INTERCONNECTION, RESALE
AND UNBUNDLING

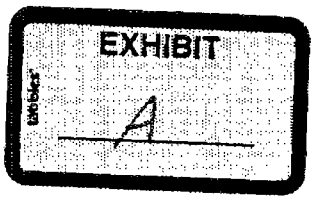
AGREEMENT

between

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.

and

GTE FLORIDA INC.



The filing of this arbitrated Agreement with the Florida Public Service Commission in accordance with the Arbitration Order No. PSC-97-0064-FOF-TP dated January 17, 1997 (the "Order") of the Commission, with respect to AT&T Communications of the Southern States, Inc.'s Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement between AT&T Communications of the Southern States, Inc. and GTE Florida Inc., does not in any way constitute a waiver by either AT&T Communications of the Southern States, Inc. or GTE Florida Inc. of any right which any such Party may have to appeal to a competent court of law, or to petition the Commission for reconsideration of, any determination contained in the Order, or any provision included in this Agreement pursuant to the Order.

In this document the Parties attempt to comply with the Order which directs the Parties to reduce to contractual language the substantive provisions and directives of the Order. Nothing contained herein shall be construed or is intended to be a concession or admission by either Party that any such provision of the Order or the language herein complies with the duties imposed by the Telecommunications Act of 1996, the decisions of the FCC and the Commission, or other law, and each Party thus expressly reserves its full right to assert and pursue claims that the Order does not comport with applicable law.

TABLE OF CONTENTS

Section	Page
PREFACE	1
AGREEMENT	1
RECITALS	1
SCOPE, INTENT AND DEFINITIONS	2
GENERAL TERMS AND CONDITIONS	3
1. Provision of Local Service, Unbundled Network Elements and Interconnection	3
2. Term of Agreement	3
3. Termination of Agreement; Transitional Support	4
4. Good Faith Performance	5
5. Option to Obtain Local Services or Network Elements Under Other Agreements	
6. Responsibility of Each Party	5
7. Governmental Compliance	6
8. Environmental	6
9. Regulatory Matters	6
10. Liability and Indemnity	9
11. Service Parity and Standards	11
12. Customer Credit History	11
13. Force Majeure	12
14. Certain State and Local Taxes	13
15. Alternative Dispute Resolution	13
16. Notices	14
17. Confidentiality and Proprietary Information	15
18. Branding	17

19. Directory Listings and Directory Distribution 18
20. Directory Assistance Listing Information 21
21. Busy Line Verification and Busy Line Verification Interrupt 21
22. Number Assignment 22
23. Miscellaneous 22

PART I LOCAL SERVICES RESALE 27

24. Telecommunications Services Provided for Resale 27
25. General Terms and Conditions for Resale 27
26. Requirements for Specific Services 29
27. Advanced Intelligent Network 30
28. Routing to Directory Assistance, Operator and Repair Services 31
29. Service Support Functions 34
30. Pay Phone Lines and Pay Phone Services 39

PART II: UNBUNDLED NETWORK ELEMENTS 43

31. Introduction 43
32. Unbundled Network Elements 43

PART III: ANCILLARY FUNCTIONS 46

33. Introduction 46
34. GTE Provision of Ancillary Functions 46
35. Standards for Ancillary Functions 46

PART IV: INTERCONNECTION PURSUANT TO SECTION 251(C)(2) 48

36. Scope 48
37. Interconnection Points and Methods. 48
38. Transmission and routing of telephone exchange service traffic pursuant to section 251(c)(2) 54
39. Transmission and Routing of Exchange Access Traffic 56
40. Transport and Termination of Information Services Traffic 57
41. Installation, Maintenance, Testing and Repair 58

ATTACHMENTS

Attachment 1	Alternative Dispute Resolution
Attachment 2	Services Description: Unbundled Network Elements ("UNE")
Attachment 3	Service Description: Ancillary Functions
Attachment 4	Provisioning and Ordering - UNE
Attachment 5	Maintenance for Local Services Resale and UNE
Attachment 6	Local Services Resale, UNE and Interconnection Billing and Recording
Attachment 7	Provision of Customer Usage Data
Attachment 8	Local Number Portability
Attachment 9	Network Security
Attachment 10	Acronyms
Attachment 11	Definitions
Attachment 12	Service Quality Standards and Processes
Attachment 13	Electronic Interface for Operations Support Systems
Attachment 14	Pricing
Attachment 15	Reciprocal Compensation For Call Termination Agreement

PREFACE

AGREEMENT

This Agreement is entered into as of the ____ day of _____, 1997, by and between AT&T Communications of the Southern States, Inc., a New York corporation having an office at 1200 Peachtree Street, N.E., Atlanta, Georgia 30309, in its capacity as a certified provider of local dial-tone service ("AT&T"), and GTE Florida Inc., a Florida corporation, having an office for purposes of this Agreement at 600 Hidden Ridge Drive, Irving, Texas 75038 ("GTE"), in its capacity as an incumbent local exchange carrier. This Agreement covers services only in the state of Florida (the "State").

RECITALS

WHEREAS, The Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, the Act places certain duties and obligations upon, and grants certain rights to, Telecommunications Carriers, with respect to the interconnection of their networks, resale of their telecommunications services, access to their poles, ducts, conduits and rights of way and, in certain cases, the offering of certain unbundled network elements and physical collocation of equipment in Local Exchange Carrier premises, and

WHEREAS, GTE is an Incumbent Local Exchange Carrier; and

WHEREAS, AT&T is a Telecommunications Carrier and has requested that GTE negotiate an agreement with AT&T for the provision of Network Elements, Local Services for resale, collocation and access to poles, ducts, conduits and rights of way and the reciprocal provision of interconnection services pursuant to the Act and in conformance with GTE's and AT&T's duties under the Act; and

WHEREAS, interconnection between competing Local Exchange Carriers (LECs) is necessary and desirable for the mutual exchange and termination of traffic originating on each LEC's network and the Parties desire to exchange such traffic and related signaling in a technically and economically efficient manner at defined and mutually agreed upon points of interconnection.

SCOPE, INTENT AND DEFINITIONS

This Agreement governs the purchase by AT&T of certain telecommunications services provided by GTE in its service areas for resale by AT&T, the purchase by AT&T of certain unbundled network elements from GTE, the terms and conditions of the collocation of certain equipment of AT&T in the premises of GTE, the provision by GTE of access to its poles, conduits and rights of way and the reciprocal interconnection of each Party's local facilities for the exchange of traffic.

The Parties agree that their entry into this Agreement is without prejudice to any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements covered in this Agreement.

For purposes of this Agreement, certain terms have been defined in Attachment 11 and elsewhere in this Agreement to encompass meanings that may differ from the normal connotation of the defined word. A defined word intended to convey its special meaning is capitalized when used. Unless the context clearly indicates otherwise, any term defined or used in the singular shall include the plural. The words "shall" and "will" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other shall not mean a different degree of right or obligation for either Party. Other terms that are capitalized, and not defined in this Agreement, shall have the meaning given them in the Act. For convenience of reference only, Attachment 10 provides a list of acronyms used throughout this Agreement.

GENERAL TERMS AND CONDITIONS

1. **Provision of Local Service, Unbundled Network Elements and Interconnection**

This Agreement, which consists of these General Terms and Conditions and Attachments 1-15 and their accompanying Appendices, sets forth the terms, conditions and prices under which GTE agrees to provide (a) telecommunications services for resale (hereinafter referred to as "Local Services") and (b) certain unbundled Network Elements, Ancillary Functions and additional features to AT&T or combinations of such Network Elements ("Combinations"), for purposes of offering telecommunications services of any kind, including, but not limited to, local exchange services, intrastate toll services, and intrastate and interstate exchange access services and (c) access to GTE's poles, conduits and rights of way. This Agreement also sets forth the terms and conditions for the interconnection of AT&T's local network to GTE's local network ("Interconnection Services") and the reciprocal compensation to be paid by each Party to the other for the transport and termination of Local Traffic of the other Party. The Network Elements, Combinations or Local Services provided pursuant to this Agreement may be connected to other Network Elements, Combinations or Local Services provided by GTE or to any Network Elements, Combinations or Local Services provided by AT&T itself or by any other vendor. Subject to the requirements of this Agreement, AT&T may, at any time add or delete the Local Services, or Network Elements or Combinations purchased hereunder.

2. **Term of Agreement**

This Agreement shall become effective two weeks following the issue date of the final order in the proceeding with respect to this Agreement. This arbitrated Agreement will be prepared, signed and executed not later than the effective date ordered by the Commission (the "Effective Date"). Each party shall designate a representative to sign the Agreement. The Agreement shall remain in effect for a period of three (3) years. This Agreement shall continue in effect for consecutive one (1) year terms, thereafter unless either Party gives the other Party at least ninety (90) calendar days written notice of termination, which termination shall be effective at the end of the then-current term.

3. **Termination of Agreement; Transitional Support**

3.1 Subject to any applicable restrictions and requirements contained elsewhere in this Agreement, AT&T may elect at any time to terminate this entire Agreement at AT&T's sole discretion, upon ninety (90) days prior written notice to GTE. Unless otherwise provided in this Agreement, in such case, AT&T's liability shall be limited to payment of the amounts due for Local Services, Network Elements, Combinations and Interconnection Services provided up to and including the date of termination. The Parties recognize that provision of uninterrupted service to customers is vital and services must be continued without interruption. Upon the termination or expiration of this Agreement, AT&T may itself provide or retain another vendor to provide comparable Local Services, Network Elements, or Combinations. GTE agrees to cooperate in an orderly and efficient transition to AT&T or another vendor such that the level and quality of the Local Services, Network Elements and Combinations are not degraded and to exercise reasonable efforts to assist in an orderly and efficient transition.

3.2 AT&T may terminate any Local Service(s), Network Element(s) or Combination(s) provided under this Agreement upon thirty (30) days written notice to GTE, unless a different notice period or different conditions are specified for termination of such Local Service(s), Network Element(s) or Combination(s) in this Agreement, in which event such specific period and conditions shall apply.

3.3 GTE will not discontinue any unbundled Network Element, Ancillary Function or Combination thereof during the term of this Agreement without AT&T's written consent which consent shall not be unreasonably withheld, except (1) to the extent required by network changes or upgrades, in which event GTE will comply with the network disclosure requirements stated in the Act and the FCC's implementing regulations; or (2) if required by a final order of the Court, the FCC or the Commission as a result of remand or appeal of the FCC's order In the Matter of Implementation of Local Competition Provisions of the Telecommunications Act of 1996, Docket 96-98. In the event such a final order allows but does not require discontinuance, GTE shall make a proposal for AT&T's approval, and if the Parties are unable to agree, either Party may submit the matter to the Dispute resolution procedures described in Attachment 1. GTE will not discontinue any Local Service or Combination of Local Services without providing 45 days advance written notice to AT&T, provided however, that if such services are discontinued with less than 45 days notice to the regulatory authority, GTE will notify AT&T at the same time it determines to discontinue the service. If GTE grandfathers a Local Service or combination of Local Services, GTE shall grandfather the service for all AT&T resale customers who subscribe to the service as of the date of discontinuance.

3.4 Either Party may terminate this Agreement at any time by giving written notice in writing to the other Party in the event the other Party files a petition for bankruptcy, is declared bankrupt, is insolvent, makes an assignment for the benefit of creditors, or goes into liquidation or receivership. In addition, either Party may terminate this Agreement in the event of a Party's refusal or failure to pay all or any portion of any amount required to be paid to the other Party as and when due; provided however that the Party allegedly due payment (1) notifies the other Party of the amounts due, (2) utilizes the ADR process set forth in Attachment 1, (3) obtains a favorable final ruling in that process and (4) does not receive payment within thirty (30) calendar days of the final ruling. There shall be no other reason for the unilateral termination of this Agreement.

4. **Good Faith Performance**

In the performance of their obligations under this Agreement, the Parties shall act in accordance with the good faith requirements of the Act. In situations in which notice, consent, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement), such action shall not be unreasonably delayed, withheld or conditioned.

5. **Section 252 (i) Election**

GTE shall allow AT&T to elect terms other than those set forth in this Agreement to the extent required by Section 252 of the Act, final regulations thereunder and relevant court decisions.

6. **Responsibility of Each Party**

Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Subject to the limitations on liability contained in this Agreement and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

7. **Governmental Compliance**

Except with respect to laws relating to the environment and laws relating to Intellectual Property Rights compliance with which is covered by Section 10.4, AT&T and GTE each shall comply with all Applicable Law that relates to i) its obligations under or activities in connection with this Agreement; or ii) its activities undertaken at, in connection with or relating to Work Locations. AT&T and GTE each agree to indemnify, defend (at the other Party's request) and save harmless the other, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from its failure to so comply. Each Party will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges which are necessary for such Party to perform its obligations under this Agreement.

8. **Environmental**

8.1 GTE and AT&T agree to comply with applicable federal, state and local environmental and safety laws and regulations including U.S. Environmental Protection Agency (EPA) regulations issued under the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act, Superfund Amendments and Reauthorization Act and the Toxic Substances Control Act and OSHA regulations issued under the Occupational Safety and Health Act of 1970 applicable to their performance under this Agreement. Each Party has the responsibility to notify the other if compliance inspections result in or citations are issued that impact any aspect of performance under this Agreement such as occurring on a LEC affected Work Location or involving CLEC potential employee exposure.

8.2 GTE and AT&T shall provide prompt reasonable notice to the other of known and discovered physical hazards or hazardous chemicals at any portion of an affected Work Location used by the other including, Material Safety Data Sheets (MSDSs) for materials existing or brought on site to the affected Work Location by such party.

8.3 AT&T and GTE will make available to each other their respective internal environmental control or safety procedures for review in planning work at a GTE Work Location. These practices/procedures will represent the regular work practices required to be followed by the employees and contractors for safety and environmental protection. AT&T will follow its practices unless for a specific Work Location or emergency procedure, GTE's practice provides a greater degree of safety or environmental control.

8.4 Any materials brought to or stored at a Work Location by AT&T are the property of AT&T. AT&T must demonstrate adequate emergency response capabilities for its materials used or remaining at the GTE Work Location.

8.5 [Intentionally Deleted]

8.6 AT&T agrees to obtain and use its own environmental permits, if necessary for its performance under this Agreement. If GTE's permit or EPA identification number must be used, AT&T must comply with applicable GTE environmental procedures, including environmental "best management practices (BMP)" and/or selection of disposition vendors and disposal sites to the extent provided by GTE. In the event that AT&T must use GTE's vendors for waste disposal, GTE assumes all liability for such materials, and GTE agrees to indemnify AT&T for any and all claims that may arise from such waste disposal.

8.7 [Intentionally Deleted]

8.8 GTE and AT&T shall coordinate plans or information required to be submitted to government agencies, such as emergency response plans and community reporting if applicable to their performance under this Agreement. If fees are associated with any required filing, GTE and AT&T will develop a cost sharing procedure. GTE and AT&T will determine for each Work Location which party has the lead responsibility for such filings and coordination.

8.9 Activities impacting safety or the environment of a Right of Way must be harmonized with the specific agreement and the relationship between GTE and the private land owner. This may include limitations on equipment access due to environmental conditions (e.g., wetland area with equipment restrictions).

8.10 For the purposes of this Section 8 only, the following terms have the meanings set forth in this subsection 8.10:

hazardous chemical: Means any chemical which is a health hazard or physical hazard as defined in the U.S. Occupational Safety and Health (OSHA) hazard communication standard (29 CFR 1910.1200).

third party contamination: Environmental pollution that is not generated by the LEC or CLEC but results from off-site activities impacting an affected Work Location.

8.11 <u>Spill and Release Notifications</u>

GTE and AT&T shall promptly notify the other of any spill or release of a Regulated Material at the facility. GTE's obligation under this Section is limited to those spills or releases likely to impact the portion of the facility used by AT&T, or any portion of the facility where AT&T personnel are

reasonably expected to be present. AT&T shall be responsible for reporting any spill or release of a Regulated Material occurring as part of or in connection with its operations that must be reported to any regulatory authority. AT&T will consult with GTE prior to making such report, unless the time required for prior consultation would preclude AT&T from complying with the applicable reporting requirement.

8.12 **Management of Manhole or Vault Water**

When conducting operations in any GTE manhole or vault area, AT&T shall follow the AT&T or GTE practice/procedure that provides the greatest degree of environmental control in evaluating and managing any water present in the manhole or vault area. AT&T shall be responsible for obtaining any permit or other regulatory approval necessary for any of its operations involving the evaluation, collection, discharge, storage, disposal, or other management of water present in a GTE manhole or vault area. GTE shall not be responsible for any costs incurred by AT&T in meeting its obligations under this Section unless GTE placed or otherwise caused materials or substances to be present in the manhole or vault area.

9. **Regulatory Matters**

9.1 GTE shall be responsible for obtaining and keeping in effect all FCC, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. AT&T shall be responsible for obtaining and keeping in effect all FCC, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with its offering of services to AT&T Customers contemplated by this Agreement. AT&T shall reasonably cooperate with GTE in obtaining and maintaining any required approvals for which GTE is responsible, and GTE shall reasonably cooperate with AT&T in obtaining and maintaining any required approvals for which AT&T is responsible.

9.2 Nothing in this Agreement shall be construed to deny either Party the right to file tariffs from time to time in the normal course of business. Nonetheless, each Party shall be exempt from any tariff change filed by the other Party during the term of this Agreement if such change conflicts with a price or other term of this Agreement, except to the extent that this Agreement makes the tariff item being changed determinative of such price or such other term, in which case the changed tariff shall apply prospectively.

9.3 [Intentionally Deleted]

9.4 [Intentionally Deleted]

10. **Liability and Indemnity**

10.1 **Liabilities of AT&T** - AT&T's liability to GTE during any Contract Year resulting from any and all causes under this Agreement, other than as specified in Sections 7, 8, 10.3 and 10.4 below, shall not exceed an amount equal to the amount due and owing by AT&T to GTE under this Agreement during the Contract Year in which such cause accrues or arises.

10.2 **Liabilities of GTE** - GTE's liability to AT&T during any Contract Year resulting from any and all causes under this Agreement, other than as specified in Sections 7, 8 and 10.4 below, shall not exceed an amount equal to any amounts due and owing by AT&T to GTE under this Agreement during the Contract Year in which such cause accrues or arises.

10.3 **No Consequential Damages** - NEITHER AT&T NOR GTE SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTIES), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION 10 SHALL LIMIT GTE'S OR AT&T's LIABILITY TO THE OTHER FOR (i) WILFUL OR INTENTIONAL MISCONDUCT (INCLUDING GROSS NEGLIGENCE); (ii) BODILY INJURY, DEATH OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY GTE'S OR AT&T's NEGLIGENT ACT OR OMISSION OR THAT OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR SHALL ANYTHING CONTAINED IN THIS SECTION 10 LIMIT THE PARTIES INDEMNIFICATION OBLIGATIONS, AS SPECIFIED BELOW. FOR PURPOSES OF THIS SECTION 10, AMOUNTS DUE AND OWING TO AT&T PURSUANT TO SECTION 11 (SERVICE PARITY) AND THE ATTACHMENT REFERENCED IN THAT SECTION SHALL NOT BE CONSIDERED TO BE INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES.

10.4 **Obligation to Indemnify**

Each Party shall, and hereby agrees to, defend at the other's request, indemnify and hold harmless the other Party and each of its officers, directors,

employees and agents (each, an "Indemnitee") against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement or any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, accounting or otherwise) (collectively, "Damages") arising out of, resulting from or based upon any pending or threatened claim, action, proceeding or suit by any third party (a "Claim"): (i) based upon injuries or damage to any person or property or the environment arising out of or in connection with this Agreement, that are the result of such Indemnifying Party's actions, breach of Applicable Law, or breach of representations, warranties or covenants made in this Agreement, or the actions, breach of Applicable Law or of this Agreement by its officers, directors, employees, agents and subcontractors, or (ii) for actual or alleged infringement of any patent, copyright, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property right now known or later developed (referred to as "Intellectual Property Rights") to the extent that such claim or action arises from the Indemnifying Party's or the Indemnifying Party's Customer's use of the Network Elements, Ancillary Functions, Combinations, Local Services or other services provided under this Agreement.

10.5 **Obligation to Defend; Notice; Co-operation** - Whenever a Claim shall arise for indemnification under this Agreement, the relevant Indemnitee, as appropriate, shall promptly notify the Indemnifying Party and request the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such Claim. The Indemnifying Party shall have the right to defend against such liability or assertion in which event the Indemnifying Party shall give written notice to the Indemnitee of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party. Except as set forth below, such notice to the relevant Indemnitee shall give the Indemnifying Party full authority to defend, adjust, compromise or settle such Claim with respect to which such notice shall have been given, except to the extent that any compromise or settlement shall prejudice the Intellectual Property Rights of the relevant Indemnitees. The Indemnifying Party shall consult with the relevant Indemnitee prior to any compromise or settlement that would adversely affect the Intellectual Property Rights of any Indemnitee, and the relevant Indemnitee shall have the right to refuse such compromise or settlement and, at the refusing Party's or refusing Parties' cost, to take over such defense, provided that in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant Indemnitee against, any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the relevant Indemnitee shall be entitled to participate with the Indemnifying Party in such defense to the extent the Claim requests equitable relief or other

relief that could affect the intellectual property rights of the Indemnitee and also shall be entitled to employ separate counsel for such defense at such Indemnitee's expense. In the event the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the relevant Indemnitee shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such Claim and the relevant records of each Party shall be available to the other Party with respect to any such defense.

11. **Service Parity and Standards**

11.1 Notwithstanding anything in this Agreement to the contrary, GTE shall meet any service standard imposed by the FCC or by any state regulatory authority for any Local Services, Unbundled Network Elements, Ancillary Functions and Interconnection provided by GTE to AT&T for resale.

11.2 GTE shall ensure that the quality of Local Services, network elements, ancillary functions, and interconnection provided to AT&T are at least equal in quality to that provided by GTE to itself.

11.3 GTE and AT&T agree to implement standards to measure the quality of the Local Services and Unbundled Network Elements supplied by GTE, in particular with respect to pre-ordering, ordering/provisioning, maintenance and billing. These quality standards are described in Attachment 12. In the event of a violation of Quality Standards by either Party, which the Complaining Party alleges constitutes a breach of this Agreement, the Complaining Party may elect, subject to the procedures set forth in Attachment 1, either (1) to seek such money damages as may be available at law; or (2) to claim the penalties specified in Attachment 12, but the Complaining Party may not seek both (1) and (2) based on the same alleged breach; provided, however, that nothing in this sentence shall prevent the Complaining Party from seeking equitable relief at the same time that it pursues a claim for money damages or a claim under Attachment 12.

11.4 [Intentionally Deleted]

11.5 If AT&T requests a standard higher than GTE provides to itself, such request shall be made as a Bona Fide Request pursuant to Attachment 12, and GTE shall provide such standard to the extent technically feasible. AT&T shall pay the incremental cost of such higher standard or other measurement of quality.

12. **Customer Credit History**

12.1 AT&T and GTE agree to make available to a designated third-party credit bureau, on a timely basis, such of the following customer payment history

information that is available solely from internal business records of the providing Party for each person or entity that applies for local or IntraLATA toll Telecommunications Service(s) from either carrier. Such information shall be provided on the condition that the credit bureau will only make such information available to the carrier to which the person or entity in question has applied for Telecommunication Service.

Applicants name;
Applicant's address;
Applicant's previous phone number; if any;
Amount, if any, of unpaid balance in applicant's name;
Whether applicant is delinquent on payments;
Length of service with prior local or IntraLATA toll provider;
Whether applicant had local or IntraLATA toll service terminated or suspended within the last six months with an explanation of the reason therefor; and
Whether applicant was required by prior local or IntraLATA toll provider to pay a deposit or make an advance payment, including the amount of each.

Nothing contained herein shall require either Party to undertake obligations which would subject that Party to requirements or liabilities as a consumer reporting agency under 15 U.S.C. §1681 et seq. and its implementing regulations or any similar statute, order or administrative rule of the State.

12.2 **Cooperation on Fraud Minimization** - The Parties shall cooperate with one another to investigate, minimize and take corrective action in cases of fraud. The Parties' fraud minimization procedures are to be cost effective and implemented so as not to unreasonably burden or harm one Party as compared to the other. At a minimum, such cooperation shall include, when permitted by law or regulation, providing the other Party, upon reasonable request, information concerning end users who terminate services to that Party without paying all outstanding charges, when that Party is notified that such end user seeks service from the other Party. If required, it shall be the responsibility of the Party seeking the information to secure the end user's permission (in the format required by law) to obtain the information. Although in most circumstances the end user's current telephone number may be retained by the end user when switching local service providers, if an end user has past due charges associated with the account, for which payment arrangements have not been made with one Party, the end user's previous telephone number will not be made available to the other Party until the end user's outstanding balance has been paid.

13. <u>Force Majeure</u>

13.1 Except as otherwise specifically provided in this Agreement, neither Party shall be liable for any delay or failure in performance of any part of this Agreement caused by any condition beyond the reasonable control of the Party claiming excusable delay or other failure to perform, including acts of the United States of America or any state, territory or political subdivision thereof, acts of God or a public enemy, fires, floods, freight embargoes, earthquakes, volcanic actions, wars, or civil disturbances. If any Force Majeure condition occurs, the Party whose performance fails or is delayed because of such Force Majeure condition shall give prompt notice to the other Party, and upon cessation of such Force Majeure condition, shall give like notice and commence performance hereunder as promptly as reasonably practicable, including implementation of disaster recovery plans.

13.2 Notwithstanding subsection 1, preceding, no delay or other failure to perform shall be excused pursuant to this Section:

(i) by the acts or omission of a Party's subcontractors, material men, suppliers or other third persons providing products or services to such Party unless such acts or omissions are themselves the product of a Force Majeure condition, and
(ii) unless such delay or failure and the consequences thereof are beyond the reasonable control and without the fault or negligence of the Party claiming excusable delay or other failure to perform.

14. **Certain State and Local Taxes**

Any state or local excise, sales, or use taxes (excluding any taxes levied on income) resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon the other Party. The collecting Party shall charge and collect from the obligated Party, and the obligated Party agrees to pay to the collecting Party, all applicable taxes, except to the extent that the obligated Party notifies the collecting Party and provides to the collecting Party appropriate documentation that qualifies the obligated Party for a full or partial exemption. Any such taxes shall be shown as separate items on applicable billing documents between the Parties. The obligated Party may contest the same in good faith, at its own expense, and shall be entitled to the benefit of any refund or recovery, provided that such Party shall not permit any lien to exist on any asset of the other Party by reason of the contest. The collecting Party shall cooperate in any such contest by the other Party, provided that the contesting Party shall pay the reasonable expenses of the collecting Party for any such cooperative activities.

15. **Alternative Dispute Resolution**

All Disputes arising under this Agreement or the breach hereof, except those arising pursuant to Attachment 6, Connectivity Billing, shall be resolved according to the procedures set forth in Attachment 1. Disputes involving matters subject to the Connectivity Billing provisions contained in Attachment 6, shall be resolved in accordance with the Billing Disputes section of Attachment 6. In no event shall the Parties permit the pendency of a Dispute to disrupt service to any customer of any Party contemplated by this Agreement except in the case of default and termination of this Agreement pursuant to Section 3.4. The foregoing notwithstanding, neither this Section 15 nor Attachment 1 shall be construed to prevent either Party from seeking and obtaining temporary equitable remedies, including temporary restraining orders.

16. **Notices**

Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in hard-copy writing (unless otherwise specifically provided herein) and shall be sufficiently given if delivered personally or delivered by prepaid overnight express service or certified mail, return receipt requested or by facsimile (followed by a hard copy delivered by U.S. Mail or another method specified herein) to the following (unless otherwise specifically required by this Agreement to be delivered to another representative or point of contact):

If to AT&T:

R. Reed Harrison
Vice President, AT&T
Room 4ED103
One Oak Way
Berkeley Heights, New Jersey 07922
Facsimile number: 908-771-2219

and

R. Steven Davis
Vice President, AT&T
Room 3252J1
295 North Maple Ave.
Basking Ridge, New Jersey 07920
Facsimile number: 908-953-8360

If to GTE:

Beverly Y. Menard
Regional Director - Regulatory & Industry Affairs

201 N. Franklin, MC FLTC0616
Tampa, FL 33602
Facsimile number: 813-223-4888

and

Thomas R. Parker, Esq.
Assistant Vice President and Associate General Counsel
HQ EO3J43
600 Hidden Ridge Drive
Irving, TX 75038
Facsimile Number: 972-718-1250

Either Party may unilaterally change its designated representative and/or address for the receipt of notices by giving seven (7) days' prior written notice to the other Party in compliance with this Section. Any notice or other communication shall be deemed given when received.

17. **Confidentiality and Proprietary Information**

17.1 For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business information, in written or tangible form, given by the Discloser to the Recipient that is stamped, labeled, or otherwise designated as "Proprietary" or "Confidential" or that contains other words or symbols clearly indicating that the Information is intended to be secure from public disclosure. "Confidential Information" also includes information that is intentionally provided or disclosed orally or visually if it is identified as proprietary or confidential when provided or disclosed and is summarized in a writing so marked and delivered within ten (10) days following such disclosure. "Confidential Information" also includes information that is observed or learned by one Party while it is on the premises (including leased collocation space) of the other Party. Notwithstanding the foregoing, all orders for Local Services, Network Elements or Combinations placed by AT&T pursuant to this Agreement, and information that would constitute Customer Proprietary Network Information of AT&T Customers pursuant to the Act and the rules and regulations of the FCC and Recorded Usage Data as described in Attachment 7, whether disclosed by AT&T to GTE or otherwise acquired by GTE in the course of the performance of this Agreement, shall be deemed Confidential Information of AT&T for all purposes under this Agreement whether or not specifically marked or designated as confidential or proprietary.

17.2 For the period set forth in Section 17.6, except as otherwise specified in this Agreement, the Recipient agrees (a) to use it only for the purpose of performing under this Agreement, (b) to hold it in confidence and disclose it to

no one other than its employees or agents or consultants having a need to know for the purpose of performing under this Agreement, and (c) to safeguard it from unauthorized use or disclosure with at least the same degree of care with which the Recipient safeguards its own Confidential Information. Any agent or consultant must have executed a written agreement of non-disclosure and non-use comparable in scope to the terms of this Section 17 which agreement shall be enforceable by the Discloser.

17.3 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies shall be subject to the same restrictions and protections as the original and shall bear the same copyright and proprietary rights notices as are contained on the original.

17.4 The Recipient agrees to return to the Discloser all Confidential Information received in tangible form from the Discloser, including any copies made by the Recipient, within thirty (30) days after a written request is delivered to the Recipient, or to destroy or erase all such Confidential Information and certify as to such event, except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement or as otherwise required by applicable law. If either Party loses or makes an unauthorized disclosure of the other Party's Confidential Information, it shall notify such other Party as soon as is reasonably practicable after the loss is discovered and use reasonable efforts to retrieve the lost or wrongfully disclosed information.

17.5 The Recipient shall have no obligation to safeguard Confidential Information: (a) which was in the possession of the Recipient free of restriction on use or disclosure prior to its receipt from the Discloser; (b) after it becomes publicly known or available through no breach of this Agreement or other restriction on use or disclosure by the Recipient; (c) after it is rightfully acquired by the Recipient free of restrictions on its use or disclosure; or (d) after it is proven to be independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party shall have the right to disclose Confidential Information to any mediator, arbitrator, state or federal regulatory body, the Department of Justice or any court in the conduct of any mediation, arbitration or approval of this Agreement subject to the requirements concerning notice and other measures specified in the last sentence of this Subsection. Additionally, the Recipient may disclose Confidential Information if so required by law, a court of competent jurisdiction, or governmental or administrative agency, so long as the Discloser has been notified of the requirement promptly after the Recipient becomes aware of the requirement, but prior to such disclosure and so long as the Recipient undertakes all lawful measures to avoid disclosing such information until Discloser has had reasonable time to seek a protective

order and Discloser complies with any protective order that covers the Confidential Information to be disclosed.

17.6 Each Party's obligations with respect to Confidential Information disclosed prior to expiration or termination of this Agreement shall expire three (3) years from the date of receipt of the initial disclosure, regardless of any termination of this Agreement prior to such expiration date; provided that the duties with respect to Confidential Information that is software, protocols and interfaces shall expire fifteen (15) years from the date of the initial disclosure.

17.7 Except as otherwise expressly provided elsewhere in this Agreement, no license is hereby granted under any patent, trademark, copyright or other Intellectual Property Right, nor is any such license implied, solely by virtue of the disclosure of any Confidential Information.

17.8 Each Party agrees that the Discloser would be irreparably injured by a breach of this Agreement by the Recipient or its representatives and that the Discloser shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Section 17. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 17, but shall be in addition to all other remedies available at law or in equity.

18. Branding

AT&T may, at its option, use the Network Elements, Combinations and Local Services provided in accordance with this Agreement to provide to its customers services branded as AT&T. Except as otherwise provided in this Agreement or specified in a separate writing by AT&T, AT&T shall provide the exclusive interface to AT&T Customers in connection with the marketing or offering of AT&T services. When a GTE technical representative goes to a customer premise on behalf of AT&T, in the event the representative has contact with the customer, the representative will indicate to the customer that he or she works for GTE but is at the customer premise on behalf of AT&T regarding AT&T service. If the customer is not at the premise at the time that the technical representative is at the premise, GTE agrees to deliver generic material or documents to the customer, and the representative will write AT&T's name on the document or material left for the customer. GTE personnel acting on behalf of AT&T will not discuss, provide, or leave information or material relative to GTE's services and products.

18.1 Operator Services and Directory Assistance provided by GTE to AT&T local service customers under this Agreement will be branded exclusively as AT&T services, where technically feasible. GTE will perform the necessary software upgrades to allow for rebranding of its Operator Services and Directory Assistance in AT&T's name on a switch by switch basis, subject to capability and capacity limitations; until those upgrades have been completed, GTE will

provide rebranded services through alternate means to the extent technically feasible. Where it is not technically feasible for GTE to provide Operator Services and Directory Assistance as rebranded services, then GTE will provide such services without any branding, if allowed by state laws and regulations. Live operators handling Operator Services and Directory Assistance calls from AT&T local service customers will identify themselves as AT&T operators; where such rebranding is not technically feasible, live operator response will be provided on an unbranded basis.

19. **Directory Listings and Directory Distribution**

GTE shall offer the following to AT&T:

19.1 **Directory Listings (White Pages) -** A basic listing for each AT&T Customer shall be included in the GTE white pages directory for such AT&T Customer's specific geographic area at no charge to AT&T or AT&T's Customers. Where an AT&T Customer has two numbers for a line due to the implementation of interim Local Number Portability, the second number shall be considered part of the White pages basic listing. Other listings that are made available to GTE Customers (e.g. additional listings, non-published status, foreign listings, etc.,) will be made available to AT&T Customers on the same rates, terms and conditions as available to GTE Customers. AT&T Customer Government listings will be listed in the same manner as GTE Customer Government listings.

19.2 **Directory Listings (Yellow Pages)** GTE will provide AT&T Customers with the same yellow page services on the same terms and conditions as those provided to GTE Customers. GTE will provide each AT&T Customer within the geographical area covered by the yellow pages directory a basic listing in GTE "yellow pages" under the classified heading that most accurately reflects the primary nature of the AT&T Customer's business at no charge to AT&T or AT&T Customers for this listing. GTE will supply AT&T with a list of authorized classified headings and will notify AT&T of any changes to such headings. AT&T agrees to supply GTE, on a regularly scheduled basis and in the format mutually agreed between AT&T and GTE, with a classified heading assignment for each AT&T Customer who wishes to receive this listing. GTE shall provide AT&T with monthly schedules (for a rolling twelve (12) month period) for Yellow Pages publications in the State.

19.3 **Listing Information -** AT&T agrees to supply GTE, on a regularly scheduled basis and in the format mutually agreed between AT&T and GTE, all listing information for AT&T Customers who wish to be listed in the white or yellow pages of the GTE published directory for that subscriber area. Listing information will consist of names, addresses (including city and ZIP code where provided in that directory) and telephone numbers. GTE shall employ

the listing information for the production of GTE-published white and yellow page directories. Listing inclusion in a given directory will be in accordance with directory configuration, scope and schedules established by GTE which are applicable to all GTE entities. GTE shall obtain AT&T's prior written approval for the use of AT&T Customers' listings for any other purpose. GTE will not sell or license, nor allow any third party, the use of AT&T subscriber listing and GTE will not disclose non-listed name or address information for any purpose without the prior written consent of AT&T, which shall not be unreasonably withheld. GTE will charge AT&T a reasonable service bureau extraction fee for all third party translations and AT&T will be free to establish its own fees for direct billing the third parties.

19.4 **Directory Distribution -** Initial directories will be provided to AT&T Customers for each AT&T Customer's specific geographic region on the same basis as GTE Customers within the same directory area. More specifically, GTE will not charge AT&T or AT&T Customers for annual distribution of directories. GTE will provide secondary distributions of directories (e.g. a new customer, requests for additional copies) to AT&T Customers at the same price that GTE is charged for secondary distribution by GTE Directories. AT&T shall pay GTE Directories for such secondary distributions based on GTE's agreement that the secondary distribution costs will be excluded from GTE's cost studies and resulting avoided cost discounts and prices for unbundled elements. Timing of such delivery and the determination of which Telephone Directories shall be delivered (by customer address, NPA/NXX or other criteria), and the number of Telephone Directories to be provided per customer, shall be provided under the same terms that GTE delivers Telephone Directories to GTE Customers. AT&T will supply GTE in a timely manner with all required subscriber mailing information, including non-listed and non-published subscriber mailing information, to enable GTE to perform its distribution responsibilities.

19.5 **Critical Customer Contact Information -** GTE will list in the information pages of its directories at no charge to AT&T, AT&T's critical customer contact information for business and residential customers regarding emergency services, billing, sales and service information, repair service and AT&T's logo. GTE shall list Competitive Local Exchange Carrier critical customer contact information on an alphabetical basis.

19.6 GTE shall also include, in the customer call guide page(s) of each Telephone Directory, up to four full pages of consolidated space for the inclusion of information about AT&T products and services, including addresses and telephone numbers for AT&T customer service. The form and content of such customer information shall be provided by AT&T to GTE and shall be subject to GTE review and approval, which approval shall not be unreasonably withheld. AT&T agrees to pay a price per page to be determined by GTE

Directories, provided that such price shall be nondiscriminatory to GTE and AT&T.

19.7 GTE shall, at no charge to AT&T, make available recycling services for Telephone Directories to AT&T Customers under the same terms and conditions that GTE makes such services available to its own local service customers.

19.8 Notwithstanding anything to the contrary contained herein, GTE may terminate this Section 19 as to a specific GTE exchange in the event that GTE sells or otherwise transfers the exchange to an entity other than a GTE Affiliate. GTE shall provide AT&T with at least ninety (90) days' prior written notice of such termination, which shall be effective on the date specified in the notice. Notwithstanding termination as to a specific exchange, this Section 19 shall remain in full force and effect in the remaining exchanges.

19.9 Notwithstanding the termination of this Section 19, the Parties' obligations with respect to any directories whose annual publication cycle has begun prior to the effective date of termination shall survive such termination. For example, if a Party terminates this Section 19 effective as of June 30, 1997, the Parties' survival obligations shall apply as follows:

Exchange	Beginning of Publication Cycle	Expiration of Obligations
1	January 1, 1997	December 31, 1997
2	June 1, 1997	May 31, 1998
3	August 1, 1997	June 30, 1997

a publication cycle begins the day following the listing activity close date for the current year's publication.

19.10 Directory Listing criteria shall be specified by GTE. GTE shall provide any changes to its Directory Listing Criteria thirty (30) days in advance of such changes becoming effective. The Directory Listing criteria shall include:

19.10.1 Classified heading information;

19.10.2 Rules for White Pages and Yellow Pages listings (e.g., eligibility for free Yellow Pages listing, space restrictions, unlisted and unpublished listings, abbreviated listings, foreign listings, and heading requirements);

19.10.3 Identification of Enhanced White Pages and Enhanced Yellow Pages listings available;

19.10.4 Publication schedules for White Pages and Yellow Pages;

19.10.5 Identification of which Telephone Directories are provided to which customers by customer address, NPA/NXX or other criteria;

19.10.6 Telephone Directory delivery schedules;

19.10.7 Restrictions, if any, on number of Telephone Directories provided at no charge to customer;

19.10.8 Processes and terms and conditions for obtaining foreign Telephone Directories from GTE; and

19.10.9 Geographic coverage areas of each Telephone (by municipality and NPA/NXX).

20. **Directory Assistance Listing Information**

20.1 GTE shall include in its directory assistance database all directory assistance listing information, which consists of name and address ("DA Listing Information") for all AT&T Customers, including those with nonpublished and unlisted numbers, at no charge to AT&T.

GTE shall provide to AT&T, at AT&T's request, for purposes of AT&T providing AT&T-branded directory assistance services to its local customers, within thirty (30) days after the Effective Date, all published GTE DA Listing Information via magnetic tape delivered within twenty-four (24) hours of preparation, at a the rate specified in Attachment 14. When available as part of the electronic interface, GTE shall provide real-time access to the DA Listing Information. Changes to the DA Listing Information shall be updated on a daily basis through the same means used to transmit the initial list. DA Listing Information provided shall indicate whether the customer is a residence or business customer.

20.2 Neither Party will release, sell, or license DA Listing Information that includes the other Party's end user information to third parties without the other Party's approval. The other Party shall inform the releasing Party if it desires to have the releasing Party provide the other Party's DA Listing Information to the third party, in which case, the releasing Party shall provide the other Party's DA Listing Information at the same time as the releasing Party provides the releasing Party's DA Listing Information to the third party. The rate to be paid by the releasing Party to the other Party for such sales shall be negotiated on a case-by-case basis.

21. **Busy Line Verification and Busy Line Verification Interrupt**

Prior to the exchange of traffic under this Agreement, each Party shall establish procedures whereby its operator bureau will coordinate with the operator bureau of the other Party to provide Busy Line Verification ("BLV")

and Busy Line Verification Interrupt ("BLVI") services on calls between their respective end users. Each Party shall route BLV and BLVI inquiries over separate inward operator services trunks. Each Party's operator assistance bureau will only verify and/or interrupt the call and will not complete the call of the end-user initiating the BLV or BLVI. Each Party shall charge the other for the BLV and BLVI services on a bill-and-keep basis.

22. **Number Assignment**

22.1 GTE shall allocate Central Office Codes, i.e. NXXs, in a neutral manner at parity with itself in those LATAs where GTE is the number administrator. GTE shall not charge a fee for the allocation of NXXs to AT&T for any costs including, but not limited to, programming expenses incurred by GTE in their role as number administrator; provided, however, that when responsibility for number assignment is transferred to a neutral third party, GTE shall charge a fee for such services to recover costs incurred that is consistent with the applicable rules and regulations for such.

22.2 GTE shall process all AT&T NXX requests in a timely manner as per the ICCF Code Assignment Guidelines and will provide numbers in any NPA/NXX associated with a terminating line within the boundaries of an LSO, in those LATAs where GTE is the number administrator.

22.3 GTE, during the interim period, will maintain its current process of notifying public utility commissions and state regulatory bodies of plans for NPA splits and code relief.

22.4 GTE shall treat as confidential, and solely for use in its role as Code Administrator and for no other purpose, any and all information received from AT&T regarding NPA/NXX forecasts. This information shall be used only for the purposes of code administration, e.g. NPA code relief studies.

22.5 GTE shall participate in the transition of its code administration responsibilities to a neutral third party and will notify AT&T if there are not sufficient numbers to meet the forecasted requirements of AT&T.

22.6 GTE shall provide AT&T with a file, or files, containing a street address/LSO cross reference indicating which LSO serves the cross referenced street address.

23. **Miscellaneous**

23.1 **Delegation or Assignment** - Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void, except that either Party may assign all of its rights, and delegate its obligations, liabilities and duties under this

Agreement, either in whole or in part, to any entity that is, or that was, an Affiliate of that Party without consent, but with written notification, provided that in the case of AT&T, such Affiliate is a certified provider of local dial-tone service in the State to the extent such State requires such certification. The effectiveness of an assignment shall be conditioned upon the assignee's assumption of the rights, obligations, and duties of the assigning Party.

23.2 **Subcontracting** - GTE may subcontract the performance of any obligation under this Agreement without the prior written consent of AT&T, provided that GTE shall remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations it performs through subcontractors, and GTE shall be solely responsible for payments due its subcontractors. No contract, subcontract or other Agreement entered into by either Party with any third party in connection with the provision of Local Services or Network Elements hereunder shall provide for any indemnity, guarantee or assumption of liability by, or other obligation of, the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party. No subcontractor shall be deemed a third party beneficiary for any purposes under this Agreement.

23.3 [Intentionally Deleted]

23.4 **Binding Effect** - This Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

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

23.6 **No Third-Party Beneficiaries** - Except as specifically set forth in Section 10.4 and 10.5, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

23.7 **Referenced Documents** - Whenever any provision of this Agreement refers to a technical reference, technical publication, AT&T Practice, GTE Practice, any publication of telecommunications industry administrative or technical standards, or any other document expressly incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect at the time of the execution of this Agreement, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, AT&T Practice, GTE Practice, or publication of industry standards.

23.8 **Regulatory Agency Control** - This Agreement shall at all times be subject to changes, modifications, orders, and rulings by the FCC and/or the applicable state utility regulatory commission to the extent the substance of this Agreement is or becomes subject to the jurisdiction of such agency. "Business Day" shall mean Monday through Friday, except for holidays on which the U. S. Mail is not delivered.

23.9 [Intentionally Deleted]

23.10 **Publicity and Advertising** - Any news release, public announcement, advertising, or any form of publicity pertaining to this Agreement, or the provision of Local Services, Unbundled Network Elements, Ancillary Functions or Interconnection Services pursuant to it, or association of the Parties with respect to provision of the services described in this Agreement shall be subject to prior written approval of both GTE and AT&T. Neither Party shall publish or use any advertising, sales promotions or other publicity materials that use the other Party's logo, trademarks or service marks without the prior written approval of the other Party.

23.11 **Amendments or Waivers** - Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement, and no consent to any default under this Agreement, shall be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition. By entering into this Agreement, neither Party waives any right granted to it pursuant to the Act.

23.12 **Severability** - If any term, condition or provision of this Agreement is held by a governmental body of competent jurisdiction be invalid or unenforceable for any reason, such invalidity or unenforceability shall not invalidate the entire Agreement. The Agreement shall be construed as if it did not contain the invalid or unenforceable provision or provisions, and the rights and obligations of each Party shall be construed and enforced accordingly.

23.13 **Entire Agreement** - This Agreement, which shall include the Attachments, Appendices and other documents referenced herein, constitutes the entire Agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein.

23.14 **Survival of Obligations** - Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement; any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations on liability, and any other provisions of

this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination thereof.

23.15 **Executed in Counterparts** - In the event that the Commission requires that this Agreement be executed by each of the Parties, This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

23.16 **Headings of No Force or Effect** - The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

23.17 **Trademarks and Trade Names** - Except as specifically set out in this Agreement, nothing in this Agreement shall grant, suggest, or imply any right, license or authority for one Party to use the name, trademarks, service marks, or trade names of the other Party for any purpose whatsoever.

23.18 **Notice of Network and Technology Changes** - GTE shall establish quarterly reviews of network and technologies plans. GTE shall notify AT&T at least six (6) months in advance of changes that would impact AT&T's provision of service.

23.19 **Technical References** -

23.19.1 The technical references cited throughout this Agreement shall apply unless GTE shall offer, within ninety (90) days following Commission approval of this Agreement, GTE's proposed substitute technical references, for consideration and review by subject matter experts designated, respectively, by AT&T and GTE. Within ten (10) business days following AT&T's receipt of true and complete copies of GTE's proposed substitute technical references, AT&T and GTE subject matter experts shall meet in person or via teleconference to review the substitute reference(s) with a view toward achieving agreement on the suitability of such references for implementation and incorporation into this Agreement. The subject matter experts may agree to implement and incorporate, to modify or supplement, or to replace any such substitute technical reference proposed by GTE. Where they so agree, the resulting substitute technical reference shall be implemented and incorporated forthwith, by formal amendment in writing, into this Agreement. Where they disagree with respect to the suitability or adequacy of any such proposed substitute technical reference, the GTE-proposed substitute technical reference shall be incorporated into this Agreement at the conclusion of the ten business day period cited above, by formal amendment in writing, subject to AT&T's right to pursue the dispute and the implementation of more suitable

technical references through the ADR procedures set forth in Attachment 1 to this Agreement. AT&T may initiate such ADR procedures within sixty (60) days following the incorporation of the challenged technical reference into this Agreement.

23.19.2 The parties recognize the possibility that some equipment vendors may manufacture telecommunications equipment that does not fully incorporate or may deviate from the technical references contained in this Agreement. To the extent that, due to the manner in which individual manufacturers may have chosen to implement industry standards into the design of their product, or due to the differing vintages of these individual facility components and the presence of embedded technologies that pre-date certain technical references, some of the individual facility components deployed with GTE's network may not adhere to the technical references, then, within forty-five (45) days after the Effective Date of this Agreement:

(a) the Parties will develop processes by which GTE will inform AT&T of any such deviations from technical standards for Network Elements or Combinations ordered by AT&T;

(b) the Parties will develop further processes and procedures designed, upon notice of such deviations from technical standards, to address the treatment of GTE and AT&T customers at parity; and

(c) the parties will take such other mutually agreed upon actions as shall be appropriate in the circumstances.

23.20 Any figures and/or schematics used throughout this Agreement, including, but not limited to, the figures and/or schematics used in Attachment 2 to this Agreement, are for the convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

PART I LOCAL SERVICES RESALE

24. Telecommunications Services Provided for Resale

Upon request by AT&T in accordance with Attachment 4 and subject to the restrictions contained in Section 25.3 hereunder, GTE shall make available to AT&T at the applicable rate set forth in Attachment 14, any Telecommunications Service that GTE currently offers or may hereafter offer at retail to subscribers that are not telecommunications carriers. Such Telecommunications Services provided by GTE pursuant to this Section are collectively referred to as "Local Services."

25. General Terms and Conditions for Resale

25.1 Ordering

25.1.1 Orders for resale of Local Services will be placed utilizing a standard Local Service Request ("LSR") form. A complete and accurate LSR must be provided by AT&T before a request can be processed; provided, however, that immaterial deviations or omissions in the LSR will not prevent an order from being processed. Each Party shall transfer the customer's service features and functionalities "as is" to the other Party when requested by a customer. For purposes of this Section 25, an "as is transfer" is the transfer of all the telecommunications services and features available for resale that are currently being provided for the specified account without the requirement of a specific enumeration of the services and features on the LSR.

25.1.2 A Letter of Authorization ("LOA") will be required before Local Services will be provided for resale to a subscriber that currently receives local exchange service from GTE or from a local service provider other that AT&T. Such LOA may be a blanket letter of authorization (Blanket LOA) or such other form as agreed upon by AT&T and GTE. When a Blanket LOA has been provided by AT&T, GTE shall not require an additional disconnect order, LOA or other writing from a customer, or another LEC, in order to process an order for Local Service. Each Party will provide the capability for customers to retain their current phone number in the event that they change local service providers to the extent technically feasible, allowing them to retain all existing features and functionalities.

25.1.3 GTE shall include an AT&T Customer's listing in its Directory Assistance database as part of the Local Service Request ("LSR") process. GTE will honor AT&T Customer's preferences for listing status, including non-published and unlisted, as noted on the LSR and will enter the listing in the GTE database which is used to perform Directory Assistance functions as it appears on the LSR.

25.1.4 GTE shall accept requests for a change in the primary interexchange carrier of a local exchange customer of AT&T only from AT&T.

25.2 **Pricing**

The prices to be charged to AT&T for Local Services under this Agreement are set forth in Part V of this Agreement.

25.3 **Restrictions on Resale**

To the extent consistent with the applicable rules and regulations of the FCC and the Commission, AT&T may resell all GTE Local Services as defined in GTE's tariffs. The following restrictions shall apply to the resale of Local Services, as described in Section 24 of this Agreement by AT&T: (i) AT&T shall not resell residential services to non-residential end users; (ii) AT&T shall not resell Lifeline/Linkup services or any other means-tested service offering, to nonqualifying customers; and (iii) AT&T shall resell grandfathered services only to customers qualified to receive such services from GTE.

25.4 [Intentionally Deleted]

25.5 **Dialing and Service Parity**

25.5.1 GTE will provide the same dialing parity to AT&T Customers as similarly-situated GTE Customers, such that, for all call types, an AT&T Customer is not required to dial any greater number of digits than a similarly-situated GTE Customer; provided however with respect to intra-LATA dialing, GTE shall provide dialing parity to AT&T customers in the State in accordance with the provisions and schedule established by the Commission.

25.5.2 GTE will provide service levels for Local Services for resale that are equal to service levels for similarly-situated GTE Customers, such that there is no loss of features or functionalities including, but not limited to: same dial tone and ringing; same capability for either dial pulse or touch tone recognition; flat and measured services; speech recognition as available; same extended local free calling area; 1+ IntraLATA toll calling; InterLATA toll calling and international calling; 500, 700, 800, 900, 976 and Dial Around (10xxx) Services; restricted collect and third number billing; all available speeds of analogue and digital private lines; off-premise extensions; CENTRANET and ISDN.

25.6 **Changes in Retail Service**

GTE will notify AT&T of proposed new retail services or modifications to existing retail services forty-five (45) days prior to the expected date of regulatory approval of the new or modified services. If new services or modifications are introduced with less than forty-five (45) days notice to the regulatory authority, GTE will notify AT&T at the same time it determines to

introduce the new or modified service. With respect to changes in prices for existing retail services or related resale rates, GTE will notify AT&T at the same time as GTE begins internal implementation efforts (i.e., at least at the time that GTE's Product Management Committee is notified of the proposed change) or obtains internal approval to make the price change, whichever is sooner. GTE will not be liable to AT&T, whether in contract, warranty, strict liability or tort, if, after announcement of a new or modified service but before such service goes into effect, GTE modifies or withdraws that service.

26. **Requirements for Specific Services**

26.1 [Intentionally deleted]

26.2 CLASS/LASS and Custom Features Requirements

AT&T may purchase the entire set of CLASS/LASS and Custom features and functions, or a subset of any one or any combination of such features, on a customer-specific basis, without restriction on the minimum or maximum number of lines or features that may be purchased for any one level of service, provided such CLASS/LASS and Custom features are available to GTE Customers served by the same GTE Central Office. GTE shall provide to AT&T a list of CLASS/LASS and Custom features and functions within ten (10) business days of the Effective Date and shall provide updates to such list when new features and functions become available. GTE shall provide to AT&T a list of all services, features, and products including a definition of the service (by specific reference to the appropriate tariff sections) and how such services interact with each other. GTE shall provide features and services by street address guide and by switch. All features shall be at least at parity with the GTE service offering.

26.3 This Section intentionally left blank.

26.4 **Intercept and Transfer Service**

GTE shall provide intercept and transfer service to AT&T for AT&T Customers on the same basis and for the same length of time as such service is available to similarly-situated GTE Customers. To that end, when an end-user customer transfers service from GTE to AT&T, or from AT&T to GTE, and does not retain its original telephone number, the Party formerly providing service to the end user will provide, upon request, a referral announcement on the original telephone number. The announcement will provide the new number of the customer.

26.5 **E911/911 Services**

GTE shall provide to AT&T, for AT&T Customers, E911/911 call routing to the appropriate PSAP. AT&T shall provide AT&T Customer information to GTE,

and GTE shall validate and provide AT&T Customer information to the PSAP. GTE shall use its service order process to update and maintain, on the same schedule that it uses for its end users, the AT&T Customer service information in the ALI/DMS (Automatic Location Identification/Location Information Database Management System) used to support E911/911 services, pursuant to National Emergency Number Agency (NENA) standards. AT&T shall have the right to verify the accuracy of the information regarding AT&T Customers in the ALI database.

26.6 **Telephone Relay Service**

GTE will provide the following information to AT&T at no additional charge:
(i) information concerning a customer's qualification for Telephone Relay Service (TRS) on the Customer Service Record (CSR) when that customer chooses AT&T for local service; and
(ii) all usage billing information which GTE receives from a provider of TRS for TRS usage by an AT&T Customer.

26.7 **Voice Mail Related Services**

Nothing in this Agreement shall limit the right of AT&T to purchase features capabilities of voice mail services in accordance with GTE's tariffs. In addition, nothing in this Agreement shall limit the right of AT&T to combine features capabilities of voice mail services purchased in accordance with GTE's tariffs with any Local Services purchased for resale in accordance with this Agreement.

26.8 **Voluntary Federal Customer Financial Assistance Programs**

Local Services provided to low-income subscribers, pursuant to requirements established by the appropriate state or federal regulatory body, include programs such as Voluntary Federal Customer Financial Assistance Programs, such as Lifeline, and Link-up America (collectively referred to as "Voluntary Federal Customer Financial Assistance Programs") and Directory Assistance - Exempt. When a GTE Customer eligible for these services chooses to obtain Local Service from AT&T, GTE shall forward to AT&T on the Customer Service Record information regarding such customer's eligibility to participate in such programs. If GTE under the applicable laws of the State cannot provide the CSR to AT&T, GTE shall otherwise inform AT&T of such customer's eligibility.

27. **Advanced Intelligent Network**

27.1 GTE will provide AT&T access to the GTE Service Creation Environment (SCE) to design, create, test, deploy and provision AIN-based features, equivalent to the access GTE provides to itself, providing that security

arrangements can be made. AT&T requests to use the GTE SCE will be subject to request, review and testing procedures to be agreed upon by the parties.

27.2 When AT&T utilizes GTE's Local Switching network element and requests GTE to provision such network element with a technically feasible AIN trigger, GTE will provide access to the appropriate AIN Call Related Database for the purpose of invoking either a GTE AIN feature or an AT&T developed AIN feature described in 27.1, above.

27.3 When AT&T utilizes its own local switch, GTE will provide access to the appropriate AIN Call Related Database for the purpose of invoking either a GTE AIN feature or an AT&T developed AIN feature described in 27.1, above.

27.4 Any mediation to GTE's AIN database will be performed on a competitively neutral, nondiscriminatory basis. Any network management controls found necessary to protect the SCP from an overload condition must be applied on a nondiscriminatory basis for all users of that database, including GTE. GTE and AT&T agree that any load mediation will affect all links to the STP, including GTE's, in a like manner. AT&T will provide the information necessary to ensure that GTE is able to engineer sufficient capacity on the AIN SCP platform.

28. **Routing to Directory Assistance and Operator Services**

28.1 Where AT&T purchases either Local Services or Local Switching as an Unbundled Element, upon AT&T's request, GTE will, where technically feasible, provide the functionality and features required to modify the AT&T Customer's line at GTE's local switch (LS) to route all calls to the AT&T Network for local Directory Assistance and the AT&T Platform for Operator Services. AT&T shall pay GTE's costs, if any, pursuant to the pricing standards of Section 252(d) of the Act and in such amounts or levels as determined by the Commission for implementation of such routing. Such costs shall only include GTE's costs for providing customized routing that requires capabilities that are beyond those that currently reside in the switch.

28.2 **Directory Assistance**

Upon AT&T's request, and where technically feasible, GTE shall route local Directory Assistance calls, including 411 and (NPA) 555-1212, dialed by AT&T Customers directly to the AT&T platform, unless AT&T requests otherwise pursuant to Section 28.7.2. AT&T shall pay GTE's costs, if any, pursuant to the pricing standards of Section 252(d) of the Act and in such amounts or levels as determined by the Commission for implementation of such routing. Such costs shall only include GTE's costs for providing

customized routing that requires capabilities that are beyond those that currently reside in the switch.

