS Intelenet of Pennsylvania, et al.*, Docket Nos. A-310203F0002, A-310213F0002, A-310236F002 and A-310258F0002, at 19 (Pa. PUC July 31, 1996) ("MFS II Order").

[23] *Investigation Into Use of Central Office Codes (NXXs) by New England Fiber Comm., LLC d/b/a Brooks Fiber, etc., Order Requiring Reclamation of NXX Codes and Disapproving Proposed Service,* Docket Nos. 98-758 & 99-593, at 13, Tab 1 (Maine PUC June 30, 2000).

[24] *Id.* at 16.

[25] *Id.* at 12.

[26] Memorandum Opinion and Order, *TSR Wireless, LLC v. US West Communications, Inc.*, 15 FCC Rcd 11166 (2000) ("*TSR Wireless Order*").

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

Docket No. 020412-TP
Direct Testimony of Terry Haynes
Exhibit No. 1
FPSC Exhibit No. _____
August 2, 2002
Page 1 of 2

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
- ADVANTAGE long distance calling plan
- Long distance invoice reports
- Toll-free service (800, 888, 877, 866, 855)
- Local Toll-Free™ service
- Enhanced Toll-Free™ service *new*
- Account codes
- Directory assistance and operator assistance
- PIC'd LD
- Calling cards
- Dedicated (T-1 facilities) 1 + long distance

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

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