28.3 **Operator Services**

Upon AT&T's request, and where technically feasible, GTE shall route local Operator Services calls (0+, 0-) dialed by AT&T Customers directly to the AT&T Local Operator Services platform, unless AT&T requests otherwise pursuant to Section 28.7.1. Such traffic shall be routed over trunk groups specified by AT&T which connect GTE end offices and the AT&T Local Operator Services platform, using standard Operator Services dialing protocols of 0+ or 0-. Where intraLATA presubscription is not available, GTE will provide the functionality and features within its local switch (LS), to route AT&T Customer dialed 0- and 0+ intraLATA calls to the AT&T designated line or trunk on the Main Distributing Frame (MDF) or Digital Cross Connect (DSX) panel via Modified Operator Services (MOS) Feature Group C signaling. Where intraLATA presubscription is available, AT&T Customer dialed 0- and 0+ intraLATA calls will be routed to the intraLATA PIC carrier's designated operator services platform. In all cases, GTE will provide post-dial delay no greater than that provided by GTE for its end user customers. For switches lacking the existing capacity and capability to provide the customized rerouting described in this Section 28, GTE shall develop alternative forms of customized routing. AT&T shall pay GTE's costs, if any, pursuant to the pricing standards of Section 252(d) of the Act and in such amounts or levels as determined by the Commission for implementation of such routing. Such costs shall only include GTE's costs for providing customized routing that requires capabilities that are beyond those that currently reside in the switch.

28.4 **Repair Calls**

In the event an AT&T Customer calls GTE with a request for repairs, GTE shall provide the AT&T Customer with AT&T's repair 800-telephone number. AT&T agrees to provide GTE with AT&T's repair 800-telephone numbers.

In the event a GTE Customer calls AT&T with a request for repairs, AT&T shall provide the GTE Customer with GTE's repair 800-telephone number. GTE agrees to provide AT&T with GTE's repair 800-telephone number.

28.5 **Non-discriminatory Treatment**

All direct routing capabilities described herein shall permit AT&T Customers to dial the same telephone numbers for AT&T Directory Assistance, Local Operator and the same number of digits for Repair Services that similarly-situated GTE Customers dial for reaching equivalent GTE services. AT&T and GTE will use 800/888 numbers where necessary to achieve this result.

28.6 [Intentionally Deleted]

28.7 **Optional Routing**

28.7.1 Operator Services: AT&T may request GTE to route AT&T Customers to GTE Operator Services. In this case, the requirements for GTE-provided Operator Services as part of the Total Services Resale service shall be those requirements specified in Attachment 2, "Unbundled Elements", Section 5.1, "Operator Services." AT&T shall pay GTE's costs, if any, pursuant to the pricing standards of Section 252(d) of the Act and in such amounts or levels as determined by the Commission for implementation of such routing. Such costs shall only include GTE's costs for providing customized routing that requires capabilities that are beyond those that currently reside in the switch.

28.7.2 Directory Assistance: AT&T may request GTE to route AT&T Customers to GTE's Directory Assistance. In this case, the requirements for GTE-provided Directory Assistance Services as part of the Total Services Resale service shall be those requirements specified in Attachment 2, "Unbundled Elements", Section 6, "Directory Services." AT&T shall pay GTE's costs, if any, pursuant to the pricing standards of Section 252(d) of the Act and in such amounts or levels as determined by the Commission for implementation of such routing. Such costs shall only include GTE's costs for providing customized routing that requires capabilities that are beyond those that currently reside in the switch.

28.8 **Line Information Database Updates**

GTE shall update and maintain AT&T Customer information in the GTE Line Information Database ("LIDB") in the same manner and on the same schedule that it maintains information in LIDB for GTE Customers.

28.9 **Telephone Line Number Calling Cards**

Upon request by an AT&T Customer or by AT&T on behalf of an AT&T Customer, and effective as of the date of an end user's subscription to AT&T service (or such later date as such request is received), GTE will remove any GTE-assigned telephone line calling card number (including area code) ("TLN") from GTE's LIDB. AT&T may issue a new telephone calling card to such customer, utilizing the same TLN, and AT&T shall have the right to enter such TLN in AT&T's LIDB for calling card validation purposes.

28.10 **End Office Features**

GTE shall provide the following end-office features in those end offices in which such features are available to GTE Customers: CLASS features; Repeat Dial Capability; Multi-line Hunting; and trunk connectivity to private branch exchange switches (PBX's) and Direct Inward Dialed Services and all other end-office features that GTE makes available to GTE Customers.

28.11 **Call Blocking**

Upon AT&T's request and when available to similarly-situated GTE Customers, GTE will provide blocking on a line by line basis of an AT&T Customer's access to any or all of the following call types: 900/976; bill to third and collect; and such other call types for which GTE provides blocking to similarly situated GTE Customers.

28.12 **Law Enforcement and Service Annoyance**

Not later than forty-five (45) business days after the Effective Date, GTE and AT&T will begin the process of developing procedures to handle requests from law enforcement agencies for service termination, wire taps and provisions of Customer Usage Data pursuant to a lawful process as well as procedures to handle AT&T Customer complaints concerning harassing or annoying calls. Such procedures will include, but not be limited to, a process for AT&T to interface with GTE regarding law enforcement and service annoyance issues on a 24 hour per day, 7 days a week basis and otherwise on the same basis as GTE provides access for its own customers.

29. **Service Support Functions**

29.1 **Electronic Interface**

29.1.1 Until such time as GTE and AT&T are able to fully implement electronic interfaces ("EI"), GTE and AT&T agree to use interim processes for Pre-Ordering, Ordering, Provisioning, Maintenance, Repair and Billing.

29.1.1.1 The schedule for implementing an interim electronic interface shall be subject to the memorandum of understanding ("MOU") relating to electronic interfaces negotiated by GTE and AT&T under the direction of the California Commission in connection with the decision in 96-07-022.

29.1.2 In accordance with the schedule set out in the MOU, GTE shall provide a Real Time electronic interface ("EI") for sending and receiving information on demand for Pre-Ordering, for Ordering/Provisioning data and materials (e.g., access to Street Address Guide ("SAG") and Telephone Number Assignment database), and for scheduling service delivery. GTE shall provide an electronic interface ("EI") for sending and receiving information on agreed, pre-defined schedules ("batch communications") for reports and Billing. These interfaces shall be administered through a national ordering platform that will serve as a single point of contact for the transmission of such data from AT&T to GTE, and from GTE to AT&T.

29.1.3 No later than six (6) months after the Effective Date of this Agreement, GTE will : (i) establish the national gateway standards to be used by AT&T and all

other carriers connecting to GTE's Operations Support Systems ("OSS"); and (ii) establish the date by which GTE will provide permanent national gateway access to its OSS. GTE will provide this permanent national gateway access at the earliest practical date but in no case later than twelve (12) months after the Effective Date of this Agreement, which shall include ensuring that all interfaces are operational and end-to-end testing has been successfully completed.

29.1.4 [Intentionally Deleted]

29.1.5 The Parties agree that the principles outlined in Attachment 13 and related time schedules will be used as a starting point for the development of the permanent national gateway.

29.1.6 GTE shall provide the same information, of the same quality and within the same time frames for Pre-Ordering, Ordering/Provisioning, Maintenance/ Repairs and Billing to AT&T as GTE provides to itself. The Parties recognize that GTE is not required to establish new systems or processes in order to provide information to AT&T which GTE does not provide to itself.

29.1.7 All Parties shall be responsible for their share of costs to develop and implement electronic interfaces with operational support systems. GTE shall provide TSLRIC cost studies for each interface as it is developed. The cost study shall be filed, along with a proposed recovery mechanism, 60 days before the implementation of the interface.

29.2 **Service Standards**

29.2.1 GTE shall ensure that all Service Support Functions used to provision Local Service to AT&T for resale are provided at a quality level which GTE is required to meet by its own internal procedures or by law, or is actually meeting, in providing Local Service to itself, to its end users or to its affiliates.

29.2.2 Not later than twenty (20) business days after the Effective Date of this Agreement, GTE and AT&T shall begin the process of developing mutually agreed-upon escalation and expedite procedures to be employed at any point in the Local Service Pre-Ordering, Ordering/Provisioning, Testing, Maintenance, Billing and Customer Usage Data transfer processes to facilitate rapid and timely resolution of Disputes.

29.3 **Point of Contact for the AT&T Customer**

29.3.1 Except as otherwise provided in this Agreement or as directed by AT&T, AT&T shall be the single and sole point of contact for all AT&T Customers with respect to AT&T Local Services.

29.3.2 GTE shall refer all questions regarding any AT&T service or product directly to AT&T at a telephone number specified by AT&T and provided to GTE for that purpose.

29.3.3 GTE representatives who receive inquiries regarding AT&T services: (i) shall refer callers who inquire about AT&T services or products to the numbers provided; and (ii) will not in any way disparage or discriminate against AT&T, or its products or services.

29.4 **Single Point of Contact**

Each Party shall provide the other Party with a single point of contact ("SPOC") for each functional area for all inquiries regarding the implementation of this Part. Each Party shall accept all inquiries from the other Party and provide timely responses.

29.5 **Service Order**

To facilitate the ordering of new service for resale or changes to such service to an AT&T Customer, AT&T's representative will have access to GTE Customer information to enable the AT&T representative to perform the tasks enumerated below. Until electronic interfaces are established, these functions will be performed with the use of an 800 number.

29.5.1 Obtain customer account information through the same nondiscriminatory access to Operation Support Systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing as GTE provides itself including information regarding the facilities and services assigned to individual customers.

29.5.2 Obtain information on all features and services available, including new services, by LSO identified by switch, NPA-NXX and customer street address.

29.5.3 Submit the AT&T Customer order by submitting an LSR using the agreed upon electronic interface (the Network Data Mover or NDM) for all desired features and services;

29.5.4 Assign a telephone number, including a vanity number, (if the AT&T Customer does not have one assigned). As an interim step prior to the implementation of the electronic interface specified in Section 29.1, GTE will establish an 800 (toll-free) number for AT&T;

29.5.5 Submit the appropriate directory listing using the agreed to EI;

29.5.6 Determine if a service call is needed to install the line or service;

29.5.7 Schedule dispatch and installation, if applicable;

29.5.8 Provide service availability dates to customer;

29.5.9 Order local and intraLATA toll service and enter AT&T Customer's choice of primary interexchange carrier on a single, unified order; and

29.5.10 Suspend, terminate or restore service to an AT&T Customer using agreed to methods (temporary disconnects for nonpayment may not be requested using the LSR).

29.6 **Provisioning**

29.6.1 After receipt and acceptance of an LSR, GTE shall provision such LSR in accordance with the following Intervals and in accordance with the service parity standards and other performance standards specified in Section 11 and Attachment 12.

29.6.2 GTE shall provide AT&T with service status notices, on a Real Time basis. Such status notices shall include the following:

29.6.2.1 Firm order confirmation, including service availability date and information regarding the need for a service dispatch for installation;

29.6.2.2 Notice of service installation issued at time of installation, including any additional information, such as material charges;

29.6.2.3 Changes/rejections/errors in LSRs;

29.6.2.4 Service completion;

29.6.2.5 Jeopardies and missed appointments;

29.6.2.6 Charges associated with necessary construction;

29.6.2.7 Order status at critical intervals;

29.6.2.8 Test results of the same type that GTE records for itself or its own customers.

29.6.3 GTE shall inform AT&T of overall change order flexibility and any changes thereto on a Real Time basis.

29.6.4 GTE shall notify AT&T prior to making any changes in the services, features or functions specified on the LSR. If an AT&T Customer requests a service change at the time of installation GTE shall refer the AT&T Customer to AT&T.

29.6.5 GTE shall provide provisioning support to AT&T on the same basis that it provides to other competitive LECs and to itself. GTE retains full discretion to control the scheduling of its provisioning workforce.

29.6.6 GTE shall provide training for all GTE employees who may communicate, either by telephone or face-to-face, with AT&T Customers, during the provisioning process. Such training shall include training on compliance with the branding requirements of this Agreement.

29.7 **Provision of Customer Usage Data**

GTE shall provide the Customer Usage Data recorded by GTE. Such data shall include complete AT&T Customer usage data for Local Service, (i.e., the same usage data that GTE records for billing its own customers), in accordance with the terms and conditions set forth in Attachment 7.

29.8 **Service/Operation Readiness Testing**

29.8.1 In addition to testing described elsewhere in this Section 29, GTE shall test the systems used to perform the following functions at a negotiated interval and in no event less than ten (10) business days prior to commencement of GTE's provision of Local Service to AT&T, in order to establish system readiness capabilities:

29.8.1.1 All interfaces between AT&T and GTE work centers for Service Order Provisioning;

29.8.1.2 Maintenance, Billing and Customer Usage Data;

29.8.1.3 The process for GTE to provide customer profiles;

29.8.1.4 The installation scheduling process;

29.8.1.5 Network alarm reporting;

29.8.1.6 Telephone number assignment;

29.8.1.7 Procedures for communications and coordination between AT&T SPOC and GTE SPOC;

29.8.1.8 Procedures for transmission of Customer Usage Data; and

29.8.1.9 Procedures for transmitting bills to AT&T for Local Service.

29.8.2 The functionalities identified above shall be tested in order to determine whether GTE performance meets the service parity requirements and other performance standards specified in Section 11. GTE shall make available sufficient technical staff to perform such testing. GTE technical staff shall be available to meet with AT&T as necessary to facilitate testing. GTE and AT&T shall mutually agree on the schedule for such testing.

29.8.3 At AT&T's request, GTE shall provide to AT&T any results of the testing performed pursuant to the terms of this Part. AT&T may review such results and may notify GTE of any failures to meet the requirements of this Agreement.

29.8.4 GTE shall provide to AT&T the same type and quality of loop testing information that it provides to and records for itself. Where GTE develops loop testing information as a matter of course, it will make that information available to AT&T where such information is relevant to AT&T's business. Where GTE maintains the internal discretion to test loops as needed, GTE will provide similar testing discretion to AT&T. AT&T shall pay the full cost of any such discretionary testing.

29.8.5 Within 60 days of the Effective Date of this Agreement, AT&T and GTE will agree upon a process to resolve cooperative testing issues and technical issues relating to GTE's provision of Local Services to AT&T. The agreed upon process shall include procedures for escalating disputes and unresolved issues up through higher levels of each company's management. If AT&T and GTE do not reach agreement on such a process within 60 days, any issues that have not been resolved by the Parties with respect to such process shall be submitted to the ADR procedures set forth in Section 15 and Attachment 1 of this Agreement unless both Parties agree to extend the time to reach agreement on such issues.

29.9 **Maintenance**

GTE shall provide maintenance in accordance with the requirements and standards set forth in Attachment 5 and in accordance with the service parity requirements set forth in this Agreement.

29.10 **Billing For Local Service**

29.10.1 GTE shall bill AT&T for Local Service provided by GTE to AT&T pursuant to the terms of this Part, and in accordance with the terms and conditions for Connectivity Billing and Recording in Attachment 6.

29.10.2 GTE shall recognize AT&T as the customer of record for all Local Service and will send all notices, bills and other pertinent information directly to AT&T.

30. **Pay Phone Lines and Pay Phone Services**

30.1 Intentionally left blank.

30.2 "Pay phone lines" are defined as the loop from the pay phone point of demarcation to the Service Wiring Center and includes all supporting central office functions and features.

30.3 GTE shall make available to AT&T for resale the following classes of pay phone lines:

30.3.1 Customer Owned Coin Operated Telephone (COCOT) Lines;

30.3.2 Coinless COCOT Lines;

30.3.3 Coin Lines in those jurisdictions where provision of such lines is required by law;

30.3.4 [Intentionally Deleted]

30.3.5 Semi Public Lines.

30.4 GTE shall also make available to AT&T for resale any future class of pay phone lines that GTE provides at retail to subscribers other than telecommunication carriers.

30.5 GTE shall make available pay phone line service options as follows:

30.6 When providing COCOT Lines to AT&T for resale, GTE shall offer the following, to the extent that GTE provides such services and in those jurisdictions and/or central offices where available: originating line screening; billed number screening; PIC protection for all 1+ inter and intraLATA traffic (when presubscription is authorized); one way and/or two way service (if so provided in the applicable tariff) on the line; detailed billing showing all 1+ traffic; AT&T's service center phone number to all AT&T end users that contact GTE service centers; number portability for end users; touchtone service; line side answer supervision; GTE designated contact center as single point of contact for customer service; provisioning of 911 service; access to Answer Number Identifier (ANI) Information; all information necessary to permit AT&T to bill end users for access line usage; the same monitoring and diagnostic routines as GTE utilizes on its own facilities; one directory for each line installed; blocking for 1+ international calls, 10XXX1+ international calls 1-900 calls, 1-976 calls DA link, any 1+ service that can be billed to the line but that is not rated, 1-700 calls, 1-500 calls, and in bound international calls where SS7 signaling is available.

30.7 When providing Coinless COCOT Lines to AT&T for resale, GTE shall offer the following, to the extent that GTE provides such services and in those jurisdictions and/or central offices where available: originating line screening; billed number screening; PIC protection for all 1+ inter and intraLATA traffic (where inter and intraLATA presubscription is available); one way and/or two way service on the line (if so provided in the tariff); flat service where flat service is required by the applicable tariff, measured service where measured service is required by the applicable tariff, and both flat and measured service where both flat and measured service are required by the applicable tariff;

detailed billing showing all 1+ traffic; AT&T's service center phone number to all AT&T end users that contact GTE service center; number portability for end users; touchtone service; GTE designated contact center as single point of contact for customer service; provisioning of 911 service; access to ANI information; all information necessary to permit AT&T to bill end users for access line usage; the same monitoring and diagnostic routines as GTE utilizes on its own facilities; one directory for each line installed; blocking for any service that can be billed to the line but not rated and all 1+ calls except where local mandate requires access to Directory Assistance.

30.8 [Intentionally Deleted]

30.9 When providing Customer Owned Pay Telephone (COPT) Lines to AT&T for resale, GTE shall offer the following to the extent that GTE provides such services and in those jurisdictions and/or central offices where available. Access to all Central Office intelligence required to provide COPT Line pay phone services; far end disconnect recognition; call timing for intra- and InterLATA calls; at the customer's option, one way or two way service on the line in those jurisdictions where available; detailed billing showing all 1+ traffic; AT&T's service center phone number to all AT&T end users; touchtone service; line side supervision in those jurisdictions where available; GTE designated contact center for use by AT&T only as single point of contact for customer service; provisioning of 911 service; access to ANI information; all information necessary to permit AT&T to bill end users for access line usage; the same monitoring and diagnostic routines as GTE utilizes on its own facilities; one directory for each line installed; blocking for 1+ international calls and any 1+ service that cannot be rated by the phone pay line or any operator service.

30.10 For any pay phone line provided to AT&T for resale, GTE shall also make available to AT&T any future pay phone line option that GTE provides to any of its own customers using such a pay phone line.

30.11 GTE shall adhere to the following additional requirements when providing pay phone lines for resale:

30.11.1 GTE shall provide AT&T with the same call restrictions and fraud protections used by GTE in connection with its pay phones;

30.11.2 GTE shall not block AT&T's existing access to NAI codes;

30.11.3 GTE shall forward all AT&T pay phone customers to the designated AT&T line or trunk group for handling Operator Services or Directory Assistance calls;

30.11.4 [Intentionally Deleted]

30.11.5 GTE shall provide all pay phone lines for resale to AT&T at the wholesale discount price required by the Commission.

PART II: UNBUNDLED NETWORK ELEMENTS

31. Introduction

This Part II sets forth the unbundled Network Elements that GTE agrees to offer to AT&T in accordance with its obligations under Section 251(c)(3) of the Act and 47 CFR 51.307 to 51.321 of the FCC Rules. The specific terms and conditions that apply to the unbundled Network Elements are described below and in Attachment 2. Prices for Network Elements are set forth in Part V and Attachment 14 of this Agreement.

32. Unbundled Network Elements

32.1 GTE will offer Network Elements to AT&T on an unbundled basis at rates set forth in Attachment 14.

32.2 GTE will permit AT&T to interconnect AT&T's facilities or facilities provided by AT&T or by third parties with each of GTE's unbundled Network Elements at any point designated by AT&T that is technically feasible.

32.3 AT&T, at its option, may designate any technically feasible network interface at a Served Premises, including without limitation, DS0, DS-1, DS-3, and STS-1.

32.4 Pursuant to the terms of this Agreement, AT&T may use one or more Network Elements to provide any Telecommunications Service that such Network Element is capable of providing.

32.5 GTE shall offer each Network Element individually and in combination with any other Network Element or Network Elements, so long as such combination is technically feasible, in order to permit AT&T to combine such Network Element or Network Elements with another Network Element or other Network Elements obtained from GTE or with network components provided by itself or by third parties to provide telecommunications services to its customers.

32.6 For each Network Element, GTE shall provide a demarcation point (e.g., an interconnection point at a Digital Signal Cross-Connect or Light Guide Cross-Connect panels or a Main Distribution Frame) and, if necessary, access to such demarcation point, which AT&T agrees is suitable. However, where GTE provides contiguous Network Elements to AT&T, GTE may provide the existing interconnections and no demarcation point shall exist between such contiguous Network Elements.

32.7 [Intentionally Deleted]

32.8 [Intentionally Deleted]

32.9 Except with respect to the Loop Distribution, Loop Concentrator/Multiplexer, and Loop Feeder elements, which shall in all cases be subject to the bona fide request process described in Attachment 12, set forth below is a list of Network Elements that AT&T and GTE have identified as of the Effective Date of this Agreement and will be offered by GTE. AT&T and GTE agree that AT&T may identify additional or revised Network Elements that it desires. All such additional or modified Network Elements shall be subject to the Bona Fide Requests Procedures outlined in Attachment 12. Descriptions and requirements for each Network Element identified below are set forth in Attachment 2. The Network Elements described in Attachment 2 consist of:

Loop or Loop Combination
Network Interface Device (NID)
Loop Distribution, otherwise known as Distribution Media
Loop Concentrator/Multiplexer
Loop Feeder
Local Switching
Operator Service
Directory Assistance Service
Common Transport
Dedicated Transport
Signaling Link Transport
Signaling Transfer Points
Service Control Points (SCPs)/Databases
Tandem Switching

32.10 **Standards for Network Elements**

32.10.1 [Intentionally Deleted]

32.10.2 [Intentionally Deleted]

32.10.3 [Intentionally Deleted]

32.10.3.1 If AT&T contends that GTE has failed to meet the requirements of this Section 32, AT&T will provide GTE documentation of such purported failure. Within a reasonable time period after receiving such documentation, GTE shall provide to AT&T engineering, design, performance and other network data that the parties mutually agree is necessary and sufficient for AT&T to determine that the requirements of this Section 32 are being met. In the event

that such data establishes that the requirements of this Section 32 are not being met, GTE shall, within ten (10) business days, cure any design, performance or other deficiency and provide new data that the parties mutually agree is sufficient for AT&T to determine that such deficiencies have been cured. To the extent that GTE is unable to meet the above timeframe, GTE shall promptly notify AT&T prior to the expiration of such timeframe and the Parties shall agree on a revised completion date.

32.10.3.2 [Intentionally Deleted]

32.10.4 [Intentionally Deleted]

PART III: ANCILLARY FUNCTIONS

33. **Introduction**

This Part III sets forth the Ancillary Functions that GTE agrees to offer to AT&T so that AT&T may interconnect to GTE's network and obtain access to unbundled Network Elements to use to provide services to its customers.

34. **GTE Provision of Ancillary Functions**

34.1 GTE will offer Ancillary Functions to AT&T on rates, terms and conditions that are just, reasonable, and non-discriminatory and in accordance with the terms and conditions of this Agreement.

34.2 GTE will permit AT&T to interconnect AT&T's equipment and facilities or equipment and facilities provided by AT&T or by third parties for purposes of interconnection or access to Network Elements at any point that is technically feasible.

34.3 AT&T may use any Ancillary Function to provide any feature, function, or service option that such Ancillary Function is capable of providing.

34.4 Set forth below is the list the Ancillary Functions that AT&T and GTE have identified as of the Effective Date of this Agreement. Either Party may identify additional or revised Ancillary Functions that it desires. All such additional or revised Ancillary Functions shall be subject to the Bona Fide Requests procedures outlined in Attachment 12. Descriptions and requirements for each Ancillary Function are set forth in Attachment 3. The Ancillary Functions described in Attachment 3 consist of:

Collocation
Right of Way (ROW)
Conduit
Pole attachment

35. **Standards for Ancillary Functions**

35.1 Subject to Section 23.19, each Ancillary Function shall meet or exceed the requirements set forth in applicable technical references, as well as the performance and other requirements, identified in this Agreement.

35.2 Each Ancillary Function provided by GTE to AT&T shall be equal in the quality of design, performance, features, functions and other

characteristics, including, but not limited to levels and types of redundant equipment and facilities for diversity and security, that GTE provides in the GTE network to itself, its own customers, its affiliates or any other entity.

35.3 If AT&T contends that GTE has failed to meet the requirements of Part III and Attachment 3, AT&T will provide GTE documentation of such purported failure. Within a reasonable time period after receiving such documentation, GTE shall provide to AT&T engineering, design, performance and other network data that the parties mutually agree is necessary and sufficient for AT&T to determine that the requirements of Part III and Attachment 3 of this Agreement are being met. In the event that such data establishes that the requirements of Part III and Attachment 3 of this Agreement are not being met, GTE shall, within 30 business days, cure any design, performance or other deficiency and provide new data that the parties mutually agree is sufficient for AT&T to determine that such deficiencies have been cured. To the extent that GTE is unable to meet the above timeframe, GTE shall promptly notify AT&T prior to the expiration of such timeframe and the Parties shall agree on a revised completion date.

35.4 Unless otherwise designated by AT&T, each Ancillary Function provided by GTE to AT&T shall be made available to AT&T on a priority basis that is at least equal to the priorities that GTE provides to itself, its customers, its affiliates or any other entity.

35.5 [Intentionally Deleted]

PART IV: INTERCONNECTION PURSUANT TO SECTION 251(C)(2)

36. **Scope**

Section 37 describes the physical architecture for Interconnection of the Parties' facilities and equipment for the transmission and routing of Local Traffic and Exchange Access traffic between the respective business and residential customers of the Parties pursuant to the Act. Interconnection may not be used solely for the purpose of originating a Party's own interexchange traffic. Sections 38 to 39 prescribe the specific logical trunk groups (and traffic routing parameters) which will be configured over the physical Interconnections described in this Part related to the transmission and routing of Local Traffic and Exchange Access traffic, respectively. Other trunk groups, as described in this Agreement, may be configured using this architecture.

37. **Interconnection Points and Methods.**

37.1 In each LATA identified pursuant to the procedures of Section 37.6, AT&T and GTE shall Interconnect their networks at the GTE and AT&T Wire Centers identified in such notice for the transmission and routing within that LATA of Local Traffic and Exchange Access traffic.

37.2 Interconnection in each LATA shall be accomplished at any technically feasible point within GTE's networks for a given LATA, including through collocation in GTE's Wire Centers as provided in Attachment 3. AT&T shall designate a minimum of one interconnection point within a LATA. If AT&T desires a single interconnection point within a LATA, AT&T shall ensure that GTE maintains the ability to bill for the services provided. AT&T may interconnect at one tandem in the LATA for exchange of local, mandatory EAS and IntraLATA toll traffic by bringing separate trunk groups to that interconnection point for each tandem in that LATA and then by using dedicated special access transport to extend the trunk group from the interconnection point to the designated tandem.

37.2.1 GTE shall be required to lease dark fiber (where available) to AT&T only for interconnection purposes, under the same terms and conditions as those in Section III.C of GTE's agreement with Metropolitan Fiber Systems of Florida, Inc., dated as of February 10, 1996, which has been memorialized in Commission Order No. PSC-

96-1401-FOF-TP. As such, AT&T shall have the right to lease under non-discriminatory tariff and other contract terms.

37.3 **Interconnection using Collocation:**

If the Parties interconnect their networks using Collocation in GTE's Wire Centers, the following requirements apply:

37.3.1 AT&T will deploy a local service network that places switching and transmission equipment throughout the LATA. The placement of this equipment uses a combination of AT&T owned Wire Centers and collocated space in GTE Wire Centers.

37.3.2 AT&T will request interconnection with GTE at specific points in GTE's network. The following options are available for (i) the termination of traffic to the GTE network, (ii) the termination of traffic to the AT&T network and (iii) the transiting of traffic to/from a third party network.

37.4 **Local Traffic and IntraLATA Toll Traffic - Originating on AT&T, Terminating on GTE.**

AT&T may build trunk groups to GTE using the following representative, but not exclusive, options: (i) from AT&T collocated equipment in a Wire Center to the GTE Tandem; (ii) from AT&T collocated equipment in a GTE Wire Center to the GTE End Office Switch; or (iii) from AT&T 4ESS Switches located at AT&T POPs to the nearest GTE Tandem.

Interfaces for these interconnections may be based upon, but not limited to, the following: (i) DS1: from an AT&T-collocated DDM-2000 to a GTE Central Office Switch; (ii) SONET STS1: from an AT&T-collocated DDM-2000 to an GTE 5ESS®-2000 Central Office Switch and (iii) DS1/DS3: from an AT&T 4ESS Switch at an AT&T POP to a GTE Tandem using new trunk groups on existing facilities.

37.5 **Transit Service Traffic**

37.5.1 GTE agrees that it shall provide Transit Service to AT&T on terms and conditions set forth in this Agreement.

37.5.2 "Transit Service" means the delivery of certain traffic between AT&T and a third party LEC or ILEC by GTE over the Local/IntraLATA Trunks. The following types of traffic will be delivered: (i) Local Traffic and IntraLATA Toll Traffic originated from AT&T to such third party LEC or ILEC and (ii) Local Traffic and IntraLATA Toll Traffic originated from such third party LEC or ILEC and terminated to

AT&T where GTE carries such traffic pursuant to the Commission's primary toll carrier plan or other similar plan.

37.5.3 While the Parties agree that it is the responsibility of each third party LEC or ILEC to enter into arrangements to deliver Local Traffic between them, they acknowledge that such arrangements are not currently in place and an interim arrangement is necessary to ensure traffic completion. Accordingly, until the earlier of (i) the date on which either Party has entered into an arrangement with such third party LEC or ILEC to deliver Local Traffic via direct trunks or (ii) the termination of this Agreement, GTE will transit such traffic.

37.5.4 All networks involved in transit traffic will deliver each call to each involved network with CCIS to the extent available from third party LECs and the appropriate Transaction Capabilities Application Part (TCAP) messages to facilitate full interoperability and billing functions. In all cases, each Party is responsible to follow Exchange Message Record ("EMR") standard and exchange records with both the other Party and the terminating LEC or ILEC to facilitate the billing process to the originating network.

37.5.5 Transiting traffic will be delivered using the physical connection options as described in Section 37.4.

37.6 **Selection of LATAs**

37.6.1 If AT&T determines to offer Telephone Exchange Services in any LATA, AT&T shall provide written notice to GTE of its need to establish Interconnection in such LATA pursuant to this Agreement. This notice shall include (i) the Wire Centers that AT&T has designated in the LATA, and (ii) a non-binding forecast of AT&T's trunking requirements indicating the proposed Interconnection Activation Date. AT&T shall issue an ASR to GTE in accordance with Section 37.6.3 to order the Interconnection facilities and trunks.

37.6.2 Unless otherwise agreed by the Parties, the Parties shall designate the Wire Center AT&T has identified as its initial Routing Point in the LATA as the ATIWC in that LATA and shall designate the GTE Tandem Office within the LATA nearest to the ATIWC (as measured in airline miles utilizing the V&H coordinates method) as the AIWC in that LATA.

37.6.3 Unless otherwise agreed by the Parties, the Interconnection Activation Date in each LATA in which no construction is required shall be fifteen (15) business days after the date on which AT&T delivered notice via an ASR to GTE pursuant to this Section. Where

construction is required, the Interconnection Activation Date shall be as mutually agreed by the Parties.

37.6.4 GTE and AT&T will conduct joint planning sessions to determine the following representative, but not exclusive, information: (i) forecasted number of trunk groups; and (ii) the interconnection activation date.

37.7 **Additional Switches or Interconnection Points**

If AT&T deploys additional switches in a LATA after the date hereof or otherwise wishes to establish Interconnection with additional GTE Wire Centers, AT&T may, upon written notice thereof to GTE, establish such Interconnection and the terms and conditions of this Agreement shall apply to such Interconnection. If GTE deploys additional switches in a LATA after the date hereof or otherwise wishes to establish Interconnection with additional AT&T Wire Centers, GTE may, upon written notice thereof to AT&T, establish such Interconnection and the terms and conditions of this Agreement shall apply to such Interconnection. If either Party establishes an additional Tandem Switch in a given LATA, the Parties shall jointly determine the requirements regarding the establishment and maintenance of separate trunk group connections and the sub-tending arrangements relating to Tandem Switches and End Offices which serve the other Party's customers within the Exchange Areas served by such Tandem Switches.

37.8 [Intentionally Deleted]

37.9 **Technical Specifications**

37.9.1 Each Party shall initially configure a two-way trunk group as a direct transmission path between each AT&T and GTE interconnected Central Offices. AT&T and GTE shall work cooperatively to install and maintain a reliable network. AT&T and GTE shall exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the government and such other information as the Parties shall mutually agree) to achieve this desired reliability.

37.9.2 AT&T and GTE shall work cooperatively to apply sound network management principles by invoking network management controls to alleviate or to prevent congestion.

37.10 **911/E911 Arrangements**

37.10.1 **Description of Service**

AT&T shall have the right to utilize the existing GTE 911/E911 infrastructure (as agreed in Sections 37.10.3 and 37.10.5 below) to provide all 911/E911 capabilities to its end users. AT&T will install a minimum of two dedicated trunks for each NPA to GTE's 911/E911 selective routers (i.e., 911 tandem offices) that serve the areas in which AT&T provides Exchange Services, for the provision of 911/E911 services and for access to all subtending PSAPs. The dedicated trunks shall be, at minimum, DS0 level trunks configured as a 2-wire analog interface or as part of a digital (1.544 Mbps) interface. Either configuration shall use CAMA type signaling with multifrequency (MF) tones that will deliver ANI with the voice portion of the call. At the request of AT&T, GTE will provide AT&T with the appropriate CLLI codes and specifications of the tandem office serving area. If an AT&T Central Office serves end users in an area served by more than one GTE 911/E911 selective router, AT&T will install a minimum of two dedicated trunks in accordance with this section to each of such 911/E911 selective routers.

37.10.2 **Transport**

If AT&T desires to obtain transport from its end office to the GTE 911 selective routers, AT&T may purchase such transport from GTE at the rates set forth in GTE's intrastate switched access tariff or in GTE's intrastate special access tariff.

37.10.3 **Cooperation and Level of Performance**

37.10.3.1 The Parties agree to provide access to 911/E911 in a manner that is transparent to the end user. The Parties will work together to facilitate the prompt, reliable and efficient interconnection of AT&T's systems to the 911/E911 platforms to ensure that 911/E911 service is fully available to AT&T's end users, with a level of performance that will provide the same grade of service as that which GTE provides to its own end users and that meets State requirements. To this end, GTE will provide documentation to AT&T showing the correlation of its rate centers to its E911 tandems.

37.10.3.2 In the event of an GTE or AT&T 911 trunk group failure, the Party that owns the trunk group will notify, on a priority basis, the other Party of such failure, which notification shall occur within two (2) hours of the occurrence or sooner if required under Applicable Law. The Parties will exchange a list containing the names and telephone numbers of the support center personnel responsible for maintaining the 911 Service between the Parties.

37.10.3.3 When AT&T purchases transport, GTE will provide AT&T with the order number and the circuit identification code in advance of the service due date.

37.10.3.4 AT&T or its third party agent will provide CNA data to GTE for use in entering the data into the 911 data base. The initial CNA data will be provided to GTE in a format prescribed by NENA (National Emergency Number Association). AT&T is responsible for providing GTE updates to the CNA data and error corrections which may occur during the entry of CNA data to the GTE 911 Database System. GTE will confirm receipt of such data and corrections by close of business on the next Business Day by providing AT&T with a report of the number of items sent, the number of items entered correctly, and the number of errors.

37.10.3.5 AT&T will monitor the 911 circuits for the purpose of determining originating network traffic volumes. AT&T will notify GTE if the traffic study information indicates that additional circuits are required to meet the current level of 911 call volumes.

37.10.3.6 [Intentionally Deleted]

37.10.3.7 Inter-office trunks provided for 911 shall be engineered to assure minimum P.01 transmission grade of service as measured during the busy day/busy hour. A minimum of two trunks shall be provided by AT&T.

37.10.4 **Updates to MSAG**

It shall be the responsibility of AT&T to ensure that the address of each of its end users is included in the Master Street Address Guide ("MSAG") via information provided on AT&T's Local Service Request ("LSR") or via a separate feed established by AT&T and GTE pursuant to section 37.10.5 of this Article. Any MSAG change that appears to be required by AT&T must be approved by the County. Within thirty (30) days after the Effective Date of this Agreement, GTE shall provide AT&T with an initial electronic copy and a paper copy of the MSAG or its equivalent. Prior to the time that updates are available electronically, GTE will provide updates to AT&T on a monthly basis. Thereafter, GTE will provide updates to AT&T as changes are made.

37.10.5 **Updates to Database**

GTE and AT&T will work together to develop the process by which the 911/E911 database will be updated with AT&T's end user

911/E911 information. AT&T shall have the right to verify the accuracy of the information regarding AT&T's end users in the 911/E911 database.

37.10.6 **Compensation**

In situations in which GTE is responsible for maintenance of the 911/E911 database and can be compensated for maintaining AT&T's information by the municipality, GTE will seek such compensation from the municipality. GTE will seek compensation from AT&T only if and to the extent that GTE is unable to obtain such compensation from the municipality.

38. Transmission and routing of telephone exchange service traffic pursuant to section 251(c)(2)

38.1 Scope of Traffic

This Section prescribes parameters for trunk groups (the "Local/IntraLATA Trunks") to be effected over the Interconnections specified in Part IV for the transmission and routing of Local Traffic and IntraLATA Toll Traffic between the Parties' respective Telephone Exchange Service Customers.

38.2 Limitations

No Party shall terminate Exchange Access traffic or originate untranslated 800/888 traffic over Local/IntraLATA Interconnection Trunks.

38.3 Trunk Group Architecture and Traffic Routing

The Parties shall jointly engineer and configure Local/IntraLATA Trunks over the physical Interconnection arrangements as follows:

38.3.1 Notwithstanding anything to the contrary contained in this Section, if the traffic volumes between any two Central Office Switches at any time exceeds the CCS busy hour equivalent of one DS1, the Parties shall within sixty (60) days after such occurrence establish new direct trunk groups to the applicable End Office(s) consistent with the grades of service and quality parameters set forth in the Grooming Plan.

38.3.2 Only those valid NXX codes served by an End Office may be accessed through a direct connection to that End Office.

38.3.3 Each Party shall ensure that each Tandem connection permits the completion of traffic to all End Offices which sub-tend that Tandem or to End Offices which sub-tend an additional Tandem, provided, that AT&T enters into an appropriate billing arrangement pursuant to Section 38.3.4. Alternatively, each Party shall establish and maintain separate trunk groups connected to each Tandem of the other Party which serves, or is sub-tended by End Offices which serve, such other Party's customers within the Exchange Areas served by such Tandem Switches.

38.3.4 GTE will provide tandem to tandem switching to AT&T. AT&T shall enter into an appropriate billing arrangement with GTE to ensure recovery of inter-tandem switching costs at rates established by the Commission.

38.4 **Signaling**

SS7 Signaling may be used for signaling for IntraLATA and local calls between AT&T switches, between AT&T switches and GTE switches, and between AT&T switches and those third party networks with which GTE's SS7 network is interconnected.

38.4.1 Where available, CCIS signaling shall be used by the Parties to set up calls between the Parties' local networks. Each Party shall supply Calling Party Number (CPN) within the SS7 signaling message, if available. If Common Channel Interoffice Signaling ("CCIS") is unavailable, MF (Multi-Frequency) signaling shall be used by the Parties.

38.4.2 Each Party is responsible for requesting Interconnection to the other Party's CCIS network, where SS7 signaling on the trunk group(s) is desired. Each Party shall connect, either directly or via arrangements with third party providers, to a pair of access STPs where traffic will be exchanged. The Parties shall establish interconnection at the STP.

38.4.3 The Parties will cooperate on the exchange of Transactional Capabilities Application Part (TCAP) messages to facilitate interoperability of CCIS based features between their respective networks, including all CLASS features and functions, to the extent each Party offers such features and functions to its Customers. Each Party shall honor all privacy indicators as required under Applicable Law.

38.4.4 Where available and upon the request of the other Party, each Party shall cooperate to ensure that its trunk groups are configured

utilizing the B8ZS ESF protocol for 64 kbps clear channel transmission to allow for ISDN interoperability between the Parties' respective networks.

38.5 **Grades of Service**

The Parties shall initially engineer and shall jointly monitor and enhance all trunk groups consistent with the Grooming Plan.

38.6 **Measurement and Billing**

38.6.1 Each Party shall pass Calling Party Number (CPN) information on each call that it originates and terminates over the Local/IntraLATA Trunks. Until GTE installs the capability to use actual CPN information, all calls exchanged shall be billed either as Local Traffic or IntraLATA Toll Traffic based upon a percentage of local usage (PLU) factor calculated based on the amount of actual volume (or best estimate) during the preceding three months. The PLU will be reevaluated every three (3) months.

38.6.2 Measurement of Telecommunications traffic billed hereunder shall be (i) in actual conversation time as specified in FCC terminating FGD Switched access tariffs for Local Traffic and (ii) in accordance with applicable tariffs for all other types of Telecommunications traffic.

38.7 **Reciprocal Compensation Arrangements**

Reciprocal Compensation for the exchange of traffic shall be paid as described in Part V and Attachment 15, at the prices specified in Attachment 14.

38.8 **Transiting Traffic**

38.8.1 The exchange of transiting traffic is defined in Section 37.5.2.

38.8.2 Compensation for transiting traffic shall be paid as described in Part V and Attachment 15, at the prices specified in Attachment 14.

39. **Transmission and Routing of Exchange Access Traffic**

39.1 **Scope of Traffic**

This Section prescribes parameters for certain trunk groups ("Access Toll Connecting Trunks") to be established over the Interconnections specified in this Agreement for the transmission and routing of Exchange Access traffic and nontranslated 800 traffic between AT&T

Telephone Exchange Service Customers and Interexchange Carriers.

39.2 **Trunk Group Architecture and Traffic Routing**

39.2.1 The Parties shall jointly establish Access Toll Connecting Trunks by which they will jointly provide Tandem transported Switched Exchange Access Services to Interexchange Carriers to enable such Interexchange Carriers to originate and terminate traffic from and to AT&T's customers.

39.2.2 Access Toll Connecting Trunks shall be used solely for the transmission and routing of Exchange Access and nontranslated 800/888 traffic to allow AT&T's customers to connect to or be connected to the interexchange trunks of any Interexchange Carrier which is connected to a GTE access Tandem.

39.2.3 The Access Toll Connecting Trunks shall be two way trunks connecting an End Office Switch that AT&T utilizes to provide Telephone Exchange Service and Switched Exchange Access Service in a given LATA to an access Tandem Switch GTE utilizes to provide Exchange Access in such LATA.

39.2.4 The Parties shall jointly determine which GTE access Tandem(s) will be sub-tended by each AT&T End Office Switch.

39.2.5 Only those valid NXX codes served by an End Office may be accessed through a direct connection to that End Office.

40. **Transport and Termination of Information Services Traffic**

40.1 Each Party shall route Information Service Traffic which originates on its own network to the appropriate information services platform(s) connected to the other Party's network over the Local/IntraLATA Trunks.

40.2 The Party ("Originating Party") on whose network the Information Services Traffic originated shall provide an electronic file transfer or monthly magnetic tape containing recorded call detail information to the Party ("Terminating Party") to whose information platform the Information Services Traffic terminated.

40.3 The Terminating Party shall provide to the Originating Party via electronic file transfer or magnetic tape all necessary information to rate the Information Services Traffic to the Originating Party's

customers and establish uncollectible reserves pursuant to the Terminating Party's agreements with each information provider.

40.4 The Originating Party shall bill and collect such information provider charges and remit the amounts collected to the Terminating Party less:

40.4.1 The Information Services Billing and Collection fee set forth in Attachment 14; and

40.4.2 An uncollectibles reserve calculated based on the uncollectibles reserve in the Terminating Party's billing and collection agreement with the applicable information provider; and

40.4.3 Customer adjustments provided by the Originating Party.

40.5 The Originating Party shall provide to the Terminating Party sufficient information regarding uncollectibles and customer adjustments. The Terminating Party shall pass through the adjustments to the information provider. Final resolution regarding all disputed adjustments shall be solely between the Originating Party and the information provider.

40.6 Nothing in this Agreement shall restrict either Party from offering to its Telephone Exchange Service Customers the ability to block the completion of Information Service Traffic.

41. Installation, Maintenance, Testing and Repair

41.1 Grooming Plan

Within ninety (90) days after the Effective Date, AT&T and GTE shall jointly begin the development of a plan (the "Grooming Plan") which shall define and detail, inter alia, (i) standards to ensure that Interconnection trunk groups experience a grade of service, availability and quality in accord with all appropriate relevant industry-accepted quality, reliability and availability standards and in accordance with the levels GTE provides to itself, or any subsidiary, Affiliate or other person; (ii) the respective duties and responsibilities of the Parties with respect to the administration and maintenance of the Interconnections (including signaling) specified in Part IV and the trunk groups specified in Part IV, including standards and procedures for notification and discoveries of trunk disconnects; (iii) disaster recovery and escalation provisions; and (iv) such other matters as the Parties may agree.

41.2 **Operation and Maintenance**

Each Party shall be solely responsible for the installation, operation and maintenance of equipment and facilities provided by it for interconnection, subject to compatibility and cooperative testing and monitoring and the specific operation and maintenance provisions for equipment and facilities used to provide Interconnection. Operation and maintenance of equipment in Virtual Collocation shall be in accordance with the provisions of Attachment 3. Each party shall also be responsible for engineering and maintaining its network on its side of the interconnection point. If and when the Parties choose to interconnect at a mid-span meet, the Parties will jointly provision the fiber optic facilities that connect the two networks and shall share the financial and other responsibilities for those facilities.

PART V: PRICING

42. General Principles

All services currently provided hereunder including resold Local Services , Network Elements and Combinations, Interconnection and any new and additional services or Network Elements to be provided hereunder shall be priced in accordance with all applicable provisions of the Act and the rules and orders of the FCC and any state public utility commission having jurisdiction over this Agreement.

43. Price Schedules

43.1 Local Service Resale

The prices to be charged to AT&T for Local Services shall be as specified in Attachment 14.

43.2 Unbundled Network Elements

The prices charged to AT&T for Unbundled Network Elements shall be as specified in Attachment 14 and shall be nondiscriminatory.

43.2.1 If implementation of an unbundled loop feeder supports shared used of required unbundling facilities, the cost of such facilities shall be allocated and prorated among all users in a non-discriminatory and competitively neutral manner. If such implementation supports only AT&T's use, then AT&T shall pay to GTE the incremental cost of such implementation.

43.2.2 If implementation of an unbundled loop concentrator /mutiplexer element supports shared used of required unbundling facilities, the cost of such facilities shall be allocated and prorated among all users in a non-discriminatory and competitively neutral manner. If implementation supports only AT&T's use, then AT&T shall pay to GTE the incremental cost of such implementation.

43.2.3 AT&T will be responsible for the costs (if any) required to create an interface at the main distribution frame if such interface does not already exist, such as in the case of an Integrated Digital Loop Carrier System.

43.3 Interconnection

43.3.1 Reciprocal Compensation applies for transport and termination of Local Traffic billable by GTE or AT&T which a Telephone Exchange Service Customer originates on GTE's or AT&T's network for

termination on the other Party's network. Reciprocal Compensation for exchange of traffic shall initially be paid on a "bill and keep" basis subject to the right of either Party to demand that compensation be calculated based upon actual local exchange traffic volumes as further specified in Attachment 14.

43.3.2 The Reciprocal Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service. All Switched Exchange Access Service and all IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state tariffs.

43.3.3 Each Party shall charge the other Party its effective tariffed intraLATA FGD switched access rates for the transport and termination of all IntraLATA Toll Traffic.

43.3.4 Standard meet point billing arrangements, as defined in Attachment 6, shall apply when the completion of a toll call involves both GTE and AT&T facilities, as further described in Attachment 6.

43.3.5 [Intentionally Deleted]

43.3.6 **Transiting Traffic**

The following applies to all scenarios with transiting traffic.

43.3.6.1 AT&T shall pay to GTE a Transiting Service Charge for the use of its Tandem Switching as specified in Attachment 14.

43.3.6.2 Until such time as AT&T and the third party LEC or ILEC agree upon mutual compensation, third party mutual compensation will be exchanged between AT&T and GTE as follows: .

43.3.6.3 [Intentionally Deleted]

43.3.6.4 [Intentionally Deleted]

43.3.6.5 GTE will provide tandem switching at GTE access tandems for traffic between AT&T and GTE end offices subtending the GTE access tandem, as well as for traffic between AT&T and non-GTE end offices subtending GTE access tandems. By transporting traffic to a non-GTE end office(s) via a GTE tandem, AT&T assumes responsibility for compensation to GTE for all tandem switched traffic between AT&T and the non-GTE end office(s). This responsibility may be fulfilled either by payment by AT&T to GTE for all tandem switched traffic between AT&T and the non-GTE end office(s) or by an agreement between AT&T and the non-GTE end office LEC

pursuant to which GTE is expressly made a third party beneficiary and GTE would receive compensation from either AT&T or the non-GTE end office LEC, depending upon which entity originated the traffic. GTE will bill AT&T for each minute of use AT&T generates that is tandem switched.

43.3.6.6 By transporting traffic to non-GTE end offices via a GTE tandem, AT&T assumes responsibility for compensation to the non-GTE end office company. AT&T assumes responsibility for negotiating a compensation arrangement with the non-GTE end office for IntraLATA Toll Traffic terminating to AT&T from such third party LEC or ILEC.

In witness whereof, the Parties have executed this Agreement through their authorized representatives.

GTE FLORIDA INC.	AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.
By:_____	By:_____
Signature	Signature
_____	_____
Name	Name
_____	_____
Title	Title
_____	_____
Date	Date

ATTACHMENT 1

ALTERNATIVE DISPUTE RESOLUTION

TABLE OF CONTENTS

1. PURPOSE 1

2. EXCLUSIVE REMEDY 1

3. INFORMAL RESOLUTION OF DISPUTES 2

4. INITIATION OF AN ARBITRATION 3

5. GOVERNING RULES FOR ARBITRATION 3

6. APPOINTMENT AND REMOVAL OF ARBITRATOR 3

7. DUTIES AND POWERS OF THE ARBITRATOR 4

8. DISCOVERY 5

9. PRIVILEGES 5

10. LOCATION OF HEARING 5

11. DECISION 5

12. FEES 6

13. CONFIDENTIALITY 6

14. SERVICE OF PROCESS 7

Appendix 1 Procedures for Resolution of Service-Affecting Disputes

ALTERNATIVE DISPUTE RESOLUTION

1. **Purpose**

This Attachment 1 is intended to provide for the expeditious, economical, and equitable resolution of disputes between GTE and AT&T arising under this Agreement, and to do so in a manner that permits uninterrupted, high quality services to be furnished to each Party's customers.

2. **Exclusive Remedy**

2.1 Negotiation and arbitration under the procedures provided herein shall be the exclusive remedy for all disputes between GTE and AT&T arising out of this Agreement or its breach. GTE and AT&T agree not to resort to any court, agency, or private group with respect to such disputes except in accordance with this Attachment.

2.1.1 If, for any reason, certain claims or disputes are deemed to be non-arbitrable, the non-arbitrability of those claims or disputes shall in no way affect the arbitrability of any other claims or disputes.

2.1.2 If, for any reason, the FCC or any other federal or state regulatory agency exercises jurisdiction over and decides any dispute related to this Agreement or to any GTE Tariff and, as a result, a claim is adjudicated in both an agency proceeding and an arbitration proceeding under this Attachment 1, the following provisions shall apply:

2.1.2.1 To the extent required by law, the agency ruling shall be binding upon the parties for the limited purposes of regulation within the jurisdiction and authority of such agency.

2.1.2.2 The arbitration ruling rendered pursuant to this Attachment 1 shall be binding upon the parties for purposes of establishing their respective contractual rights and obligations under this Agreement, and for all other purposes not expressly precluded by such agency ruling.

2.1.3 Nothing in this Attachment 1 shall limit the right of either GTE or AT&T to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Attachment 1. However, once a decision is reached by the Arbitrator, such decision shall supersede any provisional remedy.

3. **Informal Resolution of Disputes**

3.1 Prior to initiating an arbitration pursuant to the American Arbitration Association ("AAA") rules, as described below, the Parties to this Agreement shall submit any dispute between GTE and AT&T for resolution to an Inter-Company Review Board consisting of one representative from AT&T at the Director-or-above level and one representative from GTE at the Vice-President-or-above level (or at such lower level as each Party may designate). The dispute will be submitted by either Party giving written notice to the other Party, consistent with the notice requirements of this Agreement, that the Party intends to initiate the Informal Resolution of Disputes process. The notice shall define the dispute to be resolved. The Parties may use a mediator to help informally settle a dispute.

The initial representatives of each Party shall be as follows:

AT&T

_____
_____
_____

Telephone: _____
Telecopier: _____

GTE

_____
_____
_____

Telephone: _____
Telecopier: _____

A representative shall be entitled to appoint a delegee to act in his or her place as a Party's representative on the Inter-Company Review Board for any specific dispute brought before the Board.

3.2 The Parties may enter into a settlement of any dispute at any time. The Settlement Agreement shall be in writing, and shall identify how the Arbitrator's or mediator's fee for the particular proceeding, if any, will be apportioned.

3.3 At no time, for any purposes, may a Party introduce into evidence or inform the Arbitrator appointed under Section 6 below of any statement or other action of a Party in connection with negotiations between the

Parties pursuant to the Informal Resolution of Disputes provision of this Attachment 1.

3.4 By mutual agreement, the Parties may agree to submit a dispute to mediation prior to initiating arbitration.

4. **Initiation of an Arbitration**

If the Inter-Company Review Board is unable to resolve a non-service affecting dispute within 30 days (or such longer period as agreed to in writing by the Parties) of such submission, and the Parties have not otherwise entered into a settlement of their dispute, the Parties shall initiate an arbitration in accordance with the AAA rules. Any dispute over a matter which directly affects the ability of a Party to provide high quality services to its customers will be governed by the procedures described in Appendix 1 to this Attachment 1.

5. **Governing Rules for Arbitration**

The rules set forth below and the rules of Commercial Arbitrations of the AAA shall govern all arbitration proceedings initiated pursuant to this Attachment; however, such arbitration proceedings shall not be conducted under the auspices of the AAA unless the Parties mutually agree. Where any of the rules set forth herein conflict with the rules of the AAA, the rules set forth in this Attachment shall prevail.

6. **Appointment and Removal of Arbitrator**

6.1 Within forty-five (45) days following the Effective Date of this Agreement the Parties will appoint three arbitrators, each of whom will have experience in the field of telecommunications. Each such Arbitrator shall serve for the full term of this Agreement, unless removed pursuant to Section 6.3 of this Attachment. Each of the three Arbitrators will be appointed by mutual agreement of the Parties in writing within the aforementioned forty-five day period. Each Arbitrator so appointed shall receive an assignment designation number (1, 2 or 3), and the Arbitrators shall be assigned in that sequence as disputes arise that are subject to this Attachment. In the event that any of the three initial Arbitrators so appointed resigns or is removed pursuant to Section 6.3 of this Attachment, or becomes unable to discharge his or her duties, the Parties shall, by mutual written agreement, appoint a replacement Arbitrator within thirty (30) days after the date of such resignation, removal or disability. All matters pending before the departing Arbitrator shall be reassigned as provided in Section 6.4 of this Attachment; provided

however that such matters shall not be assigned to the replacement Arbitrator. New matters will be assigned the replacement Arbitrator in accordance with the procedure set forth herein(above).

6.2 For each dispute properly submitted for arbitration under this Attachment, the Parties shall assign a sole Arbitrator from among the three Arbitrators appointed under Section 6.1 in accordance with the assignment sequence described therein. Each such assignment shall be made within ten (10) days of the expiration under Section 4 of this Attachment of the Inter-Company Review Board review period. Insofar as common issues arise concerning more than one Interconnection, Resale and Unbundling Agreement signed between an AT&T Affiliate and a GTE Affiliate, the Parties agree that such common issues will be combined and submitted to the same Arbitrator for resolution.

6.3 The Parties may, by mutual written agreement, remove an Arbitrator at any time, and shall provide prompt written notice of removal to such Arbitrator. Notwithstanding the foregoing, any Arbitrator may be removed at any time unilaterally by either Party as permitted in the rules of the AAA. Furthermore, upon (30) days' prior written notice to the Arbitrator and to the other Party, a Party may remove an Arbitrator with respect to future disputes which have not been submitted to arbitration in accordance with the requirements of Section 4 of this Attachment 1, as of the date of such notice.

6.4 In the event that an Arbitrator resigns or is removed pursuant to Section 6.3 of this Attachment, or becomes unable to discharge his or her duties, or is otherwise unavailable to perform the duties of Arbitrator, any matters then pending before that departing or disabled Arbitrator will be assigned to the incumbent Arbitrator with the next assignment designation number (in ascending order). Such assignment will be made effective by written notice of the Parties to be provided within ten days following the resignation, removal or unavailability that necessitates such reassignment.

6.5 In the event that the Parties do not appoint an Arbitrator or replacement Arbitrator within the time periods prescribed in Section 6.1 of this Attachment 1, either Party may apply to AAA for appointment of such Arbitrator. Prior to filing an application with the AAA, the Party filing such application shall provide ten (10) days' prior written notice to the other Party to this Agreement.

7. **Duties and Powers of the Arbitrator**

7.1 The Arbitrator shall receive complaints and other permitted pleadings, oversee discovery, administer oaths and subpoena witnesses pursuant to the United States Arbitration Act, hold hearings, issue decisions, and

maintain a record of proceedings. The Arbitrator shall have the power to award any remedy or relief that a court with jurisdiction over this Agreement could order or grant, including, without limitation, the awarding of damages, pre-judgment interest, specific performance of any obligation created under the Agreement, issuance of an injunction, or imposition of sanctions for abuse or frustration of the arbitration process, except that the Arbitrator may not award punitive damages or any remedy rendered unavailable to the Parties pursuant to Section 10.3 of the General Terms and Conditions of this Agreement.

7.2 The Arbitrator shall not have the authority to limit, expand, or otherwise modify the terms of this Agreement.

8. **Discovery**

GTE and AT&T shall attempt, in good faith, to agree on a plan for document discovery. Should they fail to agree, either GTE or AT&T may request a joint meeting or conference call with the Arbitrator. The Arbitrator shall resolve any disputes between GTE and AT&T, and such resolution with respect to the scope, manner, and timing of discovery shall be final and binding.

9. **Privileges**

Although conformity to certain legal rules of evidence may not be necessary in connection with arbitrations initiated pursuant to this Attachment, the Arbitrator shall, in all cases, apply the attorney-client privilege and the work product immunity doctrines.

10. **Location of Hearing**

Unless both Parties agree otherwise, any hearings shall take place in Dallas, Texas.

11. **Decision**

11.1 Except as provided below, the Arbitrator's decision and award shall be final and binding, and shall be in writing and shall set forth the Arbitrator's reasons therefor for decision unless the Parties mutually agree to waive the requirement of a written opinion. Judgment upon the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof. Either Party may apply to the United States District Court for the district in which the hearing occurred for an order enforcing the decision.

11.2 A decision of the Arbitrator shall not be final in the following situations:

a) a Party appeals the decision to the Commission or FCC, and the matter is within the jurisdiction of the Commission or FCC, provided that the agency agrees to hear the matter;

b) the dispute concerns the misappropriation or use of intellectual property rights of a Party, including, but not limited to, the use of the trademark, tradename, trade dress or service mark of a Party, and the decision appealed by a Party to a federal or state court with jurisdiction over the dispute.

11.3 Each Party agrees that any permitted appeal must be commenced within thirty (30) days after the Arbitrator's decision in the arbitration proceedings is issued. In the event of an appeal, a Party must comply with the results of the arbitration process during the appeal process.

12. **Fees**

Unless otherwise mutually agreed in writing, each Arbitrator's fees and expenses shall be shared equally between the Parties, provided, however, that in the arbitration of any particular dispute either Party may request that all fees and expenses directly related to that arbitration matter be imposed on the other Party, and the Arbitrator shall have the power to grant such relief, in whole or in part.

13. **Confidentiality**

13.1 GTE, AT&T, and the Arbitrator will treat the arbitration proceeding, including the hearings and conferences, discovery, or other related events, as confidential, except as necessary in connection with a judicial challenge to, or enforcement of, an award, or unless otherwise required by an order or lawful process of a court or governmental body.

13.2 In order to maintain the privacy of all arbitration conferences and hearings, the Arbitrator shall have the power to require the exclusion of any person, other than a Party, counsel thereto, or other essential persons.

13.3 To the extent that any information or materials disclosed in the course of an arbitration proceeding contains proprietary or confidential Information of either Party, it shall be safeguarded in accordance with Section 17 of this Agreement. However, nothing in Section 17 of this Agreement shall be construed to prevent either Party from disclosing the other Party's Information to the Arbitrator in connection with or in anticipation of an arbitration proceeding. In addition, the Arbitrator may issue orders to

protect the confidentiality of proprietary information, trade secrets, or other sensitive information.

14. **Service of Process**

14.1 Service may be made by submitting one copy of all pleadings and attachments and any other documents requiring service to each Party and one copy to the Arbitrator. Service shall be deemed made (i) upon receipt if delivered by hand; (ii) after three (3) business days if sent by first class certified U.S. mail; (iii) the next business day if sent by overnight courier service; (iv) upon confirmed receipt if transmitted by facsimile. If service is by facsimile, a copy shall be sent the same day by hand delivery, first class U.S. mail, or overnight courier service.

14.2 Service by AT&T to GTE and by GTE to AT&T at the address designated for delivery of notices in this Agreement shall be deemed to be service to GTE or AT&T, respectively. The initial address for delivery of notices is specified in Subsection 3 above.

Appendix I to Attachment 1

ALTERNATIVE DISPUTE RESOLUTION

Procedure for Resolution of Service-Affecting Disputes

1. Purpose.

This Appendix 1 describes the procedures for an expedited resolution of disputes between GTE and AT&T arising under this Agreement which directly affect the ability of a Party to provide uninterrupted, high quality services to its customers and which cannot be resolved using the procedures for informal resolution of disputes contained in Attachment 1 to the Agreement.

Except as specifically provided in this Appendix 1 to Attachment 1, the provisions of Attachment 1 shall apply.

2. Initiation of an Arbitration.

a) If the Inter-Company Review Board is unable to resolve a service affecting dispute within two (2) business days (or such longer period as agreed to in writing by the Parties) of such submission, and the Parties have not otherwise entered into a settlement of their dispute, a Party may initiate an arbitration in accordance with the requirements of this Appendix 1 to Attachment 1. However, in the sole discretion of the Party which submitted the dispute to the Inter-Company Review Board, the dispute may be arbitrated in accordance with the general procedures described in Attachment 1 rather than the expedited procedures of this Appendix 1 to Attachment 1.

b) A proceeding for arbitration will be commenced by a Party ("Complaining Party") filing a complaint with the Arbitrator and simultaneously serving a copy on the other Party ("Complaint").

c) Each Complaint will concern only the claims relating to an act or failure to act (or series of related acts or failures to act) of a Party which affect the Complaining Party's ability to offer a specific service (or group or related services) to its customers.

A Complaint may be in letter or memorandum form and must specifically describe the action or inaction of a Party in dispute and identify with particularity how the complaining Party's service to its customers is affected.

3. Response to Complaint.

A response to the Complaint must be filed within five (5) business days after service of the Complaint.

4. Reply to Complaint.

A reply is permitted to be filed by the Complaining Party within three (3) business days of service of the response. The reply must be limited to those matters raised in the response.

5. Discovery.

The Parties shall cooperate on discovery matters as provided in Section 8 of Attachment 1, but following expedited procedures.

6. Hearing.

a) The Arbitrator will schedule a hearing on the Complaint to take place within twenty (20) business days after service of the Complaint. However, if mutually agreed to by the parties, a hearing may be waived and the decision of the Arbitrator will be based upon the papers filed by the Parties.

b) The hearing will be limited to four (4) days, with each Party allocated no more than two (2) days, including cross examination by the other Party, to present its evidence and arguments. For extraordinary reasons, including the need for extensive cross-examination, the Arbitrator may allocate more time for the hearing.

In order to focus the issues for purposes of the hearing, to present initial views concerning the issues, and to facilitate the presentation of evidence, the Arbitrator has the discretion to conduct a telephone prehearing conference at a mutually convenient time, but in no event later than three (3) days prior to any scheduled hearing.

Each Party may introduce evidence and call witnesses it has previously identified in its witness and exhibit lists. The witness and exhibit lists must be furnished to the other Party at least three (3) days prior to commencement of the hearing. The witness list will disclose the substance of each witness' expected testimony. The exhibit list will identify by name (author and recipient), date, title and any other identifying characteristics the exhibits to be used at the arbitration. Testimony from witnesses not listed on the witness list or exhibits not listed on the exhibit list may not be presented in the hearing.

c) The parties will make reasonable efforts to stipulate to undisputed facts prior to the date of the hearing.

d) Witnesses will testify under oath and a complete transcript of the proceeding, together with all pleadings and exhibits, shall be maintained by the Arbitrator.

7. **Decision**.

a) The Arbitrator will issue and serve his or her decision on the Parties within five (5) business days of the close of the hearing or receipt of the hearing transcript, whichever is later.

b) The Parties agree to take the actions necessary to implement the decision of the Arbitrator immediately upon receipt of the decision.

ATTACHMENT 2

SERVICE DESCRIPTION: UNBUNDLED NETWORK ELEMENTS

TABLE OF CONTENTS

1. INTRODUCTION 1

2. NETWORK INTERFACE DEVICE 1

3. LOOP 3

4. LOCAL SWITCHING 10

5. OPERATOR SERVICE 17

6. DIRECTORY ASSISTANCE SERVICE 20

7. COMMON TRANSPORT 21

8. DEDICATED TRANSPORT 22

9. SIGNALING LINK TRANSPORT 30

10. SIGNALING TRANSFER POINTS (STPS) 32

11. SERVICE CONTROL POINTS/DATABASES 35

12. TANDEM SWITCHING 44

13. ADDITIONAL REQUIREMENTS 47

SERVICE DESCRIPTION: UNBUNDLED NETWORK ELEMENTS

1. **Introduction**

This Attachment sets forth the descriptions and requirements for unbundled network elements that GTE agrees to offer to AT&T under this Agreement.

2. **Network Interface Device**

2.1. Definition:

The Network Interface Device (NID) is a single-line termination device or that portion of a multiple-line termination device required to terminate a single line or circuit. The fundamental function of the NID is to establish the official network demarcation point between a carrier and its end-user customer. The NID generally features two independent chambers or divisions which separate the service provider's network from the customer's inside wiring. Each chamber or division contains the appropriate connection points or posts to which the service provider, and the end-user customer each make their connections. The NID provides a protective ground connection, and is capable of terminating cables such as twisted pair cable. The NID may be ordered as a Network Element independently from the Loop Distribution.

2.1.1. With respect to multiple-line termination devices, AT&T shall specify the quantity of NIDs it requires within such device.

Figure 1 - Network Interface Device [Intentionally Deleted]

2.1.2. Technical Requirements

2.1.2.1. The Network Interface Device shall provide a clean, accessible point of connection for the inside wiring and for the Distribution Media and shall maintain a connection to ground that meets the requirements set forth below.

2.1.2.2. The NID shall be capable of transferring electrical analog or digital signals between the customer's inside wiring and the Distribution Media.

2.1.2.3. All NID posts or connecting points shall be in place, secure, usable and free of any rust or corrosion. The protective ground connection shall exist and be properly installed. The ground wire

will also be free of rust or corrosion and have continuity relative to ground.

2.1.2.4. The NID shall be capable of withstanding all normal local environmental variations.

2.1.2.5. Where the NID is not located in a larger, secure cabinet or closet, the NID shall be protected from physical vandalism. The NID shall be physically accessible to AT&T designated personnel and GTE will identify the cable pair used for the particular service which will be replaced by AT&T. In cases where entrance to the customer premises is required to give access to the NID, AT&T shall obtain entrance permission directly from the customer.

2.1.2.6. GTE shall offer the NID together with, and separately from the Loop or Loop Distribution Media component of the Loop.

2.1.3. Interface Requirements

2.1.3.1. AT&T shall be permitted to connect its own Loop directly to GTE's Network Interface Device (NID) in cases in which AT&T uses its own facilities to provide local service to an end user formerly served by GTE, as long as such direct connection does not adversely affect GTE's network. In order to minimize any such adverse effects, AT&T shall follow the procedures in sub-sections 2.1.3.2 and 2.1.3.3.

2.1.3.2. When connecting its own loop facility directly to GTE's NID for a residence or business customer, AT&T must make a clean cut on the GTE drop wire at the NID so that no bare wire is exposed. AT&T shall not remove or disconnect GTE's drop wire from the NID or take any other action that might cause GTE's drop wire to be left lying on the ground.

2.1.3.3. At multi-tenant customer locations, AT&T must remove the jumper wire from the distribution block (i.e. the NID) to the GTE cable termination block. If AT&T cannot gain access to the cable termination block, AT&T must make a clean cut at the closest point to the cable termination block. At AT&T's request and discretion, GTE will determine the cable pair to be removed at the NID in multi-tenant locations. AT&T will compensate GTE for the trip charge necessary to identify the cable pair to be removed.

2.1.3.4. GTE agrees to offer NIDs for lease to AT&T, but not for sale. AT&T may remove GTE identification from any NID which it

connects to an AT&T loop, but AT&T may not place its own identification on such NID.

2.1.3.5. NID to NID Connection. GTE will not require that a separate NID be installed by AT&T in order to make a NID to NID connection. Rather than connecting its loop directly to GTE's NID, AT&T may also elect to install its own NID and effect a NID to NID connection to gain access to the end user's inside wiring.

2.1.3.6. Removal of Cable Pairs. Removal from the NID of existing cable pairs required for AT&T to terminate service is the responsibility of AT&T.

2.1.3.7. Maintenance / Liability. Sub-paragraphs 2.1.3.8 through 2.1.3.11 outline AT&T's responsibilities when leasing NIDs from GTE.

2.1.3.8. GTE is responsible for the maintenance of the NID when it is leased as part of the unbundled loop.

2.1.3.9. GTE is not responsible for any damage to AT&T's customer's interior wiring, station apparatus, or physical harm to the dwelling or persons resulting from over-voltage intrusion from AT&T's cable facilities.

2.1.3.10. When AT&T no longer wishes to lease the GTE NID, AT&T is responsible for ensuring that this equipment is left in proper working order.

2.1.3.11. When AT&T discontinues the use of the NID, GTE will perform a physical inspection of the NID prior to reconnection to a GTE customer and charge AT&T for any corrective maintenance which may be required.

2.1.4. The Network Interface Device shall be provided to AT&T in accordance with the technical references listed in Appendix A, under paragraph 1.

3. Loop

3.1. **Definition:**

A "Loop" is a transmission facility between the main distribution frame (cross-connect), or functionally comparable piece of equipment in a GTE end office or wire center to a demarcation, connector block or network interface device at a customer's premises. Loop types include, but are not limited to, two-wire and

four-wire copper analog voice-grade loops, two-wire and four-wire loops that are conditioned to transmit analog and digital signals, needed to provide, for example, ISDN, ADSL, HDSL, and DS-1 level signals, DS-1 loops, Coax loops and Fiber loops. A Loop is composed of the following Sub-Loop Elements, to the extent that each is physically existent in the LEC network where the Loop is ordered and the Network Interface Device (NID). The Sub-Loop Elements are defined in detail below:

Loop Distribution Media

Loop Concentrator/Multiplexer

Loop Feeder

3.1.1. Requirements:

3.1.1.1. Basic Loop. The Basic Loop is a 2-wire copper facility or functional equivalent which will meet industry standard specifications for Voice Frequency transmission. The Basic Loop may include load coils, bridge taps, etc., or may include carrier derived facility components (i.e. pair gain applications, loop concentrator/multiplexers). The Basic Loop will be designed within industry design parameters with a loop loss (from customer to MDF) which does not exceed 10 dB and with a noise level less than 30 dbrnC. For loaded loops, the Bridge Tap and End section will be between 3 and 12 kFt.

3.1.1.2. Special Conditioning Requirements. The Basic Loop will be provided to AT&T at parity with GTE customers and will comply with the specifications noted in this section 3.1, Loop. Transmission of signaling messages or tones not provided by these specifications will be provided to AT&T, as agreed between AT&T and GTE. When placing an order for unbundled Loop and Sub-Loop elements, AT&T will notify GTE of any special requirements. Special conditioning to provide such requirements will be provided on a case-by-case basis, if technically feasible. AT&T agrees to bear the cost of any such special conditioning. Types of Loops which may require such conditioning include 2W/4W PABX Trunks, 2W/4W voice grade private line and foreign exchange lines, 4W digital data (2.4Kbps through 64Kbps), etc.

3.1.1.3. ISDN BRI Loops. Upon request by AT&T, GTE will provide 2W loops capable of transmitting ISDN data rates, where technically feasible. For Loops up to 18,000 feet from the MDF to the customer, the Loops will be designed within industry design

parameters with a loss not to exceed 42 dB at 40kHz. Bridge taps will not exceed 2,500 feet with no single bridge tap greater than 2,000 feet. Customers located greater than 18,000 feet from the MDF will require special Loop provisioning at an additional charge.

3.1.1.4. 4-Wire DS-1 Loops/ISDN PRI. These Loops will be designed to support a digital transmission rate of 1,544, 000 bps. These Loops will be designed within industry parameters and have no bridge taps or load coils. These Loops will employ special line treatment (span line repeaters, office terminating repeaters at the GTE wire center, or similar technology).

3.1.1.5. Features, Functions, Attributes, Etc. To the degree possible, all transport-based features, functions, service attributes, grades-of-service, installation, maintenance and repair intervals that apply to the bundled services, will apply to the above unbundled Loop.

3.1.1.6. All Loop facilities furnished by GTE on the premises of AT&T's end users and up to the network interface or functional equivalent are the property of GTE. GTE must have access to all such facilities for network management purposes. GTE employees and agents may enter said premises at any reasonable hour to test and inspect such facilities in connection with such purposes or, upon termination or cancellation of the Loop facility, to remove such facility.

3.1.1.7. If AT&T leases Loops which are conditioned to transmit digital signals, as a part of that conditioning, GTE will test the Loop after conditioning and provide recorded test results to AT&T. When AT&T provides its own switching, it will test the unbundled loops. If there is a maintenance problem on an unbundled loop, AT&T will report the problem to GTE, and GTE will be responsible for the repair of the loop. In maintenance and repair cases, if loop tests are taken, GTE will provide any recorded readings to AT&T at the time the trouble ticket is closed in the same manner as GTE provides to itself and its end users.

3.1.1.8. AT&T may order a copper twisted pair Loop even in instances where the Loop for services that GTE offers is other than a copper facility.

3.1.2. Unbundled Loop Facility Certification

3.1.2.1. Before deploying any service enhancing copper cable technology (e.g., HDSL, ISDN, etc.) over unbundled 2-wire analog voice grade loops provided by GTE, AT&T shall notify GTE of such intentions

to enable GTE to assess the loop transport facilities to determine whether there are any existing copper cable loop transport technologies (e.g., analog carrier, etc.) deployed within the same cable sheath that would be interfered with if AT&T deployed the proposed service enhancing copper cable technology. If there are existing copper cable loop transport technologies already deployed within the same cable sheath, or if GTE already has specific planned projects to deploy copper cable loop transport technologies within the next six months for which it can demonstrate a specific commitment by producing detailed engineering plans, GTE will so inform AT&T and AT&T shall not be permitted to deploy such service enhancing copper cable technologies.

3.1.2.1.1. If AT&T fails to notify GTE of its plans to deploy service enhancing copper cable technology and obtain prior certification from GTE of the facilities, and if AT&T's deployment of such technology is determined to have caused interference with existing or planned copper cable loop transport technologies deployed by GTE in the same cable sheath, AT&T will immediately remove such service enhancing copper cable technology and shall reimburse GTE for all incurred expense related to this interference.

3.1.2.2. Prior to GTE deploying service enhancing copper cable technology, as described above, GTE will validate, through a search of its facility assignment records, that AT&T has not deployed technologies within the same cable sheath that would be interfered by those planned by GTE. Should such incompatibility exist, GTE will not deploy such technology that would interfere with those already deployed by AT&T.

3.1.2.2.1. Should GTE deploy service enhancing copper cable technology which is determined to interfere with technology previously deployed by AT&T, and AT&T can demonstrate that they had complied with GTE's Unbundled Loop Facility Certification procedure, GTE will remove their technology from the cable sheath, reimburse AT&T for all incurred expenses related to this interference.

3.1.3. Unbundled Loop Facility Reservation. GTE and AT&T may each reserve for up to 6 (six) months the right to deploy within GTE's network copper cable loop transport technology for specific projects for which a party can demonstrate a specific commitment by producing detailed engineering plans.

3.1.4. Requirements:

Specific Loops as described in 3.1.1.1 through 3.1.1.4 are capable of transmitting signals for the following services (as needed by AT&T to provide end-to-end service capability to its end-user customer):

1. 2-wire voice grade basic telephone services
2. 2-wire ISDN
3. 2-wire Centrex
4. 2 and 4-wire PBX lines or trunks
5. 2 and 4-wire voice grade private lines and foreign exchange lines
6. 4-wire digital data (2.4kbps through 64Kbps and n times 64Kbps) (where n<24)
7. 4-wire DS1 (switched or private line)

3.1.5. Additional Requirements for Loop Where Integrated Digital Loop Carrier Systems are being used. If GTE uses Integrated Digital Loop Carrier (DLCs) systems to provide local loop, GTE will make alternative arrangements to permit AT&T to order a contiguous unbundled Loop. These arrangements may include the following: provide AT&T with copper facilities or universal DLC that are acceptable to AT&T, deploy Virtual Remote Terminals, allow AT&T to purchase the entire Integrated DLC, or convert integrated DLCs to non-integrated systems.

3.2. **Loop Distribution Media**

3.2.1. Definition:
Loop Distribution Media provides connectivity between the NID and the terminal block on the customer-side of a Feeder Distribution Interface (FDI). The FDI is a device that terminates the Loop Distribution Media and the Loop Feeder, and cross-connects them in order to provide a continuous transmission path between the NID and a telephone company central office.

3.2.1.1. In some instances, AT&T shall require a copper twisted pair Distribution Media in instances where the Loop Distribution Media for services that GTE offers is other than a copper facility.

3.2.2. GTE will provide to AT&T Loop Distribution Media of the same condition that exists for the current GTE customer.

3.2.3. GTE is not responsible for the end to end performance of the entire loop when GTE provides only the Loop Distribution Media.

3.2.4. The Loop Distribution Media provided under this Agreement shall meet or exceed the applicable interface requirements set forth in the technical references listed in Appendix A to this Attachment 2 under paragraph 2 thereof.

3.2.5. The Loop Distribution Media may be ordered by AT&T through the Bona Fide Request procedures outlined in Attachment 12. The request shall specify the technical requirements for the Loop Distribution Media.

3.2.6. GTE shall perform all cross connections to the FDI as AT&T may request from time to time in order to provide Network Elements to AT&T in accordance with this Agreement. Since GTE will be performing all necessary cross connections within the FDI and at the main distribution frame, AT&T agrees that there will be no requirement for personnel of AT&T to access the FDI or the serving wire center to the extent that AT&T has no equipment collocated in the GTE central office.

3.2.7. AT&T shall be responsible for the costs (if any) required to create an interface at the main distribution frame if such interface does not already exist, such as in the case of an Integrated Digital Loop Carrier System, as specified in Attachment 14.

3.3. **Loop Concentrator/Multiplexer**

3.3.1. **Definition:**

The Loop Concentrator/Multiplexer is the Network Element that: (1) aggregates lower bit rate or bandwidth signals to higher bit rate or bandwidth signals (multiplexing); (2) disaggregates higher bit rate or bandwidth signals to lower bit rate or bandwidth signals (demultiplexing); (3) aggregates a specified number of signals or channels to fewer channels (concentrating); (4) performs signal conversion, including encoding of signals (e.g., analog to digital and digital to analog signal conversion); and (5) in some instances performs electrical to optical (E/O) conversion.

The Loop Concentrator/Multiplexer function may be provided through a Digital Loop Carrier (DLC) system, channel bank, multiplexer or other equipment at which traffic is encoded and decoded, multiplexed and demultiplexed, or concentrated.

3.3.2. GTE is not responsible for the end to end performance of the entire loop when GTE provides only the Loop Concentrator/Multiplexer.

3.3.3. The Loop Concentrator/Multiplexer provided under this Agreement shall meet or exceed the applicable interface requirements set forth in the technical references listed in Appendix A to this Attachment 2, under paragraph 2 thereof.

3.3.4. The Loop Concentrator/Multiplexer may be ordered by AT&T through the Bona Fide Request procedures outlined in Attachment 12. The request shall specify the technical requirements for the Loop Concentrator/Multiplexer.

3.4. Loop Feeder

3.4.1. Definition:

3.4.2. The Loop Feeder is the Network Element that provides connectivity between (1) a FDI associated with Loop Distribution Media and a termination point appropriate for the media in a central office, or (2) a Loop Concentrator/Multiplexer provided in a remote terminal and a termination point appropriate for the media in a central office. Since GTE will be performing all necessary cross connections within the FDI and the main distribution frame, there will be no requirement for personnel of AT&T to access the FDI or the serving wire center to the extent that AT&T has no equipment collocated in the GTE central office.

3.4.3. In certain cases, AT&T will require a copper twisted pair loop even in instances where the medium of the Loop Feeder for services that GTE offers is other than a copper facility.

3.4.4. The Loop Feeder provided under this Agreement shall meet or exceed the applicable interface requirements set forth in the technical references listed in Appendix A to this Attachment 2, under paragraph 2 thereof.

3.4.5. The Loop Feeder may be ordered by AT&T through the Bona Fide Request procedures outlined in Attachment 12. The request shall specify the technical requirements for the Loop Feeder.

3.4.6. GTE is not responsible for the end performance of the entire loop when GTE provides only the Loop Feeder.

3.5. Other Sub-Loop Terms and Conditions

3.5.1. GTE agrees to provide access to the sub-loop network elements at the Feeder Distribution Interface (FDI), based on the following conditions:

3.5.2. AT&T agrees to pay GTE to expand or replace the FDI (over and above the established price of the basic loop) to accommodate terminating the new AT&T cable.

3.5.3. AT&T agrees to pay GTE an agreed upon charge to perform all cross connections within the GTE FDI (in addition to the price of the basic sub-loop network element(s) leased by AT&T).

3.5.4. AT&T agrees that since all cross connects will be performed by GTE personnel, AT&T personnel will not require access to the FDI.

4. **Local Switching**

4.1. **Definition:**

Local Switching is the Network Element that provides the functionality required to connect the appropriate originating lines or trunks wired to the Main Distributing Frame (MDF) or Digital Signal Cross Connect (DSX) panel to a desired terminating line or trunk. Such functionality shall include all of the features, functions, and capabilities of the GTE switch including but not limited to: line signaling and signaling software, digit reception, dialed number translations, call screening, routing, recording, call supervision, dial tone, switching, telephone number provisioning, announcements, calling features and capabilities (including call processing), CENTRANET, Automatic Call Distributor (ACD), Carrier pre-subscription (e.g., long distance carrier, intraLATA toll), Carrier Identification Code (CIC) portability capabilities, testing and other operational features inherent to the switch and switch software. Local Switching provides access to transport, signaling (ISDN User Part (ISUP) and Transaction Capabilities Application Part (TCAP), and platforms such as adjuncts, Public Safety Systems (911), operator services, directory services and Advanced Intelligent Network (AIN). Remote Switching Module functionality is included in the Local Switching function. The switching capabilities used will be based on the line side features they support, where technically feasible. Local Switching will also be capable of routing local directory assistance and operator services calls to alternative directory assistance and operator services platforms.

4.1.1. Local Switching also includes Data Switching, which provides for ISDN Packet and Circuit Switched Data service, the data switching functionality that is required to connect between industry standard ISDN interfaces. In this case, the purpose of Data Switching is to terminate, concentrate, and switch data traffic from Customer Premises Equipment (CPE) in the digital format consistent with ISDN standards. Data Switching also provides connectivity for the purpose of conveying the customer data to its final destination.

4.2. **Technical Requirements:**

The requirements set forth in this Section 4.2 apply to Local Switching.

4.2.1. GTE shall offer to AT&T unbundled access to all facilities, functions, features and capabilities of its local switches to the extent it is technically feasible. If AT&T requests access to any facility, function, feature or capability of the GTE local switch that is technically feasible but which requires GTE to make modifications to the switch where such modifications are outside the scope of modifications that have been made in the past and are modifications that the manufacturer of the switch does not, and has not supported, GTE shall immediately seek endorsement from the manufacturer of the switch to make such modifications, and shall promptly notify AT&T that GTE has done so within thirty (30) days of receiving AT&T's request. After obtaining the vendor endorsement, GTE shall provide the unbundled access to the facility, function, feature or capability requested by AT&T. AT&T will reimburse GTE for all costs associated with such modification in accordance with section 251(d)(1) of the Act.

4.2.1.1. GTE shall offer Local Switching together with and separately from Data Switching.

4.2.1.2. When applicable, GTE shall route calls to the appropriate trunk or lines for call origination or termination.

4.2.1.3. GTE shall route local directory assistance and operator services calls on a per line or per screening class basis to (1) GTE platforms providing Network Elements or additional requirements, (2) AT&T designated platforms, or (3) third-party platforms. AT&T shall be responsible for the cost of providing customized routing to the extent ordered by the Florida Public Service Commission. In no event, however, shall AT&T be responsible for the costs associated with providing customized routing within the capabilities that reside, as of the Effective Date, in the switch.

4.2.1.4. GTE shall provide standard recorded announcements as designated by AT&T and call progress tones to alert callers of call progress and disposition.

4.2.1.5. GTE shall activate service for an AT&T Customer or network interconnection on any of the Local Switching interfaces. This includes provisioning changes to change a customer from GTE's services to AT&T's services without loss of feature functionality.

4.2.1.6. GTE shall perform routine testing (e.g., Mechanized Loop Tests (MLT) and test calls such as 105, 107 and 108 type calls) and fault isolation on a reasonable schedule designated by AT&T.

4.2.1.7. GTE shall repair and restore any equipment or any other maintainable component owned by or under the control of GTE that may adversely impact Local Switching.

4.2.1.8. GTE shall control congestion points such as those caused by radio station call-ins, and network routing abnormalities, using capabilities such as Automatic Call Gapping, Automatic Congestion Control, and Network Routing Overflow.

4.2.1.9. GTE shall perform manual call trace as designated by AT&T and permit customer originated call trace.

4.2.1.10. GTE shall record billable events and send the appropriate billing data to AT&T as outlined in Attachment 6.

4.2.1.11. For Local Switching used as 911 Tandems, GTE shall allow interconnection from AT&T local switching elements and GTE shall route the calls to the appropriate Public Safety Access Point (PSAP).

4.2.1.12. GTE shall provide where the switch is capable, each of the following capabilities:

4.2.1.13. Essential Service Lines;

4.2.1.14. Telephone service prioritization;

4.2.1.15. Telephone Relay Services for handicapped;

4.2.1.16. Soft dial tone where required by law; and

4.2.1.17. Any other capability required by law.

4.2.1.18. GTE shall provide Switching Service Point (SSP) capabilities and signaling software to interconnect the signaling links destined to the Signaling Transfer Point Switch (STPS). In the event that Local Switching is provided out of a switch without SS7 capability, the Tandem shall provide this capability as discussed in the section on Tandem Switching. These capabilities shall adhere to Bellcore specifications - TCAP (GR-1432-CORE), ISUP(GR-905-CORE), Call Management (GR-1429-CORE), Switched Fractional DS1 (GR-1357-CORE), Toll Free Service (GR-1428-CORE), Calling Name (GR-1597-CORE), Line Information Database (GR-954-CORE), and Advanced Intelligent Network (GR-2863-CORE). A further description of AIN is set forth in Sections 4.2.1.26.1 and 4.2.1.26.2 of this Attachment 2.

4.2.1.19. GTE shall provide interfaces to adjuncts through industry standard and Bellcore interfaces. These adjuncts can include, but are not limited to, the Service Circuit Node and Automatic Call Distributors. Examples of existing interfaces are ANSI ISDN standards Q.931 and Q.932.

4.2.1.20. GTE shall provide performance data regarding a customer line, traffic characteristics or other measurable elements to AT&T to the extent that it provides that information to itself.

4.2.1.21. GTE shall offer Local Switching that provides feature offerings at parity to those provided by GTE to itself or any other party. Such feature offerings, where available, shall include but are not limited to:

4.2.1.22. Basic and primary rate ISDN;

4.2.1.23. Residential features;

4.2.1.24. Customer Local Area Signaling Services (CLASS/LASS);

4.2.1.25. CENTRANET (including equivalent administrative capabilities, such as customer accessible reconfiguration and detailed message recording); and

4.2.1.26. Advanced intelligent network triggers supporting AT&T features. GTE shall offer to AT&T all AIN triggers to the extent technically feasible and currently available to GTE for offering AIN-based services in accordance with the applicable technical references listed in Appendix A to this Attachment 2, under paragraph 3 thereof.

4.2.1.26.1. When AT&T utilizes GTE's Local Switching network element and requests GTE to provision such network element with a technically feasible AIN trigger, GTE will provide access to the appropriate AIN Call Related Database for the purpose of invoking either a GTE AIN feature or an AIN feature developed by AT&T through use of GTE's SCE/SMS under Section 11.7 below, provided, however, that GTE is not required to allow SS7 advanced intelligent access from AT&T's SCP to GTE's switch to invoke an AT&T-developed AIN feature, until testing and security concerns regarding the reliability of service to GTE's end users have been addressed, either through industry forums or successful testing.

4.2.1.26.2. When AT&T utilizes its own local switch, GTE will provide access to the appropriate AIN Call Related Database for the purpose of invoking either a GTE AIN feature or an AIN feature developed by AT&T through use of GTE's SCE/SMS under 11.7 below, provided, however, that GTE is not required to allow such use until testing and security concerns regarding the reliability of service to GTE's end users have been addressed, either through industry forums or successful testing.

4.2.1.27. GTE shall assign each AT&T Customer line the class of service designated by AT&T (e.g., using line class codes or other switch specific provisioning methods), and shall route local directory assistance calls from AT&T Customers to AT&T directory assistance operators at AT&T's option. AT&T shall pay GTE's costs, if any, pursuant to the pricing standards of Section 252(d) of the Act and in such amounts or levels as determined by the Commission for implementation of such routing. Such costs shall only include GTE's costs for providing customized routing that requires capabilities that are beyond those that currently reside in the switch.

4.2.1.28. GTE shall assign each AT&T Customer line the class of services designated by AT&T (e.g., using line class codes or other switch specific provisioning methods) and shall route operator calls from AT&T Customer to AT&T operators at AT&T's option. Where technically feasible, GTE shall route local Operator Services calls (0+, 0-) dialed by AT&T Customers directly to the AT&T Local Operator Services platform, unless AT&T requests otherwise pursuant to Section 28.6.1. Such traffic shall be routed over trunk groups specified by AT&T which connect GTE end offices and the AT&T Local Operator Services platform, using standard Operator Services dialing protocols of 0+ or 0-. Where intraLATA presubscription is not available, GTE will provide the functionality and features within its local switch (LS), to route AT&T Customer

dialed 0- and 0+ IntraLATA calls to the AT&T designated line or trunk on the Main Distributing Frame (MDF) or Digital Cross Connect (DSX) panel via Modified Operator Services (MOS) Feature Group C signaling. Where IntraLATA presubscription is available, AT&T Customer dialed 0- and 0+ intraLATA calls will be routed to the intraLATA PIC carrier's designated operator services platform. In all cases, GTE will provide post-dial delay at no greater than that provided by GTE for its end user customers. AT&T shall pay GTE's costs, if any, pursuant to the pricing standards of Section 252(d) of the Act, and in such amounts or levels as determined by the Commission for implementation of such routing.

4.2.1.29. If AT&T requests the termination of Local Switching, GTE shall promptly remove the class of service assignment from the line.

4.2.1.30. [Intentionally Deleted]

4.2.1.31. Local Switching shall be offered in accordance with the requirements of the technical references listed in Appendix A to this Attachment 2, under paragraph 3 thereof.

4.2.2. Interface Requirements:

4.2.2.1. GTE shall provide the following interfaces (i.e. ports) to loops:

4.2.2.2. Standard Tip/Ring interface including loopstart or groundstart, on-hook signaling (e.g., for calling number, calling name and message waiting lamp);

4.2.2.3. Coin phone signaling;

4.2.2.4. Basic Rate Interface ISDN;

4.2.2.5. Two-wire analog interface to PBX;

4.2.2.6. Four-wire analog interface to PBX;

4.2.2.7. Four-wire DS1 interface to PBX or customer provided equipment (e.g. computers and voice response systems);

4.2.2.8. Primary Rate ISDN to PBX;

4.2.2.9. Switched Fractional DS1 with capabilities to configure Nx64 channels (where N = 1 to 24); and

4.2.2.10. GTE shall provide access to, but not limited to the following:

4.2.2.11. SS7 Signaling Network or Multi-Frequency trunking if requested by AT&T;

4.2.2.12. Interface to AT&T operator services systems or Operator Services through appropriate trunk interconnections for the system; and

4.2.2.13. Interface to AT&T directory assistance services through the AT&T switched network or to Directory Services through the appropriate trunk interconnections for the system; and 950 access or other AT&T required access to interexchange carriers as requested through appropriate trunk interfaces.

4.2.2.14. Interfaces to Loops provided under this Agreement shall meet or exceed the applicable interface requirements set forth in the technical references listed in Appendix A to this Attachment 2, under paragraph 4 thereof.

4.3. Integrated Services Digital Network (ISDN)

Integrated Services Digital Network (ISDN) is defined in two variations. The first variation is Basic Rate ISDN (BRI). BRI consists of 2 Bearer (B) Channels and one Data (D) Channel. The second variation is Primary Rate ISDN (PRI). PRI consists of 23 B Channels and one D Channel. Both BRI and PRI B Channels may be used for voice, Circuit Switched Data (CSD) or Packet Switched Data (PSD). The BRI D Channel may be used for call related signaling, non-call related signaling or packet switched data. The PRI D Channel may be used for call related signaling.

4.3.1. Technical Requirements - ISDN

4.3.1.1. Where available, GTE shall offer Data Switching providing ISDN that, at a minimum:

4.3.1.2. Provides integrated packet handling capabilities;

4.3.1.3. Allows for full 2B+D Channel functionality for BRI; and.

4.3.1.4. Allows for full 23B+D Channel functionality for PRI.

4.3.1.5. Each B Channel shall allow for voice, 64Kbs CSD, and PSD of 128 logical channels at minimum speeds of 19Kbs throughput of each logical channel up to the total capacity of the B Channel.

4.3.1.6. Each B Channel shall provide capabilities for alternate voice and data on a per call basis.

4.3.1.7. The BRI D Channel shall allow for call associated signaling, non-call associated signaling and PSD of 16 logical channels at minimum speeds of 9.6 Kbs throughput of each logical channel up to the total capacity of the D channel.

4.3.1.8. The PRI D Channel shall allow for call associated signaling.

4.3.2. Interface Requirements - ISDN

4.3.2.1. GTE shall provide the BRI U interface using 2 wire copper loops.

4.3.2.2. GTE shall provide the BRI interface using Digital Subscriber Loops.

4.3.2.3. GTE shall offer PSD interfaces.

4.3.2.4. GTE shall offer PSD trunk interfaces operating at 56Kbs.

4.3.2.5. Interfaces to Loops for ISDN requirements provided under this Agreement shall meet or exceed the applicable interface requirements set forth in the technical references listed in Appendix A to this Attachment 2, under paragraph 5 thereof.

5. Operator Service

5.1. [Intentionally Deleted]

5.1.1. Definition.
Operator Service provides, where technically feasible: (1) operator handling for call completion (for example, collect, third number billing, and manual credit card calls), (2) operator or automated assistance for billing after the customer has dialed the called number; and (3) special services including Busy Line Verification and Emergency Line Interrupt (ELI), Emergency Agency Call, Operator-assisted Directory Assistance, and Rate Quotes.

5.1.2. Requirements

5.1.2.1. Operator Services for calls which are routed from the local switch shall include but not be limited to the following:

5.1.2.2. GTE shall complete 0+ and 0- dialed local calls.

5.1.2.3. GTE shall complete 0+ and 0- intraLATA toll calls.

5.1.2.4. GTE shall complete calls that are billed to a GTE calling card and AT&T shall designate to GTE the acceptable types of special billing.

5.1.2.5. GTE shall complete person-to-person calls.

5.1.2.6. GTE shall complete collect calls.

5.1.2.7. GTE shall provide the capability for callers to bill to a third party and complete such calls.

5.1.2.8. GTE shall complete station-to-station calls.

5.1.2.9. GTE shall process emergency calls.

5.1.2.10. GTE shall process Busy Line Verify and Emergency Line Interrupt requests.

5.1.2.11. GTE shall process emergency call trace.

5.1.2.12. GTE shall process operator-assisted directory assistance calls.

5.1.2.13. GTE shall provide rate quotes and process time-and-charges requests on 0- calls, and shall provide AT&T's rates where technically feasible. To the extent that the costs of these services are not covered by the underlying element charge, AT&T shall pay such costs.

5.1.2.14. GTE shall route 0- traffic directly to a "live" operator team.

5.1.2.15. Operator Services provided by GTE to AT&T local service customers under this Agreement will be customized exclusively for AT&T, where technically feasible, at rates specified in Attachment 14. GTE will perform necessary software upgrades to allow for customized Operator Services on a switch-by-switch basis, subject to capability and capacity limitations. To the extent the costs of these services are not covered by the underlying element charge, AT&T agrees to reimburse GTE for the total cost of implementing customized Operator Services in accordance with this Agreement.

5.1.2.16. GTE shall provide caller assistance for the handicapped at parity with what is provided under GTE's tariff.

5.1.2.17. [Intentionally Deleted]

5.1.2.18. [Intentionally Deleted]

5.1.2.19. GTE shall provide notification of the length of call.

5.1.2.20. Operator Service shall adhere to equal access requirements consistent with GTE Equal Access Deployment Schedule.

5.1.2.21. GTE shall exercise at least the same level of fraud control in providing Operator Service to AT&T that GTE provides for its own operator service.

5.1.2.22. GTE shall perform Billed Number Screening when handling Collect, Person-to-Person, and Billed-to-Third-Party calls.

5.1.2.23. GTE shall provide to AT&T such service measurements and accounting reports as it prepares to meet Commission requirements.

5.1.2.24. GTE shall direct customer inquiries to a single, AT&T-designated customer service center.

5.1.2.25. [Intentionally Deleted]

5.1.2.26. GTE will offer AT&T a level of Operator Services which is at parity with what it provides itself, and, at a minimum, meets all criteria, requirements and guidelines established by the Commission, if any. To the extent that the level of service GTE provides to its own customers exceeds any criterion, requirement or guideline set by the applicable state regulatory commission, GTE shall offer the same level of service to AT&T.

5.1.2.27. GTE will make all of its automation and other new technology related to the provision of Operator Services available to AT&T as soon as it is available to GTE. GTE will otherwise make all tariffed Operator Service offerings available to AT&T.

5.2. **Interface Requirements:**

With respect to Operator Services for calls that originate on local switching capability provided by or on behalf of AT&T, the interface requirements shall conform to the then current established system interface specifications for the platform used to provide Operator Service and the interface shall conform to industry standards.

6. **Directory Assistance Service**

6.1. **Definition:**

Directory Assistance Service is a service that provides telephone number information to local end users that GTE serves on behalf of AT&T who dial 411, 1411 or 555-1212 to obtain directory assistance for local numbers within their NPA.

6.1.1. [Intentionally Deleted]

6.2. Requirements

6.2.1. GTE shall offer Directory Assistance Service which allows AT&T Customers to obtain two listings at parity with the service provided to GTE's customers in accordance with tariff.

6.2.2. Directory Assistance Service provided by GTE to AT&T local service customers under this Agreement will be customized exclusively for AT&T, where technically feasible, at rates specified in Attachment 14. GTE will perform necessary software upgrades to allow for customized Directory Assistance on a switch-by-switch basis, subject to capability and capacity limitations. To the extent the cost of these services are not covered by the underlying element charge, AT&T agrees to reimburse GTE for the total cost of implementing customized Directory Assistance Service in accordance with this Agreement.

6.2.3. GTE Directory Assistance Service will provide optional call completion service to AT&T Customers in areas where call completion denial is available; Call completion services shall be provided at parity with that which GTE provides to its own end users.

6.2.4. GTE shall provide data regarding billable events.

6.2.5. To the extent that GTE provides free call allowances to Directory Assistance to its customers as part of any local service offering, GTE shall provide the same to AT&T for AT&T Customers to whom such local service offerings are resold;

6.2.6. GTE shall ensure that any Directory Assistance information that is provided by ARU shall be repeated twice for AT&T Customers;

6.2.7. GTE Directory Assistance will provide emergency listings and related services to AT&T Customers at service levels equivalent to those provided to GTE customers;

6.2.8. GTE Directory Assistance Services will include a service which intercepts calls placed to an AT&T Customer whose number has been disconnected or changed. GTE shall provide a recorded announcement to (i) notify a calling party that the end user customer has transferred to a new telephone number of AT&T and (ii) provide such calling party with details concerning the new telephone number to be dialed to reach the customer. GTE shall provide such announcement for the same length of time that GTE provides intercept or referral information for its customers that have changed telephone numbers.

6.2.9. GTE shall waive all Directory Assistance charges to AT&T for calls placed by handicapped AT&T Customers, provided however, that in accordance with GTE tariff for such services, AT&T will submit to GTE, at the same time AT&T requests such service, a doctor's letter or other proper certification, certifying that the AT&T customer is qualified to receive such service.

6.2.10. Directory Assistance Service Updates

6.2.10.1. GTE shall update the GTE DA database with AT&T customer listing changes daily. These changes include:

6.2.10.2. New customer connections;

6.2.10.3. Customer disconnections; and

6.2.10.4. Customer changes, including but not limited to name, address and listing status.

6.2.10.5. These updates shall also be provided for non-listed and non-published numbers for use in emergencies.

7. Common Transport

7.1. Definition:

Common Transport is an interoffice transmission path between GTE Network Elements that carries the traffic of more than one carrier and is not dedicated to a single carrier. Where GTE Network Elements are connected by intra-office wiring, such wiring is provided as a part of the Network Elements and is not Common

Transport. For tandem interconnection, GTE shall provide interoffice transmission for common transport.

7.2. Technical Requirements

7.2.1. [Intentionally Deleted]

7.2.2. Common Transport provided on DS1 or VT1.5 circuits, shall, at a minimum, meet the performance, availability, jitter, and delay requirements specified for Central Office to Central Office "CO to CO" connections in the technical reference in Appendix A to this Attachment 2, under paragraph 6 thereof.

7.2.3. Common Transport provided on DS3 circuits, STS-1 circuits, and higher transmission bit rate circuits, Common Transport shall, at a minimum, meet the performance, availability, jitter, and delay requirements specified for Central Office to Central Office "CO to CO" connections in the technical reference set forth in Appendix A to this Attachment 2, under paragraph 6 thereof.

7.2.4. GTE shall be responsible for the engineering, provisioning, and maintenance of the underlying equipment and facilities that are used to provide Common Transport.

7.2.5. At a minimum, Common Transport shall meet all of the requirements set forth in the technical references in Appendix A to this Attachment 2, under paragraph 6 thereof (as applicable for the transport technology being used).

8. <u>Dedicated Transport</u>

8.1. Definition:

Dedicated Transport is an interoffice transmission path between AT&T designated locations. Such locations may include GTE central offices or other equipment locations, AT&T network components, other carrier network components, or customer premises.

8.1.1. GTE shall offer Dedicated Transport in each of the following ways:

8.1.1.1. As capacity on a shared circuit.

8.1.1.2. As a circuit (e.g., DS1, DS3, STS-1) dedicated to AT&T.

8.1.1.3. As a system (i.e., the equipment and facilities used to provide Dedicated Transport such as SONET ring) dedicated to AT&T.

8.1.2. When Dedicated Transport is provided as a circuit or as capacity on a shared circuit, it shall include (as appropriate):

8.1.2.1. Multiplexing functionality;

8.1.2.2. [Intentionally Deleted]

8.1.2.3. [Intentionally Deleted]

8.1.3. When Dedicated Transport is provided as a system it shall include:

8.1.3.1. Transmission equipment such as multiplexers, line terminating equipment, amplifiers, and regenerators;

8.1.3.2. Inter-office transmission facilities such as optical fiber, copper twisted pair, and coaxial cable;

8.1.3.3. Redundant equipment and facilities necessary to support protection and restoration; and,

8.1.3.4. Dedicated Transport includes the Digital Cross-Connect System (DCS) functionality as an option. DCS is described below in Section 8.4.

8.2. Technical Requirements

This Section sets forth technical requirements for all Dedicated Transport.

8.2.1. When GTE provides Dedicated Transport as a circuit or a system, the entire designated transmission circuit or system (e.g., DS1, DS3, STS-1) shall be dedicated to AT&T designated traffic.

8.2.2. GTE shall offer Dedicated Transport in all then currently available technologies including, but not limited to, DS1 and DS3 transport systems, SONET (or SDH) Bi-directional Line Switched Rings, SONET (or SDH) Unidirectional Path Switched Rings, and SONET (or SDH) point-to-point transport systems (including linear add-drop systems), at all available transmission bit rates.

8.2.3. For DS1 or VT1.5 circuits, Dedicated Transport shall, at a minimum, meet the performance, availability, jitter, and delay

requirements specified for Customer Interface to Central Office "CI to CO" connections in the technical references listed in Appendix A to this Attachment 2, at paragraph 2.6 thereof.

8.2.4. For DS3 circuits, STS-1 circuits, and higher rate circuits, Dedicated Transport shall, at a minimum, meet the performance, availability, jitter, and delay requirements specified for Customer Interface to Central Office "CI to CO" connections in the technical reference listed in Appendix A to this Attachment 2, at paragraph 2.13 thereof.

8.2.5. When requested by AT&T, Dedicated Transport shall provide physical diversity. Physical diversity means that two circuits are provisioned in such a way that no single failure of facilities or equipment will cause a failure on both circuits.

8.2.6. When physical diversity is requested by AT&T, GTE shall provide the maximum feasible physical separation between intra-office and inter-office transmission paths (unless otherwise agreed by AT&T).

8.2.7. Upon AT&T's request, GTE shall provide Real Time and continuous remote access to performance monitoring and alarm data affecting, or potentially affecting, AT&T's traffic.

8.2.8. GTE shall offer the following interface transmission rates for Dedicated Transport:

8.2.8.1. DS1 (Extended SuperFrame - ESF, D4, and unframed applications shall be provided);

8.2.8.2. DS3 (C-bit Parity, M13, and unframed applications shall be provided);

8.2.8.3. SONET standard interface rates in accordance with ANSI T1.105 and ANSI T1.105.07 and physical interfaces per ANSI T1.106.06 (including referenced interfaces). In particular, VT1.5 based STS-1s will be the interface at an AT&T service node.

8.2.8.4. SDH Standard interface rates in accordance with International Telecommunications Union (ITU) Recommendation G.707 and Plesiochronous Digital Hierarchy (PDH) rates per ITU Recommendation G.704.

8.2.9. GTE shall provide cross-office wiring up to a suitable Point of Termination (POT) between Dedicated Transport and AT&T

designated equipment. GTE shall provide the following equipment for the physical POT:

8.2.9.1. DSX1 for DS1s or VT1.5s;

8.2.9.2. DSX3 for DS3s or STS-1s; and

8.2.9.3. LGX for optical signals (e.g., OC-3 and OC-12)

8.2.10. [Intentionally Deleted]

8.2.11. For Dedicated Transport provided as a system, GTE shall design the system (including but not limited to facility routing and termination points and facility routing over existing transport facilities between GTE and a second carrier to carry traffic designated for that carrier) according to AT&T specifications. If AT&T requests higher quality specifications than GTE provides to itself, AT&T shall pay the incremental cost of implementing such higher quality specification.

8.2.12. Upon AT&T's request, GTE shall provide AT&T with electronic provisioning control of Dedicated Transport purchased by AT&T and connected to a Digital Cross Connect System (DCS), if the DCS has Customer Network Controller capability.

8.2.13. [Intentionally Deleted]

8.2.14. At a minimum, Dedicated Transport shall meet each of the requirements set forth in Section 7.2 and in the technical references listed in Appendix A to this Attachment 2, under paragraph 7 thereof.

8.3. Technical Requirements for Dedicated Transport Using SONET technology.

This Section sets forth additional technical requirements for Dedicated Transport using SONET technology including rings, point-to-point systems, and linear add-drop systems.

8.3.1. All SONET Dedicated Transport provided as a system shall:

8.3.1.1. Be synchronized from both a primary and secondary Stratum 1 level timing source. Additional detail on synchronization requirements are given in Section 13.4.

8.3.1.2. Provide SONET standard interfaces which properly interwork with SONET standard equipment from other vendors. This includes, but is not limited to, SONET standard Section, Line, and Path performance monitoring, maintenance signals, alarms, and data channels.

8.3.1.3. Provide Data Communications Channel (DCC) or equivalent connectivity through the SONET transport system. Dedicated Transport provided over a SONET transport system shall be capable of routing DCC messages between AT&T SONET network components connected to the Dedicated Transport. For example, if AT&T leases a SONET ring from GTE, that ring shall support DCC message routing between AT&T SONET network components connected to the ring.

8.3.1.4. Support the following performance requirements for each circuit (STS-1, DS1, DS3, etc.):

8.3.1.4.1. No more than 10 Errored Seconds Per Day (Errored Seconds are defined in the technical reference at Appendix A to this Attachment 2 at paragraph 7.5); and

8.3.1.4.2. No more than 1 Severely Errored Second Per Day (Severely Errored Seconds are defined in the technical references set forth in Appendix A to this Attachment 2, at paragraph 7.5).

8.3.2. All SONET rings shall:

8.3.2.1. Be provisioned on physically diverse fiber optic cables (including separate building entrances where available and diversely routed intra-office wiring). "Diversely routed" shall be interpreted as the maximum feasible physical separation between transmission paths, unless otherwise agreed by AT&T.

8.3.2.2. Support dual ring interworking per SONET Standards.

8.3.2.3. Provide the necessary redundancy in optics, electronics, and transmission paths (including intra-office wiring) such that no single failure will cause a service interruption.

8.3.2.4. Provide the ability to disable ring protection switching at AT&T's direction (selective protection lock-out). This requirement applies to line switched rings only.

8.3.2.5. Provide the ability to use the protection channels to carry traffic (extra traffic). This requirement applies to line switched rings only.

8.3.2.6. Provide 50 millisecond restoration unless a ring protection delay is set to accommodate dual ring interworking schemes.

8.3.2.7. Have settable ring protection switching thresholds that shall be set in accordance with AT&T's specifications.

8.3.2.8. Provide revertive protection switching with a settable wait to restore delay with a default setting of 5 minutes. This requirement applies to line switched rings only.

8.3.2.9. Provide non-revertive protection switching. This requirement applies to path switched rings only.

8.3.2.10. Adhere to the following availability requirements, where availability is defined in the technical reference listed in Appendix A to this Attachment 2, at paragraph 7.5 thereof.

8.3.2.10.1. No more than 0.25 minutes of unavailability month; and

8.3.2.10.2. No more than 0.5 minutes of unavailability per year.

8.4. Digital Cross-Connect System (DCS)

8.4.1. Definition:

8.4.1.1. DCS is a function which provides automated cross connection of Digital Signal level 0 (DS0) or higher transmission bit rate digital channels within physical interface facilities. Types of DCSs include but are not limited to DCS 1/0s, DCS 3/1s, and DCS 3/3s, where the nomenclature 1/0 denotes interfaces typically at the DS1 rate or greater with cross-connection typically at the DS0 rate. This same nomenclature, at the appropriate rate substitution, extends to the other types of DCSs specifically cited as 3/1 and 3/3. Types of DCSs that cross-connect Synchronous Transport Signal level 1 (STS-1s) or other Synchronous Optical Network (SONET) signals (e.g., STS-3) are also DCSs, although not denoted by this same type of nomenclature. DCS may provide the functionality of more than one of the aforementioned DCS types (e.g., DCS 3/3/1 which combines functionality of DCS 3/3 and DCS 3/1). For such DCSs, the requirements will be, at least, the aggregation of requirements on the "component" DCSs.

8.4.1.2. In locations where automated cross connection capability does not exist, DCS will be defined as the combination of the functionality provided by a Digital Signal Cross-Connect (DSX) or Light Guide Cross-Connect (LGX) patch panels and D4 channel banks or other DS0 and above multiplexing equipment used to provide the function of a manual cross connection.

8.4.1.3. Interconnection between a DSX or LGX, to a switch, another cross-connect, or other service platform device, is included as part of DCS.

8.5. DCS Technical Requirements

8.5.1. DCS shall provide completed end-to-end cross connection of the channels designated by AT&T.

8.5.2. DCS shall perform facility grooming, multipoint bridging, one-way broadcast, two-way broadcast, and facility test functions.

8.5.3. DCS shall provide multiplexing, format conversion, signaling conversion, or other functions.

8.5.4. The end-to-end cross connection assignment shall be input to the underlying device used to provide DCS from an operator at a terminal or via an intermediate system. The cross connection assignment shall remain in effect whether or not the circuit is in use.

8.5.5. GTE shall continue to administer and maintain DCS, including updates to the control software to current available releases.

8.5.6. GTE shall provide various types of Digital Cross-Connect Systems including:

8.5.6.1. DS0 cross-connects (typically termed DCS 1/0);

8.5.6.2. DS1/VT1.5 (Virtual Tributaries at the 1.5Mbps rate) cross-connects (typically termed DCS 3/1);

8.5.6.3. DS3 cross-connects (typically termed DCS 3/3);

8.5.6.4. STS-1 cross-connects; and

8.5.6.5. Other technically feasible cross-connects designated by AT&T.

8.5.7. GTE shall provide immediate and continuous configuration and reconfiguration of the channels between the physical interfaces (i.e., GTE shall establish the processes to implement cross connects on demand, or, at AT&T's option, permit AT&T control of such configurations and reconfigurations).

8.5.8. GTE shall provide scheduled configuration and reconfiguration of the channels between the physical interfaces (i.e., GTE shall establish the processes to implement cross connects on the schedule designated by AT&T, or, at AT&T's option, permit AT&T to control such configurations and reconfigurations).

8.5.9. DCS shall continuously monitor protected circuit packs and redundant common equipment.

8.5.10. DCS shall automatically switch to a protection circuit pack on detection of a failure or degradation of normal operation.

8.5.11. The underlying equipment used to provide DCS shall be equipped with a redundant power supply or a battery back-up.

8.5.12. GTE shall make available to AT&T spare facilities and equipment, at AT&T's expense to the extent such costs are not included in the cost of the unbundled network element, necessary for provisioning repairs, and to meet AT&T's Direct Measures Of Quality (DMOQs) as specified in the Provisioning and Maintenance sections.

8.5.13. At AT&T's option, GTE shall provide AT&T with Real Time performance monitoring and alarm data on the signals and the components of the underlying equipment used to provide DCS that actually impact or might impact AT&T's services. GTE will need to establish processes that allow GTE to provide these capabilities to AT&T. For example, this may include hardware alarm data and facility alarm data on a DS3 in which an AT&T DS1 is traversing.

8.5.14. At AT&T's option, GTE shall provide AT&T with Real Time ability to initiate tests on integrated equipment used to test the signals and the underlying equipment used to provide DCS, as well as other integrated functionality for routine testing and fault isolation.

8.5.15. DCS shall provide SONET to asynchronous gateway functionality (e.g., STS-1 to DS1 or STS-1 to DS3).

8.5.16. DCS shall perform optical to electrical conversion where the underlying equipment used to provide DCS contains optical

interfaces or terminations (e.g., Optical Carrier level 3, i.e., OC-3, interfaces on a DCS 3/1).

8.5.17. DCS shall have SONET ring terminal functionality where the underlying equipment used to provide DCS acts as a terminal on a SONET ring.

8.5.18. DCS shall provide multipoint bridging of multiple channels to other DCSs. AT&T may designate multipoint bridging to be one-way broadcast from a single master to multiple tributaries, or two-way broadcast between a single master and multiple tributaries.

8.5.19. DCS shall multiplex lower speed channels onto a higher speed interface and demultiplex higher speed channels onto lower speed interfaces as designated by AT&T.

8.6. DCS Interface Requirements

8.6.1. GTE shall provide physical interfaces on DS0, DS1, and VT1.5 channel cross-connect devices at the DS1 rate or higher. In all such cases, these interfaces shall be in compliance with applicable Bellcore, ANSI, ITU, and AT&T standards.

8.6.2. GTE shall provide physical interfaces on DS3 channel cross-connect devices at the DS3 rate or higher. In all such cases, these interfaces shall be in compliance with applicable Bellcore, ANSI, ITU, and AT&T standards.

8.6.3. GTE shall provide physical interfaces on STS-1 cross-connect devices at the OC-3 rate or higher. In all such cases, these interfaces shall be in compliance with applicable Bellcore, ANSI, ITU , and AT&T standards.

8.6.4. Interfaces on all other cross-connect devices shall be in compliance with applicable Bellcore, ANSI, ITU , and AT&T standards.

8.6.5. DCS shall, at a minimum, meet all the requirements set forth in the technical references listed in Appendix A to this Attachment 12, under paragraph 8 thereof.

9. Signaling Link Transport

9.1. Definition:

Signaling Link Transport is a set of two or four dedicated 56 Kbps. transmission paths between AT&T-designated Signaling Points of Interconnection (SPOI) that provides appropriate physical diversity.

9.2. Technical Requirements

Signaling Link Transport shall consist of full duplex mode 56 kbps transmission paths.

9.3. Of the various options available, Signaling Link Transport shall perform in the following two ways:

9.3.1. As an "A-link" which is a connection between a switch and a home Signaling Transfer Point Switch (STPS) pair; and

9.3.2. As a "D-link" which is a connection between two STPS pairs in different company networks (e.g., between two STPS pairs for two Competitive Local Exchange Carriers (CLECs)).

9.4. Signaling Link Transport shall consist of two or more signaling link layers as follows:

9.4.1. An A-link layer shall consist of two links.

9.4.2. A D-link layer shall consist of four links.

9.4.3. A signaling link layer shall satisfy a performance objective such that:

9.4.3.1. There shall be no more than two minutes down time per year for an A-link layer; and

9.4.3.2. There shall be negligible (less than 2 seconds) down time per year for a D-link layer.

9.4.4. A signaling link layer shall satisfy interoffice and intraoffice diversity of facilities and equipment, such that:

9.4.5. No single failure of facilities or equipment causes the failure of both links in an A-link layer; and

9.4.6. No two concurrent failures of facilities or equipment shall cause the failure of all four links in a D-link layer.

9.5. Interface Requirements

9.5.1. There shall be a dedicated DS1 (1.544 Mbps) interface at the AT&T-designated SPOIs. Each 56 kbps transmission path shall appear as a DS0 channel within the DS1 interface.

10. Signaling Transfer Points (STPs)

10.1. **Definition:** Signaling Transfer Points is a signaling network function that includes all of the capabilities provided by the signaling transfer point switches (STPs) and their associated signaling links which enable the exchange of SS7 messages among and between switching elements, database elements and signaling transfer point switches.

10.2. **Technical Requirements**

10.2.1. STPs shall provide access to all other Network Elements connected to the GTE SS7 network. These include:

10.2.1.1. GTE Local Switching or Tandem Switching;

10.2.1.2. GTE Service Control Points/DataBases;

10.2.1.3. Third-party local or tandem switching systems; and

10.2.1.4. Third-party-provided STPs.

10.2.2. The connectivity provided by STPs shall fully support the functions of all other Network Elements connected to the GTE SS7 network. This explicitly includes the use of the GTE SS7 network to convey messages which neither originate nor terminate at a signaling end point directly connected to the GTE SS7 network (i.e., transient messages). When the GTE SS7 network is used to convey transient messages, there shall be no alteration of the Integrated Services Digital Network User Part (ISDNUP) or Transaction Capabilities Application Part (TCAP) user data that constitutes the content of the message.

10.2.3. If a GTE tandem switch routes calling traffic, based on dialed or translated digits, on SS7 trunks between an AT&T local switch and third party local switch, the GTE SS7 network shall convey the TCAP messages that are necessary to provide Call Management features (Automatic Callback, Automatic Recall, and Screening List Editing) between the AT&T local STPSs and the STPSs that provide connectivity with the third party local switch, even if the third party local switch is not directly connected to the GTE STPSs.

10.2.4. STPs shall provide all functions of the SCCP necessary for Class 0 (basic connectionless) service. In cases where the destination signaling point is a GTE local or tandem switching system or data base, or is an AT&T or third party local or tandem switching system directly connected to the GTE SS7 network, STPs shall perform final GTT of messages to the destination and SCCP Subsystem Management of the destination. In all other cases, STPs shall perform intermediate GTT of messages to a gateway pair of STPSs in an SS7 network connected with the GTE SS7 network, and shall not perform SCCP Subsystem Management of the destination.

10.2.5. When such capability is deployed in the GTE network, STPs shall provide all functions of the OMAP commonly provided by STPs, as specified in the reference set forth in Appendix A to this Attachment 2, at paragraph 9.5. This includes:

10.2.5.1. MTP Routing Verification Test (MRVT); and,

10.2.5.2. SCCP Routing Verification Test (SRVT).

10.2.6. This Section 10.2.6 applies when such capabilities are deployed in the GTE network. In cases where the destination signaling point is a GTE local or tandem switching system or DB, or is an AT&T or third party local or tandem switching system directly connected to the GTE SS7 network, STPs shall perform MRVT and SRVT to the destination signaling point. In all other cases, STPs shall perform MRVT and SRVT to a gateway pair of STPSs in an SS7 network connected with the GTE SS7 network. This requirement shall be superseded by the specifications for Internetwork MRVT and SRVT if and when these become approved ANSI standards and available capabilities of GTE STPs.

10.2.7. AT&T and GTE agree to participate in the industry IN Forum "Interconnection and Access Group" project to address interconnection requirements for multiple third party AIN SCP access to GTE's switch triggers. AT&T and GTE recognize that actual commencement of tests under this project will be determined by all participants in the project.

10.3. Interface Requirements

10.3.1. GTE shall provide the following STPs options to connect AT&T or AT&T-designated local switching systems or STPSs to the GTE SS7 network:

10.3.1.1. An A-link interface from AT&T local switching systems; and,

10.3.1.2. A D-link interface from AT&T local STPSs.

10.3.2. Each type of interface shall be provided by one or more sets (layers) of signaling links, as follows:

10.3.2.1. An A-link layer shall consist of two links.

10.3.2.2. A D-link layer shall consist of four links.

10.3.3. The Signaling Point of Interconnection (SPOI) for each link shall be located at a cross-connect element, such as a DSX-1, in the Central Office (CO) where the GTE STPS is located. There shall be a DS1 or higher rate transport interface at each of the SPOIs. Each signaling link shall appear as a DS0 channel within the DS1 or higher rate interface. GTE shall offer higher rate DS1 signaling for interconnecting AT&T local switching systems or STPSs with GTE STPSs as soon as these become approved ANSI standards and available capabilities of GTE STPs.

10.3.4. GTE shall provide intraoffice diversity between the SPOIs and the GTE STPS, so that no single failure of intraoffice facilities or equipment shall cause the failure of both D-links in a layer connecting to a GTE STPS.

10.4. Message Screening

10.4.1. GTE shall set message screening parameters so as to accept messages from AT&T local or tandem switching systems destined to any signaling point in the GTE SS7 network with which the AT&T switching system has a legitimate signaling relation.

10.4.2. GTE shall set message screening parameters so as to accept messages from AT&T local or tandem switching systems destined to any signaling point or network interconnected within the GTE SS7 network with which the AT&T switching system has a legitimate signaling relation.

10.4.3. GTE shall set message screening parameters so as to accept messages destined to an AT&T local or tandem switching system from any signaling point or network interconnected within the GTE SS7 network with which the AT&T switching system has a legitimate signaling relation.

10.4.4. GTE shall set message screening parameters so as to accept and send messages destined to an AT&T SCP from any signaling point

or network interconnected within the GTE SS7 network with which the AT&T SCP has a legitimate signaling relation.

10.5. STPs shall meet or exceed the requirements for STPs set forth in the technical references listed in Appendix A to this Attachment 2, under paragraph 9 thereof.

11. Service Control Points/Databases

11.1. **Definition:**

Databases are the Network Elements that provide the functionality for storage of, access to, and manipulation of information required to offer a particular service and/or capability.

11.1.1. A Service Control Point (SCP) is a specific type of Database Network Element functionality deployed in a Signaling System 7 (SS7) network that executes service application logic in response to SS7 queries sent to it by a switching system also connected to the SS7 network. SCPs also provide operational interfaces to allow for provisioning, administration and maintenance of subscriber data and service application data. (e.g., an 800 database stores customer record data that provides information necessary to route 800 calls).

11.2. **Technical Requirements for SCPs/Databases**

Requirements for SCPs/Databases within this section address storage of information, access to information (e.g. signaling protocols, response times), and administration of information (e.g., provisioning, administration, and maintenance). All SCPs/Databases shall be provided to AT&T in accordance with the following requirements, except where such a requirement is superseded by specific requirements set forth in Sections 11.3 to 11.7.

11.2.1. GTE shall make available physical interconnection to SCPs through the SS7 network and protocols, as specified in Section 10 of this Attachment, with TCAP as the application layer protocol.

11.2.2. Except for GTE's directory assistance databases, GTE shall provide physical interconnection to databases via industry standard interfaces and protocols. GTE will provide AT&T with copies of its directory assistance databases on magnetic tape. GTE will also provide to AT&T daily updates to its directory assistance databases on magnetic tape. AT&T and GTE shall agree on the type of magnetic tape, the format of the data on the

tapes, the locations for delivery of the tapes, and all other implementation issues that the parties need to be resolved within ten days of the Effective Date of this Agreement. If the parties fail to reach agreement pursuant to this Section, the parties will submit the disputed issues to the alternative dispute resolution process as set forth in this Agreement.

11.2.3. The reliability of interconnection options shall be consistent with requirements for diversity and survivability as specified in Section 10 of this Attachment (which applies to both SS7 and non-SS7 interfaces).

11.2.4. [Intentionally Deleted]

11.2.5. GTE shall provide Database provisioning consistent with the provisioning requirements of this Agreement (e.g., data required, edits, acknowledgments, data format and transmission medium and notification of order completion).

11.2.6. GTE shall provide Database maintenance consistent with the maintenance requirements as specified in this Agreement.

11.2.7. GTE shall provide billing and recording information to track database usage consistent with connectivity billing and recording requirements as specified in this Agreement.

11.2.8. GTE shall provide SCPs/Databases in accordance with the physical security requirements specified in this Agreement.

11.2.9. GTE shall provide SCPs/Databases in accordance with the logical security requirements specified in this Agreement.

11.3. Line Information Database (LIDB).

This Subsection defines and sets forth additional requirements for the Line Information Database.

11.3.1. Definition:

The Line Information Database (LIDB) is a transaction-oriented database accessible through Common Channel Signaling (CCS) networks. It contains records associated with customer Line Numbers and Special Billing Numbers (in accordance with the requirements set forth in the technical reference listed in Appendix A to this Attachment 2, at paragraph 10.5.). LIDB accepts queries

from other Network Elements and provides appropriate responses. The query originator need not be the owner of LIDB data. LIDB queries include functions such as screening billed numbers that provides the ability to accept Collect or Third Number Billing calls and validation of Telephone Line Number based non-proprietary calling cards. The interface for the LIDB functionality is the interface between the GTE CCS network and other CCS networks. LIDB also interfaces to administrative systems. The administrative system interface provides Work Centers with an interface to LIDB for functions such as provisioning, auditing of data, access to LIDB measurements and reports.

11.3.2. Technical Requirements

11.3.2.1. Prior to the availability of a long-term solution for Local Number Portability, GTE shall enable AT&T to store in GTE's LIDB any customer Line Number or Special Billing Number record, for which the NPA-NXX or NXX-0/1XX Group is supported by that LIDB.

11.3.2.2. Prior to the availability of a long-term solution for Local Number Portability, GTE shall enable AT&T to store in GTE's LIDB any customer Line Number or Special Billing Number record, and NPA-NXX and NXX-0/1XX Group Records, belonging to an NPA-NXX or NXX-0/1XX owned by AT&T.

11.3.2.3. Subsequent to the availability of a long-term solution for Local Number Portability, GTE shall enable AT&T to store in GTE's LIDB any customer Line Number or Special Billing Number record, regardless of the number's NPA-NXX or NXX-0/1XX.

11.3.2.4. GTE shall perform the following LIDB functions for AT&T's customer records in LIDB:

11.3.2.4.1. Billed Number Screening (provides information such as whether the Billed Number may accept Collect or Third Number Billing calls); and

11.3.2.4.2. Calling Card Validation

11.3.2.5. GTE shall process AT&T's customer records in LIDB at least at parity with GTE customer records. With respect to other LIDB functions, GTE shall indicate to AT&T what additional functions (if any) are performed by LIDB in their network.

11.3.2.6. Within two (2) weeks after a request by AT&T, GTE shall provide AT&T with a list of the customer data items which AT&T would have to provide in order to support each required LIDB function. The list shall indicate which data items are essential to LIDB function, and which are required only to support certain services. For each data item, the list shall show the data formats, the acceptable values of the data item and the meaning of those values.

11.3.2.7. [Intentionally Deleted]

11.3.2.8. [Intentionally Deleted]

11.3.2.9. [Intentionally Deleted]

11.3.2.10. GTE shall make changes to NPA-NXX and NXX-0/1XX Group Records, and Line Number and Special Billing Number Records associated with AT&T Customer, as requested by AT&T, within time frames at parity with those time frames in which GTE makes such changes for its own or any other carrier's customers.

11.3.2.11. In the event that end user customers change their local service provider, GTE shall maintain customer data (for line numbers, card numbers, and for any other types of data maintained in LIDB excluding GTE-issued line based calling card numbers) so that such customers shall not experience any interruption of service due to the lack of such maintenance of customer data.

11.3.2.12. All additions, updates and deletions of AT&T data to the LIDB shall be solely at the direction of AT&T.

11.3.2.13. GTE shall provide priority updates to LIDB for AT&T data upon AT&T's request (e.g., to support fraud protection).

11.3.2.14. [Intentionally Deleted]

11.3.2.15. GTE shall perform backup and recovery of all of AT&T's data in LIDB as frequently as AT&T may reasonably specify, including sending to LIDB all changes made since the date of the most recent backup copy.

11.3.2.16. GTE shall provide to AT&T access to LIDB measurements and reports at least at parity with the capability GTE has for its own customer records and that GTE provides to any other party.

11.3.2.17. GTE shall provide AT&T with LIDB reports of data which are missing or contain errors, as well as any misroute errors, within the time period reasonably designated by AT&T.

11.3.2.18. GTE shall prevent any access to or use of AT&T data in LIDB by GTE personnel or by any other party that is not authorized by AT&T in writing.

11.3.2.19. Where technically feasible and currently available, GTE shall provide AT&T performance of the LIDB Data Screening function, which allows a LIDB to completely or partially deny specific query originators access to LIDB data owned by specific data owners, (in accordance with the technical reference listed in Appendix A to this Attachment 2, at paragraph 10.5.) for Customer Data that is part of an NPA-NXX or NXX-0/1XX wholly or partially owned by AT&T at least at parity with GTE Customer Data. AT&T will provide GTE the screening information associated with LIDB Data Screening of AT&T data in accordance with this requirement.

11.3.2.20. GTE shall accept queries to LIDB associated with AT&T Customer records, and shall return responses in accordance with the requirements of this Section 11.

11.3.2.21. [Intentionally Deleted]

11.3.2.22. [Intentionally Deleted]

11.3.2.23. [Intentionally Deleted]

11.3.2.24. [Intentionally Deleted]

11.3.2.24.1. [Intentionally Deleted]

11.3.2.24.2. [Intentionally Deleted]

11.3.2.24.3. [Intentionally Deleted]

11.3.2.24.4. [Intentionally Deleted]

11.3.2.24.5. [Intentionally Deleted]

11.3.2.24.6. [Intentionally Deleted]

11.3.2.24.6.1. [Intentionally Deleted]

11.3.2.24.6.2. [Intentionally Deleted]

11.3.2.24.6.3. [Intentionally Deleted]

11.3.3. **LIDB Interface Requirements.**

GTE shall offer LIDB in accordance with the requirements of this Subsection.

11.3.3.1. The interface to LIDB shall be in accordance with the technical reference listed in Appendix A to this Attachment 2, at paragraph 10.3.

11.3.3.2. The CCS interface to LIDB shall be the standard interface listed in Appendix A to this Attachment 2, at paragraph 10.3.

11.3.3.3. The LIDB Data Base interpretation of the ANSI-TCAP messages shall comply with the technical reference listed in Appendix A to this Attachment 2, at paragraph 10.4. Global Title Translation shall be maintained in the signaling network in order to support signaling network routing to the LIDB.

11.4. **Toll Free Number Database**

The Toll Free Number Database is a SCP that provides functionality necessary for toll free (e.g., 800 and 888) number services by providing routing information and additional so-called vertical features during call set-up in response to queries from SSPs. GTE shall provide the Toll Free Number Database in accordance with the following:

11.4.1. Technical Requirements

11.4.1.1. GTE shall make the GTE Toll Free Number Database available for AT&T to query with a toll-free number and originating information.

11.4.1.2. The Toll Free Number Database shall return carrier identification and, where applicable, the queried toll free number, translated numbers and instructions as it would in response to a query from a GTE switch.

11.4.2. Signaling Interface Requirements

The signaling interface between the AT&T or other local switch and the Toll-Free Number database shall use the TCAP protocol as

specified in the technical reference listed in Appendix A to this Attachment 2, at paragraph 10.1, together with the signaling network interface as specified in the technical reference listed in Appendix A to this Attachment 2, at paragraphs 10.2. and 10.6.

11.5. **Automatic Location Identification/Data Management System (ALI/DMS)**

11.5.1. The ALI/DMS Database contains customer information (including name, address, telephone information, and sometimes special information from the local service provider or customer) used to determine to which Public Safety Answering Point (PSAP) to route the call. The ALI/DMS database is used to provide more routing flexibility for E911 calls than Basic 911.

11.6. Technical Requirements

11.6.1. GTE shall provide the Emergency Services Data Base in accordance with the following: GTE shall offer AT&T a data link to the ALI/DMS database or permit AT&T to provide its own data link to the ALI/DMS database. GTE shall provide error reports from the ALI/DMS data base to AT&T immediately after AT&T inputs information into the ALI/DMS data base. Alternately, AT&T may utilize GTE to enter customer information into the data base on a demand basis, and validate customer information on a demand basis.

11.6.2. The ALI/DMS database shall contain the following customer information:

11.6.2.1. Name;

11.6.2.2. Address;

11.6.2.3. Telephone number; and

11.6.2.4. Other information as appropriate (e.g., whether a customer is blind or deaf or has another disability).

11.6.2.5. When GTE is responsible for administering the ALI/DMS database in its entirety, ported number NXXs entries for the ported numbers should be maintained unless AT&T requests otherwise and shall be updated if AT&T requests.

11.6.2.6. When Remote Call Forwarding (RCF) is used to provide number portability to the local customer and a remark or other appropriate field information is available in the database, the shadow or "forwarded-to" number and an indication that the number is ported shall be added to the customer record.

11.6.2.7. If GTE is responsible for configuring PSAP features (for cases when the PSAP or GTE supports an ISDN interface) it shall ensure that CLASS Automatic Recall (Call Return) is not used to call back to the ported number.

11.6.2.8. [Intentionally Deleted]

11.6.3. SCPs/Databases shall meet or exceed the requirements for SCPs/Databases set forth in the technical references listed in Appendix A to this Attachment 2, under paragraph 10.

11.7. Service Creation Environment and Service Management System (SCE/SMS) Advanced Intelligent Network (AIN) Access

11.7.1. Advanced Intelligent Network (AIN) Database. AT&T shall have the right to obtain access to and to use GTE's service applications in the GTE SMS in addition to AT&T's own service applications that AT&T deploys via the GTE SMS to the GTE SCP, as required below. AT&T may use and access such service applications either through AT&T Switch(es) to the GTE AIN SCP via interconnection of the GTE SS7 and AT&T SS7 networks or through its purchase of unbundled elements, including local switching, from GTE. When AT&T obtains access to GTE's service applications using an AT&T switch, this interconnection arrangement shall result in the GTE AIN SCP recognizing the AT&T Switch as at least at parity with GTE's Local Switch in terms of interfaces, performance and capabilities.

11.7.1.1. GTE STPs shall maintain global title translations necessary to direct AIN queries for select global title address and translation type values to and from the AT&T SS7 network, within the global title translation capacity to the STP.

11.7.1.2. Requirements for billing and recording information to track AIN query-response usage shall be consistent with Connectivity Billing and Recording requirements as specified in Attachment 6 (e.g., recorded message format and content, timeliness of feed, data format and transmission medium).

11.7.1.3. [Intentionally Deleted]

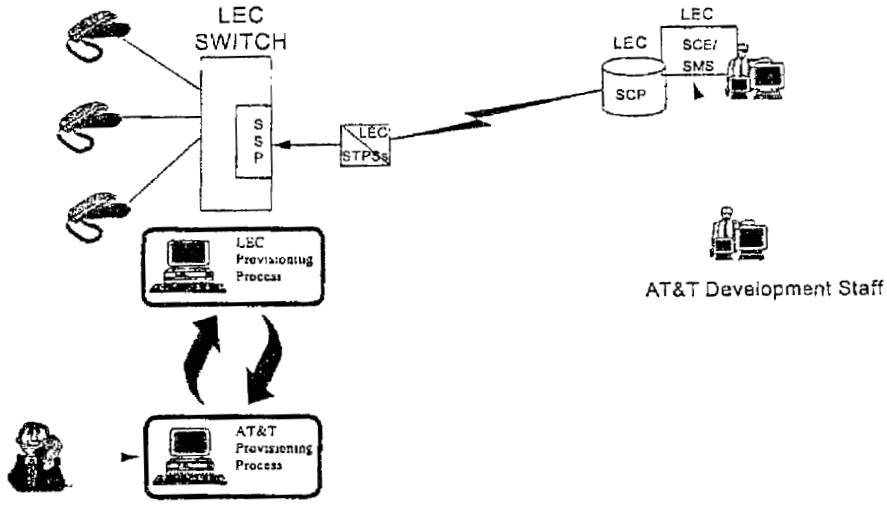
11.7.1.4. [Intentionally Deleted]

11.7.1.5. When AT&T selects SS7 Access, GTE will provide interconnection of its SS7 network per Section 10 of this Attachment 10 with AT&T's SS7 network for exchange of AIN TCAP messages between AT&T's SSP and GTE's AIN SCP.

11.7.1.6. STPs shall offer SS7 AIN Access in accordance with the requirements of the technical references listed in Appendix A to this Attachment 2, under paragraph 11.

11.7.2. SCE/SMS AIN Access shall provide AT&T the ability to create service applications in the GTE SCE and deploy those applications via the GTE SMS to the GTE SCP. This interconnection arrangement shall provide AT&T access to the GTE development environment and administrative system in a manner at least at parity with GTE's ability to deliver its own AIN-based services, subject to reasonable security arrangements. SCE/SMS AIN Access is the development of service applications within the GTE Service Creation Environment, and deployment of service applications via the GTE Service Management System. AT&T requests to use the GTE SCE will be subject to request, review and testing procedures to be agreed upon by the Parties. See Figure 2 below.

FIGURE 2



11.7.2.1. [Intentionally Deleted]

11.7.2.2. The GTE SCE/SMS shall allow for multi-user access with proper source code management and other logical security functions as specified in the Security section of this Agreement.

11.7.2.3. The GTE SCP shall partition and protect AT&T service logic and data from unauthorized access, execution or other types of compromise.

11.7.2.4. GTE shall provide training and documentation for AT&T development staff only in cases in which such training or documentation is not reasonably available from another source. If training or documentation is required in accordance with this section, it will be provided in a manner at least at parity with that provided by GTE to its development staff. Training will be conducted at a mutually agreed upon location provided that AT&T shall reimburse GTE for the cost of providing such resources.

11.7.2.5. When AT&T selects SCE/SMS AIN Access, GTE shall provide for a secure, controlled access environment on-site, and, if technically feasible, via remote data connections (e.g., dial up, LAN, WAN).

11.7.2.6. When AT&T selects SCE/SMS AIN Access, GTE shall allow AT&T to download data forms and/or tables to GTE SCP via GTE SMS without intervention from GTE (e.g., customer subscription).

11.7.2.7. Service Control Points (SCP)/Databases shall offer SCE/SMS AIN Access in accordance with requirements of GR-1280-CORE, AIN SCP Generic Requirements.

11.7.3. Any mediation to GTE's AIN database that GTE decides to apply, including the application of network management controls determined by GTE to be necessary to protect the SCP from an overload condition, will be done in a competitively neutral and nondiscriminatory basis for all users of the AIN database, including GTE and its customers. For example, any load mediation will affect all links to the STP, including those of GTE or its customers, in a like manner. AT&T agrees to provide forecast information of its AIN requirements sufficient to permit GTE to engineer sufficient capacity on GTE's AIN SCP platform.

12. Tandem Switching

12.1. Definition:

Tandem Switching is the function that establishes a communications path between two switching offices through a third switching office (the tandem switch).

12.2. **Technical Requirements**

Tandem switching shall provide the following capabilities, where technically feasible:

12.2.1. Signaling to establish a tandem connection;

12.2.2. Screening and routing;

12.2.3. Recording of all billable events;

12.2.4. Connectivity to Operator Systems;

12.2.5. **Access to Toll Free number portability database;**

12.2.6. Tandem Switching shall provide all trunk interconnections discussed under the "Network Interconnection" section (e.g., SS7, MF, DTMF, DialPulse, PRI-ISDN, DID, and CAMA-ANI (if appropriate for 911));

12.2.7. Tandem Switching shall provide connectivity to PSAPs where 911 solutions are deployed and the tandem is used for 911; and

12.2.8. Tandem Switching shall provide connectivity to transit traffic to and from other carriers.

12.2.9. Tandem Switching shall accept connections (including the necessary signaling and trunking interconnections) between end offices, other tandems, IECs, ICOs, CAPs and CLEC switches.

12.2.10. Tandem Switching shall provide local tandeming functionality between two end offices including two offices belonging to different CLEC's (e.g., between an AT&T end office and the end office of another CLEC).

12.2.11. Tandem Switching shall preserve CLASS/LASS features and Caller ID as traffic is processed. Additional signaling information and requirements are provided in Section 10.

12.2.12. Tandem Switching shall record billable events and send them to the area billing centers designated by AT&T. Billing requirements are specified in Attachment 6 of this Agreement.

12.2.13. GTE shall perform routine testing and fault isolation on the underlying switch that is providing Tandem Switching and all its interconnections. When requested by AT&T, the results and reports of the testing shall be made available to AT&T. If AT&T requests testing and fault isolation which GTE does not provide for itself, AT&T shall pay all costs associated therewith to the extent that such costs are not otherwise included in the cost of the element.

12.2.14. GTE shall maintain AT&T's trunks and interconnections associated with Tandem Switching at least at parity to its own trunks and interconnections.

12.2.15. [Intentionally Deleted]

12.2.16. Tandem Switching shall control congestion using capabilities such as Automatic Congestion Control and Network Routing Overflow. Congestion control provided or imposed on AT&T traffic shall be at parity with controls being provided or imposed on GTE traffic (e.g., GTE shall not block AT&T traffic and leave its traffic unaffected or less affected).

12.2.17. Tandem Switching shall route calls to GTE or AT&T endpoints or platforms (e.g., operator services and PSAPs) on a per call basis as designated by AT&T. AT&T shall pay all costs associated therewith to the extent that such costs are not otherwise included in the cost of the element. Detailed primary and overflow routing plans for all interfaces available within the GTE switching network shall be mutually agreed to by AT&T and GTE. Such plans shall meet AT&T requirements for routing calls through the local network.

12.2.18. Tandem Switching shall process originating toll-free traffic received from an AT&T local switch.

12.2.19. The Local Switching and Tandem Switching functions may be combined in an office. If this is done, both Local Switching and Tandem Switching shall provide all of the functionality required of each of those Network Elements in this Agreement.

12.3. Interface Requirements

12.3.1. Tandem Switching shall provide interconnection to the E911 PSAP where the underlying Tandem is acting as the E911 Tandem.

12.3.2. Tandem Switching shall interconnect, with direct trunks, to all carriers with which GTE interconnects.

12.3.3. GTE shall provide all signaling necessary to provide Tandem Switching with no loss of feature functionality.

12.3.4. Tandem Switching shall interconnect with AT&T's switch, using two-way trunks, for traffic that is transiting via the GTE network to interLATA or intraLATA carriers. GTE shall record tandem switching events necessary for GTE to bill AT&T for tandem switching and any applicable transport.

12.3.5. [Intentionally Deleted]

12.3.6. Tandem Switching shall adhere to the Trunk Interface Requirements provided in the "Network Interconnection" section.

12.4. Tandem Switching shall meet or exceed each of the requirements for Tandem Switching set forth in the technical references listed in Appendix A to this Attachment 2, under paragraph 12.

13. **Additional Requirements**

This Section 13 of Attachment 2 sets forth the additional requirements for unbundled Network Elements which GTE agrees to offer to AT&T under this Agreement.

13.1. **Cooperative Testing**

13.1.1. [Intentionally Deleted]

13.1.2. Requirements

Within 60 days of the Effective Date of this Agreement, AT&T and GTE will agree upon a process to resolve technical issues relating to interconnection of AT&T's network to GTE's network and Network Elements and Ancillary Functions. The agreed upon process shall include procedures for escalating disputes and unresolved issues up through higher levels of each company's management. If AT&T and GTE do not reach agreement on such a process within 60 days, any issues that have not been resolved by the parties with respect to such process shall be submitted to the ADR procedures set forth in Section 15 and Attachment 1 of this Agreement unless both parties agree to extend the time to reach agreement on such issues.

13.1.2.1. GTE shall provide AT&T access for testing at the MDF. Such test access shall be sufficient to ensure that the applicable requirements can be tested by AT&T. This access shall be available seven (7) days per week, 24 hours per day.

13.1.2.2. AT&T may test any interfaces, Network Elements or Ancillary Functions and additional requirements provided by GTE pursuant to this Agreement.

13.1.2.3. GTE shall provide engineering data as requested by AT&T for the loop components as set forth in Sections 2 and 3 of this Attachment which AT&T may desire to test. Such data shall include equipment engineering and cable specifications, signaling and transmission path data. GTE shall provide to AT&T the same type and quality of loop testing information that it provides to itself. Where GTE develops loop testing information as a matter of course, it will make that information available to AT&T where such information is relevant to AT&T's business. Where GTE maintains the internal discretion to test loops as needed, GTE will provide similar testing discretion to AT&T.

13.1.2.4. [Intentionally Deleted]

13.1.2.5. [Intentionally Deleted]

13.1.2.6. GTE shall temporarily provision selected Local Switching features for testing. Within 60 days of the Effective Date of this Agreement AT&T and GTE shall mutually agree on the procedures to be established between GTE and AT&T to expedite such provisioning processes for feature testing.

13.1.2.7. Upon AT&T's request, GTE shall provide technical staff to meet with AT&T representatives to provide required support for Cooperative Testing.

13.1.2.8. Dedicated Transport and Loop Feeder may experience alarm conditions due to in-progress tests. GTE shall not remove such facilities from service without obtaining AT&T's prior approval.

13.1.2.9. GTE shall conduct tests or maintenance procedures on Network Elements or Ancillary Functions or on the underlying equipment that is then providing a Network Element or Ancillary Function, that may cause a service interruption or degradation if such tests and procedures are at a time that is mutually acceptable to AT&T and GTE.

13.1.2.10. GTE shall provide a single point of contact to AT&T that is available 7 days per week, 24 hours per day for trouble status, sectionalization, resolution, escalation, and closure. Such staff shall be adequately skilled to allow expeditious problem resolution.

13.1.2.11. [Intentionally Deleted]

13.1.2.12. [Intentionally Deleted]

13.1.2.13. AT&T and GTE shall endeavor to complete Cooperative Testing expeditiously.

13.1.2.14. [Intentionally Deleted]

13.1.2.15. [Intentionally Deleted]

13.1.2.16. [Intentionally Deleted]

13.2. Performance

13.2.1. Scope:
This section addresses performance requirements for Network Elements and Ancillary Functions to provide local service. It includes requirements for the reliability and availability of Network Elements and Ancillary Functions, and quality parameters such as transmission quality (analog and digital), and speed (or delay). In addition, an overview of service performance requirements is given.

13.2.1.1. The General Performance Requirements in this section apply to all aspects of Network Elements and Ancillary Functions. Additional requirements are given in this performance section and in the individual Network Elements sections.

13.2.1.2. GTE shall work cooperatively with AT&T to determine appropriate performance allocations across Network Elements.

13.2.2. GTE shall meet or exceed the performance standards and requirements set forth in the technical references listed in Appendix A to this Attachment 2, under paragraph 13.

13.2.3. Services and Capabilities

13.2.3.1. All Network Elements shall provide performance sufficient, in combination with other Network Elements, to provide the following applications in accordance with the requirements of this document:

13.2.3.1.1. All types of voice services.

13.2.3.1.2. All types of voice-band data modem connections up to and including 28.8 kbps V.34.

13.2.3.1.3. All types of FAX transmissions up to and including 14.4 kbps group 3.

13.2.3.1.4. All CLASS/LASS features.

13.2.3.1.5. All Operator Systems.

13.2.3.2. The following capabilities shall be provided as applicable:

13.2.3.2.1. ISDN BRI

13.2.3.2.2. ISDN PRI

13.2.3.2.3. Switched Digital Data

13.2.3.2.4. Non-Switched Digital Data

13.2.3.2.5. Any types of Video applications that a customer may order

13.2.3.2.6. Any Coin Services the customer may order

13.2.3.2.7. Frame Relay and ATM

Private Line Services

13.2.4. Specific Performance Requirements for Network Elements and Ancillary Functions

13.2.4.1. The following sections itemize performance parameters for Network Elements and Ancillary Functions. GTE shall provide performance equal to or better than all of the requirements set forth in this Section. Unless noted otherwise, requirements and objectives are given in terms of specific limits. This means that all tests (acceptance and ongoing performance) shall meet the limit(s) to satisfy the requirement.

13.2.4.2. Performance Allocation Transmission path impairments may be classified as either analog or digital, and will depend on the nature of the signal transmitted across the Network Element. Analog impairments are introduced on any analog portion of the loop, typically between the NID portion of Loop Distribution and the analog to digital (A/D) conversion, and are usually correlated with the length of the physical plant. Digital impairments are introduced by A/D conversion and by interfaces between digital Network Elements. In addition, noise can be introduced by either analog transmission or the A/D conversion.

13.2.4.3. Loop Combination Architecture Constraints

13.2.4.3.1. The following constraints will limit not only the variety of Loop Combination architectures that may be considered, but also the architectures GTE may consider to deliver any Ancillary Function or Network Element. These constraints apply to the entire path between the NID portion of Loop Distribution and the GTE switch. Any exceptions to these restrictions shall be specifically requested or approved by AT&T in writing.

13.2.4.3.1.1. No more than 1 A-D conversion.

13.2.4.3.1.2. No more than 1, 2-to-4-wire hybrid.

13.2.4.3.1.3. No voice compression.

13.2.4.3.1.4. No echo cancelers or suppressers.

13.2.4.3.1.5. One digital loss pad per PBX.

13.2.4.3.1.6. No digital gain.

13.2.4.3.1.7. No additional equipment that might significantly increase intermodulation distortion.

13.2.4.4. Transmission Impairments

13.2.4.4.1. Analog Impairments Analog impairments are those introduced on portions of the end-to-end circuit on which communications signals are transmitted in analog format. These portions of the transmission path would typically be between NID and an A/D conversion, most commonly on the metallic loop. The performance on the analog portion of a circuit is typically inversely proportional to the length of that circuit.

13.2.4.4.1.1. Loss

13.2.4.4.1.1.1. Electrical loss is measured using a 1004 Hz 0.0dB one Milliwatt 900 ohm test tone.

13.2.4.4.1.1.2. Off-hook electrical loss between the NID and the switch shall be no more than 8.0 dB for any line, and the mean value for all lines shall be 3.5 dB ±0.5 dB. On-hook electrical loss between the NID and the switch shall be no more than 4.0 dB above the off-hook electrical loss for any line.

13.2.4.4.1.2. Idle Channel Circuit Noise

13.2.4.4.1.2.1. Idle channel circuit noise (C-message) is added by analog facilities, by the A/D conversion of signals, by digital processing equipment (e.g. echo cancelers, digital loss pads), robbed bit signaling, and errors on digital facilities.

13.2.4.4.1.2.2. Idle channel circuit noise shall be less than or equal to 18 dBrnC.

13.2.4.4.1.3. Talker Echo

13.2.4.4.1.3.1. The primary source of echo is improper impedance-matching at the 2-to-4 wire hybrid in the GTE network. The impact on customer perception is a function of both echo return loss and delay.

13.2.4.4.1.3.2. Echo Return Loss (ERL) shall be greater than 26dB to a standard termination (900 ohms, 2.16 mFd), and greater than 14 dB to a telephone set off-hook. Singing Return Loss (SRL) shall be greater than 21dB to a standard termination, and greater than 11 dB to a telephone set off-hook.

13.2.4.4.1.4. Listener Echo

Listener echo is a double reflection of a transmitted signal at two different impedance mismatches in the end-to-end connection. While in extreme cases it can degrade voice transmission performance, listener echo is primarily an issue for voiceband data. The requirements on Talker Echo shall apply to Listener Echo.

13.2.4.4.1.5. Propagation and Processing Delay

13.2.4.4.1.5.1. Propagation delay is the delay involved in transmitting information from one location to another. It is caused by processing delays of equipment in the network and delays associated with traveling across transmission facilities.

13.2.4.4.1.5.2. GTE shall cooperate with AT&T to limit total service propagation and processing delay to levels at parity with that within the GTE local network.

13.2.4.4.1.6. Signal-to-Noise Ratio

13.2.4.4.1.6.1. The Signal-to-Noise Ratio (S/N) is a critical parameter in determining voiceband data performance. It is typically measured with a 1004 Hz tone.

13.2.4.4.1.6.2. GTE must provide on the Loop Combination a signal-to-noise ratio of at least 37 dB between the NID and the end office.

13.2.4.4.1.7. C-Notched Noise

The requirements for Signal-to-Noise Ration shall apply to C-Notched Noise.

13.2.4.4.1.8. Attenuation Distortion

13.2.4.4.1.8.1. Attenuation distortion, also known as frequency distortion or gain slope, measures the variations in loss at different frequencies across the voice frequency spectrum (200 Hz - 3400 Hz). It is measured by subtracting the loss at 1004 Hz from the loss at the frequency of interest.

13.2.4.4.1.8.2. Attenuation distortion from the NID to the switch shall be within the range ± 0.5 dB for frequencies between 304 and 3004 Hz; from the switch to NID attenuation distortion shall be within the range ± 0.5 dB for frequencies between 204 Hz and 3004 Hz. In addition, attenuation distortion shall remain within the range +1dB/-3dB for frequencies between 200 Hz and 3500 Hz.

13.2.4.4.1.9. Envelope Delay Distortion

13.2.4.4.1.9.1. Envelope Delay Distortion (EDD) measures the difference in transit time of signals at different frequencies. EDD is measured relative to the transit time of a 1704 Hz. tone, and is given in microseconds. EDD is used as an approximation of the group delay of the channel.

13.2.4.4.1.9.2. EDD shall be: 1704 Hz to 604 Hz -- ≤ 350 msec.; 1704 Hz to 2804 Hz -- ≤ 195 msec.; 1704 Hz to 204 Hz -- ≤ 580 msec.; 1704 Hz to 3404 Hz -- ≤ 400 msec.

13.2.4.4.1.10. Phase Jitter

13.2.4.4.1.10.1. Phase jitter measures the unwanted angular modulation of a signal. It is caused by noise or the actual modulation of the signal by another unwanted signal. It displaces the zero crossings of a signal. It is measured in terms of peak-to-peak deviations of a 1004 Hz. tone from its nominal zero crossings, and in a particular frequency band (20-300 Hz and either 4-300 Hz or 2-300 Hz). Phase jitter impacts voiceband data performance and can make modems more susceptible to other impairments, including noise.

13.2.4.4.1.10.2. From the NID to the interexchange carrier point of termination, phase jitter shall be <1.5 ° point-to-point in the 20-300 Hz band, and <1.8° point-to-point in the 4-300 Hz. band.

13.2.4.4.1.11. Amplitude Jitter

13.2.4.4.1.11.1. Amplitude jitter is any deviation of the peak value of a 1004 Hz signal from its nominal value. Excessive amounts can impair voiceband data performance. It is primarily caused by noise but can also be caused by phase jitter, gain hits, or single frequency interference.

13.2.4.4.1.11.2. In NID-interexchange carrier point of termination, ≤2.5% of amplitude jitter is permitted in the 20-300 Hz band and ≤2.9% in the 4-300 Hz band.

13.2.4.4.1.12. Intermodulation Distortion

13.2.4.4.1.12.1. Intermodulation distortion (IMD) measures non-linear distortions of a signal. It compares the power of harmonic tones to the power of the transmitted tones. It is measured for both the 2nd and 3rd harmonics of the transmitted tones. IMD is caused by compression or clipping and can impair voiceband data performance.

Both 2nd and 3rd order IMD between the NID and end office must be ≥ 52dB.

13.2.4.4.1.13. Impulse Noise

13.2.4.4.1.13.1. Impulse noise is a sudden and large increase in noise on a channel for a short duration of time. Impulse noise is measured as a count of the number of times a noise threshold is exceeded during a given time period (typically 5 or 15 minutes). It is caused by protection switching, maintenance activities, electromechanical switching systems, digital transmission errors, and line coding mismatches. Impulse noise sounds like clicking noises or static on

voice connections. Impulse noise impairs voiceband data performance.

13.2.4.4.1.13.2. The NID to interexchange carrier point of termination portions of connections shall introduce no impulse noise events within 6dB of the received signal power on 93% of all 15 minute connections. In addition, there shall be no more than 1 impulse noise event within 6 dB of the received signal power during any 30-minute period.

13.2.4.4.1.14. Phase Hits

13.2.4.4.1.14.1. Phase hits are a sudden change in the phase of a signal lasting at least 4 msec. Phase hits are measured using a threshold which indicates how much the phase of the signal has changed with respect to its nominal phase. Phase hits are caused by protection switching and slips or other synchronization errors. Phase hits can impair voiceband data performance.

13.2.4.4.1.14.2. Between the NID and interexchange carrier point of termination, 99.75% of all 15-minute connections shall have no phase hits exceeding 10°. In addition, there shall be no more than 1 phase hit exceeding 10° in any 30-minute period.

13.2.4.4.1.15. Gain Hits

13.2.4.4.1.15.1. Gain hits are sudden changes in the level of a signal that last at least 4 msec. Gain hits are measured against a threshold of typically 2-5 dB relative to the signal's nominal level. Gain hits are usually caused by protection switches and can impair voiceband data performance.

13.2.4.4.1.15.2. Between the NID and the interexchange carrier point of termination, 99.5% of all 15-minute connections shall have no gain hits exceeding 3 dB. In addition, there shall be no more than 1 gain hit exceeding 3 dB in any 30-minute period.

13.2.4.4.1.16. Dropouts

13.2.4.4.1.16.1. Dropouts are drops in the level of a signal of 12 dB or more for at least 4 msec. They are caused by protection switching events, radio fading, and conditions causing digital carrier systems to lose frame. Dropouts are critical for voiceband data performance but, if severe enough, will also affect voice quality.

13.2.4.4.1.16.2. Between the NID and the interexchange carrier point of termination, 99.9% of all 15-minute connections shall have no dropouts and in addition, no connection shall suffer more than 1 dropout in any 60-minute period.

13.2.4.4.1.17. Frequency Shift

13.2.4.4.1.17.1. Frequency shift measures any frequency changes that occur when a signal is transmitted across a channel. It is typical measured using a 1004 Hz tone. Frequency shift has very little impact on voice or voiceband data performance; however, round-trip frequency shifts can affect the ability of echo cancelers to remain converged.

13.2.4.4.1.17.2. No more than 0.2 Hz frequency shift shall be on any connection. In addition, 99.5% of all calls shall have frequency shift < 0.1 Hz.

13.2.4.4.1.18. Crosstalk

13.2.4.4.1.18.1. Crosstalk is the presence of signals from other telephone connections on a circuit. Crosstalk can be either intelligible, when speech from other connections can be heard and understood, or unintelligible. Crosstalk is caused by inter-channel interference on the transmission system. Crosstalk is difficult to measure: it requires correlating signals on different circuits or using human listeners to identify its presence. Trouble reports may be used to estimate the probability of crosstalk.

13.2.4.4.1.18.2. 99% of Loop Combinations shall have probability ≤ 0.1% of experiencing crosstalk exceeding -65 dBm0.

13.2.4.4.1.19. Clipping

13.2.4.4.1.19.1. Clipping occurs when part of a transmitted signal is dropped and does not reach the receiving portion on a connection. It can be caused by Digital Speech Interpolation (DSI) equipment used in Digital Circuit Multiplication Systems (DCMS) which increase the amount of traffic that transmission facilities carry, and by echo cancelers or echo suppressers.

No clipping incidents shall occur on any call.

13.2.4.4.2. Digital Impairments

Digital impairments occur in the signal wherever it is transmitted in digital format. These errors are usually introduced upon conversion of the signal from analog to digital, as well as at

interfaces between digital components. While many digital impairments have little impact on subjective voice quality, they can impact voiceband data performance.

13.2.4.4.2.1. Signal Correlated Distortion

13.2.4.4.2.1.1. Signal correlated distortion (SCD) is unwanted noise or distortion introduced into a signal through the conversion of a signal from analog to digital format or through digital processing that changes the transmitted signal. SCD affects performance when a sign is being transmitted. The primary sources of SCD are signal encoders, echo cancelers, digital loss pads, and robbed bit signaling. SCD affects both voice and voiceband data performance.

13.2.4.4.2.1.2. The NID-to-end-office connection shall allow:

13.2.4.4.2.1.2.1. A maximum of 1 A/D conversion, using 64Kbps m-law (m=255) PCM;

13.2.4.4.2.1.2.2. No voice compression;

13.2.4.4.2.1.2.3. No echo cancellation; and

13.2.4.4.2.1.2.4. Robbed bit signaling only if SS7 or ISDN are not used.

13.2.4.4.2.2. Slips

13.2.4.4.2.2.1. Slips occur when a frame of digital data is either deleted or repeated because of differences in the clocks used to synchronize digital facilities. Slips sound like clicks or pops on voice calls and have major impact on voiceband data performance.

13.2.4.4.2.2.2. The NID-to-interexchange carrier point of termination portion of connections shall have fewer than 0.45 slips every 24 hours on average.

13.2.4.4.2.3. Digital Timing Jitter and Wander

13.2.4.4.2.3.1. Digital timing jitter is the unwanted phase modulation of digital signals at rates above 10 Hz. Wander is the unwanted phase modulation of digital signals at rates below 10 Hz. Digital timing jitter is caused by imperfections in the timing recovery process of repeaters and the stuffing synchronization process used by multiplexer/demultiplexers. Wander is caused by slowly varying

changes in digital signal phase due to clock frequency offset and drift, changes in propagation delay of terrestrial facilities due to temperature changes and changes in the distance of satellites from the earth. These events have a major impact on voiceband data performance.

13.2.4.4.2.3.2. The maximum digital timing jitter allowed in the 10 Hz to 8 kHz frequency band at any network interface or any terminal equipment in the network is 5 Unit Intervals (UI). The maximum digital timing jitter allowed in the 8 kHz to 40 kHz frequency band is 0.1 UI. The objective for wander is less than 28 UI at any network interface or terminal equipment.

13.2.4.4.2.4. DS-1 Errored Seconds

13.2.4.4.2.4.1. An Errored Second (ES) on a DS-1 facility is any second during which at least 1 bit is in error. The impact of an ES on performance depends on the number of errors that occur during a second. Typically, voice performance is not significantly impacted by ES but they can cause errors in voiceband data transmissions.

13.2.4.4.2.4.2. Each GTE network shall have less than 20 ESs per 24 hour period.

13.2.4.4.2.5. DS-1 Severely Errored Seconds

13.2.4.4.2.5.1. A severely Errored Second (SES) is any second during which a DS-1 has an error rate exceeding 0.001. An SES can be caused by a loss of framing, a slip, or a protection switch. SESs have impacts on both voice and voiceband data performance. For voice, an SES will sound like a burst of noise or static. SESs that occur during a voiceband data transmission cause a significant burst of errors and can cause modems to retrain.

13.2.4.4.2.5.2. The digital portion of each NID to POP connection shall have less than 2 SESs per 24 hour period).

13.2.4.4.2.6. Short Failure Events

13.2.4.4.2.6.1. A Short Failure Event (SFE) is a Loss of Frame (LOF) event of less than two minutes' duration. An LOF event is declared when, on detection of a Loss of Signal (LOS) or Out-of-Frame (OOF), a rise-slope-type integration process starts that declares a LOF after 2.5±0.5 sec. of continuous LOS or OOF. If the LOS or OOF is intermittent, the integration process shall decay at a slope of 1/5 the rise slope during the period when the signal is normal. Thus, if

the ratio of a LOS or OOF to a normal signal is greater than 1/2, a LOF will be declared. A LOS condition shall be declared when the Network Channel Terminating Equipment has determined that 175±75 successive pulse positions with no pulses of either positive or negative polarity have occurred. An OOF condition shall be declared when either Network equipment or Digital Terminal Equipment detects errors in the framing pattern.

13.2.4.4.2.6.2. There shall be fewer than 1 SFE per month.

13.2.4.5. Service Availability and Reliability

Availability refers to the time period during which the service is up and usable for its intended purpose. Reliability refers to the probability that a task will be completed successfully, given that it is successfully begun.

13.2.4.5.1. Blocked Calls

13.2.4.5.1.1. Blocking is the fraction of call origination attempts denied service during a stated measurement period. Blocking occurs because of competition for limited resources within the network.

13.2.4.5.1.2. For intraLATA toll service as well as for local exchange service, the blocking level from originating network interface (NID) to terminating NID shall not exceed 1% in any hour, except under conditions of service disruption. For access to or egress from the AT&T long distance network, the blocking rate shall not exceed 0.5% in any hour, except under conditions of service disruption.

13.2.4.5.2. Blocked Dial Tone

13.2.4.5.2.1. Blocked dial tone occurs when the subscriber does not receive dial tone within 3 seconds of going off-hook.

13.2.4.5.2.2. Customers shall not experience more than 0.1% dial tone blocking during average busy season busy hour (ABSBH).

13.2.4.5.3. Downtime

Downtime is the period of time that a system is in a failed state.

13.2.4.5.3.1. The average downtime for all subscriber Loop Combinations shall be less than 49 minutes per year. The maximum downtime for 99% of all subscriber Loop Combinations shall be less than 74 minutes per year.

13.2.4.5.3.2. The average downtime for an end office switch shall be less than 3 minutes per year. The average downtime for individual trunks shall be less than 28 minutes per year. The average downtime for digital trunk groups shall be less than 20 minutes per year. The average downtime for an individual line appearance at the switch shall be less than 28 minutes per year. The average downtime for a Remote Terminal (RT) shall be less than 17 minutes per year. The average downtime for an individual line on a Remote Terminal (RT) shall be less than 13 minutes per year.

13.2.4.5.3.3. The mean time to repair (MTTR) of any equipment at an attended site shall be less than 3 hours. The mean time to repair (MTTR) of any equipment at an unattended site shall be less than 4 hours. 95% of all repairs to the network interface (NID) shall be completed within 24 hours.

13.2.4.5.3.4. There shall be no downtime due to power failures at the switch.

13.2.4.5.3.5. The probability of a stable call being cut off shall be less than 20 cutoffs per one million 1 minute calls.

13.2.4.5.3.6. The rate of ineffective machine attempts at the end office shall be less than 0.0005 (5 failures per 10,000 call attempts).

13.2.4.5.3.7. GTE shall meet all requirements for private line services in TR-NWT-000335, ANSI T1.512-1994, and AT&T Technical References as listed in this Section 13.2.

13.2.4.5.4. Dial Tone Delay

13.2.4.5.4.1. Dial-Tone Delay is the time period between a customer off-hook and the receipt of dial tone from an originating end office. Dial-Tone Delay has a significant effect on customer opinion of service quality.

13.2.4.5.4.2. The average dial-tone delay shall not exceed 0.6 seconds. At most 0.5% of calls during the average-season busy hour (ABSBH) shall experience dial-tone delay greater than 3 seconds. At most 8% of calls during the ten-high-day busy hour (THDBH) shall experience dial-tone delay greater than 3 seconds. At most 10% of calls during the high-day busy hour (HDBH) shall experience dial-tone delay greater than 3 seconds.

13.2.4.5.5. Dial Tone Removal

13.2.4.5.5.1. Dial tone removal is the time between recognition of the first address digit to the removal of dial tone on the line.

The maximum dial tone removal interval shall be ≤ 500 milliseconds.

13.2.4.5.6. Post Dial Delay

13.2.4.5.6.1. Post Dial Delay (PDD) is the amount of time a caller must wait after entering or dialing the last digit of a Destination Telephone Number (DTN) before hearing a valid audible network response. The PDD for an end user is measured from the time the caller has pressed or dialed the last digit of a DTN until receipt of an audible network response.

13.2.4.5.6.2. The requirements given reflect an end-to-end CCS7 protocol for AT&T end users. Where a mixture of CCS7 and inband (MF) signaling protocols are employed, an increase in the PDD can be expected.

13.2.4.5.6.2.1. PDD 1 - A - Intra AT&T LSO

13.2.4.5.6.2.1.1. Intra-LSO calls do not employ external signaling protocols. The PDD for intra-LSO calls flows are dependent upon the processor cycle time and traffic load conditions. This PDD is assumed to be between customers on the same AT&T LSO, between the Remote Switch Modules (RSMs) on the same Host, or between an RSM and 5ESS Host customers.

13.2.4.5.6.2.1.2. The objective for intra-LSO PDD is less than 310 milliseconds for 50% of all calls and less than 460 milliseconds for 95% of all calls.

13.2.4.5.6.2.2. PDD1 - B - AT&T LSO to Another AT&T Local LSO

13.2.4.5.6.2.2.1. The signaling protocols from an AT&T LSO to another AT&T LSO are assumed to employ out-of-band Common Channel Signaling System 7 (CCS7) format. Local calls, that is, calls from an AT&T LSO to another AT&T LSOs are assumed to have no more than one pair of Signaling Transfer Point Switches (STPSs) and no more than one data base dip.

13.2.4.5.6.2.2.2. This PDD is expected to be better than the AT&T Long Distance objective with an average PDD of .870 seconds with 95% 1.34 seconds.

13.2.4.5.6.2.3. PDD1 - C - AT&T LSO to Other LSO

13.2.4.5.6.2.3.1. Calls from an AT&T LSO to other LSOs are dependent upon the interface agreements between AT&T and the LSO service provider and may employ CCS7, inband (MF) or a combination of both protocols.

13.2.4.5.6.2.3.2. Calls from an AT&T LSO to another LSO via the Public Switched Telecommunications Network (PSTN), using end-to-end CCS7 signaling protocols, can expect to meet the AT&T PDD objectives of an average of 2.0 seconds with 95% in 2.5 seconds. Calls from an AT&T LSO via the PSTN to LSOs outside the local service area are assumed to use CCS7 signaling protocols to the AT&T #4ESS.Ô The egress signaling protocols from the AT&T Switched Network (ASN) to the many different local telephone company service providers however does not necessarily utilize CCS7 signaling. There are three basic egress signaling configuration. They are:

13.2.4.5.6.2.3.2.1. Network Inter-Connect, CCS7 between AT&T and the local telephone company.

13.2.4.5.6.2.3.2.2. Inband Multifrequency (MF) signaling protocols without a GTE egress tandem in the connection.

13.2.4.5.6.2.3.2.3. Inband MF signaling protocols with a GTE egress tandem in the connection.

13.2.4.6.3.2.3.2.3.1 Calls from an AT&T LSO to other LSOs outside the local service area are assumed to have multiple STPSs for 1+ traffic in the access and ASN portion of the connection. The egress from the ASN for 1+ traffic is again dependent upon the interface agreements in that service area and may consist of CCS7 or inband MF protocols.

13.2.4.6.3.2.3.2.3.2 Calls from an AT&T's LSO to another AT&T LSO with a mixture of CCS7 or all inband signaling protocols are expected to receive PDDs on the average of 2.9 seconds with 95% in ≤ 6.5 seconds.

13.2.4.5.6.2.4. PDD2 - AT&T LSO to Operator Services

13.2.4.5.6.2.4.1. The signaling protocols between an AT&T LSO and the AT&T ASN 5ESS® Operator Services Position Systems (OSPS) will employ IN-band Feature Group C Modified Operator Services Multifrequency signaling format. As with 1+ traffic, the egress from the ASN to the local service providers LSO is dependent upon the interface.

13.2.4.5.6.2.5. PDD2 - A - AT&T LSO to 5ESS® OSPS 0 Only

13.2.4.5.6.2.5.1. When a "0" has been entered by the customer, timing is applied in the absence of a DTMF "#". If a "#" is not entered, the objective is for the timer to expire in 4 seconds +/- 1 second. After the timer has expired, or the "#" has been entered, the average PDD shall not exceed 2.2 seconds.

13.2.4.5.6.2.6. PDD2 - B - 0 Plus Calls

13.2.4.5.6.2.6.1. On calls where analysis of the first 6 digits (area code + central office code) is required, the PDD shall not exceed 2.0 seconds on the average, and 2.5 seconds in 95% of all occurrences. For calls that require analysis of the 10-digits CALLED number and the 7 digits of calling number (ANI, e.g. Automatic Charge Quotation Service) the PDD is expected to be 4.5 seconds on the average and < 5.0 seconds in 95% of all occurrences. These delays are based on the calling customer receiving a network response as described above, specifically the calling card alerting tone from the 5ESS® OSPS. The remaining call completion PDD to the DTN, after the customer has completed the Operator Service function, will take the form of the PDDs discussed in PDD1-C.

13.2.4.5.6.2.7. Impact of Local Number Portability (LNP)

13.2.4.5.6.2.7.1. Local Number Portability will increase PDDs. If a call forwarding option is used as an interim solution for LNP, the delay due to additional switching in the local access is estimated to be 0.3 seconds (mean) and 0.4 seconds (95th percentile) in addition to the PDDs described earlier. These estimates assumes CCS7 signaling between LSOs. If inband signaling is used between LSOs, the PDD will be increased by 1.9 to 3.6 (1.7+1.9) seconds compared to the PDDs provided in the section on Post Dial Delay.

13.2.4.5.6.2.8. Custom Local Area Subscriber Services (CLASS)

13.2.4.5.6.2.8.1. CLASS^{SM} features such as Calling Name Delivery can contribute to the PDD of a call. This delay is caused by the additional time (GTE option) before the ringing interval commences. This default delay is 3 seconds. Optional settings are available in 1 second intervals from 1 to 6 seconds. Calls to DTNs that have CLASS^{SM} features, particularly with calling name delivery, can expect to experience from 1 to 6 seconds (3 seconds default) of additional PDD compared to the PDDs shown for PDD1-C.

13.2.4.5.6.2.9. Partial Dial Timing

13.2.4.5.6.2.9.1. The interval between each information digit from a customer's line, until the LSO or switching system has determined that the digit string is incomplete.

13.2.4.5.6.2.9.2. For customer lines, partial dial timing shall be ≥ 16 seconds and 24 seconds. For trunks, inband signaling time-out shall be ≥ 5 seconds and 20 seconds.

13.2.5. Test and Verification

13.2.5.1. GTE will provision, test, and restore any Network Element to the appropriate technical specifications for such Network Element.

13.2.5.1.1. At AT&T's request, GTE will provide access to the Network Element sufficient for AT&T to test the performance of that Network Element to AT&T's satisfaction.

13.2.5.1.2. GTE will perform all necessary testing to provision and restore a Network Element to technical specifications. When GTE documents the performance of a test, GTE will provide such test results to AT&T.

13.3. Protection, Restoration, and Disaster Recovery

13.3.1. Scope:

This Section refers specifically to requirements on the use of redundant network equipment and facilities for protection, restoration, and disaster recovery.

13.3.2. Requirements

13.3.2.1. GTE shall provide protection, restoration, and disaster recovery capabilities at parity with those capabilities provided for GTE's own services, facilities and equipment (e.g., equivalent circuit pack protection ratios, facility protection ratios).

13.3.2.2. GTE shall provide Network Elements and Ancillary Functions equal priority in protection, restoration, and disaster recovery as provided to GTE's own services, facilities and equipment.

13.3.2.3. GTE shall provide Network Elements and Ancillary Functions equal priority in the use of spare equipment and facilities as provided to GTE's own services, facilities and equipment.

13.3.2.4. GTE shall restore Network Elements which are specific to AT&T end user customers on a priority basis as AT&T may designate.

13.4. Synchronization

13.4.1. Definition:

Synchronization is the function which keeps all digital equipment in a communications network operating at the same average frequency. With respect to digital transmission, information is coded into discrete pulses. When these pulses are transmitted through a digital communications network, all synchronous Network Elements are traceable to a stable and accurate timing source. Network synchronization is accomplished by timing all synchronous Network Elements in the network to a stratum 1 traceable timing source so that transmission from these network points have the same average line rate.

13.4.2. Technical Requirements

The following requirements are applicable to the case where GTE provides synchronization to equipment that AT&T owns and operates within a GTE location. In addition, these requirements apply to synchronous equipment that is owned by GTE and is used to provide a Network Element to AT&T.

13.4.2.1. The synchronization of clocks within digital networks is divided into two parts: intra-building and inter-building. Within a building, a single clock is designated as the Building Integrated Timing Supply (BITS), which provides all of the DS1 and DS0 synchronization references required by other clocks in such building. This is referred to as intra-building synchronization. The BITS receives synchronization references from remotely located BITS. Synchronization of BITS between buildings is referred to as inter-building synchronization.

13.4.2.2. To implement a network synchronization plan, clocks within digital networks are divided into four stratum levels. All clocks in strata 2, 3, and 4 are synchronized to a stratum 1 clock, that is, they are traceable to a stratum 1 clock. A traceable reference is a reference that can be traced back through some number of clocks to a stratum 1 source. Clocks in different strata are distinguished by their free running accuracy or by their stability during trouble conditions such as the loss of all synchronization references.

13.4.2.2.1. Intra-Building

13.4.2.2.1.1. Within a building, there are different kinds of equipment that require synchronization at the DS1 and DS0 rates. Synchronization at the DS1 rate is accomplished by the frequency synchronizing presence of buffer stores at various DS1 transmission interfaces. Synchronization at the DS0 rate is accomplished by using a composite clock signal that phase synchronizes the clocks. Equipment requiring DS0 synchronization frequently does not have adequate buffer storage to accommodate the phase variations among different equipment. Control of phase variations to an acceptable level is accomplished by externally timing all interconnecting DS0 circuits to a single clock source and by limiting the interconnection of DS0 equipment to less than 1,500 cable feet. Therefore, a BITS shall provide DS1 and composite clock signals when appropriate The composite signal is a 64-kHz 5/8th duty cycle, return to zero with a bipolar violation every eighth pulse (B8RZ).

13.4.2.2.2. Inter-Building

13.4.2.2.2.1. GTE shall provide inter-building synchronization at the DS1 rate, and the BITS shall accept the primary and secondary synchronization links from BITS in other buildings. From hierarchical considerations, the BITS shall be the highest stratum clock within the building and GTE shall provide operations capabilities (this includes, but is not limited to: synchronization reference provisioning; synchronization reference status inquiries; timing mode status inquiries; and alarm conditions).

13.4.3. Synchronization Distribution Requirements

13.4.3.1. Central office BITS shall contain redundant clocks meeting or exceeding the requirements for a stratum 2 clock as specified in ANSI T1.101-1994 and Bellcore TR-NWT-001244 Clocks for the Synchronized Network: Common Generic Criteria.

13.4.3.2. Central office BITS shall be powered by primary and backup power sources.

13.4.3.3. If both reference inputs to the BITS are interrupted or in a degraded mode (meaning off frequency greater than twice the minimum accuracy of the BITS, loss of frame, excessive bit errors, or in Alarm Indication Signal), then the stratum clock in the BITS shall provide the necessary bridge in timing to allow the network to operate without a frame repetition or deletion (slip free) with better performance than 1 frame repetition or deletion (slip) per week.

13.4.3.4. DS1s multiplexed into a SONET synchronous payload envelope within an STS-n (where n is defined in ANSI T1.105-1995) signal shall not be used as reference facilities for network synchronization.

13.4.3.5. The total number of Network Elements cascaded from the stratum 1 source shall be minimized.

13.4.3.6. A Network Element shall receive the synchronization reference signal only from another Network Element that contains a clock of equivalent or superior quality (stratum level).

13.4.3.7. GTE shall select for synchronization those facilities shown to have the greatest degree of availability (absence of outages).

13.4.3.8. Where possible, all primary and secondary synchronization facilities shall be physically diverse (this means the maximum feasible physical separation of synchronization equipment and cabling).

13.4.3.9. No timing loops shall be formed in any combination of primary and secondary facilities.

13.4.3.10. An Operations Support System (OSS) shall continuously monitor the BITS for synchronization related failures or degradation.

13.4.3.11. An OSS shall continuously monitor all equipment transporting synchronization facilities for synchronization related failures or degradation.

13.4.3.12. For non-SONET equipment, GTE shall provide synchronization facilities which, at a minimum, comply with the standards set forth in ANSI T1.101-1994.

For SONET equipment, GTE shall provide synchronization facilities that have time deviation (TDEV) for integration times greater than 0.05 seconds and less than or equal to 10 seconds, that is less than or equal to 10 nanoseconds. TDEV, in nanoseconds, for integration times greater than 10 seconds and less than 1000 seconds, shall be less than 3.1623 times the square-root of the integration time. For example, for integration times of 25 seconds, TDEV shall be less than 15.8 nanoseconds.

13.5. SS7 Network Interconnection

13.5.1. Definition:

SS7 Network Interconnection is the Interconnection of GTE Signal Transfer Points (STPs) with AT&T STPs or AT&T local or tandem switching systems. This connectivity enables the exchange of SS7 messages between AT&T local or tandem switching systems and GTE's local or tandem switching systems, and between AT&T local or tandem switching systems and other third-party local or tandem switching systems with signaling connectivity to the same STPs. This connectivity also enables the exchange of messages between AT&T local or tandem switching systems, and GTE databases.

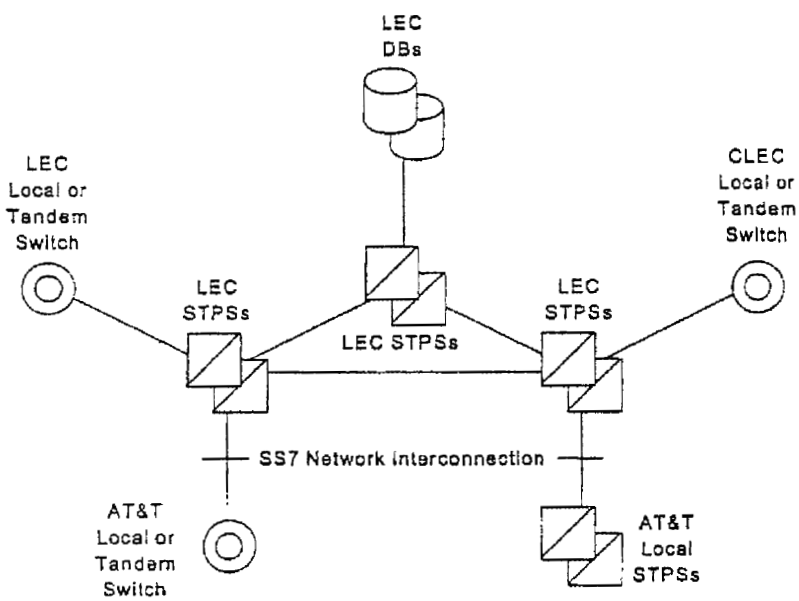


Figure 3. SS7 Network Interconnection

13.5.2. Technical Requirements

13.5.2.1. SS7 Network Interconnection shall provide connectivity to all components of the GTE SS7 network. These include:

13.5.2.1.1. GTE local or tandem switching systems;

13.5.2.1.2. GTE DBs; and

13.5.2.1.3. Other third-party local or tandem switching systems.

13.5.2.2. The connectivity provided by SS7 Network Interconnection shall fully support the functions of GTE switching systems and DBs and AT&T or other third-party switching systems with A-link access to the GTE SS7 network.

13.5.2.3. In particular Figure 4 depicts a circumstance where SS7 Network Interconnection shall provide transport for certain types of Transaction Capabilities Application Part (TCAP) messages. If traffic is routed based on dialed or translated digits between an AT&T local switching system and a GTE or other third-party local switching system, either directly or via a GTE tandem switching system, then it is a requirement that the GTE SS7 network convey via SS7 Network Interconnection the TCAP messages that are necessary to provide Call Management services (Automatic Callback, Automatic Recall, and Screening List Editing) between the AT&T local STPSs and the GTE or other third-party local switch.

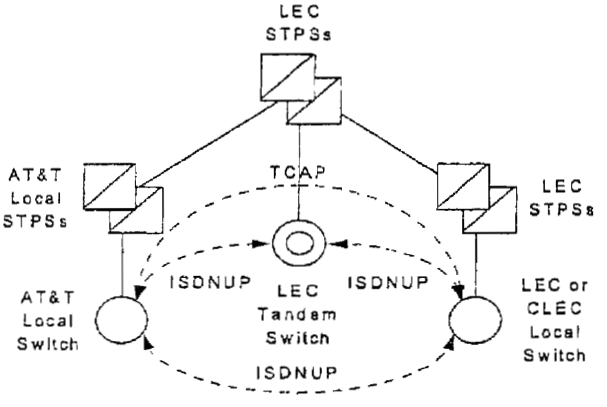


Figure 4. Interswitch TCAP Signaling for SS7 Network Interconnection

13.5.2.4. When the capability to route messages based on Intermediate Signaling Network Identifier (ISNI) is generally available on GTE STPSs, the GTE SS7 Network shall also convey TCAP messages using SS7 Network Interconnection in similar circumstances where the GTE switch routes traffic based on a Carrier Identification Code (CIC).

13.5.2.5. SS7 Network Interconnection shall provide all functions of the MTP as specified in ANSI T1.111. This includes Signaling Data Link functions, as specified in ANSI T1.111.2; Signaling Link functions, as specified in ANSI T1.111.3; and Signaling Network Management functions, as specified in ANSI T1.111.4.

13.5.2.6. SS7 Network Interconnection shall provide all functions of the SCCP necessary for Class 0 (basic connectionless) service, as specified in ANSI T1.112 (Reference 13.5.2.5). In particular, this includes Global Title Translation (GTT) and SCCP Management procedures, as specified in T1.112.4. Where the destination signaling point is a GTE switching system or DB, or is another third-party local or tandem switching system directly connected to the GTE SS7 network, SS7 Network Interconnection shall include final GTT of messages to the destination and SCCP Subsystem Management of the destination. Where the destination signaling point is an AT&T local or tandem switching system, SS7 Network Interconnection shall include intermediate GTT of messages to a gateway pair of AT&T local STPSs, and shall not include SCCP Subsystem Management of the destination.

13.5.2.7. SS7 Network Interconnection shall provide all functions of the Integrated Services Digital Network User Part (ISDNUP), as specified in ANSI T1.113 (Reference 13.5.2.5).

13.5.2.8. SS7 Network Interconnection shall provide all functions of the TCAP, as specified in ANSI T1.114 (Reference 13.5.2.5).

13.5.2.9. If and when Internetwork MTP Routing Verification Test (MRVT) and SCCP Routing Verification Test (SRVT) become approved ANSI standards and available capabilities of GTE STPSs, SS7 Network Interconnection shall provide these functions of the OMAP.

13.5.3. Link Interface Requirements

13.5.3.1. GTE shall offer the following SS7 Network Interconnection options to connect AT&T or AT&T-designated local or tandem switching systems or STPSs to the GTE SS7 network:

13.5.3.1.1. A-link interface from AT&T local or tandem switching systems; and

13.5.3.1.2. D-link interface from AT&T STPSs.

13.5.3.2. Each interface shall be provided by one or more sets (layers) of signaling links, as follows:

13.5.3.2.1. An A-link layer shall consist of two links, as depicted in Figure 5.

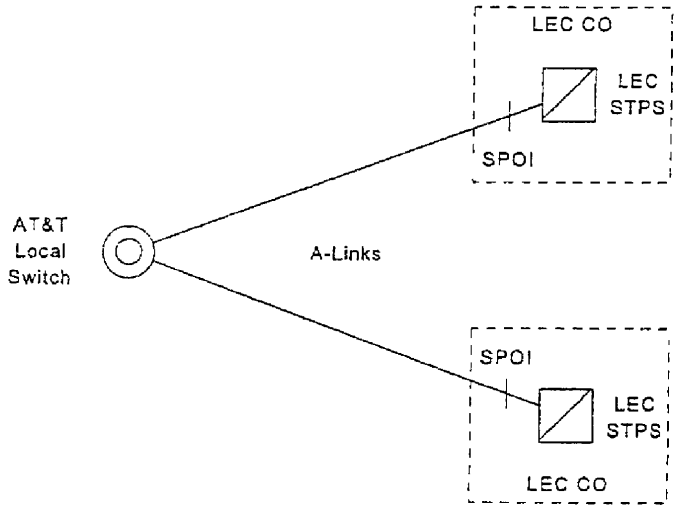


Figure 5. A-Link Interface

13.5.3.2.2. A D-link layer shall consist of four links, as depicted in Figure 6.

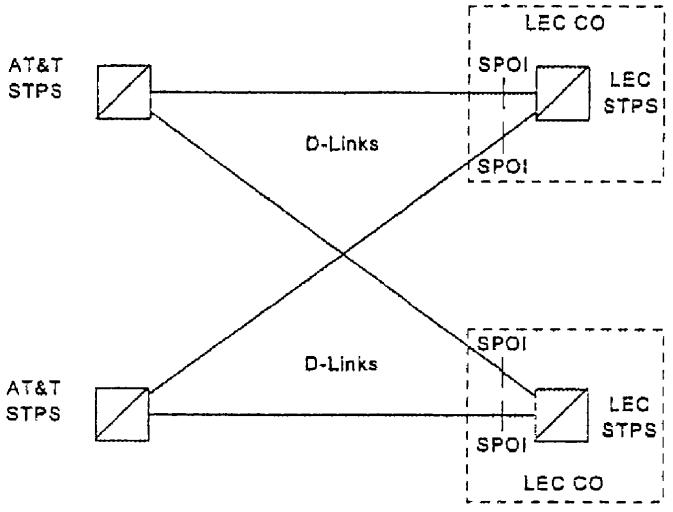


Figure 6. D-Link Interface

13.5.3.3. The Signaling Point of Interconnection (SPOI) for each link shall be located at a cross-connect element, such as a DSX-1, in the Central Office (CO) where the GTE STPS is located. There shall be a DS1 or higher rate transport interface at each of the SPOIs. Each signaling link shall appear as a DS0 channel within the DS1 or higher rate interface. GTE shall offer higher rate DS1 signaling links for interconnecting AT&T local switching systems or STPSs with GTE STPSs as soon as these become approved ANSI standards and available capabilities of GTE STPSs.

13.5.3.4. GTE CO shall provide intraoffice diversity between the SPOIs and the GTE STPS, so that no single failure of intraoffice facilities or equipment shall cause the failure of both D-links in a layer connecting to a GTE STPS.

13.5.3.5. The protocol interface requirements for SS7 Network Interconnection include the MTP, ISDNUP, SCCP, and TCAP. These protocol interfaces shall conform to the specifications contained in the technical references listed in Appendix A to this Attachment 2, under paragraph 14.

13.5.3.6. SS7 Network Interconnection shall be provided to AT&T in accordance with the technical references listed in Appendix A to this Attachment 2, under paragraph 15.

APPENDIX A

1. The Network Interface Device (NID) shall be provided to AT&T in accordance with the following technical references:

1.1 Bellcore Technical Advisory TA-TSY-000120 "Customer Premises or Network Ground Wire";

1.2 Bellcore Generic Requirement GR-49-CORE "Generic Requirements for Outdoor Telephone Network Interface Devices";

1.3 Bellcore Technical Requirement TR-NWT-00239 "Indoor Telephone Network Interfaces";

1.4 Bellcore Technical Requirement TR-NWT-000937 "Generic Requirements for Outdoor and Indoor Building Entrance"; and,

1.5 Bellcore Technical Requirement TR-NWT-000133 "Generic Requirements for Network Inside Wiring."

2. The Loop shall be equal to or better than each of the applicable interface requirements set forth in the following technical references:

2.1 Bellcore TR-NWT-000049, "Generic Requirements for Outdoor Telephone Network Interface Devices," Issued December 1,1994;

2.2 Bellcore TR-NWT-000057, "Functional Criteria for Digital Loop Carrier Systems," Issued January 2, 1993;

2.3 Bellcore TR-NWT-000393, "Generic Requirements for ISDN Basic Access Digital Subscriber Lines";

2.4 Bellcore TR-NWT-000253, SONET Transport Systems: Common Criteria (A module of TSGR, FR-NWT-000440), Issue 2, December 1991;

2.5 AT&T Data Communications Technical Reference TR 62310, DS0 Digital Local Channel Description and Interface Specification, August 1993; Also Addendum 1 and Addendum 2; and

2.6 AT&T Technical Reference TR 62411, ACCUNET T1.5 Service Description and Interface Specification, December 1990; Addendum 1, March 1991; Addendum 2, October 1992.

2.7 AT&T Technical Reference TR 62421, ACCUNET Spectrum of Digital Services Description and Interface Specification, December 1989; Also TR 62421A Addendum 2, November 1992.

2.8 ANSI T1.106 - 1988, American National Standard for Telecommunications - Digital Hierarchy - Optical Interface Specifications (Single Mode).

2.9 ANSI T1.105 - 1995, American National Standard for Telecommunications - Synchronous Optical Network (SONET) - Basic Description including Multiplex Structure, Rates and Formats.

2.10 ANSI T1.102 - 1993, American National Standard for Telecommunications - Digital Hierarchy - Electrical Interfaces.

2.11 ANSI T1.403- 1989, American National Standard for Telecommunications - Carrier to Customer Installation, DS1 Metallic Interface Specification

2.12 Bellcore GR-253-CORE, Synchronous Optical Network Systems (SONET), Common Generic Criteria.

2.13 AT&T Technical Reference TR 54014, ACCUNET T45 Reserved Services - Service Description and Interface Specification, May 1992.

2.14 AT&T Technical Reference TR 54018, ACCUNET T155 Service Description and Interface Specification.

2.15 Bellcore TR-TSY-000008, Digital Interface Between the SLC 96 Digital Loop Carrier System and a Local Digital Switch, Issue 2, August 1987.

2.16 Bellcore TR-NWT-000303, Integrated Digital Loop Carrier System Generic Requirements, Objectives and Interface, Issue 2, December 1992; Rev.1, December 1993; Supplement 1, December 1993.

2.17 Bellcore TR-TSY-000673, Operations Systems Interface for an IDLC System, (LSSGR) FSD 20-02-2100, Issue 1, September 1989.

2.18 AT&T Technical Reference TR-62415 "Access Specifications for High Capacity DS1/DS3 Dedicated Digital Service";

2.19 Bellcore Technical Requirement TR-NWT-000499, Issue 5, December 1993, section 7 for DS1 interfaces.

3. Local Switching shall be equal to or better than the requirements for Local Switching set forth in Bellcore's Local Switching Systems General Requirements (FR-NWT-000064) and shall be offered in accordance with the requirements of the following technical references:

3.1 GR-1298-CORE, AIN Switching System Generic Requirements;

3.2 GR-1299-CORE, AIN Switch-Service Control Point (SCP)/Adjunct Interface Generic Requirements;

3.3 TR-NWT-001284, AIN 0.1 Switching System Generic Requirements;

3.4 SR-NWT-002247, AIN Release 1 Update.

4. Interface to Loop Requirements:

4.1 Basic Rate Interface ISDN adhering to ANSI standards Q.931, Q.932 and appropriate Bellcore Technical Requirements;

4.2 Primary Rate ISDN to PBX adhering to ANSI standards Q.931, Q.932 and appropriate Bellcore Technical Requirements;

4.3 Loops adhering to Bellcore TR-NWT-08 and TR-NWT-303 specifications to interconnect Digital Loop Carriers.

5. Interface to Loop for ISDN Requirements

5.1 GTE shall provide the BRI U interface using 2 wire copper loops in accordance with TR-NWT-000393, January 1991, Generic Requirements for ISDN Basic Access Digital Subscriber Lines.

5.2 GTE shall provide the BRI interface using Digital Subscriber Loops adhering to Bellcore TR-NWT-303 specifications to interconnect Digital Loop Carriers.

5.3 GTE shall offer PSD interfaces adhering to the X.25, S.75 and S.75' ANSI and Bellcore requirements.

6. At a minimum, Common Transport shall be provided to AT&T in accordance with the following technical references (as applicable for the transport technology being used):

6.1 ANSI T1.101-1994, American National Standard for Telecommunications - Synchronization Interface Standard Performance and Availability;

6.2 ANSI T1.102-1993, American National Standard for Telecommunications - Digital Hierarchy - Electrical Interfaces;

6.3 ANSI T1.102.01-199x, American National Standard for Telecommunications - Digital Hierarchy - VT1.5;

6.4 ANSI T1.105-1995, American National Standard for Telecommunications - Synchronous Optical Network (SONET) - Basic Description including Multiplex Structure, Rates and Formats;

6.5 ANSI T1.105.01-1995, American National Standard for Telecommunications - Synchronous Optical Network (SONET) - Automatic Protection Switching;

6.6 ANSI T1.105.02-1995, American National Standard for Telecommunications - Synchronous Optical Network (SONET) - Payload Mappings;

6.7 ANSI T1.105.03-1994, American National Standard for Telecommunications - Synchronous Optical Network (SONET) - Jitter at Network Interfaces;

6.8 ANSI T1.105.03a-1995, American National Standard for Telecommunications - Synchronous Optical Network (SONET): Jitter at Network Interfaces - DS1 Supplement;

6.9 ANSI T1.105.05-1994, American National Standard for Telecommunications - Synchronous Optical Network (SONET) - Tandem Connection;

6.10 ANSI T1.105.06-199x, American National Standard for Telecommunications - Synchronous Optical Network (SONET) - Physical Layer Specifications;

6.11 ANSI T1.105.07-199x, American National Standard for Telecommunications - Synchronous Optical Network (SONET) - Sub STS-1 Interface Rates and Formats;

6.12 ANSI T1.105.09-199x, American National Standard for Telecommunications - Synchronous Optical Network (SONET) - Network Element Timing and Synchronization;

6.13 ANSI T1.106-1988, American National Standard for Telecommunications - Digital Hierarchy - Optical Interface Specifications (Single Mode);

6.14 ANSI T1.107-1988, American National Standard for Telecommunications - Digital Hierarchy - Formats Specifications;

6.15 ANSI T1.107a-1990 - American National Standard for Telecommunications - Digital Hierarchy - Supplement to Formats Specifications (DS3 Format Applications);

6.16 ANSI T1.107b-1991 - American National Standard for Telecommunications - Digital Hierarchy - Supplement to Formats Specifications;

6.17 ANSI T1.117-1991, American National Standard for Telecommunications - Digital Hierarchy - Optical Interface Specifications (SONET) (Single Mode - Short Reach);

6.18 ITU Recommendation G.707, Network node interface for the synchronous digital hierarchy (SDH);

6.19 ITU Recommendation G.704, Synchronous frame structures used at 1544, 6312, 2048, 8488 and 44736 kbit/s hierarchical levels;

6.20 Bellcore FR-440 and TR-NWT-000499, Transport Systems Generic Requirements (TSGR): Common Requirements;

6.21 Bellcore GR-820-CORE, Generic Transmission Surveillance: DS1 & DS3 Performance;

6.22 Bellcore GR-253-CORE, Synchronous Optical Network Systems (SONET); Common Generic Criteria;

6.23 Bellcore TR-NWT 000507, Transmission, Section 7, Issue 5 (Bellcore, December 1993). (A module of LSSGR, FR-NWT-000064.);

6.24 Bellcore TR-INS-000342, High-Capacity Digital Special Access Service-Transmission Parameter Limits and Interface Combinations, Issue 1 February 1991;

6.25 Bellcore ST-TEC 000052, Telecommunications Transmission Engineering Textbook, Volume 2: Facilities, Third Edition, Issue I May 1989;

6.26 Bellcore ST-TEC-000051, Telecommunications Transmission Engineering Textbook Volume 1: Principles, Third Edition. Issue 1 August 1987;

7. At a minimum, Dedicated Transport shall be provided to AT&T in accordance with the following technical references:

7.1 ANSI T1.105.04-1995, American National Standard for Telecommunications - Synchronous Optical Network (SONET) - Data Communication Channel Protocols and Architectures;

7.2 ANSI T1.119-1994, American National Standard for Telecommunications - Synchronous Optical Network (SONET) - Operations, Administration, Maintenance, and Provisioning (OAM&P) Communications;

7.3 ANSI T1.119.01-1995, American National Standard for Telecommunications - Synchronous Optical Network (SONET) - Operations, Administration, Maintenance, and Provisioning (OAM&P) Communications Protection Switching Fragment;

7.4 ANSI T1.119.02-199x, American National Standard for Telecommunications - Synchronous Optical Network (SONET) - Operations, Administration, Maintenance, and Provisioning (OAM&P) Communications Performance Monitoring Fragment;

7.5 ANSI T1.231-1993 -American National Standard for Telecommunications - Digital Hierarchy - Layer 1 In-Service Digital Transmission performance monitoring.

7.6 AT&T Technical Reference TR 54016, Requirements For Interfacing Digital Terminal Equipment To Services Employing The Extended Superframe Format, September 1989;

7.7 AT&T Technical Reference TR 62421 ACCUNET Spectrum of Digital Services Description And Interface Specification, December 1989 and all addenda;

7.8 AT&T Technical Reference TR 62310, DS0 Digital Local Channel Description And Interface Specification, August 1993 and all addenda; and

7.9 AT&T Technical Reference TR 62415, Access Specification For High Capacity (DS1/DS3) Dedicated Digital Service, June 1989 and all addenda.

8. Digital Cross-Connect System (DCS) shall be provided to AT&T in accordance with the following technical references:

8.1 AT&T Technical Reference TR 62421 ACCUNET® Spectrum of Digital Services Description And Interface Specification, December 1989 and TR 62421A Addendum 2, November 1992;

8.2 AT&T Data Communications Technical Reference TR 62310 DS0 Digital Local Channel Description and Interface Specification, August 1993, and all addendums;

8.3 AT&T Technical Reference TR 62415 Access Specification For High Capacity (DS1/DS3) Dedicated Digital Service, June 1989, and all addendums including TR 62415A3 July, 1992;

8.4 AT&T Technical Reference TR 62411 ACCUNET® T1.5 Service Description And Interface Specification, December 1990 and all addendums including Addendum 2, October 1992;

8.5 AT&T Technical Reference TR 54014 ACCUNET® T45 and T45 Reserved Services - Service Description And Interface Specification;

8.6 AT&T Technical Reference TR 54018 OC-3 Optical Interface Specifications, November 1991;

8.7 AT&T Technical Reference TR 54016 Requirements For Interfacing Digital Terminal Equipment To Services Employing The Extended Superframe Format, September 1989;

8.8 ANSI T1.102-1993, American National Standard for Telecommunications - Digital Hierarchy - Electrical Interfaces;

8.9 ANSI T1.102.01-199x, American National Standard for Telecommunications - Digital Hierarchy - VT1.5;

8.10 ANSI T1.105-1995, American National Standard for Telecommunications - Synchronous Optical Network (SONET) - Basic Description including Multiplex Structure, Rates and Formats;

8.11 ANSI T1.105.03-1994, American National Standard for Telecommunications - Synchronous Optical Network (SONET) - Jitter at Network Interfaces;

8.12 ANSI T1.105.03a-1995, American National Standard for Telecommunications - Synchronous Optical Network (SONET): Jitter at Network Interfaces - DS1 Supplement;

8.13 ANSI T1.105.06-199x, American National Standard for Telecommunications - Synchronous Optical Network (SONET) - Physical Layer Specifications;

8.14 ANSI T1.106-1988, American National Standard for Telecommunications - Digital Hierarchy - Optical Interface Specifications (Single Mode);

8.15 ANSI T1.107-1988, American National Standard for Telecommunications - Digital Hierarchy - Formats Specifications;

8.16 ANSI T1.107a-1990 - American National Standard for Telecommunications - Digital Hierarchy - Supplement to Formats Specifications (DS3 Format Applications);

8.17 ANSI T1.107b-1991 - American National Standard for Telecommunications - Digital Hierarchy - Supplement to Formats Specifications;

8.18 ANSI T1.117-1991, American National Standard for Telecommunications - Digital Hierarchy - Optical Interface Specifications (SONET) (Single Mode - Short Reach);

8.19 ANSI T1.403-1989, Carrier to Customer Installation, DS1 Metallic Interface Specification;

8.20 ANSI T1.404-1994, Network-to-Customer Installation - DS3 Metallic Interface Specification;

8.21 ITU Recommendation G.707, Network node interface for the synchronous digital hierarchy (SDH);

8.22 ITU Recommendation G.704, Synchronous frame structures used at 1544, 6312, 2048, 8488 and 44736 kbit/s hierarchical levels;

8.23 FR-440 and TR-NWT-000499, Transport Systems Generic Requirements (TSGR): Common Requirements;

8.24 GR-820-CORE, Generic Transmission Surveillance: DS1 & DS3 Performance;

8.25 GR-253-CORE, Synchronous Optical Network Systems (SONET); Common Generic Criteria; and

8.26 TR-NWT-000776, Network Interface Description for ISDN Customer Access.

9. Signaling Transfer Points (STPs) shall be provided to AT&T in accordance with the following technical references:

9.1 ANSI T1.111-1992 American National Standard for Telecommunications - Signaling System Number 7 (SS7) - Message Transfer Part (MTP);

9.2 ANSI T1.111A-1994 American National Standard for Telecommunications - Signaling System Number 7 (SS7) - Message Transfer Part (MTP) Supplement;

9.3 ANSI T1.112-1992 American National Standard for Telecommunications - Signaling System Number 7 (SS7) - Signaling Connection Control Part (SCCP);

9.4 ANSI T1.115-1990 American National Standard for Telecommunications - Signaling System Number 7 (SS7) - Monitoring and Measurements for Networks;

9.5 ANSI T1.116-1990 American National Standard for Telecommunications - Signaling System Number 7 (SS7) - Operations, Maintenance and Administration Part (OMAP);

9.6 ANSI T1.118-1992 American National Standard for Telecommunications - Signaling System Number 7 (SS7) - Intermediate Signaling Network Identification (ISNI);

9.7 Bellcore GR-905-CORE, Common Channel Signaling Network Interface Specification (CCSNIS) Supporting Network

Interconnection, Message Transfer Part (MTP), and Integrated Services Digital Network User Part (ISDNUP); and

9.8 Bellcore GR-1432-CORE, CCS Network Interface Specification (CCSNIS) Supporting Signaling Connection Control Part (SCCP) and Transaction Capabilities Application Part (TCAP).

10. SCPs/Databases shall be equal to or better than all of the requirements for SCPs/Databases set forth in the following technical references:

10.1 GR-246-CORE, Bell Communications Research Specification of Signaling System Number 7, ISSUE 1 (Bellcore, December 1995);

10.2 GR-1432-CORE, CCS Network Interface Specification (CCSNIS) Supporting Signaling Connection Control Part (SCCP) and Transaction Capabilities Application Part (TCAP). (Bellcore, March 1994);

10.3 GR-954-CORE, CCS Network Interface Specification (CCSNIS) Supporting Line Information Database (LIDB) Service 6, Issue 1, Rev. 1 (Bellcore, October 1995);

10.4 GR-1149-CORE, OSSGR Section 10: System Interfaces, Issue 1 (Bellcore, October 1995) (Replaces TR-NWT-001149);

10.5 GR-1158-CORE, OSSGR Section 22.3: Line Information Database 6, Issue (Bellcore, October 1995)

10.6 GR-1428-CORE, CCS Network Interface Specification (CCSNIS) Supporting Toll Free Service (Bellcore, May 1995); and

10.7 BOC Notes on the RLEC Networks, SR-TSV-002275, ISSUE 2, (Bellcore, April 1994).

11. Signalling Transfer Points (STPs) shall offer SS7 AIN Access in accordance with the requirements of the following technical references:

11.1 GR-2863-CORE, CCS Network Interface Specification Supporting Advanced Intelligent Network (AIN);

11.2 GR-2902-CORE, CCS Network Interface Specification (CCSNIS) Supporting Toll-Free Service Using Advanced Intelligent Network (AIN).

12. Tandem Switching shall meet or exceed the following technical references:

12.1 Bell Communications Research TR-TSY-000540 issue 2R2, Tandem Supplement, 6/1/90.

12.2 GR-905-CORE covering CCSNIS;

12.3 GR-1429-CORE for call management features; and GR-2863-CORE and GR-2902-CORE covering CCS AIN interconnection.

13. GTE performance under Section 13 of Attachment 2 shall meet or exceed the performance standards and requirements set forth in the technical references listed below;

13.1 Bell Communications Research, Inc. Documents

13.1.1 FR-64, LATA Switching Systems Generic Requirements (LSSGR). This document contains 117 Technical References and Generic Requirements. Sections provide the requirements for local switching systems (also referred to as end offices) that serve customers' lines. Some modules of the LSSGR are also referenced separately in this document.

13.1.2 TR-NWT-000499, Issue 5, Rev 1, April 1992, Transport Systems Generic Requirements (TSGR): Common Requirements.

13.1.3 TR-NWT-000418, Issue 2, December 1992, Generic Reliability Assurance Requirements For Fiber Optic Transport Systems.

13.1.4 TR-NWT-000057, Issue 2, January 1993, Functional Criteria for Digital Loop Carriers Systems.

13.1.5 TR-NWT-000507, Issue 5, December 1993, LSSGR - Transmission, Section 7.

13.1.6 GR-303-CORE, Issue 1, September 1995, Integrated Digital Loop Carrier System Generic Requirements, Objectives, and Interface.

13.1.7 GR-334-CORE, Issue 1, June 1994, Switched Access Service: Transmission Parameter Limits and Interface Combinations.

13.1.8 TR-NWT-000335, Issue 3, May 1993, Voice Grade Special Access Services - Transmission Parameter Limits and Interface Combinations.

13.1.9 TR-TSY-000529, Issue 2, July 1987, Public Safety - LSSGR.

13.1.10 GR-1158-CORE, Issue 2, October 1995, OSSGR Section 22.3: Line Information Database.

13.1.11 TR-TSY-000511, Issue 2, July 1987, Service Standards, a Module (Section 11) of LATA Switching Systems Generic Requirements (LSSGR, FR-NWT-000064).

13.1.12 TR-NWT-000393, January 1991, Generic Requirements for ISDN Basic Access Digital Subscriber Lines.

13.1.13 TR-NWT-000909, December 1991, Generic Requirements and Objectives for Fiber In The Loop Systems.

13.1.14 TR-NWT-000505, Issue 3 , May 1991, LSSGR Section 5, Call Processing.

13.1.15 FR-NWT-000271, 1993, Operator Services Systems Generic Requirements (OSSGR).

13.1.16 TR-NWT-001156, Issue 2, July 1993, OSSGR Operator Services Systems Generic Requirements, Section 21, Operator Subsystem.

13.1.17 SR-TSY-001171, Issue 1, January 1989, Methods and Procedures for System Reliability Analysis.

13.1.18 Bellcore Telecommunications Transmission Engineering, 3rd Ed, 1990.

13.2 ANSI Standards

13.2.1 ANSI T1.512-1994, Network Performance - Point-to-Point Voice-Grade Special Access Network Voiceband Data Transmission Objectives.

13.2.2 ANSI T1.506-1990, Network Performance - Transmission Specifications for Switched Exchange Access Network.

13.2.3 ANSI T1.508-1992, Telecommunications - Network Performance - Loss Plan for Evolving Digital Networks. Also supplement T1.508a-1993.

13.2.4 ANSI T1.101-1994, Digital Synchronization Network Plan.

13.3 TIA/EIA Standards

13.3.1 Requirements not specifically addressed here shall be found in the documents listed in Electronic Industries Association/Telecommunications Industries Association Standards and Engineering Publications.

13.3.2 TIA/EIA TSB-37A, Telephone Network Transmission Model for Evaluating Modem Performance.

13.3.3 TIA/EIA TSB-38, Test Procedure for Evaluation of 2-wire 4 kHz Voiceband Duplex Modems.

13.4 IEEE Standards

13.4.1 IEEE Standard 743-1984, IEEE Standard Methods and Equipment for Measuring Transmission Characteristics of Analog Voice Frequency Circuits.

13.4.2 ANSI/IEEE Standard 820-1984, Telephone Loop Performance Characteristics.

13.5 AT&T Standards

13.5.1 Outside Plant Engineering Handbook, August 1994.

13.5.2 AT&T Pub. 60220, Issue 1, April 1991, 5ESS OSPS Interface Technical Specification for Domestic Toll And Assistance Applications.

13.5.3 AT&T Technical Reference TR 43202, May 1985, AT&T Analog Voice Total and Coordinated Services.

13.5.4 AT&T Technical Reference TR 41458, April 1990, Special Access Connection to the AT&T Network.

13.5.5 AT&T Technical Reference TR 62415, June 1989, Access Specification For High Capacity (DS1/DS3) Dedicated Digital Service. Also TR 62415A2 November 1990, and TR 62415A3 July 1992 which are addenda to TR 62415.

13.5.6 AT&T Technical Reference TR 54016, September 1989, Requirements For Interfacing Digital Terminal Equipment To Services Employing The Extended Superframe Format.

13.5.7 AT&T Technical Reference TR 62411, December 1990, ACCUNET T1.5 Service Description And Interface Specification. Also Addendum 1 March 1991 and Addendum 2 October 1992.

13.5.8 AT&T Technical Reference TR 62421, December 1989, ACCUNET Spectrum of Digital Services Description And Interface Specification. Also TR 62421A Addendum 2 November 1992.

13.5.9 AT&T Data Communications Technical Reference TR 62310, August 1993, DS0 Digital Local Channel Description And Interface Specification. Also Addendum 2 November 1992.

13.5.10 AT&T Technical Reference TR 54014, 1992, ACCUNET T45 and T45 Reserved Services - Service Description And Interface Specification.

13.5.11 AT&T Technical Reference TR 54018, most current issue, ACCUNET T155 Service Description And Interface Specification.

14. The protocol interface requirements for SS7 Network Interconnection include the MTP, ISDNUP, SCCP, and TCAP. These protocol interfaces shall conform to the following specifications:

14.1 Bellcore GR-905-CORE, Common Channel Signaling Network Interface Specification (CCSNIS) Supporting Network Interconnection, Message Transfer Part (MTP), and Integrated Services Digital Network User Part (ISDNUP);

14.2 Bellcore GR-1428-CORE, CCS Network Interface Specification (CCSNIS) Supporting Toll Free Service;

14.3 Bellcore GR-1429-CORE, CCS Network Interface Specification (CCSNIS) Supporting Call Management Services; and

14.4 Bellcore GR-1432-CORE, CCS Network Interface Specification (CCSNIS) Supporting Signaling Connection Control Part (SCCP) and Transaction Capabilities Application Part (TCAP).

14.5 GTE shall set message screening parameters to block accept messages from AT&T local or tandem switching systems destined to any signaling point in the GTE SS7 network with which the AT&T switching system has a legitimate signaling relation.

15. SS7 Network Interconnection shall be provided to AT&T in accordance with the following technical references:

15.1 ANSI T1.110-1992 American National Standard Telecommunications - Signaling System Number 7 (SS7) - General Information;

15.2 ANSI T1.111-1992 American National Standard for Telecommunications - Signaling System Number 7 (SS7) - Message Transfer Part (MTP);

15.3 ANSI T1.111A-1994 American National Standard for Telecommunications - Signaling System Number 7 (SS7) - Message Transfer Part (MTP) Supplement;

15.4 ANSI T1.112-1992 American National Standard for Telecommunications - Signaling System Number 7 (SS7) - Signaling Connection Control Part (SCCP);

15.5 ANSI T1.113-1995 American National Standard for Telecommunications - Signaling System Number 7 (SS7) - Integrated Services Digital Network (ISDN) User Part;

15.6 ANSI T1.114-1992 American National Standard for Telecommunications - Signaling System Number 7 (SS7) - Transaction Capabilities Application Part (TCAP);

15.7 ANSI T1.115-1990 American National Standard for Telecommunications - Signaling System Number 7 (SS7) - Monitoring and Measurements for Networks;

15.8 ANSI T1.116-1990 American National Standard for Telecommunications - Signaling System Number 7 (SS7) - Operations, Maintenance and Administration Part (OMAP);

15.9 ANSI T1.118-1992 American National Standard for Telecommunications - Signaling System Number 7 (SS7) - Intermediate Signaling Network Identification (ISNI);

15.10 Bellcore GR-905-CORE, Common Channel Signaling Network Interface Specification (CCSNIS) Supporting Network Interconnection, Message Transfer Part (MTP), and Integrated Services Digital Network User Part (ISDNUP);

15.11 Bellcore GR-954-CORE, CCS Network Interface Specification (CCSNIS) Supporting Line Information Database (LIDB) Service;

15.12 Bellcore GR-1428-CORE, CCS Network Interface Specification (CCSNIS) Supporting Toll Free Service;

15.13 Bellcore GR-1429-CORE, CCS Network Interface Specification (CCSNIS) Supporting Call Management Services; and,

15.14 Bellcore GR-1432-CORE, CCS Network Interface Specification (CCSNIS) Supporting Signaling Connection Control Part (SCCP) and Transaction Capabilities Application Part (TCAP).

ATTACHMENT 3

SERVICE DESCRIPTION: ANCILLARY FUNCTIONS

TABLE OF CONTENTS

Section Page

SERVICE DESCRIPTION: ANCILLARY FUNCTIONS 1

1. Introduction 1

2. Collocation 1

3. Poles, Ducts, Conduits, Rights of Way (ROW) 8

SERVICE DESCRIPTION: ANCILLARY FUNCTIONS

1. Introduction

This Attachment sets forth the descriptions and requirements for Ancillary Functions that GTE agrees to offer to AT&T under this Agreement.

2. Collocation

2.1 Definition: Collocation is the right of AT&T to obtain dedicated space in GTE's Local Serving Office (LSO) or other GTE locations and to place equipment in such spaces to interconnect with the GTE network or obtain access to unbundled network elements. Collocation also includes GTE providing resources necessary for the operation and economical use of collocated equipment.

2.1.1 [Intentionally Deleted]

2.2 Technical Requirements

2.2.1 Upon request by AT&T, GTE shall provide space, as required by 47 CFR § 51.323 and as requested by AT&T, to meet AT&T's needs for placement of equipment, interconnection, or provision of services. Such space shall be provided in GTE's proposed central offices, serving wire center and tandem switches and at controlled environmental vaults, huts and cabinets. GTE will provide collocation as follows: physical collocation will be provided on a first-come, first-served basis, provided there is space available for collocation and providing for reasonable security arrangements. If GTE determines that space is not available GTE shall provide virtual collocation for AT&T equipment, unless GTE demonstrates that virtual collocation is not technically feasible. GTE and AT&T shall adhere to reasonable industry standard security measures, applied on a non-discriminatory basis.

2.2.1.1 GTE will not restrict AT&T's access to existing space for collocation on the basis of GTE plans for future use of that space, except on terms and conditions for reserving future space that are made available to all collocating carriers who wish to hold space for future use and that do not favor GTE over such other carriers. AT&T will pay for any space reserved for future use in accordance with such non-discriminatory terms for reserving collocation space and in accordance with the pricing terms of Attachment 14 and future order of the Commission.

2.2.1.2 GTE is not required to construct additional space when none is available to meet a physical collocation request. However, in determining whether space is available to meet a request for physical collocation, GTE will offer contiguous space to AT&T where available. GTE will also take AT&T and other collocator demand into account when renovating existing facilities and constructing or leasing new facilities.

2.2.2 GTE shall provide intraoffice facilities (e.g., DS0, DS1, DS3, OC3, OC12, OC48, and STS-1 terminations) as requested by AT&T to meet AT&T's need for placement of equipment, interconnection, or provision of service.

2.2.3 Other than reasonable security restrictions, where AT&T's physical collocated space is located in space that is partitioned separately from GTE facilities, GTE shall place no restriction on access to the AT&T collocated space by AT&T's employees and designated agents. Such space shall be available to AT&T designated agents twenty-four (24) hours per day each day of the week. Where AT&T's collocated space is located in space that is not partitioned separately from GTE's facilities, GTE shall provide AT&T designated personnel escort service to and from AT&T's collocated space, at AT&T's expense. Such escort service shall be available twenty-four (24) hours per day each day of the week. In no case should any reasonable security restrictions be more restrictive than those GTE places on their own personnel.

2.2.4 AT&T may collocate any type of equipment that is for interconnection functions (which include interconnection with GTE's network and other collocated carriers or access to GTE unbundled network elements), including but not limited to transmission and multiplexing equipment; provided however, AT&T may not collocate enhanced service equipment or switching equipment, including remote switching modules.

2.2.5 GTE shall allow the interconnection of AT&T to other carriers who have collocated space within GTE's facility (e.g., GTE shall not require AT&T to interconnect with other carriers outside of GTE's facilities). This connection will be provisioned using EISCC (expanded interconnection service cross connect jumper) and will be priced as set forth in Attachment 14.

2.2.6 AT&T may select its own vendors for all required engineering and installation services associated with its physically collocated equipment

subject to GTE's reasonable restrictions on third party vendors that GTE has decertified with good cause. GTE shall maintain and provide AT&T with a list of all such decertified vendors. Notwithstanding GTE decertification of a third party vendor, AT&T may use such vendor for work associated with its collocated equipment if such vendor is the only third party vendor reasonably available to AT&T to perform such work. In no event shall GTE require AT&T to utilize GTE's internal engineering or installation work forces for the engineering and installation of AT&T's physically collocated equipment.

2.2.7 GTE shall provide basic telephone service with a connection jack as requested by AT&T from GTE for the collocated space. Upon AT&T's request, this service shall be available at the AT&T collocated space on the day that the space is turned over to AT&T by GTE.

2.2.8 GTE shall provide adequate lighting, ventilation, power, heat, air conditioning, and other environmental conditions for AT&T's space and equipment. These environmental conditions shall adhere to Bell Communication Research (Bellcore) Network Equipment-Building System (NEBS) standards TR-EOP-000063.

2.2.9 [Intentionally Deleted]

2.2.10 GTE shall provide all ingress and egress of fiber and power cabling to AT&T collocated spaces in compliance with AT&T's cable diversity standards. The specific level of diversity required for each site or Network Element will be provided in the collocation request. AT&T will pay for the provision of such diversity if AT&T's requirements exceed those provided by GTE for itself in such site or to such Network Element. In such event, the price will be established on an individual case basis in accordance with the applicable GTE intrastate access tariff. AT&T will also pay for the provision of such diversity in circumstances where AT&T's requirements do not exceed those provided by GTE for itself in such site or to such Network Element, but where capacity does not exist in the fiber or power cabling to accommodate the provision of diversity requested by AT&T. In such circumstances, the price will be established on an individual case basis in accordance with the applicable GTE intrastate access tariff.

2.2.11 This Section 2.2.11 left intentionally blank.

2.2.12 GTE shall adhere to the DMOQs, set forth in Attachment 12.

2.2.13 GTE will provide answers to AT&T's Environmental, Health & Safety Questionnaire at the first contact meeting for each collocated space in each building in which collocated space is provided.

2.2.14 GTE shall provide AT&T with written notice at least two (2) business days prior to those instances in which GTE or its subcontractors may be performing non-emergency work in the general area of the collocated space occupied by AT&T, or in the general area of the AC and DC power plants which support AT&T equipment that is, or potentially may be, service affecting. GTE will inform AT&T by telephone of any emergency related activity that GTE or its subcontractors may be performing in the general area of the collocated space occupied by AT&T, or in the general area of the AC and DC power plants which support AT&T equipment. GTE will use diligent efforts to notify AT&T of any emergency related activity prior to the start of the activity so that AT&T can take any action required to monitor or protect its service.

2.2.15 GTE shall construct the collocated space in compliance with AT&T's collocation request for cable holes, ground bars, doors, and convenience outlets as long as such request is in compliance with Applicable Laws and GTE's grounding requirements. To the extent that such request involves additional work beyond that required to construct the standard GTE collocation space, the price for such construction will be on an individual case basis or as established in accordance with Attachment 14.

2.2.16 AT&T and GTE will complete an acceptance walk through of all collocated space requested from GTE. Exceptions that are noted during this acceptance walk through shall be corrected by GTE within five (5) business days after the walk through. The correction of these exceptions from the original collocation request shall be at GTE's expense.

2.2.17 GTE shall provide Telephone Equipment detailed drawings depicting the exact location, type, and cable termination requirements (i.e., connector type, number and type of pairs, and naming convention) for GTE Point of Termination Bay(s) to AT&T at the first mutually scheduled GTE/AT&T collocation meeting with respect to the specific request which meeting shall occur within thirty five (35) days of AT&T's request for collocated space, except in unusual cases.

2.2.18 GTE shall provide Telephone Equipment detailed drawings depicting the exact path, with dimensions, for AT&T Outside Plant Fiber ingress and egress into AT&T collocated space at the first mutually scheduled collocation meeting which meeting shall occur within thirty five (35) days of AT&T's request for collocated space, except in unusual cases. Such path and any areas around it in which AT&T must work to perform installation shall be free of friable asbestos, lead paint (unless encapsulated), radon and other health or safety hazards.

2.2.19 GTE shall provide detailed power cabling connectivity information including the sizes and number of power feeders to AT&T no later than five (5) days in advance of the first mutually scheduled collocation meeting.

2.2.20 GTE shall provide positive confirmation to AT&T when construction of AT&T collocated space is approximately 50% completed. This confirmation shall also include confirmation of the scheduled completion and turnover dates.

2.2.21 GTE will make every reasonable effort to meet the negotiated completion and turnover dates, which dates shall be no greater than 120 days from the original collocation request, except in unusual cases or in instances where GTE is precluded from meeting such dates because of delay caused by the need to obtain building permits, despite the use of every reasonable effort by GTE to obtain such permits in time to meet the negotiated dates.

2.2.22 GTE shall provide the following information to AT&T no later than five (5) business days in advance of the first mutually scheduled collocation meeting:

2.2.22.1 Work restriction guidelines.

2.2.22.2 GTE or Industry technical publication guidelines that impact the design of AT&T collocated equipment.

2.2.22.3 GTE contacts (names and telephone numbers) for the following areas:

Engineering
Physical & Logical Security
Provisioning
Billing
Operations
Site and Building Managers
Environmental and Safety

2.2.22.4 Escalation process for GTE representatives (names, telephone numbers and the escalation order) for any disputes or problems that might arise pursuant to AT&T's collocation.

2.2.23 Power as referenced in this Attachment 3 refers to any electrical power source supplied by GTE for AT&T equipment. It includes all superstructure, infrastructure, and overhead facilities, including, but not limited to, cable, cable racks and bus bars. GTE will supply power to support AT&T equipment at equipment specific DC and AC voltages. At a minimum, GTE shall supply power to AT&T at parity with that provided by GTE to itself or to any third party. If GTE performance, availability, or restoration falls below industry standards, GTE shall bring itself into compliance with such industry standards as soon as technologically feasible.

2.2.23.1 Central office power supplied by GTE into the AT&T equipment area, shall be supplied in the form of power feeders (cables) on cable racking into the designated AT&T equipment area. The power feeders (cables) shall efficiently and economically support the requested quantity and capacity of AT&T equipment. The termination location shall be mutually agreed upon by the Parties.

2.2.23.2 GTE shall provide power as requested by AT&T to meet AT&T's need for placement of equipment, interconnection, or provision of service.

2.2.23.3 GTE power equipment supporting AT&T's equipment shall:

2.2.23.3.1 Comply with applicable industry standards (e.g., Bellcore, NEBS and IEEE) or manufacturer's equipment power requirement specifications for equipment installation, cabling practices, and physical equipment layout;

2.2.23.3.2 Have redundant DC power through battery back-up as required by the equipment manufacturer's specifications for AT&T equipment, or, at minimum, at parity with that provided for similar GTE equipment;

2.2.23.3.3 GTE shall immediately notify AT&T if an alarm condition exists with respect to such monitoring or if backup power has been engaged for any power supporting AT&T's equipment;

2.2.23.3.4 Provide central office ground, in accordance with GTE's grounding requirements; and

2.2.23.3.5 Provide power feeder capacity and quantity to support the equipment layout for AT&T equipment in accordance with AT&T's collocation request.

2.2.23.3.6 GTE shall:

2.2.23.3.6.1 Provide installation sequences and access that will allow installation efforts in parallel without jeopardizing personnel safety or existing AT&T services;

2.2.23.3.6.2 Provide power plant alarms that adhere to Bell Communication Research (Bellcore) Network Equipment-Building System (NEBS) standards TR-EOP-000063;

2.2.23.3.6.3 Provide cabling that adheres to Bell Communication Research (Bellcore) Network Equipment-Building System (NEBS) standards TR-EOP-000063;

2.2.23.3.6.4 Provide Lock-Out Tag Out and other electrical safety procedures and devices in accordance with OSHA or industry guidelines.

2.2.23.3.7 GTE will provide AT&T with written notification within ten (10) business days of any scheduled non-emergency AC or DC power work or related activity in the collocated facility that will or might cause an outage or any type of power disruption to AT&T equipment located in the GTE facility. GTE will use diligent efforts to notify AT&T by telephone of any emergency power activity that would impact AT&T equipment.

2.2.23.3.8 With respect to any work to provide or prepare collocation space (including, without limitation, power supplies and cage construction) proposed to be performed by GTE or its subcontractors or vendors on behalf of AT&T:

2.2.23.3.8.1 GTE shall, within thirty (30) days after a request by AT&T, provide AT&T with a written price for any such work. The price will be accompanied by the following written information: (a) any terms under which the work is proposed to be performed, (b) a reasonably detailed breakdown or explanation of costs underlying the price, and (c) a reasonably detailed description of the technical specifications of the work to be performed. AT&T must approve the price, terms, cost breakdown and technical specifications prior to any work being performed.

2.2.23.3.8.2 Following completion of the work, AT&T and GTE will complete an acceptance walk through of the collocated space in accordance with Section 2.2.16.

2.2.24 GTE shall be required to take AT&T demand for collocation space into account when expanding, adding to or altering existing facilities and constructing or leasing new facilities.

2.3 Technical References - GTE shall provide collocation in accordance with the following standards:

2.3.1 Institute of Electrical and Electronics Engineers (IEEE) Standard 383, IEEE Standard for Type Test of Class 1 E Electric Cables, Field Splices, and Connections for Nuclear Power Generating Stations.

2.3.2 National Electrical Code (NEC) use latest issue.

2.3.3 TA-NPL-000286, NEBS Generic Engineering Requirements for System Assembly and Cable Distribution, Issue 2, (Bellcore, January 1989).

2.3.4 TR-EOP-000063 Network Equipment-Building System (NEBS) Generic Equipment Requirements, Issue 3, March 1988.

2.3.5 TR-EOP-000151, Generic Requirements for 24-, 48-, 130-, and 140-Volt Central Office Power Plant Rectifiers, Issue 1, (Bellcore, May 1985).

2.3.6 TR-EOP-000232, Generic Requirements for Lead-Acid Storage Batteries, Issue 1 (Bellcore, June 1985).

2.3.7 TR-NWT-000154, Generic Requirements for 24-, 48-, 130, and 140-Volt Central Office Power Plant Control and Distribution Equipment, Issue 2, (Bellcore, January 1992).

2.3.8 TR-NWT-000295, Isolated Ground Planes: Definition and Application to Telephone Central Offices, Issue 2, (Bellcore, July 1992).

2.3.9 TR-NWT-000840, Supplier Support Generic Requirements (SSGR), (A Module of LSSGR, FR-NWT-000064), Issue 1, (Bellcore, December 1991).

2.3.10 TR-NWT-001275 Central Office Environment Installations/Removal Generic Requirements, Issue 1, January 1993.

2.3.11 Underwriters' Laboratories Standard, UL 94.

3. **Poles, Ducts, Conduits, Rights of Way (ROW)**

3.1 **Definitions**

3.1.1 An "Attachment" is any placement of AT&T's Facilities in or on GTE's poles, ducts, conduits, or rights of way.

3.1.2 A "conduit" is a tube or protected trough that may be used to house communication or electrical cables. Conduit may be underground or above ground and may contain one or more inner ducts.

3.1.3 A "duct" is a single enclosed path to house facilities to provide telecommunications services.

3.1.4 For the purpose of this Section 3, the terms "Facility" and "Facilities" include anchors, pole hardware, wires, cables, strands, apparatus enclosures, equipment boxes, optical conductors and associated hardware and other telecommunications equipment located on or in a Structure.

3.1.4.1 For the purposes of this Attachment 3 the terms "Structure" and "Structures" refer to poles, ducts, conduits and ROW.

3.1.5 An "inner duct" is one of the single enclosed pathways located within a duct, or buried separately without the benefit of conduit.

3.1.6 The term "make ready work" refers to all work performed or to be performed to prepare GTE's conduit systems, poles or anchors and related facilities for the requested occupancy or attachment of AT&T's Facilities. "Make ready work" includes, but is not limited to, clearing obstructions, the rearrangement, transfer, replacement, and removal of existing Facilities on a pole or in a conduit system where such work is required solely to accommodate AT&T's Facilities and not to meet GTE's business needs or convenience. "Make ready work" may include the repair, enlargement, or modification of GTE's Structures (including, but not limited to, conduits, ducts, or manholes) or the performance of other work required to make a pole, anchor, conduit or duct usable for the initial placement of AT&T's Facilities.

3.1.7 A "manhole" is a subsurface enclosure that personnel may enter and use for the purpose of installing, operating, maintaining and repairing communications Facilities.

3.1.8 A "pole attachment" is the connection of a Facility to a utility pole.

3.1.9 A "Right of Way" ("ROW") is the right to use the land or other property of another party to place poles, conduits, cables, other structures and equipment, or to provide passage to access such structures and equipment. A ROW may run under, on, or above public or private property (including air space above public or private property) and may

include the right to use discrete space in buildings, building complexes, or other locations. The existence of a ROW shall be determined in accordance with Applicable Law.

3.2 **General Duties**

3.2.1 GTE shall make poles, ducts, conduits, and ROW available to AT&T for Attachments under the terms and conditions set forth in this Section 3.

3.2.2 GTE shall provide AT&T equal and non-discriminatory access to pole space, ducts, inner ducts, conduit, and ROW, including ancillary pathways as provided below, it owns or controls. Such access shall be provided to AT&T on terms and conditions as favorable as is provided by GTE to itself or to any other party. Further, GTE shall not preclude or delay allocation of these Structures to AT&T because of the potential needs of itself or of other parties, except as provided below. This general duty is subject to any agreements or easements that would prohibit GTE from providing such access on specific pole space, ducts, conduit, or ROW to AT&T. If GTE determines that access to specific pole space, ducts, conduit, or ROW is precluded by an agreement or easement, AT&T shall have the right to review the pertinent provisions of the agreement or easement.

3.2.3 GTE will not enter into any agreements with owners that restrict the ability of the owner to reach agreements with AT&T regarding access to ROW and ancillary pathways to the customer, such as entrance facilities, cable vaults, telephone closets, equipment rooms, risers, and other similar passageways. For those ancillary pathways to the customer, such as entrance facilities, cable vaults, telephone closets, equipment rooms, risers, and other similar passageways, that GTE controls access to and where spare capacity exists, whether access will be provided will be decided by GTE on a case by case basis.

3.2.4 GTE shall provide to AT&T a Regional Single Point of Contact to resolve issues that arise in the implementation of this Agreement.

3.2.5 Excepting maintenance and emergency ducts as provided below, all useable but unused space on poles, conduits, ducts or ROW owned or controlled by GTE shall be available for the attachments of AT&T, GTE or other providers of Telecommunications Services or cable television systems; provided, however, GTE may exclude or condition access for reasons of safety, reliability and generally applicable engineering

standards, provided that such exclusions and conditions are consistent with those that GTE applies to its own use of poles, ducts, conduits and ROW. Neither AT&T, GTE nor any other person may reserve space on GTE owned or controlled poles, conduits, ducts or ROW for its future needs, unless GTE permits AT&T, GTE or any other person to reserve space on GTE-owned or controlled poles, conduits, ducts or ROW for specific planned projects over the same time period. To the extent that GTE decides to permit such reservations it shall do so in a nondiscriminatory and competitively neutral manner and shall not favor itself or any of its affiliates and it shall notify AT&T in writing 30 days in advance of implementing such decision of the reservation process it intends to follow. Such reservations may only be for specific projects for which a party, including GTE or any of its affiliates, can demonstrate a specific commitment by producing detailed engineering plans. GTE may reserve for emergency and maintenance purposes one duct in each conduit section of its facility routes. Such duct shall be equally accessible and available by any party with Facilities in such conduit section to use to maintain its Facilities or to restore them in an emergency.

3.3 **Pre-Ordering Disclosure Requirements**

3.3.1 AT&T may request information regarding the availability and conditions of poles, ducts, conduits, and ROW prior to the submission of Attachment Requests. GTE shall provide information regarding the availability and condition of GTE's poles, ducts, conduits, or ROW for Attachments within thirty (30) business days. If it is unable to inform AT&T about availability and conditions within the thirty-day interval, GTE shall advise AT&T within ten (10) days after receipt of AT&T's information request and will seek a mutually satisfactory time period for GTE's response. If GTE's response requires a field-based survey, AT&T shall have the option to be present at the field-based survey and GTE shall provide AT&T at least twenty-four (24) hours notice prior to the start of such field survey. During and after this period, GTE shall allow AT&T personnel to enter manholes and view pole structures to inspect such structures in order to confirm usability or assess the condition of the structure.

3.3.2 GTE shall make available to AT&T for inspection marked street maps and as-built drawings showing existing poles, conduit or other ROW at GTE's area engineering offices, upon reasonable advance notification. If the Parties can ascertain the availability of a specific point-to-point route at the time of viewing, GTE will make the maps and pole prints available for copying. In making these maps and prints available, GTE makes no express or implied warranty as to the accuracy of these

maps and prints, other than to represent that they are the maps and prints GTE uses in its day-to-day operations. GTE reserves the right to deny subsequent requests to see previously viewed maps and prints if AT&T does not have a good faith intention to submit an Attachment Request relating to the areas described.

3.3.3 AT&T shall pay GTE a reasonable administrative fee to cover the direct cost of providing conduit maps and prints.

3.4 **Attachment Requests**

3.4.1 GTE agrees to permit AT&T to place AT&T's Facilities on or in GTE's poles, ducts, conduits, and ROW pursuant to Attachment Requests from AT&T approved in accordance with this Section 3.4 on the terms and conditions set forth herein. GTE may not restrict AT&T's ability to construct, maintain and monitor its facilities at these sites to any greater extent than GTE restricts its own abillty to construct, maintain and monitor the same facilities.

3.4.2 For access to GTE owned or controlled poles, AT&T will follow this process: (a) AT&T forwards a completed pole attachment inquiry/request form to GTE; (b) GTE reviews inquiry/request form and verifies the availability of space and communicates availability information back to AT&T within 30 business days; (c) AT&T decides whether it wants space; (d) If AT&T wants space, it will provide three (3) copies of maps, pole lease application and permit, permit compliance letter, rearrangement worksheet ("make ready" sheet); (e) AT&T will provide a check to cover the costs of GTE inspection and the first year's rent pro-rated to the next (annual) billing period. At this point, AT&T is guaranteed space and GTE opens a work order; (f) GTE uses make ready sheets to inspect the poles for proper build and identification of possible infractions. This process could take up to 45 days depending upon the size of the job; (g) GTE provides to AT&T a corrected copy of the make ready sheets and gives AT&T permission to start its build; (h) AT&T has 60 to 90 days to begin construction, but can start construction immediately upon receiving permission; (i) After construction is complete AT&T will notify GTE. GTE will complete a final inspection and identify infractions on a "gig" sheet provided back to AT&T. AT&T has 30 days to fix infractions; and (j) AT&T will notify GTE when work is complete and GTE will do one last inspection and close work order.

3.4.3 For access to GTE owned or controlled ducts or conduit, AT&T will follow this process: (a) AT&T forwards a completed conduit/duct occupancy inquiry/request form to GTE; (b) GTE reviews

inquiry/request form for availability, but not integrity of conduit/duct and communicates availability information back to AT&T within 30 business days; (c) AT&T decides whether it wants conduit/duct, and if so requests to know the integrity of the conduit/duct. Prior to integrity verification, GTE will require either an engineering deposit or an escrow account for the inspector's or single source provider's (SSP) time; (d) Upon receipt of the deposit or escrow funds, AT&T can request GTE (SSP) to pull a slug through the duct to validate integrity. If and when requested, GTE will do so and will also attach a mule tape to the back end of the slug to get an accurate read (footage) from point A to point B of the conduit/duct. Alternatively, AT&T can have its approved vendor pull a slug with GTE's inspector watching; (e) Once the integrity of the conduit/duct is validated, AT&T will provide a check for the first year's rental associated with the amount of the actual footage to be leased pro-rated to the next (annual) billing period and an engineering design within 30 business days, which will provide procedures for access to the conduit/duct including, but not limited to a gas test procedure, a procedure for dealing with water in manholes which are used to access the conduit/duct, and how AT&T will guard the other Facilities in the manhole during its work. At this point conduit/duct is guaranteed to AT&T; (f) AT&T will access the conduit/duct through a manhole, a cable equipment vault or another mutually agreed means; (g) AT&T will be given 60 to 90 days to start construction, but can start construction immediately, at the point conduit/duct is guaranteed to AT&T; (h) After construction is complete, AT&T will notify GTE; and (i) GTE will complete a visual inspection of the job as well as any inspections during construction that GTE deems are necessary.

3.4.4 GTE's single point of contact will provide or will arrange to provide to AT&T any information known or available to GTE regarding environmental, health and safety matters for each GTE Structure in or on which AT&T seeks an Attachment no later than the time that GTE approves an AT&T Attachment Request. Information is considered available if it is in GTE's possession. GTE represents that the information provided by GTE will be the best information available to GTE at the time the information is provided. GTE does not represent that any information provided reflects the actual condition of the Structure at the time the information is provided, or at the time AT&T enters or seeks an Attachment at the Structure, nor that no change has occurred in such conditions between the time such information is provided and the time AT&T enters or seeks an Attachment at the Structure, and AT&T acknowledges that no such representations are made, however, GTE shall inform AT&T of any changes in the

information provided to AT&T as soon as practicable after the change is known or available to GTE.

3.5 **Authority to Place Attachments**

3.5.1 Before AT&T places any Attachment pursuant to an approved Attachment Request, AT&T shall submit evidence of its authority to erect and maintain the Facilities to be placed on GTE's Structures within the public streets, highways and other thoroughfares or on private property, where such authority is required by law. AT&T shall be solely responsible for obtaining all licenses, authorizations, permits, and consent from federal, state and municipal authorities or private property owners that may be required to place Attachments on GTE's Structures.

3.5.2 GTE shall not unreasonably intervene against or attempt to delay the granting of any licenses, authorizations, permits or consents from federal, state and municipal authorities or private property owners that may be required for AT&T to place its Attachments on or in any poles, ducts, conduits, or rights of way, including those that GTE owns or controls.

3.5.3 If any license, authorization, permit or consent obtained by AT&T from an authority, which for the purposes of this Section 3.5.3 does not include GTE, is subsequently revoked or denied for any reason, permission to attach to GTE's Structures shall terminate immediately and AT&T shall remove its Attachments within the time required by such authorities, or absent such time, within ninety (90) days after AT&T receives notification of revocation or denial. AT&T may, at its option, litigate or appeal any such revocation or denial and if AT&T is diligently pursuing such litigation or appeal, AT&T may continue to maintain its Attachment. In doing so, AT&T agrees to indemnify GTE from and against any and all costs resulting from GTE's continuation of the Attachment which is the subject of such litigation or appeal. If AT&T does not appeal and AT&T fails to remove AT&T's Attachments within the above specified time period, GTE shall have the option to remove AT&T's Attachments and store them in a public warehouse at the expense of and for the account of AT&T without GTE being deemed guilty of trespass or conversion, and without GTE becoming liable for any loss or damage to AT&T's Attachments occasioned thereby. Alternatively, GTE may remove AT&T's Attachments and store them upon GTE's premises, in which event, GTE shall use the same standard of care to protect AT&T's Attachments that GTE uses for protecting GTE's own facilities and equipment. All reasonable costs

incurred by GTE to remove AT&T's Attachments shall be reimbursed to GTE by AT&T upon demand.

3.6 **Capacity**

3.6.1 When there is insufficient space on a GTE pole or in a GTE conduit to accommodate an AT&T requested Attachment or occupancy, GTE shall take all reasonable steps to accommodate AT&T's requests for Attachments or occupancy where such access would require expansion of capacity.

3.6.2 With GTE's consent, which consent shall not be unreasonably withheld, AT&T may break out of GTE conduit where there is no reasonable engineering alternative. Where required by GTE, GTE shall provide AT&T designated personnel with an escort service at AT&T's expense. Such escort service shall be available twenty-four (24) hours per day, each day of the week. Prior to the start of work, AT&T and the GTE escort will discuss the manner in which the work will be performed and GTE's reasonable requirements for ensuring the integrity of the conduit, protecting the Facilities contained in the conduit, protecting personnel and public safety and for preventing service interruptions. GTE Outside Plant Personnel will determine whether escort services are required on a case by case basis. This determination will be based on AT&T's adherence to GTE's requirements for plant protection procedures and the industry-standard construction and access procedures used by AT&T. Nonetheless, GTE may require escort service in its sound discretion.

3.6.3 GTE shall permit manhole interconnections and breaking out of GTE manholes. Where required by GTE, GTE shall provide AT&T designated personnel with an escort service, at AT&T's expense. Such escort service shall be available twenty-four (24) hours per day each day of the week. Prior to the start of work, AT&T and the GTE escort will discuss the manner in which the work will be performed and GTE's reasonable requirements for ensuring the integrity of the manhole structure, protecting the Facilities contained in the manhole structure, protecting personnel and public safety and for preventing service interruptions. GTE Outside Plant Personnel will determine whether escort services are required on a case by case basis. This determination will be based on AT&T's adherence to GTE's requirements for plant protection procedures and the industry-standard construction and access procedures used by AT&T. Nonetheless, GTE may require escort service in its sound discretion. GTE reserves the right to deny AT&T requests to break out of manholes where the

break out does not occur at precast knockout locations or where the location in which AT&T wants to break out is blocked by cable rack.

3.6.4 GTE shall take all reasonable measures to allow access and/or egress to all conduit systems. This shall include but not be limited to GTE's removal, upon AT&T's request and at AT&T's expense by paying GTE the actual costs incurred, of any retired cable from conduit systems to allow for the efficient use of conduit space within a reasonable period of time. If the Parties are unable to agree on what is reasonable (in terms of measures or time intervals), the matter may be submitted according to the Alternate Dispute Resolution Process, described in Attachment 1, by either Party.

3.6.5 [Intentionally Deleted]

3.6.6 Where a spare inner duct does not exist, GTE shall allow and AT&T shall be required to install all inner duct in a spare GTE conduit. If another attaching entity, including GTE, uses the inner duct installed by AT&T, GTE shall inform AT&T and such entity shall share in the depreciated cost of the installation of the inner duct in proportion to the amount of the inner duct being used by that entity.

3.6.7 GTE shall not attach, or permit other entities to attach Facilities on existing AT&T Facilities without AT&T's prior written consent.

3.7 **Sharing of Rights of Way**

3.7.1 GTE shall offer the use of such ROW it has obtained from a third party to AT&T, to the extent that GTE's agreement or easement with the third party does not prohibit GTE from granting such rights to AT&T. AT&T shall have the right to review the pertinent parts of the agreement or easement between GTE and the third party. In cases where GTE does not have the authority to grant access, GTE shall provide the owner contact information if known to GTE and will not interfere in AT&T's obtaining such access and shall not prevent or delay any third party assignment of rights-of-way to AT&T.

3.7.2 [Intentionally Deleted]

3.7.2.1 [Intentionally Deleted]

3.7.2.2 [Intentionally Deleted]

3.7.2.3 [Intentionally Deleted]

3.7.2.4 [Intentionally Deleted]

3.8 **Emergency Situations**

3.8.1 Within fifteen (15) business days after the Effective Date, GTE shall establish a non-discriminatory priority method to access GTE manholes and conduits in emergency situations.

3.9 **Attachment Fees**

3.9.1 AT&T shall pay to GTE an Attachment Fee, consistent with Applicable Law for each GTE Structure upon which AT&T obtains authorization to place an Attachment.

3.9.2 GTE shall maintain an inventory of the GTE Structures occupied by AT&T based upon the cumulative Structures specified in all Requests for Attachment approved in accordance with Section 3.4 of this Attachment 3. AT&T shall have the right to remove any Attachment at any time, and it shall be AT&T's sole responsibility to notify GTE of any and all removals by AT&T of its Attachments from GTE's Structures. Such notice shall be provided to GTE at least thirty (30) days prior to the removal of the Attachments and shall take the form of a Notice of Removal. AT&T shall remain liable for an Attachment Fee for each GTE facility included in all approved Attachment Requests until the Attachment is removed by AT&T. GTE may, at its option, conduct a physical inventory of AT&T's Attachments for purposes of determining the Attachment Fees to be paid by AT&T under this section.

3.10 **Additions and Modifications to Existing Attachments**

3.10.1 AT&T shall not modify, add to or replace Facilities on any pre-existing Attachment without first notifying GTE in writing of the intended modification, addition or replacement at least thirty (30) days prior to the date the activity is scheduled to begin. The required notification shall include: (1) the date the activity is scheduled to begin, (2) a description of the planned modification, addition or replacement, (3) a representation that the modification, addition or replacement will not require any space other than the space previously designated for AT&T's Attachments, and (4) a representation that the modification, addition or replacement will not impair the structural integrity of the Structures and Facilities involved.

3.10.2 If the modification, addition or replacement specified by AT&T in its notice will require more space than that allocated to AT&T or will require the reinforcement of replacement of or an addition of support

equipment to the Structures or Facilities involved in order to accommodate AT&T's modification, addition or replacement, AT&T will submit a Attachment Request in compliance with this Section in order to obtain authorization for the modification, addition or replacement of its Facilities.

3.11 **Charges for Unauthorized Attachments**

3.11.1 It is agreed that a charge equal to two (2) times the amount of the then current Attachment Fee shall be paid by AT&T to GTE for each Unauthorized Attachment to a GTE Structure for the period of time for which the Attachment is unauthorized provided that the lack of authorization as due to the act, or failure to act, of AT&T. Such payment shall be deemed liquidated damages and not a penalty. AT&T also shall pay GTE an Attachment Fee for each Unauthorized Attachment accruing from the date the Unauthorized Attachment was first placed on the GTE Structure. In the event that the date the Unauthorized Attachment was first placed on a GTE Structure cannot be determined, such date shall be deemed the date of the last physical inventory made in accordance with this Agreement or, if no physical inventory has been conducted, the date the first Attachment Request from AT&T was approved in accordance with this Agreement. If AT&T elects to leave the Attachment in place, AT&T also shall pay to GTE all costs incurred by GTE to rearrange any Unauthorized Attachment(s) of AT&T in order to accommodate the Attachment(s) of another party whose Attachment(s) would not have required a rearrangement but for the presence of AT&T's Unauthorized Attachment(s). If AT&T elects to leave the Attachment in place, AT&T shall also pay to GTE all costs incurred by GTE to reinforce, replace or modify a GTE Structure, which reinforcement, replacement or modification was required as a result of the Unauthorized Attachment of AT&T. The Attachment Fee referenced in this subsection shall be determined in the same manner as such fee would have been determined if the Attachment had been authorized by GTE.

3.11.2 For purposes of this section, an Unauthorized Attachment shall include, but not be limited to: (a) an Attachment on or in any GTE Structure, which Structure is not identified in any Attachment Request approved in accordance with this Attachment 3; (b) an Attachment that occupies more space than that allocated to AT&T by GTE; (c) an addition or modification to a pre-existing Attachment that impairs the structural integrity of the involved GTE Structure or Facilities; (d) an Attachment installed by AT&T for the use of a party other than AT&T. An Unauthorized Attachment does not include an Attachment which

AT&T demonstrates was made mistakenly, but in good faith pursuant to an approved Attachment Request for another location(s).

3.12 **Surveys and Inspections of Attachments**

3.12.1 The exact location of AT&T's Attachments on or in GTE's Structures may be determined, at GTE's discretion, through a survey to be made by GTE. If so requested, AT&T and/or any other entity owning or jointly owning the Structures with GTE may participate in the survey. If the survey reveals one or more unauthorized Attachments by AT&T, AT&T shall reimburse GTE all expenses incurred in conducting the survey.

3.12.2 Apart from surveys conducted in accordance with Section 3.12.1 above, GTE shall have the right to inspect any Attachment of AT&T on or in GTE's Structures as conditions may warrant. No joint survey or inspection by GTE shall operate to relieve AT&T of any responsibility, obligation or liability assumed under this Agreement.

3.13 **Notice of Modification or Alteration of Poles by GTE**

3.13.1 If GTE plans to modify or alter any GTE Structures upon which AT&T has Attachments, GTE shall provide AT&T notice of the proposed modification or rearrangement at least sixty (60) days prior to the time the proposed modification or alteration is scheduled to take place. AT&T shall be allowed to participate with GTE in such modification or rearrangement. AT&T shall make all rearrangements of its Facilities within such period of time as is jointly determined to be reasonable by the Parties based on the amount of rearrangements necessary and a desire to minimize chances for service interruption or facility-based service denial to an AT&T customer.

To the extent AT&T benefits from such modification or rearrangement or obtains access to such Structure as a result of the modification, AT&T shall pay GTE AT&T's proportionate share of the costs incurred. If AT&T has a preexisting Attachment to the modified Structure it shall be deemed to directly benefit from a modification if, after receiving notification of such modification, it adds to or modifies its Attachment. Notwithstanding the foregoing, if AT&T has a preexisting attachment to a Structure it shall not be required to bear any of the costs of rearranging or replacing its Attachment if such rearrangement or replacement is necessitated solely as a result of an additional Attachment or the modification of an existing Attachment sought by a third party or GTE. If AT&T makes an Attachment to the Structure after the completion of the modification, it shall share proportionately in the

cost of the modification with GTE and any contributing third parties, if such modification rendered possible the added Attachment.

3.14 **Default and Remedies**

3.14.1 The occurrence of any one of the following shall be deemed a Material Default by AT&T: (a) Failure by Licensee to perform or observe any term, condition, covenant, obligation or provision of this Attachment 3 and such default continues for a period of thirty (30) days after written notice thereof from GTE (provided that if such default is not curable within such thirty (30) period, the period will be extended if Licensee commences to cure such default within such thirty (30) day period and proceeds diligently thereafter to effect such cure); (b) AT&T's knowing use or maintenance of its Attachments in violation of any law or regulation, or in aid of any unlawful act or undertaking; (c) If any authorization which may be required of AT&T by any governmental or private authority for the placement, operation or maintenance of AT&T's Attachments is denied or revoked, and any appeals or other actions for review of such denial or revocation have been completed.

3.14.2 In the event of a Material Default, the provisions of Section 3.18.1 shall apply.

3.14.3 All rights and remedies of GTE set forth in this Agreement shall be cumulative and none shall exclude any other right or remedy, now or hereafter allowed by or available under any statute, ordinance, rule of court, or the common law, either at law or in equity, or both, except that GTE may not exercise any of the remedies set forth in § 3.14.2 if such Material Default is the subject of Alternate Dispute Resolution procedures as set forth in Attachment 1 to the Agreement.

3.15 **Termination of Section 3 by AT&T**

3.15.1 Section 3 of Attachment 3 of this Agreement may be terminated by AT&T any time prior to the expiration of its term by providing written notice to GTE of its intent to terminate not less than ninety (90) days prior to the date such termination is to become effective. Within ninety (90) days after the date this Section 3 is terminated, AT&T shall cause all of its Attachments to be removed from all of GTE's poles. In the event AT&T fails to remove its Attachments as required by this section, GTE shall have the option to remove all such Attachments and store them in a public warehouse or elsewhere at the expense of and for the account of AT&T without GTE being deemed guilty of trespass or conversion, and without GTE becoming liable for any loss or damages to AT&T occasioned thereby.

3.16 **Indemnification**

AT&T shall indemnify GTE as set forth in Section 10 of the General Terms and Conditions of this Agreement.

3.17 **Abandonment**

3.17.1 Nothing in this Agreement shall prevent or be construed to prevent GTE from abandoning, selling, assigning or otherwise disposing of any poles, conduit systems, or other GTE property used for AT&T's Attachments, provided, however, that GTE shall condition any such sale, assignment or other disposition subject to the rights granted to AT&T pursuant to this Agreement. GTE shall promptly notify AT&T of any proposed sale, assignment or other disposition of any Structures or other GTE property used for AT&T's Attachments.

3.18 **Alternate Dispute Resolution**

3.18.1 If GTE has declared AT&T in default of any provisions of this Section 3, or has otherwise notified AT&T that AT&T is not in compliance with the terms of this Section 3, either party may invoke the Alternate Dispute Resolution Process, described in Attachment 1, or the procedures described in the Act, the *FCC's First Interconnection Order*, § 1217-1231 and the FCC's Rules at 47 CFR §1.1401-1.1416. GTE will continue to process Attachment Requests pursuant to this Section 3.18.1 so long as ADR or one of the other procedures described in this section has been initiated and is still pending.

3.18.2 GTE will not be relieved of its obligations to process Attachment Requests by AT&T if AT&T is alleged to be in default of this Section 3 for nonpayment of fees and charges due GTE under this Section 3, so long as such default is (1) the subject of good faith negotiations; (2) the subject of Alternate Dispute Resolution procedures as set forth in Attachment 1 to the Agreement; or (3) being adjudicated before the FCC or any other court, regulatory body, agency, or tribunal having jurisdiction over such dispute.

ATTACHMENT 4

PROVISIONING AND ORDERING FOR UNBUNDLED ELEMENTS

TABLE OF CONTENTS

Section ..... Page

1. NETWORK DEPLOYMENT 1

2. GENERAL PROVISIONING REQUIREMENTS 1

3. SPECIFIC PROVISIONING PROCESS REQUIREMENTS 2

4. GENERAL ORDERING REQUIREMENTS 3

5. ORDERING INTERFACES 3

6. GTE PROVISION OF INFORMATION 4

7. ORDER FORMAT AND DATA ELEMENTS FOR INDIVIDUAL NETWORK ELEMENTS 5

8. ORDER FORMAT AND DATA NETWORK ELEMENTS FOR COMBINATIONS 6

9. PERFORMANCE REQUIREMENTS 6

Provisioning and Ordering

1. Network Deployment

1.1 GTE shall complete on a timely basis AT&T's orders for Network Elements and Combinations and for services that GTE is required to offer to AT&T pursuant to this Agreement in all its serving areas from and after the Effective Date of this Agreement.

1.2 Throughout the term of this Agreement, the quality of the technology, equipment, facilities, processes, and techniques (including, without limitation, such new architecture, equipment, facilities, and interfaces as GTE may deploy) that GTE provides to AT&T under this Agreement must be at least equal in quality to that provided by GTE to itself.

2. General Provisioning Requirements

2.1 AT&T may order Network Elements individually and in any combination so long as the combination is technically feasible. Combinations are Network Elements that are specified by AT&T for a geographic area or for a specific customer.

2.2 Combinations shall be identified and described by AT&T so that they can be ordered and provisioned together.

2.3 Combinations may be ordered by AT&T from GTE on a single order without the need to have AT&T send an order for each Network Element. The Parties agree to negotiate in good faith on the adoption of any subsequent forms or formats approved by the OBF.

2.4 GTE shall provide provisioning services to AT&T on the same days/hours that it provides such services to itself. These days currently are Monday through Friday from 8:00 a.m. to 5:00 p.m., within each respective time zone. AT&T may request GTE to provide Saturday, Sunday, holiday, and off-hour provisioning services. If AT&T requests that GTE perform provisioning services at times or on days as stated in the preceding sentence, GTE shall quote, within one (1) day of the request, a cost-based rate for such services. If AT&T accepts GTE's quote, GTE shall perform such provisioning services and AT&T will pay the agreed-upon rates.

2.5 GTE shall provide a Single Point of Contact (SPOC) for all ordering and provisioning activities involved in the purchase and provisioning of GTE's Network Elements or Combinations. GTE shall also provide to AT&T a toll-free nationwide telephone number (operational from 8:00 a.m. to 5:00 p.m., Monday through Friday, within each respective time zone) which will be answered by capable staff trained to answer questions and resolve problems in connection

with the provisioning of Network Elements or Combinations, and other orders made under this Agreement.

2.6 GTE will recognize AT&T as the customer of record of all Network Elements and Combinations ordered by AT&T and will send all notices, invoices and pertinent information directly to AT&T.

3. **Specific Provisioning Process Requirements**

3.1 When requested by AT&T, GTE will schedule installation appointments (GTE employee dispatch) with GTE's representative on the line with AT&T's representative or provide AT&T access to GTE's scheduling system. GTE will provide appropriate training for all its employees who may interface with AT&T's customers.

3.2 GTE shall provide intercept and transfer services to AT&T for AT&T Customers on the same basis as such service is available to similarly-situated GTE customers. GTE shall provide a recorded announcement to (i) notify a calling party that the end user customer has transferred to a new telephone number of AT&T and (ii) provide such calling party with details concerning the new telephone number to be dialed to reach the customer. GTE shall provide such announcement for the same length of time that GTE provides intercept or referral information for its customers that have changed telephone numbers.

3.3 GTE will provide AT&T with a Firm Order Confirmation (FOC) for each order, as specified in Attachment 12. The FOC will contain an enumeration of AT&T's ordered Network Elements or Combinations (consisting of circuit number, telephone number and/or component ID), PON, version, and GTE's commitment date for order completion (Committed Due Date).

3.4 Upon work completion, GTE will provide AT&T electronically (unless otherwise requested by AT&T) with an Order Completion for each order that states when that order was completed. GTE shall respond with specific order detail as enumerated on the FOC and shall state any additional charges (e.g., time and cost charges) up to a previously agreed-upon limit associated with that order that may be applicable.

3.5 GTE will perform pre-testing in accordance with industry standards. Where such test results are recorded, they will be provided to AT&T electronically or in writing (as directed by AT&T) at installation/turn-up. Where provision of such test results is not included in the underlying network element charge, AT&T will pay for such test results at GTE's cost.

3.6 As soon as identified and unless otherwise agreed, GTE shall provide notification electronically of any rejections or errors contained in any of the Data Element fields contained on any AT&T order.

3.7 As soon as identified and unless otherwise agreed, GTE shall provide notification electronically of any instances when GTE's committed due dates are in jeopardy of not being met by GTE on any aspect or feature contained in any AT&T order. GTE shall concurrently indicate its new Committed Due Date.

3.8 At AT&T's request, GTE will cooperate with AT&T to test Network Elements or Combinations purchased by AT&T in order to identify any performance problems identified at turn-up, including trouble shooting to isolate any problems. The costs for these items will be included in the underlying costs of the Network Element or Combination.

3.9 AT&T will designate the AIN features which GTE is to provide for the AT&T customer on AT&T's provisioning order.

3.10 GTE shall not reassign an AT&T Customer's AIN Trigger from an AT&T AIN application to some other service provider's application.

4. General Ordering Requirements

4.1 Upon AT&T's request through a Suspend/Restore Order, GTE shall suspend or restore the functionality of any Network Element or Combination. GTE shall suspend or restore each Network Element or Combination in a manner that conforms with AT&T's requested priorities and any applicable regulatory policy or procedures at appropriate service order charges to the extent not otherwise included in the underlying element cost.

4.2 GTE shall offer to AT&T the functionality of blocking calls (e.g., 800, 900, 976 international calls) by line or trunk.

4.3 GTE shall offer separate interLATA and intraLATA capabilities (i.e., 2 PICs where available) on a line or trunk basis.

4.4 Unless otherwise directed by AT&T, when AT&T orders a Network Element or technically feasible Combination, all pre-assigned trunk or telephone numbers currently associated with that Network Element or technically feasible Combination shall be retained without loss of feature capability and without loss of the associated Ancillary Functions including, but not limited to, Directory Assistance and 911/E911 capability.

4.5 When AT&T orders Network Elements or technically feasible Combinations that are currently interconnected and functional, such Network Elements and technically feasible Combinations will remain interconnected and functional without any disconnection or disruption of functionality.

5. Ordering Interfaces

5.1 GTE shall provide to AT&T a Real Time Electronic Interface (EI) for transferring and receiving orders, FOCs, Order Completions, and other provisioning data and materials (e.g., access to Street Address Guide (SAG) and Telephone Number Assignment Data Base) as provided in Section 29.1 of this Agreement.

5.2 With the customer authorization required by law, the permanent gateway shall provide AT&T's representatives with Real Time access to GTE customer information systems which will allow the AT&T representatives to perform the following tasks, if such information systems support GTE's retail business:

5.2.1 Obtain AT&T customer profile, including AT&T customer name, billing and residence address, billed telephone numbers, and identification of features and services subscribed to by AT&T's customer;

5.2.2 Obtain information on all features and services available, in the end-office where the AT&T customer is provisioned;

5.2.3 Enter the order for the desired features and services;

5.2.4 Provide an assigned telephone number (if the AT&T customer does not have one assigned). Reservation and aging of these numbers shall remain GTE's responsibility;

5.2.5 Establish the appropriate directory listing;

5.2.6 Determine if a service call is needed to install a line or service;

5.2.7 Provide service availability dates to the AT&T customer;

5.2.8 Provide information regarding dispatch and installation schedules, if applicable;

5.2.9 Suspend, terminate, or restore service to an AT&T customer.

6. **GTE Provision of Information**

6.1 GTE shall provide to AT&T upon request and AT&T shall pay the required charge as part of the underlying element:

6.1.1 A list of all services and features technically available from each switch that GTE may provide Local Switching, by switch CLLI;

6.1.2 A listing by street address detail of the service coverage area of each switch CLLI;

6.1.3 All engineering design and layout information for each Network Element and Combination;

6.1.4 A listing of all technically available functionalities for each Network Element or Combination; and

6.1.5 Advanced information on the details and requirements for planning and implementation of NPA splits. GTE shall provide such information to AT&T within thirty (30) days from the time the GTE becomes aware of such information.

6.2 Within thirty (30) days after the Effective Date of this Agreement, GTE shall provide AT&T with an initial electronic copy and a paper copy of the SAG or its equivalent. Prior to the time that updates are available electronically, updates will be provided to AT&T on a monthly basis. Thereafter, updates shall be provided to AT&T as changes are made to the SAG.

7. Order Format and Data Elements for Individual Network Elements

7.1 AT&T and GTE shall each use the appropriate Data Elements for the ordering and provisioning of Network Elements and Combinations.

7.2 Each order for a Network Element or a Combination will contain the following order-level sections, as then currently defined by the Ordering and Billing Forum (OBF), including, as appropriate, Administration, Bill, and Contact Information. This information is contained on both the ASR and LSR forms. In addition, each Network Element or Combination to be used for a specific AT&T End User customer shall contain the End User Information section.

7.3 AT&T and GTE will use the OBF formats defined below for the exchange of ordering and provisioning data for Network Elements or Combinations. AT&T shall use the ASR forms and processes for ordering Network Elements that AT&T will use to serve more than one End User customer and the LSR form and processes for ordering Network Elements that AT&T will use to serve a single End User customer. AT&T and GTE shall use the forms and formats that have been approved by the OBF and, if mutually agreed, those that have reached the "initial closure" status at the OBF. If AT&T needs to order or have provisioned Network Elements or Combinations for which OBF approved or "initial closure" forms and formats do not yet exist, AT&T and GTE shall, within 30 days of a request by either party to do so, jointly develop a proposal for such forms and formats. AT&T and GTE shall use the jointly proposed forms and formats for the exchange of ordering and provisioning data unless the OBF modifies such forms and formats upon "initial closure" or final approval. If the OBF modifies such forms and formats upon "initial closure" or final approval, AT&T and GTE shall, upon mutual agreement, use the forms and formats as modified by the OBF. If AT&T and GTE do not agree on the interim forms and formats described in this Section, either Party may submit any disputed issues to the Alternative Dispute Resolution process in accordance with this Agreement.

7.4 When ordering a Network Element (individually or as part of a technically feasible Combination), the interconnection characteristics and functionality of that Network Element will not be specifically ordered by AT&T and will automatically be provided by GTE.

8. Order Format and Data Network Elements for Combinations

8.1 AT&T may purchase Combinations (i) on a case-by-case basis for those Network Elements that are AT&T customer-specific (hereinafter referred to as Customer-Specific Network Elements or Combinations); or (ii) on a common-use basis for those Network Elements that are shared by multiple AT&T customers (hereinafter referred to as Common-Usage Network Elements or Combinations).

8.2 When ordering a Combination, AT&T will have the option of ordering all capabilities and functionalities of each of the individual Network Elements that comprise the Combination.

8.3 When ordering either Customer-Specific Combinations or Common-Usage Combinations, AT&T may specify the functionality of that Combination without the need to specify the configuration of the individual Network Elements needed to perform that functionality. AT&T will specify the Elements that make up each of the Combinations necessary to satisfy the request.

8.4 Prior to providing Local Service in a specific geographic area or when AT&T requires a change of network configuration, AT&T may place an order with GTE requiring GTE to implement the capability. AT&T may request the establishment of Common Usage Network Elements or Combinations by use of the negotiated ordering methods and forms. The initial order requesting Unbundled Switching, recording and associated trunking, which shall be in a mutually agreed format, will be known as a "Footprint Order".

9. Performance Requirements

9.1 AT&T will specify on each order its Desired Due Date (DDD) for completion of that particular order. GTE will not complete the order prior to the DDD or later than the DDD unless authorized by AT&T. If the time period from the date of the order to the DDD is less than the intervals for provisioning Network Elements, Combinations and the Footprint Order as set forth in the following table, and is also less than the intervals for provisioning the same or like Network Elements, Combinations and Footprint Orders that GTE provides to itself or to any third party, the order will be considered an expedited order.

INTERVALS FOR ORDER COMPLETION	
Network Element, Combination or Footprint Order	Number of Days[1]
Loop Distribution	
Loop Concentrator/Multiplexer	
Loop Feeder	
Local Switching and Tandem Switching	
Operator System	
Dedicated Transport and Common Transport DS0, DS-1, T 1.5 STS-1, DS3/T3 OC-3, +	
Signaling Transfer Points	
Signaling Link Transport	
SCPs/Databases	
Loop Combination	
Footprint Order	

9.2 Within two (2) Business Hours after a request from AT&T for an expedited order, GTE shall notify AT&T if GTE will complete, or not complete, the order within the expedited interval. A Business Hour is any hour occurring on Monday through Friday, exclusive of national holidays, between 8 a.m. and 8 p.m. within each respective time zone.

9.3 Once an order has been issued by AT&T and if AT&T subsequently requires a new DDD that is earlier than the original DDD, AT&T will issue an expedited modify order. GTE will notify AT&T within two (2) Business Hours if it will complete, or not complete, the order on the new DDD.

9.4 AT&T and GTE will agree to escalation procedures and contacts. GTE shall notify AT&T of any modifications to these contacts within one (1) week of such modifications.

[1] For each of the indicated Network Elements, Combinations and Footprint Orders listed in the Table, the intervals (i.e., number of days) will be established by the Implementation Team within 90 days of the Effective Date of this Agreement.

ATTACHMENT 5

MAINTENANCE FOR LOCAL SERVICES RESALE

AND UNBUNDLED ELEMENTS

1. GTE shall provide repair, maintenance, and testing for all Local Services and Unbundled Network Elements and Combinations in accordance with the terms and conditions of this Attachment. In addition, GTE shall provide surveillance for all Local Services and Unbundled Network Elements and Combinations to the same extent that GTE provides such surveillance for itself.

2. GTE shall cooperate with AT&T to meet maintenance standards for all Local Services and Unbundled Network Elements and Combinations ordered under this Agreement, as specified in Section 9 of this Attachment. GTE shall otherwise meet Commission maintenance and repair standards, if any, with respect to Local Services, Unbundled Network Elements and Combinations.

3. GTE shall cooperate with AT&T to establish a Real Time Electronic Interface for gateway or automated access by AT&T to GTE's maintenance systems and databases as provided in Section 29.1 of this Agreement.

4. GTE service technicians and other repair personnel shall provide repair service to AT&T customers that is at least equal in quality to that provided to GTE customers. GTE's operating policies, procedures and practices shall apply in all such repair service situations without regard to whether the customer is a GTE customer or an AT&T customer.

5. For all Local Services, Network Elements and Combinations provided to AT&T under this Agreement, GTE shall provide the same maintenance, including, without limitation, maintenance intervals and procedures, that GTE provides for its own network. GTE shall provide AT&T notice within one business day of the scheduling of any maintenance activity which may impact AT&T's Customers. Scheduled maintenance shall include, without limitation, such activities as, switch software retrofits, power tests, major equipment replacements and cable rolls; provided, however, that such activity is not related to a network or technology change covered elsewhere in this Agreement. Plans for scheduled maintenance shall include, at a minimum, the following information: location and type of facilities, work to be performed, date and time work is scheduled to commence, and date and time work is scheduled to be completed.

6. GTE shall advise AT&T of all non-scheduled maintenance and testing activity to be performed by GTE on any network element, including, without limitation, any hardware, equipment, software, or system, providing service functionality that may reasonably be expected to impact AT&T Customers. GTE shall provide the maximum amount of advance notice to AT&T of such non-scheduled maintenance and testing activity as is reasonably practical, under the circumstances; provided, GTE shall provide emergency maintenance as promptly as possible under the circumstances, to maintain or restore service and shall advise AT&T promptly of any such actions it takes.

7. Major network outages will be reported to AT&T via a telephone number designated by AT&T. GTE and AT&T shall work cooperatively on the establishment of emergency restoration procedures. GTE may invite other carriers to join in this effort. In establishing such procedures, consideration shall be given to: (i) provision for immediate notification to AT&T of the existence, location, and source of any emergency network outage potentially affecting customers; (ii) establishment of a single point of contact responsible for initiating and coordinating the restoration of all Local Services and Network Elements or Combinations; (iii) methods and procedures to provide access to information relating to the status of restoration efforts and problem resolution during the restoration process; (iv) an inventory and description of mobile restoration equipment, by location; (v) methods and procedures for the dispatch of mobile equipment to the restoration site; (vi) methods and procedures for reprovisioning of all Local Services and Network Elements or Combinations after initial restoration; (vii) priority, as between AT&T Customers and GTE Customers, with respect to restoration efforts, consistent with FCC Service Restoration guidelines, including, without limitation, deployment of repair personnel, and access to spare parts and components; and (viii) a mutually agreeable process for escalation of maintenance problems, including a complete, up-to-date list of responsible contacts, each available twenty-four (24) hours per day, seven (7) days per week. Said plans shall be modified and up-dated as needed.

   For purposes of this subsection, a major network outage is defined as 5,000 or more blocked call attempts in a ten (10) minute period in a single exchange. GTE shall provide timely notification to AT&T of any outage.

8. With respect to misdirected calls from AT&T customers requesting repair, GTE shall refer such AT&T customers to the telephone number designated by AT&T. With respect to misdirected calls from GTE customers requesting repair, AT&T shall refer such GTE customers to the telephone number designated by GTE.

9. GTE's repair bureau shall conform to the following performance and service quality standards when providing repair and maintenance to AT&T and AT&T Customers under this Agreement:

9.1 If service is provided to AT&T Customers before a Real Time Electronic Interface is established between AT&T and GTE, AT&T will transmit repair calls to the GTE repair bureau by telephone. In such event, the following standards shall apply: The GTE repair bureau shall answer its telephone and begin taking information from AT&T within twenty (20) seconds of the first ring, eighty percent (80%) of the time. Calls answered by automated response systems, and calls placed on hold, shall be considered not to meet these standards.

9.2 GTE's repair bureau, shall be on-line and operational twenty-four (24) hours per day, seven (7) days per week. AT&T and GTE will develop mutually agreed-upon manual processes for repair reporting in the event of unavailability or failure of the Electronic Interface.

9.3 GTE's repair bureau shall provide to AT&T the "estimated time to restore" for all DS1 or higher capacity services at performance standard levels determined by the Implementation Team. GTE shall provide all other classes of service restoral commitment(s) as specified in Appendix 2 of Attachment 12 to this Agreement.

9.4 Additional maintenance performance measures, described in 9.4.1, 9.4.2 and 9.4.3 following, will be evaluated by the Implementation Team.

9.4.1 Where an outage has not reached the threshold defining an emergency network outage, the following quality standards shall apply with respect to restoration of Local Service and Network Elements or Combination:

Total outages requiring a premises visit by a GTE technician that are received by GTE between 8 a.m. to 6 p.m. on any day shall be restored within four (4) hours of referral, ninety percent (90%) of the time; within eight (8) hours of referral, ninety-five percent (95%) of the time; and within sixteen (16) hours of referral, ninety-nine percent (99%) of the time and Mean time to Restore (MTR) within eight (8) hours.

Total outages requiring a premises visit by a GTE technician that are received between 6 p.m. and 8 a.m. on any day shall be restored during the following 8 a.m. to 6 p.m. period in accordance with the following performance metrics: within four (4) hours of 8 a.m., ninety percent (90%) of the time; within eight (8) hours of 8 a.m., ninety-five percent (95%) of the time; and within sixteen (16) hours of 8 a.m., ninety-nine percent (99%) of the time and MTR within eight (8) hours.

Total outages which do not require a premises visit by a GTE technician shall be restored within two (2) hours of referral, eighty-five percent (85%) of the time; within three (3) hours of referral, ninety-five percent (95%) of the time; and within four (4) hours of referral, ninety-nine percent (99%) of the time and MTR within two (2) hours.

9.4.2 Trouble calls (e.g., related to Local Service or Network Element or Combination degradation or feature problems) which have not resulted in total service outage shall be resolved within twenty-four (24) hours of referral, ninety-five percent (95%) of the time, irrespective of whether or not resolution requires a premises visit. For purposes of this Section, Local service or a Network Element or Combination is considered restored, or a trouble resolved, when the quality of the Local Service or Network Element or Combination is equal to that provided before the outage, or the trouble, occurred.

9.4.3 Repeat trouble reports from the same customer in a two-month period shall be less than one percent (1%). Repeat trouble reports shall be measured by the number of calls received by the GTE repair bureau relating to the same telephone line during the current and previous report months.

9.5 GTE shall provide progress reports and status of repair efforts to AT&T upon request. GTE shall inform AT&T within one (1) hour of restoration of Local Service or Network Element or Combination after a network outage has occurred. GTE shall clear all repair tickets in compliance with GTE policies and guidelines. GTE shall close all repair tickets, including "test OK" ("TOK")and "Came Clear" ("CC") repair tickets, with the AT&T work centers designated by AT&T on the repair ticket, unless a different notification procedure is mutually agreed to by the Parties. GTE shall make one attempt to notify AT&T of closed repair tickets using a mutually agreed to notification method. At AT&T's option, AT&T shall contact the Customer to verify that the repair has been effected. GTE shall provide AT&T with a list of any applicable charges, as specified in Attachment 14, at the time a repair ticket is closed.

9.6 When, in AT&T's judgment, any repair ticket or tickets are not being handled or resolved by GTE personnel in a timely manner, AT&T may escalate the matter for review and resolution under such procedures as are now available or may be established between the Parties during the term of this Agreement.

9.7 Except with respect to charges for inside wire maintenance, maintenance charges for premises visits by GTE technicians shall be billed by AT&T to its Customer, and not by GTE. The GTE technician shall present the Customer with an AT&T-branded form. Additional authorization for time and material charges shall be provided by AT&T using the agreed-to notification process.

9.8 Dispatching of GTE technicians to AT&T Customer premises shall be accomplished by GTE pursuant to a repair request received from AT&T and non-recurring charges shall apply as provided in Attachment 14. Any additional trips required to an AT&T Customer's premise because the Customer was not ready/available will result in an additional non-recurring charge.

9.9 GTE shall furnish AT&T with a single point of contact ("SPOC") for all communications relating to trouble repair and maintenance for POTS services; for special services, GTE will provide AT&T with a single point of contact on a regional basis.

ATTACHMENT 6
LOCAL SERVICES RESALE, UNBUNDLED NETWORK ELEMENT AND INTERCONNECTION BILLING AND RECORDING

1. GENERAL

This Attachment contains the provisions applicable to billing and payment of all charges AT&T incurs for purchasing wholesale Local Services for resale and Unbundled Network Elements and Combinations, and the billing and payment procedures to be followed when AT&T is interconnected to GTE Network Facilities. The specific provisions for Local Service Billing are set forth in Appendix A; the specific provisions for Unbundled Network Element billing are set forth in Appendix B; and the specific provisions for Interconnection Billing are set forth in Appendix C.

2. ADDITIONAL REQUIREMENTS

The following provisions shall, when applicable, govern Local Service, Unbundled Network Element and Interconnection Bills.

2.1 BILL ACCURACY CERTIFICATION AND VALIDATION

2.1.1 The Parties agree that as further set forth in accordance with this Attachment 6 and in order to ensure the proper performance and integrity of the entire Billing process, GTE will be responsible and accountable for transmitting to AT&T accurate and current bills on a monthly basis. GTE agrees to implement control mechanisms and procedures to render a bill that accurately reflects the Elements, Combinations and Local Service ordered and used by AT&T. The Parties agree that under meet point billing both Parties are responsible and accountable for recording and transmitting to the other Party accurate and current billing data as specified in Attachment 6, Appendix C. In addition, the Parties agree to meet monthly or as deemed necessary by either Party to review and resolve potential billing discrepancies.

2.1.2 AT&T and GTE shall use diligent and good faith effort to reach an agreement on the Bill Certification Methodology. The Access Billing Supplier Quality Certification Operating Agreement, dated December 7, 1992, as amended December 16, 1993, between GTE and AT&T shall be used as the model for a Local Service Resale and Unbundling Billing Certification Operating Agreement. GTE will move to the

development of mutually-acceptable bill quality processes by April 30, 1997.

2.1.3 Until Bills and Data are certified pursuant to the Local Service Bill Certification Operating Agreement reached under Section 2.1.2 of this Attachment 6, Bill and Data accuracy will be validated through an interim process using a mutually agreed procedures.

2.1.4 Subject to GTE's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, AT&T may audit GTE's books, records and other documents pertaining to the services provided to AT&T under this Agreement and billed in accordance with this Attachment 6 once in each Contract Year for the purpose of evaluating the accuracy of GTE's billing, data and invoicing. AT&T may employ other persons or firms for this purpose subject to the confidentiality provisions contained herein. Such audit shall take place at a time and place agreed on by the Parties no later than thirty (30) days after notice thereof to GTE. GTE shall have the right to review such audit and the findings.

2.1.5 Upon resolution of the audit, GTE shall promptly correct any error that is revealed in an audit, including making refund of any overpayment by AT&T or recording a charge for underpayment by AT&T, in each instance together with applicable interest, in the form of a credit or a debit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results. Any Disputes concerning audit results shall be resolved pursuant to the Alternate Dispute Resolution procedures described in Attachment 1. Applicable Interest shall be as defined in Section 2.4.1.

2.1.6 Each Party shall cooperate fully in any such audit, providing reasonable access to any and all of its appropriate employees and relevant books, records and other documents of the party reasonably necessary to assess the accuracy of AT&T's orders and GTE's bills, data and invoices. Each Party shall bear its own costs and expenses of any audits.

2.2 PAYMENT OF CHARGES

2.2.1 Subject to the terms of this Agreement, AT&T and GTE will pay each other within thirty (30) calendar days from the Bill Date, or twenty (20) calendar days from the receipt of the bill, whichever is later. If the payment due date is a Sunday or is a Monday that has been

designated a bank holiday by the Chase Manhattan Bank of New York (or such other bank as the Parties specify), payment will be made the next business day. If the payment due date is a Saturday or is on a Tuesday, Wednesday, Thursday or Friday that has been designated a bank holiday by the Chase Manhattan Bank of New York (or such other bank as the Parties specify), payment will be made on the preceding business day.

2.2.2 Payments shall be made in U.S. Dollars via electronic funds transfer ("EFT") to the other Party's bank account. At least thirty (30) days prior to the first transmission of billing data and information for payment, GTE and AT&T shall provide each other the name and address of its bank, its account and routing number and to whom Billing payments should be made payable. If such banking information changes, each Party shall provide the other Party at least sixty (60) days written notice of the change and such notice shall include the new banking information. Notwithstanding any permitted assignment of this Agreement, AT&T will provide GTE with only one address to which such payments shall be rendered and GTE will provide to AT&T with only one address to which such payments shall be rendered. In the event AT&T receives multiple Bills from GTE which are payable on the same date, AT&T may remit one payment for the sum of all such Bills payable to GTE's bank account specified in this subsection. AT&T will provide specific account level detail for payment application. Each Party shall provide the other Party with a contact person or center for the handling of Billing payment questions or problems.

2.3 **BILLING DISPUTES**

2.3.1 Each Party agrees to notify the other Party in writing upon the discovery of a billing dispute. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) calendar days of the Bill Date on which such disputed charges appear. Resolution of the dispute will be attempted at all appropriate levels of management within the Parties respective billing organizations before use of the dispute resolution process in Attachment 1 resulting in a recommendation or settlement of the dispute and closure of a specific billing period.

2.3.2 If a Party disputes a Charge and does not pay such charge by the payment due date, such charges shall be subject to late payment charges as set forth in the Late Payment Charges provision of this Attachment. If a Party disputes Charges and the dispute is resolved in favor of such Party, the other Party shall credit the bill of the disputing

Party for the amount of the disputed charges along with any late payment charges applicable no later than the second bill Date after the resolution of the dispute. Accordingly, if a Party disputes Charges and the dispute is resolved in favor of the other Party, the disputing Party shall pay the other Party the amount of the disputed charges and any associated late payment charges applicable no later than the second bill payment due date after the resolution of the dispute. In no event, however, shall any late payment charges be assessed on any previously assessed late payment charges, unless Regulatory rules provide otherwise.

2.4 LATE PAYMENT CHARGES

2.4.1 If either Party fails to pay any Charges in this Attachment by the payment due date, of if a payment or any portion of a payment is received by either Party after the payment due date, of if a payment or any portion of a payment is received in funds which are not immediately available to the other Party, then interest shall be payable as a late payment penalty shall be assessed. The late payment interest rate shall be one and one-half (1 1/2) percent per month, or if lower the highest rate permitted by law, calculated based upon any portion of a payment not received by the payment due date, compounded daily for the number of days from the payment date to and including the date that payment is actually made. In no event, however, shall interest be assessed on any previously assessed late payment charges, unless Regulatory rules provide otherwise.

2.5 RECORDING OF CALL INFORMATION

2.5.1 The Parties agree to record call information in accordance with this subsection. To the extent technically feasible within a Party's existing systems, each Party will record agreed upon call detail information associated with calls originated or terminated to the other Party's local exchange customer. These records shall be provided at a Party's request and shall be formatted pursuant to Bellcore standards and the terms and conditions of this Attachment. These records shall be transmitted as agreed upon to the other Party in EMR format via Connect: Direct capabilities, such records shall be transmitted as the Parties agree. GTE and AT&T agree that they will retain, at each Party's sole expense, copies of all AMA records transmitted to the other Party for at least seven (7) calendar days after transmission to the other Party.

2.5.2 Each Party will provide the other Party with a carrier identification code ("CIC") on each EMR record transmitted to the other Party. If GTE does not have a CIC for any local exchange carrier, ALEC or IXC for whom GTE must supply to AT&T Connectivity Billing records for information pursuant to this Attachment, GTE agrees that it will assist the local exchanger carrier, ALEC or IC in obtaining a CIC expeditiously. Until the local exchange carrier, ALEC or IXC has received a CIC, GTE agrees that it will submit its CIC to AT&T on those records for billing and payment. GTE further agrees that it will then be responsible for obtaining reimbursement for the respective charges from the appropriate carrier. Likewise, if AT&T does not have a CIC for any local exchange carrier, ALEC or IXC for whom AT&T must supply to GTE Billing records or information pursuant to this Attachment, AT&T agrees that it will assist the local exchange carrier, ALEC or IXC in obtaining a CIC expeditiously. Until the local exchange carrier, ALEC or IXC has received a CIC, AT&T agrees that it will submit its CIC to LEC on those records for billing and payment. AT&T further agrees that it will then be responsible for obtaining reimbursement for the respective charges from the appropriate carrier.

2.5.3 The Parties agree that they will meet the performance measurements for the provision of EMR records in Attachment 12.

2.5.4 The Parties agree that they will provide each other a single point of contact regarding any data exchange problems.

2.6 **EXAMINATION OF RECORDS**

2.6.1 Without waiver of and in addition to the Audit rights in the General part of this Agreement, upon reasonable notice and at reasonable times and in accordance with the Access Billing Supplier Quality Certification Operating Agreement, AT&T or its authorized representatives may examine GTE's documents, systems, records and procedures which relate to the billing and recording of the Charges to AT&T under this Attachment 6.

ATTACHMENT 6A

LOCAL SERVICES RESALE, BILLING AND RECORDING

TABLE OF CONTENTS

APPENDIX A 1

LOCAL SERVICE RESALE BILLING AND RECORDING 1

1. General 1

2. Billable Information And Charges 1

3. Issuance of Local Service Bills - General 2

4. Electronic Transmissions of Local Services Bills 3

5. Testing Requirements 5

APPENDIX A
LOCAL SERVICE RESALE BILLING AND RECORDING

1. **General**

This Section describes the specific requirements for GTE to bill and record all charges AT&T incurs for purchasing wholesale Local Services for resale.

2. **Billable Information And Charges**

2.1 GTE will bill and record in accordance with this Agreement those charges AT&T incurs as a result of AT&T purchasing from GTE wholesale Local Services, as set forth in this Agreement (hereinafter "Local Service Charges"). Each Local Service, purchased by AT&T shall be assigned a separate and unique billing code in the form agreed to by the Parties and such code shall be provided to AT&T on each Local Service Bill in which charges for such Elements, Combinations, or Local Services appear. Each such billing code shall enable AT&T to identify the Local Services ordered or utilized by AT&T in which Local Service Charges apply pursuant to this Agreement. Each Local Service Bill shall set forth the quantity and description of each such Local Service provided and billed to AT&T. All Local Service Charges billed to AT&T must indicate the state from which such charges were incurred.

2.2 GTE shall provide AT&T a monthly Local Service Bill that includes all Local Service Charges incurred by and credits and/or adjustments due to AT&T for those Local Services ordered, established, utilized, discontinued or performed pursuant to this Agreement. Each Local Service Bill provided by GTE to AT&T shall include: (1) all non-usage sensitive charges incurred for the period beginning with the current bill date and extending to, but not including, the next bill date, (2) any known unbilled non-usage sensitive charges for prior periods, (3) unbilled usage sensitive charges for the period beginning with the day after the last bill date and extending up to, and including, the current bill date, (4) any known unbilled usage sensitive charges for prior periods, and (5) any known unbilled adjustments. The Local Service Bill shall also include all charges for Primary Interchange Carrier (PIC) changes as a separate item defined by billing telephone number and any associated working telephone number.

2.3 The Bill Date must be present on each bill transmitted by GTE to AT&T. Local Service Bills shall not be rendered for any Local Service Charges which are incurred under this Agreement on or before one (1) year preceding the Bill Date except for charges resulting from resolution of an audit conducted pursuant to Section 2.1.4 of Attachment 6. In addition, on each bill where

"Jurisdiction" is identified, Local Traffic charges shall be identified as "Local" and local toll charges identified as intrastate/intraLATA.

2.4 GTE shall bill AT&T for any wholesale Local Service, supplied by GTE to AT&T pursuant to this Agreement at the rates set forth in this Agreement. GTE will bill AT&T based on the actual Local Service Charges incurred, provided, however, for those usage based Local Service Charges where actual charge information is not determinable by GTE because the jurisdiction (i.e., interstate, interstate/interLATA, intrastate, intrastate/intraLATA, local) of the traffic is unidentifiable, the Parties will jointly develop a process to determine the appropriate charges. Measurement of usage-based Local Service Charges shall be actual conversation in tenths of seconds. The total conversation seconds per chargeable traffic types will be totalled for the entire monthly bill cycle and then rounded to the next whole minute.

2.5 Except as otherwise specified in this Agreement, each Party shall be responsible for (1) all costs and expenses it incurs in complying with its obligations under this Agreement and (2) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement.

2.6 Each Party shall provide the other Party at no additional charge a contact person or center for the handling of any Local Service Billing questions or problems that may arise during the implementation and performance of the terms and conditions of this Attachment.

3. <u>Issuance of Local Service Bills - General</u>

3.1 GTE and AT&T shall issue Local Service Bills as follows:

3.1.1 Until July 1, 1998, GTE and AT&T shall issue Local Service Bills via Electronic Data Exchange ("EDI").

3.1.2 GTE and AT&T will jointly work together such that on or as soon after July 1, 1998 as possible, GTE and AT&T shall issue all Local Service Bills in accordance with CABS Version 26.0, or such later versions of CABS that are published by Bellcore, or its successor, and the requirements of this Appendix such other version of CABS which becomes industry standard.

3.2 GTE and AT&T will establish monthly billing dates ("Bill Date") for each Billing Account Number ("BAN"), and, when appropriate, as further defined in the CABS document, which Bill Date shall be the same day month to month. Each BAN shall remain constant from month to month, unless changed as agreed to by the Parties. Each Party shall provide the other Party at least

thirty (30) calendar days written notice prior to changing, adding or deleting a BAN. The Parties will provide one Local Service Billing invoice associated with each BAN. Each invoice must contain an invoice number (which will vary from month to month). On each bill associated with a BAN, the appropriate invoice number and the charges contained on such invoice must be reflected. All Local Service Bills must be received by the other Party no later than ten (10) calendar days from Bill Date and at least twenty (20) calendar days prior to the payment due date (as described in this Attachment), whichever is earlier. Any Local Service Bill received on a Saturday, Sunday or a day designated as a holiday by the Chase Manhattan Bank of New York (or such other bank as AT&T shall specify) will be deemed received the next business day. If either Party fails to receive Local Service Billing data and information within the time period specified above, the payment due date will be extended by the number of days the Local Service Bill is late.

3.3 Each Party will provide the other Party written notice of which Local Service Bills are to be deemed the official bills. If either Party requests an additional copy(ies) of a bill, such Party shall pay the other Party a reasonable fee per additional bill copy, unless such copy was requested due to errors, omissions, or corrections or the failure of the transmission to comply with the specifications set forth in this Agreement.

3.4 To avoid transmission failures or the receipt of Local Service Billing information that cannot be processed, the Parties shall provide each other with their respective process specifications and edit requirements. AT&T shall comply with GTE's processing specifications when AT&T transmits Local Service Billing data to GTE. GTE shall comply with AT&T's processing specifications when GTE transmits Local Service Billing data to AT&T. AT&T and GTE shall provide each other reasonable notice if a Local Service Billing transmission is received that does not meet such Party's specifications or that such Party cannot process. Such transmission shall be corrected and resubmitted to the other Party, at the resubmitting Party's sole expense, in a form that can be processed. The payment due date for such resubmitted transmissions will be twenty (20) days from the date that the transmission is received in a form that can be processed and that meets the specifications set forth in this Attachment.

4. <u>Electronic Transmissions of Local Services Bills</u>

4.1 GTE and AT&T agree that after July 1, 1998 following implementation of CABS pursuant to Section 3.1.2 of this Appendix A, each Party will transmit Billing information and data in the appropriate CABS format electronically via Connect: Direct (formerly known as Network Data Mover) to the other Party at the location specified by the Party. The Parties agree that a T1.5 or 56kb

circuit to Gateway for Connect: Direct is required. AT&T data centers will be responsible for originating the calls for data transmission via switched 56kb or T1.5 lines. If GTE has an established Connect: Direct link with AT&T, that link can be used for data transmission if the location and applications are the same for the existing link. Otherwise, a new link for data transmission must be established. GTE must provide AT&T/Alpharetta its Connect: Direct Node ID and corresponding VTAM APPL ID before the first transmission of data via Connect:Direct. AT&T's Connect: Direct Node ID is "NDMATTA4" and VTAM APPL ID is "NDMATTA4" and must be included in LEC's Connect:Direct software. AT&T will supply to GTE its RACF ID and password before the first transmission of data via Connect:Direct. Any changes to either Party's Connect: Direct Node ID must be sent to the other Party no later than twenty-one (21) calendar days before the changes take effect.

4.2 The following dataset format shall be used as applicable for those Charges transmitted via Connect:Direct in CABS format:

Production Dataset

AF25.AXXXXYYY.AZZZ.DDDEE	Production Dataset Name
AF25=	Job Naming Convention
AXXXX=	Numeric Company Code
YYY=	LEC Remote
AZZZ=	RAO (Revenue Accounting Office)
DDD=	BDT (Billing Data Tape with or without CSR) Or CSR (Customer Service Record)
EE=	01 thru 31 (Bill Period) (optional) Or GA (US Postal-State Code)

Test Dataset

AF25.ATEST.AXXXX.DDD	Test Dataset Name
AF25.ATEST=	Job Naming Convention
AXXXX=	Numeric Company Code
DDD=	BDT (Billing Data Tape with or without CSR) Or CSR (Customer Service Record

4.2.1 GTE agrees that if it transmits data to AT&T in a mechanized format utilizing CABS, GTE will also comply with the following specifications which are not

contained in CABS guidelines but which are necessary for AT&T to process Billing information and data:

- The BAN shall not contain embedded spaces or low values.
- The Bill Date shall not contain spaces or non-numeric values.
- Each Bill must contain at least one detail record.
- Any "From" Date should be less than the associated "Thru" Date and neither date can contain spaces.
- The Invoice Number must not have embedded spaces or low values.

5. **Testing Requirements**

5.1 The Parties will jointly develop a test procedure prior to sending mechanized bills or data to ensure to the satisfaction of each Party that bills may be processed as required in this Agreement.

5.2 GTE shall provide to AT&T's Company Manager, located at 500 North Point Parkway, FLOC B1104B, Alpharetta, Georgia 30302, GTE's originating or state level company code so that it may be added to AT&T's internal tables at least thirty (30) calendar days prior to testing or prior to a change in GTE's originating or state level company code.

5.3 During the testing period, GTE shall transmit to AT&T any Billing data and information via paper transmission. Test tapes shall be sent to AT&T at the following location:

Test Tapes:	AT&T 500 North Point Parkway FLOC B1104B Alpharetta, Georgia 30302 Attn: Access Bill Testing

ATTACHMENT 6B

UNBUNDLED NETWORK ELEMENTS BILLING AND RECORDING

TABLE OF CONTENTS

APPENDIX B 1

UNBUNDLED NETWORK ELEMENT BILLING AND RECORDING 1

1. General 1

2. Billable Information And Charges 1

3. Collocation 2

4. Issuance of Unbundled Network Element Bills - General 3

5. Electronic Transmissions of Unbundled Network Element Bills 4

6. Testing Requirements 4

7. Local Number Portability 4

APPENDIX B
UNBUNDLED NETWORK ELEMENT BILLING AND RECORDING

1. **General**

This Section contains the provisions applicable to the billing and recording of all charges AT&T incurs for purchasing Unbundled Network Elements and/or Combinations of Unbundled Network Elements.

2. **Billable Information And Charges**

2.1 GTE will bill and record in accordance with this Agreement those Combinations charges AT&T incurs as a result of AT&T purchasing from GTE Unbundled Network Elements and/or Combinations of Unbundled Network Elements as set forth in this Agreement (hereinafter "Unbundled Network Element Charges"). Each such Element, or Combination thereof purchased by AT&T shall be assigned a separate and unique billing code in the form agreed to by the Parties and such code shall be provided to AT&T on each Unbundled Network Element Bill in which charges for such Elements, or Combinations appear. Each such billing code shall enable AT&T to identify the Element(s), or Combinations, Objects and Options as described in Attachment 4 to this Agreement ordered or utilized by AT&T in which Unbundled Network Element Charges apply pursuant to this Agreement. Each Unbundled Network Element Bill shall set forth the quantity and description of each such Element, or Combination provided and billed to AT&T. All Unbundled Network Element Charges billed to AT&T must indicate the state from which such charges were incurred.

2.2 GTE shall provide AT&T a monthly Unbundled Network Element Bill that includes all Unbundled Network Element Charges incurred by and credits and/or adjustments due to AT&T for those Elements, or Combination thereof, ordered, established, utilized, discontinued or performed pursuant to this Agreement. Each Unbundled Network Element Bill provided by GTE to AT&T shall include: (1) all non-usage sensitive charges incurred for the period beginning with the day after the current bill date and extending to, and including, the next bill date, (2) any known unbilled non-usage sensitive charges for prior periods, (3) unbilled usage sensitive charges for the period beginning with the last bill date and extending up to, but not including, the current bill date, (4) any known unbilled usage sensitive charges for prior periods, and (5) any known unbilled adjustments.

2.3 The Bill Date must be present on each bill transmitted by GTE to AT&T. Unbundled Network Element Bills shall not be rendered for any Unbundled Network Element Charges which are incurred under this Agreement on or before one (1) year preceding the Bill Date, except for charges resulting from an audit conducted pursuant to Section 2.1.4 of Attachment 6. In addition, on each bill where "Jurisdiction" is identified, Local Traffic charges shall be identified as "Local" and local toll charges shall be identified as intrastate/intraLATA.

2.4 GTE shall bill AT&T for each Element, or Combination thereof, supplied by GTE to AT&T pursuant to this Agreement at the rates set forth in this Agreement. GTE will bill AT&T based on the actual Unbundled Network Element Charges incurred, provided, however, for those usage based Unbundled Network Element Charges where actual charge information is not determinable by GTE because the jurisdiction (i.e., interstate, interstate/interLATA, intrastate, intrastate/intraLATA, local) of the traffic is unidentifiable, the Parties will jointly develop a process to determine the appropriate charges. Measurement of usage-based Unbundled Network Element Charges shall be in tenths of conversation seconds. The total conversation seconds per chargeable traffic types will be totalled for the entire monthly bill cycle and then rounded to the next whole minute.

2.5 Except as otherwise specified in this Agreement, each Party shall be responsible for (1) all costs and expenses it incurs in complying with its obligations under this Agreement and (2) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement.

2.6 Each Party shall provide the other Party at no additional charge a contact person or center for the handling of any Unbundled Network Element Billing questions or problems that may arise during the implementation and performance of the terms and conditions of this Attachment.

3. **Collocation**

When AT&T collocates with GTE in GTE's facility as described in this Agreement, capital expenditures (e.g., costs associated with building the "cage"), shall be billed separately and shall not be included in the Unbundled Network Element Bill provided to AT&T pursuant to this Attachment. All such capital expenses shall be given a unique BAN (as defined in Section 4.2, below) and invoice number. All invoices for capital expenses shall be sent to the location specified by AT&T for payment. All other non-capital recurring collocation expenses shall be billed to AT&T in accordance with this

Agreement. The CABS Billing Output Specifications ("BOS") documents provide the guidelines on how to bill the Unbundled Network Element Charges associated with collocation. The bill label for those collocation charges shall be entitled "Expanded Interconnection Service." For those nonmechanized Unbundled Network Element bills, the bill label for non-capital recurring collocation expenses shall be entitled "Co-location."

4. **Issuance of Unbundled Network Element Bills - General**

4.1 GTE and AT&T shall issue Unbundled Network Element Bills as follows:

4.1.1 Until the availability of CABS in accordance with Section 4.1.2, GTE and AT&T shall issue Unbundled Network Element Local Service Bills via EDI.

4.1.2 GTE and AT&T will jointly work together such that as soon after July 1, 1998, as possible, GTE and AT&T shall issue all Unbundled Network Element Local Service Bills in accordance with CABS Version 26.0, or such later version of CABS that are as published by Bellcore, or its successor, and the requirements of this Appendix or such other version of CABS which becomes industry standard.

4.2 GTE and AT&T will establish monthly billing dates ("Bill Date") for each Billing Account Number ("BAN"), and, when appropriate, as further defined in the CABS document, which Bill Date shall be the same day month to month. Each BAN shall remain constant from month to month, unless changed as agreed to by the Parties. Each Party shall provide the other Party at least thirty (30) calendar days written notice prior to changing, adding or deleting a BAN. The Parties will provide one Unbundled Network Element Billing invoice associated with each BAN. Each invoice must contain an invoice number (which will vary from month to month). On each bill associated with a BAN, the appropriate invoice number and the charges contained on such invoice must be reflected. All Unbundled Network Element Bills must be received by the other Party no later than ten (10) calendar days from Bill Date and at least twenty (20) calendar days prior to the payment due date (as described in this Attachment), whichever is earlier. Any Unbundled Network Element Bill received on a Saturday, Sunday or a day designated as a holiday by the Chase Manhattan Bank of New York (or such other bank as AT&T shall specify) will be deemed received the next business day. If either Party fails to receive Unbundled Network Element Billing data and information within the time period specified above, the payment due date will be extended by the number of days the Unbundled Network Element Bill is late.

4.3 Each Party will provide the other Party written notice of which Unbundled Network Element Bills are to be deemed the official bills. If either Party

requests an additional copy(ies) of a bill, such Party shall pay the other Party a reasonable fee per additional bill copy, unless such copy was requested due to errors, omissions, or corrections or the failure of the transmission to comply with the specifications set forth in this Agreement.

4.4 To avoid transmission failures or the receipt of Unbundled Network Element Billing information that cannot be processed, the Parties shall provide each other with their respective process specifications and edit requirements. AT&T shall comply with GTE's processing specifications when AT&T transmits Unbundled Network Element Billing data to GTE. GTE shall comply with AT&T's processing specifications when GTE transmits Unbundled Network Element Billing data to AT&T. AT&T and GTE shall provide each other reasonable notice if a Unbundled Network Element Billing transmission is received that does not meet such Party's specifications or that such Party cannot process. Such transmission shall be corrected and resubmitted to the other Party, at the resubmitting Party's sole expense, in a form that can be processed. The payment due date for such resubmitted transmissions will be twenty (20) days from the date that the transmission is received in a form that can be processed and that meets the specifications set forth in this Attachment.

5. **Electronic Transmissions of Unbundled Network Element Bills**

Electronic Transmission of Unbundled Network Elements will be governed by the same standards and conditions applicable to Local Service Bills, as set forth in Appendix A to this Attachment 6, Section 4.

6. **Testing Requirements**

GTE shall adhere to the same testing requirements and specifications for transmitting Unbundled Network Element Bills as applicable to Local Service Bills, as set forth in Appendix A to this Attachment 6, Section 5.

7. **Local Number Portability**

7.1 In accordance with the terms and conditions set forth in this Attachment 6, GTE shall record and provide to AT&T agreed upon detail information associated with a call to an AT&T local exchange customer whose telephone number has been ported from GTE under INP as further described in the Local Number Portability Attachment to this Agreement.

7.2 When an IXC terminates an interLATA or IntraLATA toll call to an AT&T local exchange customer whose telephone number has been ported from GTE, the

Parties agree that AT&T shall receive those IXC access charges associated with end office switching, local transport, RIC and CCL, as appropriate, and such other applicable charges. GTE shall be entitled only to receive any access tandem fees and associated local transport charges, and any INP fees (i.e., such as RCF charges) set forth in this Agreement. When a call for which access charges are not applicable is terminated to an AT&T local exchange customer whose telephone number has been ported from GTE the Parties agree that the mutual compensation arrangements described in this Agreement shall apply.

ATTACHMENT 6C

INTERCONNECTION BILLING AND RECORDING

TABLE OF CONTENTS

APPENDIX C 1

INTERCONNECTION BILLING AND RECORDING 1

1. General 1

2. Meet Point Billing 1

3. Reciprocal Compensation 3

4. Issuance of Meet Point Billing Data and Mutual Billing Data 3

5. Testing Requirements 3

APPENDIX C

INTERCONNECTION BILLING AND RECORDING

1. **General**

This Section describes the Meet Point Billing and Reciprocal Compensation requirements applicable when AT&T is Interconnected to GTE network facilities.

2. **Meet Point Billing**

2.1 AT&T and GTE will establish meet-point billing ("MPB") arrangements in accordance with the Meet Point Billing guidelines adopted by and contained in the OBF's MECAB and MECOD documents. Both Parties will use their best reasonable efforts, individually and collectively, to maintain provisions in their respective federal and state access tariffs, and/or provisions within the National Exchange Carrier Association ("NECA") Tariff No. 4, or any successor tariff to reflect the MPB arrangements identified in this Agreement, in MECAB and in MECOD.

2.2 AT&T and GTE will implement the "Multiple Bill/Multiple Tariff" option in order to bill any interexchange carrier ("IXC").

2.3 GTE and AT&T shall provide to each other the billing name, billing address, and carrier identification code ("CIC") of the IXCs that may utilize any portion of each other's network in an AT&T/ILEC MPB arrangement in order to comply with the MPB Notification process as outlined in the MECAB document. Such information shall be provided to each other in the format and via the medium that the parties agree. If either party does not initially record sufficient bill detail for any IXC for whom either party must supply to the other MPB billing information, each party agrees that it will assist each other in resolving these billing matters by providing sufficient billing detail to the other party to allow that party to obtain reimbursement from the IXC. GTE and AT&T shall require any new IXC to notify both GTE and AT&T using the existing ASR process in accordance with MECOD ordering guidelines.

2.4 GTE and AT&T agree that in a MPB arrangement where one Party provides local transport and the other Party provides the end office switching, the Party who provides the end office switching is entitled to bill any residual interconnection charges ("RIC") and common carrier line ("CCL") charges associated with the traffic. The Parties further agree that in those MPB situations where one Party sub-tends the other Party's access tandem, the Party providing the access tandem is only entitled to bill the access tandem fee and any associated local transport charges. The Parties also agree that

the Party who provides the end office switching is entitled to bill end office switching fees, local transport charges, RIC and CCL charges, as appropriate, and such other applicable charges.

2.5 GTE and AT&T will record and transmit MPB information in accordance with the standards and in the format set forth in this Attachment. GTE and AT&T will coordinate and exchange the billing account reference ("BAR") and billing account cross reference ("BACR") numbers for the MPB arrangements described in this Attachment. Each Party will notify the other if the level of billing or other BAR/BACR elements change, resulting in a new BAR/BACR number.

2.6 If MPB data is not processed and delivered by either GTE or AT&T and in turn such Party is unable to bill the IXC for the appropriate charges, the Party who failed to deliver the data will be held liable for the amount of the unbillable charges.

2.7 If MPB data is not submitted within fifteen (15) days of their recording or is not in the proper format as set forth in this Attachment, and if as a result the other Party is delayed in billing the IXC for the appropriate charges it incurs, the delaying Party shall pay the other Party a late MPB data delivery charge which will be the total amount of the delayed charges times the highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the date the MPB charges should have been received to and including the date the MPB charge information is actually received.

2.8 Errors in MPB data exchanged by the Parties may be discovered by AT&T, GTE or the billable IXC. Both AT&T and GTE agree to provide the other Party with notification of any discovered errors within two (2) business days of the discovery. The other Party shall correct the error within eight (8) business days of notification and resubmit the data. In the event the errors cannot be corrected within the time period specified above, the erroneous data shall be considered lost. If MPB data is lost due to incorrectable errors or otherwise, the Parties shall follow the procedures set forth in the Customer Billing Data Attachment of this Agreement and compensate the other for the lost MPB billing data.

2.9 [Intentionally left blank]

2.10 Neither AT&T nor GTE will charge the other for services rendered, or for information required for Collocation as set forth in this Attachment except those MPB charges specifically set forth herein. Both Parties will provide the other a single point of contact to handle any MPB questions.

3. **Reciprocal Compensation**

3.1 The Parties shall bill each other reciprocal compensation in accordance with the standards set forth in this Agreement for traffic terminated to the other Party's customer, where both such customers bear NPA-NXX designations associated with the same LATA or other authorized area (e.g., extended area service zones in adjacent LATAs), including those traffic types that have been traditionally referred to as "local calling", as "extended area service (EAS)", and as "intraLATA toll". Where GTE is the recording company, such traffic shall be recorded and transmitted to AT&T in accordance with this Attachment. Further, the traffic exchanged pursuant to this Attachment shall be measured in billing minutes of use and shall be in actual conversation seconds. The total conversation seconds per chargeable traffic type will be totaled for the entire monthly billing cycle and then rounded to the next whole conversation minute. Reciprocal compensation for the termination of this traffic shall be charged at rates specified in Part V and Attachment 14.

3.2 In lieu of the reciprocal compensation arrangement described above and where permitted by state law or Commission regulation or order, the Parties may elect in writing to adopt a bill and keep compensation arrangement or such other mutually agreed upon compensation arrangement.

4. **Issuance of Meet Point Billing Data and Mutual Billing Data**

4.1 GTE and AT&T shall issue the data required to implement Section 2 of this Appendix (i.e. Meet Point Billing Data) and Section 3 of this Appendix (i.e. Reciprocal Compensation) as provided in EMR format via Connect: Direct as provided in Section 2.5 of this Attachment.

5. **Testing Requirements**

The Parties shall adhere to the same testing requirements and specifications for transmitting Meet Point Billing data and Reciprocal Compensation data as applicable to the recording of Call Information as set forth in Section 2.5 of this Attachment.

ATTACHMENT 7

PROVISION OF CUSTOMER USAGE DATA

TABLE OF CONTENTS

PROVISION OF CUSTOMER USAGE DATA 1
1. Introduction 1
2. General Requirements for Recorded Usage Data 1
3. Usage Data Specifications 1
4. Recorded Usage Data Format 2
5. Recorded Usage Data Reporting Requirements 2
6. Recording Failures 4
7. Charges 5
8. Local Account Maintenance 5
9. Clearinghouse Procedures 5
APPENDIX I 7
SECTION I: SCOPE 8
SECTION II: RECORDED USAGE TO BE TRANSMITTED TO AT&T 9
SECTION III: GTE TO AT&T USAGE FEED 10
SECTION IV: AT&T PROCESSING REQUIREMENTS 15
SECTION V: TEST PLANS AND ACTIVITIES 17
SECTION VI: POST DEPLOYMENT ACTIVITIES 19
SECTION VII: APPENDICES 23
APPENDIX II 31

PROVISION OF CUSTOMER USAGE DATA

1. Introduction

1.1 This Attachment sets forth the terms and conditions for GTE's provision of recorded usage data (as defined in this Attachment) to AT&T. Recorded Usage Data shall be provided by GTE to AT&T when AT&T purchases Network Elements, Combinations, or Local Services from GTE.

2. General Requirements for Recorded Usage Data

2.1 GTE shall provide AT&T with Recorded Usage Data in accordance with this Attachment.

2.2 GTE's provision of Recorded Usage Data to AT&T shall be in accordance with AT&T's Direct Measures of Quality (DMOQs) set forth in Attachment 12.

2.3 GTE shall retain Recorded Usage Data in accordance with applicable law and regulation.

3. Usage Data Specifications

3.1 To the extent that GTE records such information for itself, GTE will record usage originating from AT&T Customers using the GTE provided Element or Local Services, which include intraLATA toll and local usage. Recorded Usage Data includes, but is not limited to, the following categories of information:

- Call Attempts
- Completed Calls
- Use Of CLASS/LASS/Custom Features
- Calls To Information Providers Reached Via GTE Facilities And Contracted By GTE
- Calls To Directory Assistance Where GTE Provides Such Service To An AT&T Customer
- Calls Completed Via GTE Provided Operator Services Where GTE Provides Such Service To AT&T's Local Service Customer
- For GTE Provided CENTRANET Service, Station Level Detail for calls outside the CENTRANET group
- Records Shall Include Complete Call Detail And Complete Timing Information
- Recording Of Completed Calls Which GTE Does Not Record For Its Own Service Offerings (e.g., Flat Rate Free Calling Area Service)

In the event GTE does not record the above information for itself, GTE will record such information subject to AT&T's agreement to pay its proportionate share of costs associated with such recording.

3.2 GTE shall provide to AT&T Recorded Usage Data for AT&T Customers only in unrated format, except for rated incollects and except as provided in Section 3.3 following. GTE will not submit other carrier local usage data as part of the AT&T Recorded Usage Data.

3.3 Calls to information providers referenced in Section 3.1 preceding shall be provided to AT&T in rated format for billing to the customer.

3.3.1 The parties also agree to establish settlement procedures to permit AT&T to recourse to GTE amounts AT&T Customers refuse to pay for these rated information provider charges forwarded by GTE to AT&T for billing.

3.4 End user customer usage records and station level detail records shall be in packs in accordance with EMR standards.

4. **Recorded Usage Data Format**

4.1 GTE will provide Recorded Usage Data in the EMR format and by category, group and record type, as specified in the AT&T Customer Usage Data Transfer Requirements, March 1996 ("Data Requirements"), which is attached hereto and incorporated herein as Appendix II.

4.2 GTE shall include the Working Telephone Number (WTN) of the call originator on each EMR call record.

4.3 End user customer usage records and station level detail records shall be in packs in accordance with EMR standards.

5. **Recorded Usage Data Reporting Requirements**

5.1 GTE shall segregate and organize the Recorded Usage Data in accordance with AT&T's instructions.

5.2 GTE shall provide segregated Recorded Usage Data to multiple AT&T biller locations as designated by AT&T.

5.3 GTE shall transmit Data Requirements formatted Recorded Usage Data to AT&T via CONNECT: Direct as designated by AT&T. In the event that usage transfer cannot be accommodated by CONNECT: Direct because of extended (one business day or more) facility outages, or if facilities do not exist, the LSP will contract for a courier service to transport the data tapes.

Data transported to AT&T on tape or cartridge via a courier will have the physical characteristics indicated in SUBAPPENDIX A. AT&T's intent is for variable block format (2476 bytes) with a LRLECL of 2472. The charge for said service shall be as set forth in Attachment 14.

5.3.1 GTE will provide AT&T with contacts for sending/receiving usage files.

AT&T will provide GTE with contacts responsible for receiving usage transmitted by GTE and usages tapes from a courier service in the event of a facility outage.

5.4 AT&T will test and certify the CONNECT: Direct interface to ensure the accurate receipt of Recorded Usage Data. GTE shall make any changes necessary to pass the AT&T CONNECT: Direct certification process.

5.5 GTE shall provide Recorded Usage Data to AT&T within the time frames specified in Attachment 12.

5.6 GTE will establish a single point of contact to respond to AT&T call usage, data error, and record transmission inquiries.

5.7 The Recorded Usage Data EMR format, content, and transmission process will be tested as specified by AT&T.

5.8 When requested by AT&T for security purposes, GTE shall provide AT&T with Recorded Usage Data promptly. If not available in EMR format, the Recorded Usage Data may be provided in AMA format.

5.9 USAGE SUMMARY

Messages will be transmitted, via a direct feed, to AT&T in standard EMR format. The following is a list of EMR records that AT&T can expect to receive from the LSP:

Header Record	20-20-01
Trailer Record	20-20-02
Detail Records*	01-01-01, 06, 07, 08, 09, 16, 18, 31, 32, 33, 35, 37, 80, 81, 82, 83, 10-01-01, 06, 07, 08, 09, 16, 18, 31, 32, 35, 37, 80, 81, 82, 83
Credit Records	03-01-XX
Rated Credits	41-01-XX
Cancel Records	51-01-XX

Correction Records 71-01-XX

*Category 01 is utilized for Rated Messages; Category 10 is utilized for Unrated Messages

In addition, the LSP should provide a 42-50-01 Miscellaneous Charge record to support the Special Features Star Services (see Appendix II, Subappendix E for specific details) if these features are part of the LSP's resale product.

For detailed information regarding EMR, refer to the current version of the BellCore Practice BR010-200-010 document.

5.10 AT&T and GTE will track pack number to control input based upon invoice sequencing criteria. GTE will be notified of sequence failures identified by AT&T and resend procedures are to be invoked.

5.11 AT&T, upon receipt of cancel/connection records, will perform their current matching functionality to identify the original message to be connected/canceled. Processing will be dependent upon individual negotiations.

6. **Recording Failures**

6.1 Loss of Recorded Usage Data - AT&T Recorded Usage Data determined to have been lost, damaged or destroyed as a result of an error or omission by GTE in its performance of the recording function shall, upon AT&T's request, be recovered by GTE at no charge to AT&T. In the event the data cannot be recovered by GTE, GTE shall estimate the messages and associated revenue, with assistance from AT&T, based upon the method described below. This method will be applied on a consistent basis, subject to modifications agreed to by GTE and AT&T. This estimate will be used to adjust amounts AT&T owes GTE for services GTE provides in conjunction with the provision of Recorded Usage Data.

6.1.1 Partial Loss - GTE shall review its daily controls to determine if data has been lost. When there has been a partial loss, actual message and minute volumes shall be reported, if possible. Where actual data are not available, a full day shall be estimated for the recording entity, as outlined in Section 6.1.3 following. The amount of the partial loss is then determined by subtracting the data actually recorded for such day from the estimated total for such day.

6.1.2 Complete Loss - Estimated message and minute volumes for each loss consisting of an entire AMA tape or entire data volume due to its loss prior to or during processing, lost after receipt, degaussed before processing, receipt of a blank or unreadable tape, or lost for other causes, shall be reported.

6.1.3 Estimated Volumes - From message and minute volume reports for the entity experiencing the loss, GTE shall secure message/minute counts for the four (4) corresponding days of the weeks preceding that in which the loss occurred and compute an average of these volumes. GTE shall apply the appropriate average revenue per message ("arpm") provided by AT&T to the estimated message volume to arrive at the estimated lost revenue. Within 45 business days of the Effective Date of this Agreement, the Parties will mutually agree on a minimum threshold for application of this Section 6.1.3. Section 6.1.3 will be modified as set forth below:

6.1.3.1 If the day of loss is not a holiday but one (1) (or more) of the preceding corresponding days is a holiday, use additional preceding weeks in order to procure volumes for two (2) non-holidays in the previous two (2) weeks that correspond to the day of the week that is the day of the loss.

6.1.3.2 If the loss occurs on a weekday that is a holiday (except Christmas), GTE shall use volumes from the two (2) preceding Sundays.

6.1.3.3 If the loss occurs on Mother's Day or Christmas, GTE shall use volumes from that day in the preceding year (if available).

6.2 AT&T may also request data be provided that has previously been successfully provided by GTE to AT&T. GTE shall provide such data to the extent available subject to AT&T's agreement to pay relevant charges on a case-by-case basis.

7. Charges

GTE shall bill and AT&T shall pay the charges set forth in Part V and Attachment 14 for Recorded Usage Data. Billing and payment shall be in accordance with the applicable terms and conditions set forth in this Agreement.

8. Local Account Maintenance

8.1 When AT&T purchases Local Service from GTE, and, as appropriate, when AT&T purchases certain Unbundled Network Elements, GTE shall provide AT&T with Local Account Maintenance as described in Appendix III of this Attachment. These procedures are in addition to Service Order procedures set forth in Part I and Attachment 4 to this Agreement.

9. Clearinghouse Procedures

9.1 The Parties acknowledge that calls will be placed using the service of one Party that will be billable to customers of the other Party. In order to ensure

that these calls are properly accounted for and billed to the appropriate customer, the Parties agree to work together and, when required, with other carriers, to establish clearinghouse procedures to accomplish these objectives. It is the intention of the Parties that these negotiations will be completed within six (6) months of the Effective Date of this Agreement. These procedures will establish the following:

9.1.1 AT&T shall have access to the Bellcore CMDS process for transmitting, receiving, and settling calling card, in-collect, and out-collect inter-region messages.

9.1.2 AT&T shall have access to the Bellcore company regional process for receiving and settling calling card, in-collect, and out-collect intra-region messages.

9.1.3 In the event a clearinghouse procedure is not in place upon the Effective Date of this Agreement, GTE will implement an interim arrangement with AT&T.

APPENDIX I
TO
ATTACHMENT 7

CUSTOMER USAGE DATA

TRANSFER REQUIREMENTS

SECTION I: SCOPE

1. General

This Appendix addresses the transmission by GTE of AT&T Customer usage to AT&T.

1.1 Usage Summary

Messages will be transmitted, via a direct feed, to AT&T in standard EMR format. The following is a list of EMR records that AT&T can expect to receive from GTE:

Header Record	20-20-01
Trailer Record	20-20-02
Detail Records*	01-01-01, 06, 07, 08, 09, 16, 18, 31, 32, 33, 35, 37,80, 81, 82, 83
	10-01-01, 06, 07, 08, 09, 16, 18, 31, 32, 35, 37, 80, 81, 82, 83
Credit Records	03-01-XX
Rated Credits	41-01-XX
Cancel Records	51-01-XX
Correction Records	71-01-XX

*Category 01 is utilized for Rated Messages; Category 10 is utilized for Unrated Messages

In addition, GTE shall provide a 42-50-01 Miscellaneous Charge record to support the Special Features Star Services (see Subappendix E for specific details) if these features are part of GTE's offering.
For detailed information regarding EMR, refer to the current version of the BellCore Practice BR010-200-010 Appendix.

2. Appendix Content

This Appendix describes baseline requirements for the transfer of GTE recorded, unrated usage to AT&T. Testing requirements and the reports needed to ensure data integrity are also included. Additional requirements and implementation details may be identified for conditions unique to GTE. Modifications and/or exceptions to this Appendix must be negotiated and mutually agreed upon by GTE and AT&T.

SECTION II: RECORDED USAGE TO BE TRANSMITTED TO AT&T

1. General

This section addresses the types of usage to be transmitted by GTE to AT&T.

9.1 Usage To Be Transferred To AT&T

9.1.1 AT&T Usage To Be Transferred

The following messages recorded by GTE are to be transmitted to AT&T. GTE recorded usage includes all usage by AT&T Customers.

NOTE: Rated incollect messages should be transmitted via the direct feed and can be intermingled with the unrated messages. No special packing is needed.

At the discretion of AT&T, any of the above mentioned messages that cannot be rated and/or billed by AT&T may be returned to GTE via a direct returns feed. Returned messages will be sent to GTE in EMR format. Standard EMR return codes will be utilized.

File transfer specifications are included within Section 3.

9.2 AT&T Usage

The Recorded Usage Data in a local resale environment includes all intraLATA toll and local usage. GTE will provide AT&T with unrated EMR records associated with all intraLATA toll and local usage which they record on AT&T's behalf. Any Category, Group and/or Record types approved in the future for GTE will be included if they fall within the definition of local service resale. AT&T shall be given notification of implementation of a new type within the negotiated timeframes.

NOTE: GTE messages will be packed using the packing criteria outlined in Section 3.4.8. It is important to note that all GTE messages will be packed together (intermingled) based on the appropriate AT&T Send To/Bill To RAO combination. Specific categories, groups, and record types will not be packed separately.

SECTION III: GTE TO AT&T USAGE FEED

1. **General**

This section contains the information required for GTE to transmit the usage defined in Section II to AT&T. This section specifically addresses the dataset requirements and processing.

9.1 Detailed EMR Record Edits

AT&T will perform detailed record edits on the unrated and rated messages upon receipt from GTE. Messages that fail these edits may be returned to GTE.

9.2 Duplicate Record Checks

AT&T will perform record checks on the unrated and rated messages to validate that duplicate messages are not sent by GTE to AT&T.

9.3 GTE to AT&T Usage Feed

9.3.1 Usage Data Transport Requirements

GTE will provide the transport facility between GTE location and the AT&T location. It is AT&T's intent that usage data be transmitted via CONNECT: Direct whenever possible. In the event usage transfer cannot be accommodated by CONNECT: Direct because of extended (one (1) business day or longer) facility outages, or if facilities do not exist, GTE will contract for a courier service to transport the data via tape.

GTE will provide AT&T with contacts, Remote Identifiers (IDs), and expected usage data volumes for each sending location.

AT&T will provide contacts responsible for:
Receiving usage transmitted by GTE.
Receiving usage tapes from a courier service in the event of a facility outage.

9.3.2 Physical Characteristics

Data transported to AT&T on tape or cartridge via a courier will have the physical characteristics indicated in Subappendix A. AT&T's intent is for variable block format (2,476 bytes) with a LRECL of 2472.

9.3.3 Data Delivery Schedules

Data will be delivered to AT&T by GTE daily (Monday through Friday) unless otherwise negotiated. AT&T and/or GTE Data Center holidays are excluded. GTE and AT&T will exchange schedules of designated Data Center holidays.

9.3.4 Resending Data

AT&T will notify GTE of resend requirements if a pack or entire dataset must be replaced due to pack rejection, damage in transit, dataset name failure, etc.

9.3.5 Pack Rejection

Critical edit failure on the Pack Header or Pack Trailer records will result in pack rejection (e.g., detail record count not equal to grand total included in the pack trailer). Notification of pack rejection will be made by AT&T within one (1) business day of processing. Rejected packs will be corrected by GTE and retransmitted to AT&T by GTE.

9.3.6 Held Packs And Messages

AT&T and GTE will track pack number to control input based upon invoice sequencing criteria. GTE will be notified of sequence failures identified by AT&T and resend procedures are to be invoked.

9.3.7 Data Content Requirements

EMR is the format to be used for usage data provided to AT&T.

9.3.8 RAO Packing Requirements

A pack shall contain a minimum of one message record or a maximum of 9,999 message records plus a pack header record and a pack trailer record. A file transmission contains a maximum of 99 packs. A dataset shall contain a minimum of one pack. GTE will provide AT&T one dataset per sending location, with the agreed upon RAO/OCN populated in the Header and Trailer records.

Within the Header and Trailer records, the FROM RAO identifies the location that will be sending usage to AT&T. GTE will populate the FROM RAO field with the unique numeric value identifying the location that is sending the data to AT&T. GTE will populate the Send To/Bill To RAO fields with the appropriate AT&T RAO values. Also, Pack Header and Trailer will have the OCN appropriately populated.

The FROM RAO, OCN, and Remote Identifiers will be used by AT&T to

control invoice sequencing and each will have its own invoice controls. The FROM RAO will also be used to determine where the message returns file, containing any misdirected and unguidable usage, will be sent.

The file's Record Format (RECFM) will be Variable Block (VB) Size 2,476 and the Logical Record Length (LRECL) will be 2,472 bytes. Compaction requirements can be found in Subappendix B hereto.

AT&T has no special sort requirements for the packs sent by GTE.

9.3.9 Dataset Naming Convention

GTE will transmit the usage to AT&T using the following dataset naming conventions. The dataset name (DSN) will be partitioned into five nodes, separated by periods as follows:

NODE 1BB03PX*NN**
NODE 2.IBMUP
NODE 3 (To be determined during negotiations)
NODE 4.USAGE

NODE 5.G*NNNNV00** (Generational Dataset to be incremented by sender).
*The italicized "*N*" represents numeric fields determined during negotiations.

9.3.10 Control Reports

AT&T accepts input data provided by GTE in EMR format in accordance with the requirements and specifications detailed in this section of the attachment. In order to ensure the overall integrity of the usage being transmitted from GTE to AT&T, data transfer control reports will be required. These reports shall be provided by AT&T to GTE on a daily or otherwise negotiated basis and reflect the results of the processing for each pack transmitted by GTE.

9.3.11 Message Validation Reports

AT&T will provide the following three (3) daily (or otherwise negotiated) Message Validation reports to the designated GTE System Control Coordinator. These reports will be provided for all data received within GTE Local Resale Feed and will be transmitted Monday through Friday whether or not there have been any files transmitted.

9.3.11.1 Message Validation Pack Reject Report (A7287)

This report provides information on packs rejected by AT&T. It lists the header and trailer record of each rejected pack and indicates the error codes

and the associated error message which explains why the pack was rejected.

An example of the report and a list of Valid Error Codes and associated error messages are provided in Subappendix B hereto.

9.3.11.2 Message Validation Pack Accepted Report (A7288)

This report provides vital statistics and control totals by Record ID, Type of Service, Message Counts and Record Counts, for all valid, rejected and dropped messages. The information is provided in the following report formats and control levels:

1. RLEC Total Messages
2. RLEC Total Records
3. RAO Total Messages
4. RAO Total Records
5. Pack Total (Record Counts and Message Counts)

The first four report formats include percentages that indicate the relationship of the daily input volume by Record ID and Type of Record to the total input volume provided by an RAO and GTE.

An example of the report is provided in Subappendix C hereto.

9.3.11.3 Message Validation EMR Detail Error Report (A7289)

An EMR detailed error report is generated for each pack/ invoice that is received and processed by AT&T. The report lists, in vertical format, the complete 175 byte EMR record that has failed to pass the initial edit criteria. It prints this detailed information only for the first five EMR records that share a common error condition. The error condition is flagged on the report by one of two possible error codes preceding the field value. The error codes are:

(C) DENOTES CRITICAL ERRORS
(I) DENOTES INFORMATION ERRORS

The last two pages of the report for a given pack/invoice provide the following control totals:

Total Errors for each Field
Total Records Received
Total Records Dropped
Total Records Rejected to MIU

Pack Reject Rate
Total Default Count (represents the number of Files on all of the input records that had to be programmatically altered to meet the EMR standards and specifications.)

If the entire pack/invoice has been rejected because of a Critical Error Rate greater than 0.5%, the last page of the report will display such a statement enclosed in asterisks.

An example of the report is provided in Subappendix D hereto.

9.3.11.4 Control Reports - Distribution

Since GTE is not receiving control reports, dataset names will be established during detailed negotiations.

SECTION IV: AT&T PROCESSING REQUIREMENTS

1. General

This section contains requirements for AT&T processing of Recorded Usage Data that has been transmitted to AT&T for billing.

9.1 AT&T Rating Process

9.1.1 Message Rating

AT&T will rate any individual messages (as defined in Section II), that have not already been rated by GTE (information provider messages will be rated by GTE), prior to transmitting the usage to a billing environment within AT&T.

9.1.2 Application Of Taxes/Fees/Surcharges

AT&T will apply taxes, fees and surcharges as appropriate for the individual messages and/or customer accounts. The application of all taxes, fees and surcharges will be applied on all intraLATA local and toll usage received from GTE.

9.1.3 Duplicate Messages

AT&T has existing duplicate checks as part of their message processing or billing functions. AT&T will perform these checks on the rated/unrated messages sent pursuant to GTE duplicate message disposition procedures and reports will be identified by AT&T during negotiations.

9.1.4 Record Edits

9.1.4.1 AT&T Record Edits

AT&T will perform detailed record edits on the rated and unrated messages prior to transmitting them to the billing environment. Rated and unrated records that do not pass AT&T edits will be returned to GTE.

9.1.4.2 GTE Record Edits

If GTE has existing detailed record edits for rated and unrated messages, GTE is to perform these edits.

Rated and unrated records that do not pass AT&T edits will be returned to GTE. GTE will attempt to perform error correction on all records requiring such action as agreed upon through the detailed negotiations process.

9.1.5 AT&T To GTE Message Returns

At the discretion of AT&T, customer usage data sent to AT&T by GTE that cannot be guided to an AT&T billed account or that cannot be processed will be returned to GTE with the appropriate industry standard return codes.

9.1.6 Cancel/Correction Records

AT&T, upon receipt of cancel/correction records, will perform their current matching functionality to identify the original message to be canceled/corrected. (Processing will be dependent upon individual negotiations.)

SECTION V: TEST PLANS AND ACTIVITIES

1. General

This section defines GTE and AT&T activities which are required prior to implementation. The tests and activities described are necessary to ensure a smooth, accurate and well-programmed conversion. Specific test dates will be identified through the negotiations process.

9.1 **Interface Testing**

The Parties agree to usage interface testing between GTE and AT&T. The purpose of this test is to ensure that the usage described in Section II preceding can be sent by either Party and can be accepted and processed by the other Party. GTE will provide a test file to AT&T's designated Regional Processing Center (RPC) in the format that will be used for live day-to-day processing. The file will contain one (1) full day's production usage. The format of the file will conform to the requirements shown in Section III. AT&T will review the file and verify that it conforms to its data center requirements. AT&T will notify GTE in writing whether the format is acceptable. AT&T will also provide GTE with the agreed-upon control reports as part of this test.

AT&T will provide a test file to GTE's designated Regional Processing Center (RPC) in the format that will be used for live day-to-day processing. The file will contain one (1) full day's production usage. The format of the file will conform to the requirements shown in Section III. GTE will review the file and verify that it conforms to its data center requirements. GTE will notify AT&T in writing whether the format is acceptable. GTE will also provide AT&T with the agreed-upon control reports as part of this test.

9.2 **Operational Test**

The purpose of this test is to ensure that volumes of usage in consecutive sequence can be extracted, distributed, and processed by GTE and AT&T.

GTE is required to provide AT&T with GTE recorded, unrated usage (as defined in Section 2) for a minimum of five (5) consecutive days. AT&T will provide GTE with the message validation reports associated with test usage.

AT&T will rate and process the unrated intraLATA toll and local usage. AT&T will process this data to test bills. AT&T may request that the test usage contain specific usage volumes and characteristics to ensure a complete test. Specific usage volumes and characteristics will be discussed during detailed negotiations.

9.3 Test File

Test data should be transported via CONNECT: Direct whenever possible. In the event that courier service must be used to transport test media, the physical tape characteristics to be used are described in Subappendix A hereto.

SECTION VI: POST DEPLOYMENT ACTIVITIES

1. General

Requirements for ongoing maintenance of the usage feeds between AT&T and GTE are described in this section. Included are minimal requirements for day to day control of the regularly scheduled transfer of GTE unrated and rated usage data and procedures for introducing and verifying AT&T/GTE System Changes.

9.1 Control Maintenance And Review

9.1.1 Periodic Review

Control procedures for all usage transferred between GTE and AT&T will require periodic review. This review may be included as part of an annual audit of GTE by AT&T or as part of the normal production interface management function. Breakdowns which impact the flow of usage between GTE and AT&T must be identified and jointly resolved as they occur. The resolution may include changes to control procedures, as similar problems would be avoided in the future. Any changes to control procedures would need to be mutually agreed upon by AT&T and GTE.

9.1.2 Retention of Records

Data back-up will be retained for forty-five (45) days. GTE shall maintain a machine readable back-up copy of the message detail provided to AT&T for a minimum of forty-five (45) calendar days. AT&T will maintain the message detail received from GTE for a minimum period of forty-five (45) calendar days. Designated AT&T personnel will provide these records to GTE or its authorized agents upon written request. GTE will also provide any data back to AT&T upon their written request.

9.2 GTE Software Changes

When GTE plans to introduce any software changes which impact the format or content structure of the usage data feed to AT&T, designated GTE personnel will notify AT&T no less than one hundred twenty (120) calendar days before such changes are implemented.

GTE will communicate the projected changes to the appropriate groups in AT&T so that potential impacts on AT&T processing can be determined.

AT&T personnel will review the impact of the change on the entire control structure as described in Section 1.5, Post Conversion Test Plan, herein. AT&T will negotiate any perceived problems with GTE and will arrange to have the data tested utilizing the modified software.

If it is necessary for GTE to request changes in the schedule, content or format of usage data transmitted to AT&T, GTE will notify AT&T.

9.3 AT&T Requested Changes

If it is necessary for AT&T to request changes in the schedule, content, or format of the usage data transmitted from GTE, AT&T will notify GTE.

When the negotiated changes are to be implemented, AT&T and/or GTE will arrange for testing of the modified data as described in Section 1.5, Post Conversion Test Plan.

9.4 AT&T Software Changes

When AT&T plans to introduce any software changes which may impact the format or content structure of the usage data transmitted from GTE, AT&T will notify the designated GTE personnel, no less than one hundred twenty (120) calendar days before such changes are implemented.

The AT&T contact will communicate the projected changes to the appropriate groups in GTE so that potential impacts on GTE processing can be determined.

AT&T will negotiate any perceived problems with GTE and will arrange to have the data tested utilizing the modified software.

Altering the one hundred twenty (120) day window for introducing software changes can be negotiated by both companies, dependent upon the scope and impact of the change.

9.5 Post-Conversion Test Plan

The test plan described below is designed to encompass all types of changes to the usage data transferred by GTE to AT&T and the methods of transmission for that data.

9.5.1 GTE System Change Description

For a GTE system change, GTE shall provide AT&T with an overall description of the change, stating the objective and a brief explanation of the reasons for the change.

During the initial negotiations regarding the change, GTE shall provide a list of the specific records and/or systems impacted by the change to designated AT&T personnel.

Finally, GTE shall also provide AT&T a detailed description of the changes to be implemented. It shall include sufficient detail for designated AT&T personnel to analyze and estimate the effects of the changes and to design tests to verify the accuracy of the implementation.

9.5.2 Change Negotiations

GTE and AT&T will provide mutual written change notifications. AT&T shall be notified in writing of all proposed change negotiations initiated by GTE. In turn, AT&T will notify GTE of proposed change negotiations initiated by AT&T.

After formal notification of planned changes, whether originated by GTE or AT&T, designated AT&T personnel will schedule negotiation meetings as required with designated GTE personnel. The first meeting should produce the overall change description (if not previously furnished) and the list of records and/or systems affected.

In subsequent meetings, GTE shall provide the detailed description of changes to be implemented. After reviewing the described changes, designated AT&T personnel will negotiate a detailed test procedure with GTE.

9.5.3 Control Change Analysis

Based on the detailed description of the changes provided by GTE, and the review of the projected changes by AT&T, designated AT&T personnel will:

9.5.3.1 Determine the impact of the changes on the overall structure.

9.5.3.2 Determine whether any single change has a potential control impact (i.e., high error rate on individual records that might result in pack rejection).

9.5.3.3 Determine whether any controls might be adversely affected.

9.5.3.4 Arrange for appropriate control structure changes to meet any of the above conditions.

9.5.4 Verification Of Changes

Based on the detailed description of changes furnished by GTE, designated AT&T personnel will:

9.5.4.1 Determine the type of change(s) to be implemented.

9.5.4.2 Develop a comprehensive test plan.

9.5.4.3 Negotiate scheduling and transfer of modified data with GTE.

9.5.4.4 Negotiate testing of modified data with the appropriate AT&T rpc.

9.5.4.5 Negotiate processing of verified data through the AT&T billing system with the rpc.

9.5.4.6 Arrange for review and verification of testing with appropriate AT&T groups.

9.5.4.7 Arrange for review of modified controls, if applicable.

9.5.5 Introduction of Changes

When all the testing requirements have been met and the results reviewed and accepted, designated AT&T personnel will:

9.5.5.1 Negotiate an implementation schedule.

9.5.5.2 Verify the existence of a contingency plan with the appropriate AT&T personnel.

9.5.5.3 Arrange for the follow-up review of changes with appropriate AT&T personnel.

9.5.5.4 Arrange for appropriate changes in control program, if applicable.

9.5.5.5 Arrange for long-term functional review of impact of changes on the AT&T billing system, i.e., accuracy, timeliness, and completeness.

SECTION VII: SUBAPPENDICES

SUMMARY OF SUBAPPENDICES

Subappendix A

Physical Characteristics Of Data Tapes/
Cartridges

Subappendix B

Message Validation Pack Reject Report (A7287)

Subappendix C

Message Validation Pack Accepted Report (A7288)

Subappendix D

Message Validation EMR Detail Error Report (A7289)

Subappendix E

Special Features Star Services

SUBAPPENDIX A

PHYSICAL CHARACTERISTICS OF DATA TAPES/CARTRIDGES

Data transported to AT&T by GTE, or to GTE by AT&T, on tape or cartridge via a courier will have the following physical characteristics:

Tape:	9-track, 6250 (or 1600) BPI (Bytes per inch)
Cartridge:	38,000 BPI (Bytes per inch)
LRECL:	2,472 Bytes
Parity:	Odd
Character Set:	Extended Binary Coded Decimal Interchange Code (EBCDIC)
External labels:	Exchange Carrier Name, Dataset Name (DSN) and volume serial number
Internal labels:	IBM Industry OS labels will be used. They consist of a single volume label and two sets of header and trailer labels.
One file per sending with variable length records	104 bytes EMR compacted format plus location modules as applicable.

SUBAPPENDIX B

MESSAGE VALIDATION PACK REJECT REPORT (A7287) MM/DD/YY HH:MM:SS

RETEN CODE: 01R-00300

COMPANY XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX REMOTE ID 9999X FROM BSID 999

HEADER	RECORD ID	DATE CREATED	INVOICE NUMBER	BELL CO ID	BELL RAO	IX CARRIER	IND CO ID
	999999	99-99-99	99	99	999	999	9999

TRAILER	RECORD ID	DATE CREATED	INVOICE NUMBER	BELL CO ID	BELL RAO	IX CARRIER	IND CO ID	TOTAL REC. COUNT
	999999	99-99-99	99	99	999	999	9999	99,999

ERRORS ERROR CODE ERROR MESSAGE

EC99.9
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

SUBAPPENDIX B (CONT'D)
MESSAGE VALIDATION PACK REJECT REPORT (A7287)

ERROR CODE	ERROR MESSAGES
EC01.2	First record after trailer is not a Pack Header.
EC03.2	From RAO is not numeric.
EC04.3	Invoice number on header invalid.
EC04.5	Company ID not numeric.
EC04.6	Independent company ID is not numeric.
EC04.7	Header Record ID is invalid.
EC04.8	Trailer Record ID is invalid.
EC04.9	Trailer Record count invalid.
EC05.0	Duplicate pack.
EC05.1	Old Pack.
EC05.2	RAO not found on table.
EC07.3	Error rate greater than invoice file threshold for RAO invoice number.
EC12.0	Remote ID in Dataset is not valid.
EC20.0	No detail records in pack.
EC13.0	Invalid status on Pack Header.
EC27.0	Pack exceeds limit of 9,999 detail records.
EC40.9	Pack Header record is missing.
EC41.0	Trailer record is missing.
EC42.0	Trailer message volume is not equal to accumulated message volume.
EC44.0	Header/Trailer date is invalid.
EC45.0	From RAO on Trailer Record is not equal to the from RAO on Header Record.
EC48.0	Invoice number on Trailer Record is not equal to the invoice number on the Header Record.

SUBAPPENDIX C - MESSAGE VALIDATION PACK ACCEPTED REPORT (A7288)

MM/DD/YY-------HH:MM:SS
RETEN CODE: 01R-00300

COMPANY XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX FROM RAO INVOICE NO. DATE CREATED
TOTAL RECORDS RECEIVED
----------999----------99----------MM/DD/YY----------
--ZZ.ZZ9

----------RECORD
COUNTS----------MESSAGE COUNTS ----------
RECORD ID TYPE OF RECORDVALID-----REJECTED----DROPPED-----TOTAL-------VALID-----REJECTED---
-DROPPED---TOTAL

010102					OUTWATS (NON-SMDR)	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9	
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9					
010103					OUTWATS (SMDR)	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9	
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9					
010104					800 SERVICE	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9	
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9					
			TOTAL WATS/800						
010101					MTS	ZZ.ZZ9	ZZ.ZZ9		
ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9				
010106					NON-DIAL CONFER BRIDGE	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9	
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9					
010107					NON-DIAL CONFER LEG RECORD	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9	
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9					
010108					DIAL CONFERENCE BRIDGE	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9	
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9					
010111					ALLIANCE (AGTC)	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9	
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9					

010116					DIAL-IT SERVICE	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9				
010132					DIRECTORY ASSISTANCE	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9				
010180					MARINE/AIRCRAFT	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9				
010181					RADIO LINK	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9				
010182					MARINE NON-DIAL CONFER BRIDGE	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9				
010183					MARINE NON-DIAL CONFER LEG REC.	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9				
0101XX					OTHER MTS RECORDS	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9				
TOTAL NORTH AMERICAN MTS								

010201					IOTC/IDDD MTS	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9				
0102XX					IOTC/IDDD OTHERS	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9				
010301					IOTC BFC MTS	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9				
0103XX					IOTC BFC OTHERS	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9				
010401					IOC MTS	ZZ.ZZ9	ZZ.ZZ9	
ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9			
0104XX					IOC OTHERS	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9				
010501					IOC MTS	ZZ.ZZ9	ZZ.ZZ9	
ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9			
0105XX					IOC OTHERS	ZZ.ZZ9	ZZ.ZZ9	ZZ.ZZ9
ZZ.ZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9	ZZ.ZZZ9				
TOTAL OVERSEAS MTS								

015002 OUTWATS LINE SUMMARY ZZ.ZZ9 ZZ.ZZ9 ZZ.ZZ9
ZZ.ZZ9 ZZ.ZZZ9 ZZ.ZZZ9 ZZ.ZZZ9 ZZ.ZZZ9
015004 800 LINE SUMMARY ZZ.ZZ9 ZZ.ZZ9 ZZ.ZZ9
ZZ.ZZ9 ZZ.ZZZ9 ZZ.ZZZ9 ZZ.ZZZ9 ZZ.ZZZ9
015032 DIR. ASSISTANCE LINE SUMMARY ZZ.ZZ9 ZZ.ZZ9 ZZ.ZZ9
ZZ.ZZ9 ZZ.ZZZ9 ZZ.ZZZ9 ZZ.ZZZ9 ZZ.ZZZ9
TOTAL OVERSEAS MTS

03XXXX CREDIT REQUESTS ZZ.ZZ9 ZZ.ZZ9 ZZ.ZZ9
ZZ.ZZ9 ZZ.ZZZ9 ZZ.ZZZ9 ZZ.ZZZ9 ZZ.ZZZ9
51/52 CANCEL REQUESTS ZZ.ZZ9 ZZ.ZZ9 ZZ.ZZ9
ZZ.ZZ9 ZZ.ZZZ9 ZZ.ZZZ9 ZZ.ZZZ9 ZZ.ZZZ9
71/72 CORRECTION REQUESTS ZZ.ZZ9 ZZ.ZZ9 ZZ.ZZ9
ZZ.ZZ9 ZZ.ZZZ9 ZZ.ZZZ9 ZZ.ZZZ9 ZZ.ZZZ9
INVALID RECORD IDENTIFICATION ZZ.ZZ9 ZZ.ZZZ9 ZZ.ZZZ9
ZZ.ZZZ9
PACK TOTALS ZZ.ZZ9 ZZ.ZZ9ZZ.ZZ9 ZZ.ZZ9 ZZ.ZZZ9 ZZ.ZZZ9 ZZ.ZZZ9

SUBAPPENDIX D

PAPER COPY OF A REPORT TO BE INCLUDED WITH DISTRIBUTION

SUBAPPENDIX E
SPECIAL FEATURES STAR SERVICES

The following are STAR Services supported by these Local Resale requirements to date. When identified, additional services can be negotiated to be included in this Resale offer.

1) Busy Redial/Last Number Redial ..... This feature allows a customer to redial a number when a Busy signal is encountered.

2) Call Return/Missed Call Dialing..... This feature allows a customer to automatically return the most recent incoming call, even if it is not answered.

3) Call Trace ..... This feature allows the tracing of nuisance calls.

4) Automatic Redial..... This feature allows a customer to automatically redial the last number dialed.

To provide for the transfer and billing of these features the following requirements apply:

For all "per use" STAR Features the 'Miscellaneous Charge Line Summary Non-Detail Charge' 425001 record should be used and be populated as follows:

CONNECT TIME	POSITIONS 55 - 60	MUST BE POPULATED
MISCELLANEOUS TEXT CODE	POSITIONS 168 - 172	1) BUSY REDIAL/LAST NUMBER REDIAL POPULATE WITH '00001'
MISCELLANEOUS *TEXT CODE	POSITIONS 168 - 172	2) CALL RETURN/LAST NUMBER REDIAL POPULATE WITH '00002'
MISCELLANEOUS TEXT CODE	POSITIONS 168 - 172	3) CALL TRACE POPULATE WITH '00003'
MISCELLANEOUS TEXT CODE	POSITIONS 168-172	4) 3-WAY CALLING POPULATE WITH '00004'
MISCELLANEOUS TEXT CODE	POSITIONS 168-172	5) AUTOMATIC REDIAL POPULATE WITH '00005'

NOTE: For fields not specifically defined, the standard EMR format for a 425001 record should be used.

APPENDIX II

TO

ATTACHMENT 7

LOCAL
ACCOUNT MAINTENANCE

LOCAL ACCOUNT MAINTENANCE REQUIREMENTS

1. GENERAL

In a Resale environment the goal is to enable AT&T to create an account maintenance structure congruent to GTE. In the current LEC environment, the LEC has access to all of the customer account data, network switch activity and current status, and new and existing customer account data. In order to obtain the data necessary to satisfy AT&T Local Account Maintenance requirements, GTE must support three key Local Account Maintenance requirements.

9.1 REQUIREMENT #1 - LSP Change Notification Feed

Situation: A Customer initiates a change from AT&T to another LSP by contacting the New LSP. (LSP Change Notification Feed)

GTE shall issue and provide to AT&T at the end of each business day a service activation report in an electronic format reflecting change activity occurring on the previous day.

Create an end-of-day LSP Change Notification Feed:

Purpose: To convey to AT&T that a customer has left the LSP and moved to a new LSP. The new LSP could either be another Reseller, GTE or Facilities based provider.

Data Delivery Schedule: Five days a week, volumes fluctuating with change activity.

Data Transfer Requirements: Batch feed, sent end-of-day, via Connect/Direct NDM sent within 24 hours of the switch being provisioned.

AT&T Data Center Receiving NODE: NDMATTA1

Dataset Name: TMCD.LOCAL.LSPOUT.(+1) = Generation dataset

9.1 REQUIREMENT #2 - LSP SERVICE ORDER PIC ONLY CHANGE PROCESS

Situation: Customer has AT&T for Local Service and contacts AT&T requesting a change of PIC only from one LD Carrier to another.

AT&T Local Process: LD PIC Changes will be accepted by AT&T. AT&T will enter the PIC Change into the service order system, and will generate an LD PIC Change Order which will be sent to GTE for provisioning.

SWP Requirement: Accept a PIC Only Change for an existing AT&T customer via the current Service Order feed. Provision the network, and convey the confirmation of the PIC Only order via the current Work Order Completion feed.

9.2 REQUIREMENT #3 - IXC PIC CHANGE PROCESS

Situation: Customer has AT&T and contacts a New IXC to change PIC to new LD Carrier.

Upon receipt of an IXC-initiated '01' PIC order on a Resold line:

- GTE will reject the '01' order. Create the appropriate Industry Standard '3148', with the Local Service Provider ID of the Reseller and send the reject to the originating IXC. The reject must be returned within one business day.

  NOTE: If GTE refuses to provide the Local Service Provider ID the record can be rejected with the Industry Standard transaction code '3147'.

9.3 PIC Restricted

In order for GTE to appropriately reject an IXC initiated "01" PIC Order on an AT&T WTN, GTE must implement a specific up-front edit. Do not apply a 'PIC Freeze' or a 'PIC Restriction'.

If the submitted WTN is a resold line assigned to AT&T (LSP ID 7421), reject the "01" PIC order with TCSI 3148. Populate LSP ID 7421 in the

CARE record and return to the submitting IXC. If GTE were to reject the order for the reason of "restricted PIC" rather than "resold line," the submitting IXC would not know the line was resold. This would further delay the IXC's attempt to provision the line with the correct LSP.

The above edit process has nothing to do with "PIC Restriction." It is not AT&T's intent to provide GTE with end user PIC Restriction information since an end user's request for PIC restriction will be resident only on AT&T data bases. IXC initiated PIC orders received by AT&T will be edited for restricted PIC and returned to the submitting IXC with the appropriate reject TCSI if the WTN is found to be restricted.

GLOSSARY OF TERMS

Acronym	Definition
ALEC	Alternate Local Exchange Carrier
CARE	Customer Account Record Exchange
CTI	Customer Type Indicator
Incumbent LEC	Incumbent Local Exchange Company
ISI	Industry Support Interface
IXC	Interexchange Carrier
LAM	Local Account Maintenance
LD	Long Distance
LEC	Local Exchange Company
LERG	Local Exchange Routing Guide
LSP	Local Service Provider
NDM	Network Data Mover
OCN	Operating Company Number
OUTPLOC	LSP CHANGE NOTIFICATION
PIC	Primary Interexchange Carrier
PLOC	Primary Local Operating Carrier
S/O	Service Order
SWP	Switch Provider
WTN	Working Telephone Number

ATTACHMENT 8

INTERIM NUMBER PORTABILITY

TABLE OF CONTENTS

Section	Page
1. GTE PROVISIONING OF INTERIM NUMBER PORTABILITY	1
2. INTERIM NUMBER PORTABILITY (INP) METHODS	1
3. REQUIREMENTS FOR INP	3

INTERIM NUMBER PORTABILITY

1. GTE Provisioning of Interim Number Portability

GTE shall provide, to the extent technically feasible, interim number portability (INP) in accordance with requirements of the Act and FCC 96-286. INP will be provided with minimum impairment of functionality, quality, reliability and convenience to subscribers of AT&T services. INP by Remote Call Forwarding shall be made available for ordering by AT&T upon approval of this Agreement.

1.1 In addition, except for the loss of features that may be occasioned by the use of Remote Call Forwarding or other number portability technologies, the AT&T Customer may retain its local telephone number with no loss of features and functionalities; and the post-dial delay (time elapsed between the last digit dialed and the first network response), call completion rate and transmission quality experienced by an AT&T Customer shall be equal in quality to that experienced by a similarly-situated GTE Customer with Remote Call Forwarding or other number portability technology, as the case may be.

2. Interim Number Portability (INP) Methods

2.1 INP Methods

INP shall be provided by Remote Call Forwarding (RCF), Flexible Direct Inward Dialing (Flex DID), Route-Indexing (RI) or Local Exchange Routing Guide (LERG). AT&T shall specify on a per telephone number basis which method is to be employed and GTE shall provide such method to the extent technically feasible. If Flex-DID or Route Indexing is ordered but not immediately available, AT&T may choose another available INP method until the requested service is available, provided, however, that GTE shall provide to AT&T the requested service within six (6) months of the approval of this Agreement. AT&T and GTE agree that AT&T may identify additional or revised methods of interim number portability. All such additional or modified methods of interim number portability shall be subject to the Bona Fide Request Procedures outlined in Attachment 12.

2.2 Remote Call Forwarding

Remote Call Forwarding (RCF) is an existing switch-based GTE service that may be used to provide subscribers with limited service-provider LNP by redirecting calls within the telephone network. When RCF is used to provide LNP, calls to the ported number will first route to the GTE switch to which the ported number was previously assigned. The GTE switch will then forward the call to a number with an NXX associated with the AT&T

operated switch to which the number is ported. AT&T shall specify the number of paths required to handle multiple simultaneous calls to the same ported telephone number.

2.3 **Flex Direct Inward Dialing**

When a call to the ported number reaches the GTE switch, Flex-DID will route the dialed number directly to AT&T, over end-office to end-office, one-way DID trunking with multi-frequency (MF) signaling for call completion.

2.3.1 Flex-DID does not allow for overflow routing. MF signaling does not allow for passing the Calling Party Line Identification (CLID) to AT&T.

2.3.2 [Intentionally Deleted]

2.3.3 GTE shall disclose to AT&T any technical or capacity limitations that would prevent use of a requested INP implementation in a particular switching office. GTE and AT&T shall cooperate in the process of provisioning INP to minimize customer out-of-service time.

2.4 Route Indexing

Route Indexing (RI) may take one of two forms: Directory Number-Route Indexing - End Office (DNRI-EO) or Directory Number Route Indexing - Portability Hub (DNRI-PH).

2.4.1 When a call to the ported number reaches the GTE switch, DNRI-EO will route the dialed number directly to AT&T over end-office to end-office interconnection trunking, for call completion.

2.4.2 When a call to the ported number reaches the GTE switch, DNRI-PH will prefix the dialed number with a pseudo NPA code. The pseudo code will cause the call to be routed to AT&T at the GTE switch's serving tandem office. The pseudo code is removed by the tandem office and the dialed number is routed directly to AT&T, over interconnection trunking for call completion.

2.4.3 AT&T shall designate only one of either DNRI-EO or DNRI-PH to be employed at a GTE end office switch. However, if AT&T designates DNRI-EO be employed at a GTE end office switch at whose serving tandem office AT&T has ordered DNRI-PH, any overflow calls to ported numbers shall be sent to the serving tandem via the DNRI-PH method.

2.4.4 For the RI methods of INP, the interconnection trunking arrangements shall be made according to the Interconnection Agreements between AT&T and GTE and shall be in place prior to the ordering of RI INP for individual ported telephone numbers.

2.5 LERG Reassignment

Where either Party has activated for a customer either (1) an entire NXX (i.e., a block of 10,000 seven-digit telephone numbers beginning with the same three-digits) or (2) at least 80% of NXX with the remaining numbers in that NXX either reserved for future use or otherwise unused, then if such customer chooses to receive service from the other Party, the Party that initially activated the NXX shall cooperate with the other Party to have the entire NXX reassigned (or subsequently reassigned, in the case of subsequent carrier change) in the LERG (and associated industry databases, routing tables, etc.) to an end office operated by the Party to whom such customer's service is being transferred.

3. Requirements for INP

3.1 White and Yellow Page Listings

GTE shall provide and maintain for AT&T one (1) white page and one (1) yellow page (if applicable) listing for each AT&T subscriber that has ported its number from GTE, consistent with that specified for Provisioning in this Agreement.

3.2 The listing and handling of listed and nonlisted telephone numbers will be at least at parity with that provided by GTE to its own customers.

3.3 Cutover Process

GTE shall cooperate in the process of porting numbers from one carrier to the other so as to limit service outage for the ported subscriber.

3.4 Testing

GTE shall cooperate in testing ported telephone numbers to assure call completion.

3.5 Non-Geographic Numbers

GTE shall not be required to provide number portability for non-geographic services (e.g., 500 and 900 NPAs and 976 NXX number services) under this Agreement.

3.5.1 Compensation arrangements for terminating local traffic between GTE and AT&T shall apply to ported calls.

3.5.2 GTE shall pay to AT&T a portion of the terminating access revenue for calls transported from the interexchange carrier to AT&T via a GTE porting office.

3.6 Treatment of TLN Calling Cards

3.6.1 Where technically feasible and where AT&T is purchasing LIDB services from GTE, GTE shall allow AT&T to order provisioning of TLN calling cards and Billed Number Screening (BNS), in its LIDB, for numbers ported on an interim basis, as specified by AT&T. GTE shall continue to allow AT&T access to its LIDB. Other LIDB provisions are specified in this Agreement.

3.7 AT&T shall have the right to use the existing GTE 911 infrastructure for all 911 capabilities. With respect to 911 service associated with ported numbers under INP, AT&T shall provide to GTE in GTE's capacity as administrator of the PSAP's ALI (Automatic Location Identification) database, current subscriber address records keyed to AT&T's shadow number and including GTE's ported number and GTE's company Identification number as established by the National Emergency Number Association (NENA). GTE will provide the AT&T records to the ALI database as promptly as it provides its own records. GTE will work with AT&T to establish a process to verify the accuracy of the information in the PSAP's database.

ATTACHMENT 9

NETWORK SECURITY

TABLE OF CONTENTS

NETWORK SECURITY 1

1. Protection of Service and Property 1
2. Revenue Protection 2
3. Law Enforcement Interface 3
4. Impairment of Service 4

NETWORK SECURITY

1. **Protection of Service and Property**

GTE shall exercise the same degree of care to prevent harm or damage to AT&T, its employees, agents or customers, or their property as it employs to protect its own personnel, customers and property, etc. GTE, its employees, agents, or representatives agree to take reasonable and prudent steps to protect AT&T property and services, including, but not limited to:

1.1 Restricting access to AT&T's collocation space as set forth in applicable GTE state and federal collocation tariffs. Additionally, GTE agrees that the following terms and conditions shall apply to access to AT&T's collocation space:

1.1.1 GTE shall implement adequate measures to control access to collocation cages.

1.1.2 Collocation space shall comply with all applicable fire and safety codes.

1.1.3 Doors with removable hinges or inadequate strength shall be monitored by an alarm connected to a manned site. All other alarms monitoring AT&T collocation space provided by GTE shall also be connected to a manned site. AT&T may, at its option, provide its own intrusion alarms for its collocated space.

1.1.4 GTE shall control janitorial access to collocation cages, and restrict such access to approved and certified employees, agents or contractors.

1.1.5 GTE shall establish procedures for access to collocation cages by GTE and non-GTE emergency personnel, and shall not allow access by security guards unless such access comports with this section and is otherwise allowed under applicable GTE state and federal collocation tariffs.

1.1.6 GTE shall retain a master key to AT&T's collocation space for use only in event of emergency as detailed in applicable GTE state and federal tariffs. At AT&T's option, the Parties shall review key control procedures no more frequently than twice in any twelve month period. At any time, AT&T may elect to change keys if it suspects key control has been lost, provided, however, that GTE will be provided with a master key in accord with this section.

1.1.7 Not more frequently than twice a year, AT&T may audit the security and access procedures and equipment applicable to its collocated space and the central office housing the collocation space. Access by personnel

necessary to conduct such an audit shall be limited as set forth in applicable GTE state and federal collocation tariffs. Should AT&T identify deficiencies in security and access procedures and equipment, as a result of such audits or otherwise, the cost, terms and conditions of the correction of such deficiencies shall be negotiated in good faith between the Parties.

1.2 In order to protect customer proprietary information, ensure both ongoing operational and update integrity of databases, and control access to the ability to disconnect end users on authorized ports, in cases in which there are shared systems access to GTE systems, GTE will provide access controls to its system based upon GTE's internal security standards, which standards shall include, at minimum, traditional log in and password procedures. AT&T shall be responsible for AT&T control installation.

2. **Revenue Protection**

2.1 The Parties shall work cooperatively with each other to utilize present and future fraud prevention or revenue protection features, including prevention, detection, or control functionality embedded within the network. These features may include screening codes, call blocking of international, 800, 900/976, and 700 numbers and the capability to require end-user entry of an authorization code for dial tone on a per line basis, in accordance with applicable laws, regulations and tariffs. GTE will provide call blocking of 700 and 800/888 numbers when technically feasible and when made available to GTE end users, in accordance with applicable laws, regulations and tariffs.

2.2 If AT&T has uncollectible or unbillable revenue resulting from, but not confined to, provisioning, maintenance, or signal network routing errors which are the responsibility of GTE, GTE shall issue AT&T a credit for the monthly recurring charge or other charges for the underlying Local Service or Network Element on a pro-rata basis for the period of time during which the error occurred.

2.3 If AT&T has uncollectible or unbillable revenue resulting from the accidental or malicious alteration of software underlying Network Elements or their subtending operational support systems by unauthorized third parties for which GTE has administrative control of access to said Network Element or operational support system software, GTE shall issue AT&T a credit for the monthly recurring charge or other charges for the underlying Local Service Network or Network Element on a pro-rata basis for the period of time during which the alteration occurred.

2.4 If AT&T has uncollectible or unbillable revenue resulting from the unauthorized physical attachment to loop facilities (under GTE's

responsibility or control) from the Main Distribution Frame up to and including the Network Interface Device, including clip on fraud, GTE shall issue AT&T a credit for the monthly recurring charge or other charges for the underlying Local Service or Network Element on a pro-rata basis for the period of time during which the unauthorized attachment occurred.

2.5 GTE shall provide quick/soft dial tone to allow only the completion of calls to termination points required by law and to establish service.

3. **Law Enforcement Interface**

3.1 Only if available in connection with GTE's operation of its own business, GTE shall provide seven day a week/ twenty-four hour a day installation and information retrieval pertaining to emergency traps, assistance involving emergency traces and emergency information retrieval on customer invoked CLASS services, including, without limitation, call traces requested by AT&T.

3.2 GTE agrees to work jointly with AT&T in security matters to support law enforcement agency requirements for taps, traces, court orders, etc. Charges for providing such services for AT&T Customers will be billed to AT&T.

3.3 GTE will, in nonemergency situations, inform the requesting law enforcement agencies that the end-user to be wire tapped, traced, etc. is an AT&T Customer and shall refer them to AT&T.

4. **Impairment of Service**

4.1 The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services, cause damage to their plant, violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities or create hazards to the employees of either Party or to the public (each hereinafter referred to as an "Impairment of Service").

4.2 If either Party causes an Impairment in Service, the Party whose network or service is being impaired (the "Impaired Party") shall promptly notify the Party causing the Impairment of Service (the "Impairing Party") of the nature and location of the problem and that, unless promptly rectified, a temporary

discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, then the Impaired Party may at its option temporarily discontinue the use of the affected circuit, facility or equipment.

ATTACHMENT 10

ACRONYMS

ACRONYM	DEFINITION
AAA	American Arbitration Association
AIN	Advanced Intelligent Network
ALEC	Alternative Local Exchange Carrier
ALI/DMS	Automatic Location Identification/Data Management Systems
AMA	Automated Message Accounting
ANSI	American National Standards Institute
ARPM	Average Revenue Per Message
ATIS	Alliance for Telecom Industry Solutions
ATM	Asynchronous Transfer Mode
BICI	Broadband Inter-Carrier Interface
BITS	Building Integrated Timing Supply
BLV	Busy Line Verification
BRCS	Business and Residential Customer Service
C	Network Element Combination
C-DTTA	Combo of Dedicated Transport & Tandem
C-LPLS	Combo of Loop & Local Switching
C-LSCTSSDBTS	*
CABS	Carrier Access Billing Systems
CAMA ANI	Centralized Automatic Message Accounting - Automatic Number Identification
CAP	Competitive Access Provider
CARE	Customer Account Record Exchange
CCITT	Consultative Committee on International Telegraph & Telephone
CCS	Communications Channel Signaling
CCSNIS	Common Channel Signaling Network Interface Specification
CIC	Carrier Identification Code
CLASS	Custom Local Area Signaling Service
CLC	Carrier Liasion Committee
CLEC	Competitive Local Exchange Carrier
CLLI	Common Language Location Identifier

*Combo of: Local Switching, Common Transport, Signaling, Databases & Tandem Switching

CMIP	Coded Mark Inversion Protocol
CO	Central Office
CPE	Customer Premises Equipment
CRDD	Customer Requested Due Dates
CT	Common Transport
CTI	Customer Type Indicator
CY	Current Year
DA	Directory Assistance
DACS	Digital Access Crossconnect Systems
DB	Database
DB	Service Central Points/Databases
DCC	Data Communications Channel
DCS	Digital Cross-Connect System
DID	Direct Inward Dialing
DLC	Digital Loop Carrier
DLCI	Data Link Connection Identifier
DMOQs	Direct Measures of Quality
DN	Directory Numbers
DN-RI	Directory Number - Route Index
DS-1	Digital Signal Level One
DS-3	Digital Signal Level Three
DS0	Digital Signal Level Zero
DSN	Data Set Name
DSX	Digital Cross Connect
DT	Dedicated Transport
DTMF	Dual-Tone Multi Frequency
E	Network Element
E&M	Ear & Mouth Signaling
E-LP	Element Loop
EAMF	Equal Access Multi-Frequency
EBCDIC	Extended Binary-Coded Decimal Interexchange Code
EBI	Electronic Bonding Interface
EFT	Electronic Fund Transfer
EI	Electronic Interface
EI	Emergency Interrupt
EMR	Exchange Message Record
EO	End Office
ESF	Extended Super Frame
ESL	Essential Service Line
ETTR	Estimated Time to Repair
FDI	Feeder Distribution Interface
FN	Fiber Node
FOC	Firm Order Confirmation

FRF	Frame Relay Forum
FUNI	Framebased User to Network Interface
GTT	Global Title Translation
HDT	Host Digital Terminal
HFC	Hybrid Fiber Coax
HFC-HDT	Hybrid Fiber Coax - Host Digital Terminal
ID	Remote Identifiers
IEC	Interexchange Carrier
IECs	Interexchange Carriers
IEEE	Institute of Electrical and Electronic Engineers
IISP	Interim Interswitch Signaling Protocol
ILEC	Incumbent Local Exchange Carrier
INA	Integrated Network Access
Incumbent LEC	Incumbent Local Exchange Company
INP	Interim Number Portability
ISDN	Integrated Services Digital Network
ISDNUP	Integrated Services Digital Network User Part
ISI	Industry Support Interface
ISNI	Intermediate Signal Network Identifier
ISO	International Standardization Organization
ISUP	Integrated Services User Part
ITU	International Telecommunications Union
IVMS	Interswitch Voice Messaging Service
IXC	Interexchange Carrier
LAM	Local Account Maintenance
LARG	LIDB Access Routing Guide
LASS	Local Area Signaling Services
LATA	Local Access Transport Area
LC	Loop Concentrator/Multiplexor
LCC	Line Class Code
LD	Loop Distribution
LEC	Local Exchange Carrier
LEC DA	LEC Directory Assistance
LEC SCE	LEC Service Creation Environment
LEC SCP	LEC Service Control Point
LEC SMS	LEC Service Management System
LEC SSP	LEC Service Switching Point
LERG	Local Exchange Routing Guide
LF	Loop Feeder
LGX	Lightguide Cross-Connect
LIDB	Line Information Data Base
LMI	Local Management Interface
LNP	Local Number Portability

LP	Loop
LRECL	Logical Record Length
LRN	Local Routing Number
LS	Local Switching
LSO	Local Serving Office
LSP	Local Service Provider
LSSGR	LATA Switching Systems Generic Requirements
MDF	Main Distribution Frame
MDU	Multiple Dwelling Unit
MDU/BCL	Multiple Dwelling Unit/Business Customer Location
MF	Multi-Frequency
MIB	Management Information Base
MLT	Mechanized Loop Tests
MOP	Methods of Procedure
MOS	Modified Operator Services
MR	Modification Request
MRVT	MTP Routing Verification Test
MSAG	Master Street & Address Guide
MTP	Message Transfer Port
NDM	Network Data Mover
NEBS	Network Equipment Building System
NI	Network Interface Device
NID	Network Interface Device
NIU	Network Interface Unit
NMS	Network Management System
NNI	Network to Network Interface
NVT	Network Validation Test
OAM	Operation and Maintenance
OAM&P	Operations Administration Maintenance & Provisioning
OBF	Ordering & Billing Forum
OC	Optical Carrier
OCN	Operating Company Number
ODS	Optical Distribution
OLI	Originating Line Indicator
OMAP	Operations, Maintenance & Administration Part
ORT	Operational Readiness Test
OS	Operator Services
OSPS	Operator Services Position System
OSS	Operations Support Systems
OSSGR	Operator Services Systems Generic Requirements
OUTPLOC	LSP CHANGE NOTIFICATION
PBX	Private Branch Exchange
PDH	Plesiochronous Digital Hierarchy

PEC	Primary Exchange Carrier
PIC	Primary Interexchange Carrier
PLOC	Primary Local Operating Carrier
PNP	Permanent Number Portability
POI	Point of Interface
POI	Points of Interconnection
POT	Point of Termination
POTS	Plain Old Telephone Service
PRI	Primary Rate Interface
PSAP	Public Safety Answering Point
PSC	Public Service Commission
RAO	Regional Accounting Office
RCF	Remote Call Forwarding
RECFM	Record Format
RI	Route Index
RI-PH	Route Index - Portability Hub
ROW	Right of Way
RPC	Regional Processing Center
RSM	Remote Switch Module
RT	Remote Terminal
SAG	Street Address Guide
SCCP	Signaling Connection Control Point
SCP	Service Control Points
SDH	Synchronous Digital Hierarchy
SECAB	Small Exchange Carrier Access Billing
SL	Signaling Link Transport
SMDI-E	Standard Message Desk Interface - Enhanced
SMS	Service Management System
SNMP	Simple Network Management Protocol
S/O	Service Order
SONET	Synchronous Optical Network
SPOC	Single Point of Contact
SPOI	Signaling Point of Interconnection
SRVT	SCCP Routing Verification Test
SS	SS7 Message Transfer & Connection Control
SS7	Signaling System 7
SSP	Switching Services Port
STP	Signaling Transfer Point
STS	Synchronous Transport Signal
SWF-DSI	Switched Functional DS1 Service Capability
SWP	Switch Provider
T&M	Time & Material
TCAP	Transaction Capabilities Application Port

TDEV	Time Deviation
TDI	Tie Down Information
TIA/EIA	Telecommunications Industries Association/Electronic Industries Association
TR	Technical Requirements
TS	Tandem Switching
TSG	Trunk Sub-Group
TSGR	Transport System Generic Requirements
TSLRIC	Total Service Long Run Incremental Cost
TSP	Telecommunications Services Priority
UNI	User to Network Interface
VB	Variable Block
VCI	Virtual Channel Identifier
VF	Voice Frequency
WDM	Wavelength Division Multiplexing
WTN	Working Telephone Number

ATTACHMENT 11

DEFINITIONS

"**AAA**" means the American Arbitration Association.

"**Act**" means the Telecommunications Act of 1996.

"**Advanced Intelligent Network (AIN)**" is a network functionality that permits specific conditions to be programmed into a switch which, when met, directs the switch to suspend call processing and to receive special instructions for further call handling instructions in order to enable carriers to offer advanced features and services.

"**Affiliate**" means, with respect to any Party, a corporation or other entity directly or indirectly controlled by, controlling or under common control with such Party. "Control" means the power to direct the management and policies of the entity whether through the ownership of voting securities by agreement, or otherwise.

"**Agreement**" has the meaning set forth in the preamble.

"**AIN Services**" has the meaning set forth in Section 27.1 of the Agreement.

"**AMA**" means the Automated Message Accounting structure inherent in switch technology that initially records telecommunication message information. AMA format is contained in the Automated Message Accounting document, published by Bellcore as GR-1100-CORE which defines the industry standard for message recording.

"**Applicable Law**" shall mean all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits and approvals of any Governmental Authority, including without limitation those relating to the environment, health and safety, which apply or relate to Work Locations or the subject matter of this Agreement.

"**Arbitrator**" has the meaning set forth in Section 6.1 of Attachment 1 of the Agreement.

"**As Defined in the Act" or "As Described in the Act**" means as specifically defined or as described, respectively, in the Act as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

"**AT&T**" has the meaning set forth in the Preface.

"AT&T Customer" means any business or residential customer for AT&T **Telecommunications** Service.

"Attachment" is any placement of one Party's equipment or facilities in or on another Party's Poles, Ducts, Conduits, or Rights of Way.

"Attachment Request" is a request for attachment made pursuant to Section 3.4 of Attachment 3 of the Agreement.

"Automatic Location Identification/Data Management System (ALI/DMS)" means the emergency services (E911/911) database containing customer location information (including name, address, telephone number, and sometimes special information from the local service provider) used to determine to which Public Safety Answering Point ("PSAP") to route the call.

"Automatic Route Selection (ARS)" is a service feature that provides for automatic selection of the least expensive or most appropriate transmission facility for each call based on criteria programmed into the system.

"Bill" means bill submitted by one Party to the other Party for Charges.

"Business Day" has the meaning set forth in Section 23.8 of the Agreement.

"BLV/BLI (Busy Line Verify/Busy Line Interrupt) Traffic" or "BLV/BLI Call" means an operator call in which the end user inquires as to the busy status of, or requests an interruption of, a call on an Exchange Service.

"CABS" means the Carrier Access Billing System which is contained in a document prepared under the direction of the Billing Committee of the OBF. The Carrier Access Billing System document is published by Bellcore in Volumes 1, 1A, 2, 3, 3A, 4 and 5 as Special Reports SR-OPT-001868, SR-OPT-001869, SR-OPT-001871, SR-OPT-001872, SR-OPT-001873, SR-OPT-001874, and SR-OPT-001875, respectively, and contains the recommended guidelines for the billing of access and other connectivity services.

"Central Office Switch" means a switch used to provide Telecommunications Services including (i) "End Office Switches" which are Class 5 switches from which end user Exchange Services are directly connected and offered, and (ii) "Tandem Office Switches" which are Class 4 switches which are used to connect and switch trunk circuits between and among central office switches. Central office switches may be employed as combination end office/tandem office switches (combination Class 5/Class 4).

"**CENTRANET**" means a Telecommunications Service that uses central office switching equipment for call routing to handle direct dialing of calls, and to provide many private branch exchange-like features.

"**Charge**" means an amount charged by one Party to the other Party for services rendered or products purchased hereunder.

"**Claim**" has the meaning set forth in Section 10.4 of the Agreement.

"**CLASS (Custom Local Area Signaling Service) and LASS (Local Area Signaling Service)**" means a grouping of optional enhancements to basic local exchange service that offers special call handling features to residential and single-line business customers (e.g., call waiting, call forwarding and automatic redial).

"**CLEC**" means competitive local exchange carrier.

"**CLLI codes**" means Common Language Location Identifier Codes.

"**Collocation**" has the meaning set forth in Section 2.1 of Attachment 3 of the Agreement.

"**Combinations**" has the meaning set forth in Section 1 of the Agreement.

"**Commission**" means the Public Service Commission of the State of Florida.

"**Common Transport**" has the meaning set forth in Section 7.1 of Attachment 2 of the Agreement.

"**Complaint**" and "**Complaining Party**" have the respective meanings set forth in Section 2(b) of Appendix I to Attachment 1 of the Agreement.

"**Conduit**" means a tube or protected through that may be used to house communication or electrical cables. Conduit may be underground or above ground (for example, inside buildings) and may contain one or more inner ducts.

"**Confidential Information**" has the meaning set forth in Section 17.1 of the Agreement.

"**Contract Year**" means a twelve (12) month period during the term of the contract commencing on the Effective Date and each anniversary thereof.

"Customer Usage Data" means the local Telecommunications Services usage data of an AT&T Customer, measured in minutes, sub-minute increments, message units, or otherwise, that is recorded by GTE and forwarded to AT&T.

"DA Listing Information" has the meaning set forth in Section 20.1 of the Agreement.

"Damages" has the meaning set forth in Section 10.4 of the Agreement.

"Dedicated Transport" has the meaning set forth in Section 8.1 of Attachment 2 of the Agreement.

"Directory Listings" has the meaning set forth in Sections 19.1 and 19.2 of the Agreement.

"Directory Assistance Service" has the meaning set forth in Section 6.1 of Attachment 2 of the Agreement.

"Discloser" means that Party to this Agreement which has disclosed Confidential Information to the other Party.

"Disputes" mean all disputes, claims or disagreements arising under or related to this Agreement or the breach thereof.

"Duct" has the meaning set forth in Section 3.1.3 of Attachment 3 of the Agreement.

"Effective Date" has the meaning set forth in Section 2 of the Agreement.

"EMR" means the Exchange Message Record System used among LECs for exchanging telecommunications message information for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, published by Bellcore which defines the industry standard for exchange message records.

"Environmental Hazard" means any substance the presence, use, transport, abandonment or disposal of which (i) requires investigation, remediation, compensation, fine or penalty under any Applicable Law (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendment and Reauthorization Act, Resource Conservation Recovery Act, the Occupational Safety and Health Act and provisions with similar purposes in applicable foreign, state and local jurisdictions) or (ii) poses risks to human health, safety or the environment

(including, without limitation, indoor, outdoor or orbital space environments) and is regulated under any Applicable Law.

"**Enhanced White Pages**" means optional features available for White Pages Directory listings (e.g., bold, all capitals, additional line of text, indented).

"**Enhanced Yellow Pages**" means optional features available for Yellow Pages Directory listings (e.g., red type, bold, all capitals, additional line of text, indented).

"**Exchange Service**" refers to all basic access line services, or any other services offered to end users which provide end users with a telephonic connection to, and a unique telephone number address on, the public switched telecommunications network ("PSTN"), and which enable such end users to place or receive calls to all other stations on the PSTN.

"**Excluded Environmental Liabilities**" has the meaning set forth in Section 8.1 of the Agreement.

"**E911 Service**" is a method of routing 911 calls to a PSAP that uses customer location data in the ALI/DMS to determine the PSAP to which a call should be routed.

"**Facility**" and "**Facilities**" has the meaning set forth in Section 3.1.4 of Attachment 3 of the Agreement.

"**FCC**" means the Federal Communications Commission.

"**Governmental Authority**" means any federal, state, local, foreign or international court, government, department, commission, board, bureau, agency, official, or other regulatory, administrative, legislative or judicial authority with jurisdiction over GTE or AT&T.

"**Grooming Plan**" has the meaning set forth in Section 41.1 of the Agreement.

"**GTE**" has the meaning set forth in the Preface of this Agreement.

"**GTE Customer**" means any business or residential customer for GTE Telecommunications Service.

"**Impairment in Service**", "Impaired Party" and "Impairing Party" shall have the respective meanings set forth in Section 4 of Attachment 9 of the Agreement.

"**Inner Duct**" has the meaning set forth in Section 3.1.5 of Attachment 3 of the

Agreement.

"Intellectual Property" means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.

"Intellectual Property Rights" has the meaning set forth in Section 10.4 of the Agreement.

"Inter-Company Review Board" means an inter-company review board established pursuant to Section 3.1 of Attachment 1 of the Agreement.

"Interconnection" [Definition Deleted].

"Interconnection Services" has the meaning set forth in Section 1 of the Agreement.

"Interim Number Portability (INP)" means the delivery of LNP capabilities, from a customer standpoint in terms of call completion, with as little impairment of functioning, quality, reliability, and convenience as possible and from a carrier standpoint in terms of compensation, through the use of existing and available call routing, forwarding, and addressing capabilities.

"LATA" means local access transport area.

"Line Information Data Base(s) (LIDB)" has the meaning set forth in Section 11.3.1 of Attachment 2 of the Agreement.

"LEC" means local exchange carrier.

"LOA" has the meaning set forth in Section 25.1.1 of the Agreement.

"Local Number Portability (LNP)" means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

"Local Services" has the meaning set forth in Section 24 of the Agreement.

"Local Service Bill" means a Bill for Local Service Charges.

"Local Service Charges" has the meaning set forth in Section 2.1 of Appendix A to Attachment 6 of the Agreement.

"Local Traffic" for purposes of interconnection and mutual compensation under

this Agreement means traffic: (i) that originates and terminates in the same GTE exchange area; or (ii) originates and terminates in different GTE exchange areas that share a common mandatory local calling area such as mandatory Extended Area Service (EAS). Local Traffic does not include optional EAS which are those arrangements where the originating end user has a choice between rate plans, one rate plan which does include the identified route and one rate plan which does not include the identified route within the end user's flat-rate calling area.

"**Loop**" and "**Loop Combination**" have the respective meanings set forth in Section 3 of Attachment 2 of the Agreement.

"**Loop Concentrator/Multiplexer**" has the meaning set forth in Section 3.3.1 of Attachment 2 of the Agreement.

"**Loop Distribution Media**" has the meaning set forth in Section 3.2.1 of Attachment 2 of the Agreement.

"**Loop Feeder**" has the meaning set forth in Section 3.4.1 of Attachment 2 of the Agreement.

"**LSR**" means the Local Services request form and processes for ordering services for an end user customer which are approved by the OBF and may be modified by mutual agreement of the Parties.

"**Manhole**" has the meaning set forth in Section 3.1.7 of Attachment 3 of the Agreement.

"**MECAB**" means the Multiple Exchange Carrier Access Billing (MECAB) document prepared under the direction of the Billing Committee of the OBF which functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions. The MECAB document, published by Bellcore as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of access and other connectivity services provided by two or more LECs (including LECs and CLECs), or by one LEC or CLEC in two or more states within a single LATA.

"**MECOD**" means the Multiple Exchange Carriers Ordering and Design (MECOD) Guidelines for Access Services - Industry Support Interface, a document developed under the auspices of the Billing Committee of the OBF which functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions. The MECOD document, published by Bellcore as Special Report SR STS-002643, establishes recommended guidelines for processing orders for access and other connectivity

services which is to be provided by two or more LECs (including a LEC and a CLEC), or by one LEC or CLEC in two or more states within a single LATA.

"Network Element" or "Element" means a facility or equipment used in the provision of a Telecommunications Service. Network Element includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

"Network Interface Device" or **"NID"** has the meaning set forth in Section 2.1 of Attachment 2 of the Agreement.

"New Services Request" means a request from AT&T to GTE to obtain facilities, features, capabilities, functionality or services that are not already available under this Agreement.

"North American Numbering Plan" or "NANP" means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico and certain Caribbean Islands. The NANP format is a 10 digit number that consists of a 3 digit NPA code (commonly referred to as the are code), followed by a 3 digit NXX code and a 4 digit line number.

"NXX" means the three digit code which appears as the first three digits of a seven digit telephone number.

"911 Service" means a universal telephone number which gives the public direct access to the PSAP. Basic 911 service collects 911 calls from one or more local exchange switches that serve a geographic area. The calls are then sent to the correct authority designated to receive such calls.

"OBF" means the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS).

"Operator Service" has the meaning set forth in Section 5.1.1 of Attachment 2 of the Agreement.

"OSS" means operations support systems.

"Parties" means AT&T and GTE.

"Permanent Number Portability (PNP)" means the use of the Location Routing Number (LRN) database solution to provide fully transparent LNP for all customers and all providers without limitation.

"Pole Attachment" means the connection of a facility to a utility pole. Some examples of facilities are mechanical hardware, grounding and transmission cable, and equipment boxes.

"Public Safety Answering Point" or "PSAP" means an answering location for 911 calls originating in a given area. A PSAP may be designed as Primary or Secondary, which refers to the order in which calls are directed for answering. Primary PSAPs respond first; Secondary PSAPs receive calls on a transfer basis only, and generally serve as a centralized answering location for a particular type of emergency call. PSAP's are staffed by employees of Service Agencies such as police, fire or emergency medical agencies or by employees of a common bureau serving a group of such entities.

"Quality Standards" are referenced in Section 11.3, Sections 9 and 9.4.1 of Attachment 5, and Attachment 12 of the Agreement

"Real Time" means interactive system-to-system communications and response (of the type described in Section 29.1.2 and Attachment 13) in the actual time in which an event takes place, with the reporting on or recording of the event practically simultaneous (given or assuming network and systems' capabilities) with the occurrence of the event.

"Recipient" means that party to this Agreement to which Confidential Information has been disclosed by the other party.

"Recorded Usage Data" has the meaning set forth in Attachment 7 of the Agreement.

"Remote Call Forwarding" or ("RCF") has the meaning set forth in Section 2.2 of Attachment 8 of the Agreement.

"Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, or migration, including without limitation, the movement of Environmental Hazards through or in the air, soil, surface water or groundwater, or any action or omission that causes Environmental Hazards to spread or become more toxic or more expensive to investigate or remediate.

"Right of Way (ROW)" has the meaning set forth in Section 3.1.9 of Attachment 3 of the Agreement.

"SECAB" means the Small Exchange Carrier Access Billing document prepared by the Billing Committee of the OBF. The Small Exchange Carrier Access Billing document, published by Bellcore as Special Report SR OPT - 001856, contains the recommended guidelines for the billing of access and other connectivity services.

"Served Premises" means collectively, all of the locations selected by AT&T for or to which AT&T orders Network Elements, Ancillary Functions or Combinations.

"Signaling Link Transport" has the meaning set forth in Section 9.1 of Attachment 2 of the Agreement.

"Signaling Transfer Points" has the meaning set forth in Section 10.1 of Attachment 2 of the Agreement.

"State" has the meaning set forth in the preambie.

"Structure" has the meaning set forth in Section 3.1.4.1 of Attachment 3 of the Agreement.

"Tandem Switching" has the meaning set forth in Section 12.1 of Attachment 2 of the Agreement.

"Telecommunications Service" has the meaning set forth in Section 3 of the Act.

"Telephone Relay Service" has the meaning set forth in Section 26.6 of the Agreement.

"TSLRIC" has the meaning set forth in Section 2 of Attachment 14 of the Agreement.

"Thousands Block of Numbers" shall mean 1000 or more consecutive numbers beginning and ending on a digit boundary, e.g., 949-1000 to 949-1999.

"Transit Service" has the meaning set forth in Section 37.5.2 of the Agreement.

"Unbundled Network Element Bill" means a Bill for Unbundled Network Element Charges.

"Unbundled Network Element Charges" has the meaning set forth in Section 2.1 of Appendix B to Attachment 6 of the Agreement.

"Voluntary Federal Customer Financial Assistance Programs" are Telecommunications Services provided to low-income subscribers, pursuant to requirements established by the appropriate state regulatory body.

"Waste" means all hazardous and non-hazardous substances and materials which are intended to be discarded, scrapped, or recycled, associated with activities AT&T or GTE or their respective contractors or agents perform at Work Locations. It shall be presumed that all substances or materials associated with such activities, that are not in use or incorporated into structures (including without limitation damaged components or tools, leftovers, containers, garbage, scrap, residues or byproducts), except for substances and materials that AT&T, GTE or their respective contractors or agents intend to use in their original form in connection with similar activities, are Waste. "Waste" shall not include substances, materials or components incorporated into structures (such as cable routes) even after such components or structure are no longer in current use.

"Wire Center" means a building or space within a building that serves as an aggregation point on a LEC's network, where transmission facilities and circuits are connected or switched.

"Work Locations" means all buildings, equipment, structures and other items located on a single site or contiguous or adjacent sites owned or operated by the same person or persons for the purpose of providing Telecommunications Services in connection with this Agreement.

ATTACHMENT 12

SERVICE QUALITY STANDARDS AND PROCESSES

TABLE OF CONTENTS

1. INTRODUCTION.....1

2. SERVICE QUALITY 3

3. DEPLOYMENT.....4

4. PROCESSES 7

5. CAPACITY PLANNING 7

APPENDICES

1. DMOQS

2. DMOQ CATEGORIES

3. AT&T SUPPLIER PERFORMANCE QUALITY MANAGEMENT SYSTEM

4. DEPLOYMENT PLAN

5. BONA FIDE REQUEST PROCESS

6. NEW SERVICES PROCESS

Service Quality Standards and Processes

1. Introduction

This Agreement contains provisions which are applicable to Local Services, Network Elements, including Ancillary Functions and features, and Combinations, access to GTE's poles, conduits and rights of way, and Interconnection Services, and shall apply on a national and/or an individual state basis, as herein specified or as otherwise established by agreement of the parties or by the context in which a quality standard, process or measurement is applied. The service quality standards, processes and procedures, including Direct Measures of Quality (DMOQs), set forth in this Attachment shall apply to GTE's provision and performance of services, systems, processes and related activity under this Agreement, and are in addition to and not in place of or satisfaction of specific performance standards or obligations imposed on GTE elsewhere in this Agreement or in other Attachments to this Agreement. To the extent indicated in this Attachment, related performance obligations are imposed on AT&T, and the indicated service quality standards, processes and procedures shall apply to AT&T's performance of said obligations.

1.1. Pursuant to Section 10 of this Agreement, Appendix 1 of this Attachment 12 sets forth the service standards, measurements and performance criteria, applicable to Local Services, Network Elements (including Ancillary functions and features) and Combinations provided under this Agreement, and the liquidated damages, payments, or credits to be paid, or other remedies to apply in the event that specified failures of performance occur.

1.2 The Parties recognize that this Agreement will establish new business processes. The Parties also expect that experience will show whether new measurements are needed or whether existing measurements are not needed. Either Party, therefore, may request the addition, deletion or modification of the measures set forth in the Appendices to this Attachment. In the event that the Parties cannot agree on such addition, deletion or modification, then the Party seeking the addition, deletion or modification may initiate the Dispute Resolution process prescribed in Attachment 1 to this Agreement.

1.3. GTE shall provide services to AT&T that have substantially the same characteristics of timeliness and performance as GTE provides to itself, its affiliates (hereinafter referred to as "GTE's actual performance"). GTE's service performance, as defined by the designated comparable measures, shall be no worse than or no less than the specific performance threshold of GTE's actual performance for the equivalent service, subject to the

definitions contained within this Attachment 12. AT&T shall provide performance as defined by the designated comparable measures at no less than the specific performance thresholds contained within this Attachment 12. The calculation of those performance thresholds will be based on a three (3) month rolling average of actual performance unless otherwise specified. Liquidated damages will apply when a Party's performance is worse than the specified performance threshhold as described in this Attachment 12.

1.4 Average Non-Recurring Charges

The Average Non-Recurring Charge is the sum of all non-recurring charges applied to service orders issued by AT&T to GTE divided by the total number of AT&T orders issued to GTE. These calculations will be made by service activity and service category, Business (Single/Multi-Line, Centrex, PBX Trunks), Residence, LINK, and ISDN. The Average Non-Recurring Charge will be separately calculated for field work and non-field work orders. These Averages and a weighting factor for field and non-field work will be calculated during a study period to be mutually agreed between the Parties. The initial average non-recurring charge calculation will occur within three (3) months of AT&T's initial issuance of orders. The average non-recurring charge shall be recalculated when there is a non-recurring charge rate change, and annually as part of the Interconnection Agreement Annual Review.

1.5. Average Recurring Charges

The Average Recurring Charge is the sum of all recurring charges applied to service orders issued by AT&T to GTE divided by the total number of AT&T orders. These Averages will be calculated during a study period to be mutually agreed between the Parties. These calculations will be made by service activity and service category, Business (Single/Multi-Line, Centrex, PBX, Trunks), Residence, LINK and ISDN. The initial average recurring charge calculation will occur within three (3) months of AT&T's initial issuance of orders. The average recurring charge shall be recalculated when there is a recurring charge rate change, and annually as part of the Interconnection Agreement Annual Review.

1.6 DMOQs are categorized by the Parties as:

CATEGORY 1;
CATEGORY 2; or
CATEGORY 3.

Category 1: Those primary Performance Measures which the Parties agree must be delivered at performance threshhold either by state or at a national

level or as specified per measure. These DMOQs will carry financial incentives in the form of debits or credits to a Party's bill when a current month's performance is worse than the performance threshold. In addition, gap closure plan incentives will apply to Category 1. (Example: Due Date Commitments Met).

Category 2: Those secondary Performance Measures which are indicators of predicted performance and which the Parties agree must be delivered at or above the performance threshold either at a national level by state as specified in Appendix 2 of Attachment 12. While financial incentives do not apply to these Category 2 DMOQs, gap closure plan financial incentives will apply. (Example: Repair Ticket Closures).

Category 3: Those DMOQs which the Parties may determine to be necessary and appropriate, but which require additional evaluation to permit that determination. The Implementation Team established under this Attachment will review and consider each such Category 3 DMOQ to make the aforementioned determination. If the Implementation Team determines that a Category 3 DMOQ is necessary and appropriate, it will reclassify the DMOQ in question as Category 1 or Category 2.

1.7 The Parties' agreement to these standards, processes and procedures does not waive or limit the rights of either Party to initiate the Dispute Resolution processes provided in Attachment 1 to this Agreement, nor to initiate or pursue other administrative, judicial or arbitration proceedings to enforce rights or obligations under this Agreement or under governing law.

1.8 The service standards, processes and procedures set forth in this Attachment shall not relieve the Parties of any obligations otherwise imposed by the Telecommunications Act of 1996, by the rules, regulations and guidelines duly promulgated thereunder, or by other applicable state or federal law, nor constitute a waiver by the Parties of any rights relating to such obligations.

1.9 As used in this Attachment, Contract Month means a calendar month during the term of this Agreement. Contract Month 1 shall commence on the first day of the first full calendar month following the Effective Date. However, if the Effective Date is on the first day of a Calendar Month, that month will be Contract Month 1.

2. Service Quality

2.1 GTE and AT&T recognize and acknowledge the mutual benefit of a Customer-Supplier relationship built upon proven Quality Management Systems.

2.2 DMOQs. GTE will provide Local Service, Network Elements and Ancillary Functions in accordance with the service parity standards and other measurements of quality ("DMOQs") described and agreed to in this Attachment and in the Appendices to this Attachment. In the event that either Party falls to meet an applicable DMOQ, the procedures described in Appendix 1 shall be followed.

2.3 Service Guarantees. The credits and waivers described in Appendix 2 are intended to serve as an incentive for the Parties to fulfill certain of their commitments under this Agreement.

2.4 AT&T Supplier Performance Quality Management System. As one method of achieving quality and reliability for services ordered from GTE, GTE agrees to implement the AT&T Supplier Performance Quality Management System described in Appendix 3 to this Attachment.

3. Deployment

3.1. Deployment Plan. The Deployment Plan is a staged approach to the implementation of processes, procedures and systems required by this Agreement. The Deployment Plan describes the Parties' attempt to implement a process for attaining performance at or better than the performance threshold.

The Parties agree to implement the provisions of this Agreement in accordance with the Deployment Plan set forth in Appendix 4 to this Attachment. The Parties agree to negotiate, by the end of Contract Month 1, additional requirements which relate to those obligations of the parties in this Agreement that are not addressed in the Deployment Plan.

Thereafter, the Deployment Plan may be revised from time to time to add any additional requirements established by the Parties as part of the implementation process.

3.2. Implementation Team.

The Parties understand that the arrangements and provision of services, network elements and ancillary functions described in this Agreement shall require technical and operational coordination between the Parties. The Parties further agree that it is not feasible for this Agreement to set forth each of the applicable and necessary procedures, guidelines, specifications and standards that will promote the Parties' provision of Telecommunications Services to their respective Customers. Accordingly, the Parties agree to form a team (the "Implementation Team") which shall develop and identify

those additional processes, guidelines, specifications, standards, terms and conditions necessary for the provision of the services, network elements and ancillary functions, and for the specific implementation of each Party's obligations hereunder, including those described in the Deployment Plan. Within five (5) days after the Effective Date, each Party shall designate, in writing, not more than four (4) persons to be permanent members of the Implementation Team; provided that either Party may include in meetings or activities such technical specialists or other individuals as may be reasonably required to address a specific task, matter or subject. Each Party may replace its representatives on the Implementation Team by delivering written notice thereof to the other Party. Furthermore, the Deployment Plan will describe the Parties' attempt to implement a process for attaining and maintaining service parity.

3.3. Operations Plan.

Within one hundred and twenty (120) days after the Effective Date, the Implementation Team shall reach agreements on the items listed in the Deployment Plan, which shall include processes, procedures, and milestones. The agreements reached by the Implementation Team shall be documented in an operations manual (the "Operations Plan"). The Operations Plan shall include documentation of the various items described in the agreement which are to be agreed upon by the Parties.

3.4. Action of Implementation Team.

The Deployment Plan and the Operations Plan may be amended from time to time by the Implementation Team as the team deems appropriate. Unanimous written consent of the permanent members of the Implementation Team shall be required for any action of the Implementation Team. An escalation process will be put in place to support the resolution of disputed issues. If the Implementation Team and the escalation process are unable to resolve the issue, the existing provisions of the Deployment Plan and Operations Plan shall remain in full force and effect.

3.5. Further Coordination and Performance.

Except as otherwise agreed upon by the Parties, on a mutually agreed upon day and time once a month during the Term of this Agreement, the Implementation Team shall discuss the performance of the Parties under this Agreement and apply the principles of the AT&T Supplier Performance Quality Management System. At each such monthly session the Parties will discuss: (i) the administration and maintenance of the interconnections and trunk groups provisioned under this Agreement; (ii) the Parties' provisioning of the

services, network elements and ancillary functions provided under this Agreement; (iii) the Parties' compliance with the DMOQs set forth in this Agreement and any areas in which such performance may be improved; (iv) any problems that were encountered during the preceding month or anticipated in the upcoming month; (v) the reason underlying any such problem and the effect, if any, that such problem had, has or may have on the performance of the Parties; and (vi) the specific steps taken or proposed to be taken to remedy such problem. In addition to the foregoing, the Parties. through their representatives on the Implementation Team or such other appropriate representatives, will meet to discuss any matters that relate to the performance of this Agreement, as may be requested from time to time by either of the Parties.

3.6. Operational Review

3.6.1. Representatives of AT&T and GTE will meet on a quarterly basis, beginning with the end of the first quarter of 1997, to determine that the service cycle of pre-ordering, ordering, provisioning, maintenance and billing categories are addressed, including the following:

a) Interfaces and processes are operational and the agreed upon numbers of AT&T Customers for residential and business Resale Services are successfully completed per day;

b) Interfaces and processes are operational and the agreed upon numbers of orders for Network Elements, Ancillary Functions and Combinations are successfully completed per day;

c) Interfaces and processes are operational and the AT&T orders for unbundled loops are successfully completed per day;

d) All agreed upon performance standards and DMOQs will be reviewed with respect to the Implementation Plan.

3.6.2. If at any quarterly review it is determined that the requirements of this Agreement and the Act are not being met, the Parties may invoke the dispute resolution proceedings provided in Attachment 1 to this Agreement where allowed by applicable regulatory orders.

4. Processes

The Parties agree to implement the following processes as a means to provide a mechanism for addressing the individual requirements of AT&T in a specific state.

4.1. Bona Fide Request. The Parties may agree that certain services, including features, capabilities, functionality, Network Elements, or Combinations, are to be ordered through the use of customized Service Orders. In such event, the Bona Fide Request Process described in Appendix 5 to this Attachment will be followed.

4.2. New Services. AT&T may request from GTE that facilities, features, capabilities, functionality or services that are not already available under this Agreement at the time of such request be provided under this Agreement by delivering a New Services Request to GTE in accordance with the procedures described in Appendix 6 to this Attachment.

5. Capacity Planning

5.1 The Parties negotiated and included in this Agreement common provisions which are applicable to Local Services, Network Elements, including Ancillary Functions and features, and Combinations, access to GTE's poles, conduits and rights of way, and Interconnection Services for all geographic areas in which GTE provides Telecommunications Services on a national basis. However, the Parties recognize that certain provisions, in addition to pricing, must be handled on a state specific basis to address unique local requirements. These items are described below in this Attachment.

5.1.1 By the end of Contract Month 1, AT&T will provide a forecast of the quantities of Local Services, Network Elements, Combinations and Ancillary Functions to be made available to AT&T during Contract Year 1 on a State-wide basis. The Parties shall meet during the last Contract Month of each Contract Year to agree upon the quantities of Local Services, Network Elements, Combinations and Ancillary Functions to be made available to AT&T for the next Contract Year. These quantities shall be sufficient to meet AT&T's anticipated requirements as communicated to GTE. If GTE is not able to meet AT&T's forecast requirements at any time during the term of this Agreement, GTE must document to AT&T within fifteen (15) days of receiving AT&T's forecast the reasons why such requirements cannot be met.

5.2 In addition, AT&T will furnish a per month quarterly forecast of service order volumes, quantities of Local Services, Network Elements, Combinations and Ancillary Functions on a State-wide basis. These forecasts will be furnished

at least one month before the beginning of the quarter covered by the forecast. These projections will allow GTE to provide sufficient Staff for the projected demand and to secure appropriate inventories to meet AT&T's requirements. In the event that the first month of AT&T's next quarterly forecast is greater than ten (10%) percent of the last month of the current quarter forecast, AT&T will notify GTE promptly of the increased order volume.

5.3 If AT&T actual order activity for a quarter is ten (10%) percent less than stated in its forecast submission to GTE for that quarter, then financial incentives as set forth in Appendix 2 will apply. If AT&T actual order activity for a quarter exceeds the level stated in its forecast submission to GTE for that quarter pursuant to Section 5.2 of this Attachment 12, then as to such order activity in excess of forecast levels, the remedies otherwise applicable for missed service order commitments in the Category 1 and Category 2 DMOQs and preparation of Gap Closure Plans shall not apply.

5.4 AT&T will provide forecasts as specified in Sections 5.1 and 5.2 on a sub-State basis, provided, however, that AT&T will provide such forecasts only after the Parties have mutually agreed on a definition of "sub-State" and further provided, that no penalties shall apply to sub-State forecasts.

5.5 At the meeting to be held during the last Contract Month of each Contract Year, AT&T will provide GTE with a two (2) year rolling forecast of its growth requirements for Ancillary Functions that will be reviewed jointly on a yearly basis.

Appendix 1
to
Attachment 12

DMOQs

1. General

The DMOQs in this Appendix are managed as part of the Supplier Performance Quality Management System (SPQMS).

SPQMS requires that when the monthly results do not meet the performance levels described in Appendix 2 to this Attachment, Gap Closure Plans shall be implemented to improve performance. The intent of a Gap Closure Plan is to identify and implement expeditiously those actions necessary to close performance gaps to the acceptable levels of performance established by the Parties under this Agreement and this Attachment. The Parties anticipate that Gap Closure Plans will typically be of six to nine months' duration.

These Gap Closure Plans include:

- evaluation of the opportunity for continuous improvement, systems enhancements and re-engineering;
- forecasted improvement to the desired DMOQ for each issue or initiative;
- evaluation of pertinent changes in periodic results; and
- a date for compliance with AT&T's expected performance.

The Gap Closure Plans will be reviewed monthly, or more frequently as updated data and analysis are available.

2. Measurements

The specific measurements which apply to this Agreement are described in Appendix 2. The Parties agree to meet on an annual basis to discuss whether changes should be made to any DMOQs or performance objectives.

3. Performance Incentives

3.1. If either Party fails to meet an applicable Category 1 or 2 DMOQ for Three (3) Contract Months in a Six (6) Month period, that Party must thereafter submit

to the other Party a draft of a Gap Closure Plan within thirty (30) days of receipt of notice that the DMOQ(s) was (were) not met.

3.2. If either Party required under Section 3.1 preceding to deliver a draft Gap Closure Plan to the other Party fails or fails within the prescribed time period to do so, then the other Party shall receive a credit or payment of Five Thousand Dollars ($5,000.00). Said payment or credit shall be made within three (3) business days of the entitled Party's demand therefor.

3.3. AT&T and GTE will agree upon an approval date for the Gap Closure Plan within ten (10) days of the delivery of the draft Gap Closure Plan.

3.4. The Party subject to the Gap Closure Plan will commence implementation of the Gap Closure Plan on its approval date. If that Party fails to meet its commitments under the Gap Closure Plan, the other Party shall receive a credit or payment, as appropriate, in the sum of up to Fifteen Thousand dollars ($15,000) payable on demand within three (3) business days, as described in Sections 3.4.1, 3.4.2 and 3.4.3 below.

3.4.1 Payment of Five Thousand Dollars ($5,000) for failure to implement the process improvements outlined in the plan. The parties may with mutual agreement modify the process improvements in the plan during the life of the plan.

3.4.2 Payment of Five Thousand Dollars ($5,000) for failure to achieve performance improvements by the completion date of the approved Gap Closure Plan.

3.4.3 Payment of Five Thousand Dollars ($5,000) for failure to complete the Gap Closure Plan on schedule.

3.5 GTE is committed to service parity at the start of AT&T's Local Service operations. Both parties recognize that a sufficient volume of orders must be processed before a DMOQ can exhibit with a degree of confidence that parity does or does not exist.

The Parties agree to a "transition period" where process data will be accumulated and discussed. This information will assist the Implementation Team in their development and implementation of processes.

For national DMOQs, once AT&T's order volume reaches a level of one hundred fifty (150) orders for three (3) consecutive months, a ninety (90) day grace period will begin, with respect to the performance incentives prescribed

for each DMOQ under this Attachment. At the end of that ninety (90) day grace period, those performance incentives shall fully apply.

For State DMOQs, once AT&T's order volume reaches a level of one hundred fifty (150) orders for the State for three (3) consecutive months, a ninety (90) day grace period will begin, with respect to the performance incentives prescribed for each DMOQ under this Attachment. At the end of that ninety (90) day grace period, those performance incentives shall fully apply.

3.6 The purpose of the payments described above are to serve as an incentive for the Parties to improve their respective performance, not as a substitute for either Party's right to institute dispute resolution processes under Attachment 1 of this Agreement.

Appendix 2

to

Attachment 12

DMOQ Categories

1. Category 1 DMOQs

1.1 Table 1 below lists the Category 1 DMOQs for each of the pre-ordering, ordering and provisioning, interconnection, maintenance and repair, forecasting, and billing classifications. For each Category 1 DMOQ classification, column 1 indicates the number of the DMOQ within the classification. Column 2 indicates which Party has the obligation to meet the DMOQ performance measurement, with a "G" indicating a GTE obligation and an "A" indicating an AT&T obligation. Column 3 indicates whether the relevant DMOQ performance measurement data is compiled on a national level ("N"), by state ("S"), or by each occurrence of the DMOQ ("P"). Column 4 contains a description of each DMOQ within each classification. Column 5 describes, for each DMOQ, the performance measurement that applies to the DMOQ. Column 6 shows the remedy that must be paid by the Party that has the obligation to meet the DMOQ if that Party has failed to meet the performance thresholds set forth in column 5.

1.2. The Parties agree to provide performance at or above the performance thresholds for each applicable DMOQ as indicated in Table 1 following. Each Party also agrees to pay to the other Party the remedies applicable to each DMOQ for which it has an obligation to meet the performance thresholds but has failed to do so.

TABLE 1

CATEGORY 1 DMOQs

			DESCRIPTION	MEASURE	REMEDY
			Pre-Ordering/Ordering/ Provisioning		
1	G	N	Prompt transmission of Customer Service Record ("CSR") Information	85% of CSRs sent to AT&T by the close of business on business day following receipt of request.	5% of Average Non-Recurring Charges incurred by AT&T for the number of CSRs for which the Quality Standard is not met in the reported month.
2	G	N	Prompt transmission of Firm Order Confirmation ("FOC")	85% of FOCs sent to AT&T by the close of business on business day following receipt of request.	20% of Average Non-Recurring Charges incurred by AT&T for the lines ordered for which GTE failed to meet the Quality Standard in the reported month.
3	G	S	Due Date commitments met	Percent of AT&T Customer install, transfer and change service orders for which service is installed by close of business on the committed due date is not more than 2.5 percent below the percent of GTE customer install, transfer and change service orders.	Waiver of the Average Non-Recurring Charges installation charges for the number of lines by which GTE fails to meet the Quality Standard in the reported month.

			DESCRIPTION	MEASURE	REMEDY
4	G	S	% Reporting trouble within 30 days of the date installed	Percent of AT&T customer install, transfer and change service orders which are followed by a customer trouble report within 30 days of service order completion date is not more than 2.5 percent worse than the percent GTE customer install, transfer and change service orders which are followed by a customer trouble report within 30 days of service order completion date.	One month's average recurring charge per trouble report exceeding the Quality Standard in the reported month. (not to exceed one credit per customer line per month).
5	A	S	Service Order Discrepancy: LSRs issued without material errors.	80 percent of LSRs initiated by AT&T do not contain an order discrepancy or error. Twelve (12) months after this measurement becomes effective, the metric shall change to 90 percent.	Payment by AT&T to GTE equal to 20% of the average non-recurring installation charges for the number of lines by which AT&T fails to meet the Quality Standard in the reported month.
6	G	N	PIC Changes completed within 24 hours	85% of the time the PIC changes will be completed within 24 hours.	PIC change charge credit for all PIC changes worse than the quality standard.
			Interconnection		
1	G	S	Trunk orders completed on or before the Committed Due Date.	Percent of trunk orders by AT&T completed by GTE on or before the commitment date is not more than 10 percent below the percent of feature group B & D switched access orders by all ordering companies completed by GTE on or	Waiver of 100% of Average Non-Recurring Charges for trunks ordered for which GTE failed to meet the Quality Standard

			DESCRIPTION	MEASURE	REMEDY
				before the commitment date.	in the reported month.
2	G	N	Firm Order Confirmation (FOC) time delivery	Percent of trunk orders by AT&T completed by GTE on or before the commitment date is not more than 5 percent below the percent of feature group B & D switched access orders by all ordering companies for which GTE sends FOC within 5 days.	Waiver of 20% of Average Non-Recurring installation charges for trunks ordered for which GTE failed to meet the Quality Standard in the reported month.
3	A	N	Service Order Discrepancy: ASRs issued without material errors.	80% of ASRs initiated by AT&T do not contain a material error or result in a discrepancy. Twelve (12) months after this measurement becomes effective, the metric shall change to 90 percent.	Charge equal to 20% of Average Non-Recurring Charges for installation of trunks ordered for which AT&T failed to meet the Quality Standard in the reported month.
4	G	P	Collocation: Conditioning of space provided for Collocation.	The time AT&T's collocated space is not available to AT&T for installation of equipment by the agreed upon due date.	The credit will be calculated by dividing the monthly recurring charge for such collocated space by 30, times the number of days delayed. This penalty does not apply if the delay circumstances are beyond GTE's control.

			DESCRIPTION	MEASURE	REMEDY
5	G	P	Collocation: Outage of AT&T Equipment Collocated in GTE space.	The time AT&T's collocated equipment is out of service due to GTE's failure to comply with its obligations under this agreement.	AT&T will receive an outage credit calculated by dividing the monthly recurring charge for such collocated space by 30, times the number of days of outage. This penalty does not apply if the delay circumstances are beyond GTE's control.
6	G	P	Rights of Way (ROW), Conduit and Pole Attachments Availability.	When ROW, Conduit and Pole-Attachments are not available to AT&T by the agreed upon due date.	AT&T will receive a credit in the amount proportionate to the length of the delay. The credit will be calculated by dividing the annual rental charge by 365 times the number of days delayed. This penalty does not apply if the delay circumstances are beyond GTE's control.
			Maintenance/Repair		
1	G	S	Percent commitments met.	Percent of AT&T customer network trouble reports where commitment met was more than 2.5 percent	One month's flat rate average recurring charge

			DESCRIPTION	MEASURE	REMEDY
				worse than the percent of GTE customer network trouble reports where commitment was met (excluding reports which are cleared CPE, AT&T Customer error).	per line out of service for which Quality Standard is not met in the reported month.
2	G	S	Average clearing time - out of service - Designed.	Average repair time (total number of elapsed hours/minutes for out of service AT&T Customer network trouble reports divided by total number out of service customer network trouble reports) for AT&T Customers is more than 10 percent more than the average repair time for GTE Customers (includes only "designed" services).	One month's flat rate average recurring charge per line out of service for which Quality Standard is not met in the reported month.
3	G	S	Average clearing time - out of service - non-designed	Average repair time (total number of elapsed hours/minutes for out of service customer network trouble reports divided by total number out of service customer network trouble reports) for AT&T Customers is more than 10 percent more than the average repair time for GTE customers (includes only POTS and circuits which do not require a design).	One month's flat rate average recurring charge per line out of service for which Quality Standard is not met in the reported month.
4	G	S	Percent reports per 100 (failure frequency)	Percent of AT&T Customers making trouble reports (total number of AT&T Customer network trouble reports divided by the total access lines multiplied by 100) is not worse than 0.5 percentage points than the percent of GTE customers making trouble reports.	One month's flat rate average recurring charge per line out of service for which Quality Standard is not met in the reported month.
5	G	S	Percent repeat	Percent of AT&T Customer repeat trouble reports (total number of	One month's flat rate average

			DESCRIPTION	MEASURE	REMEDY
			reports in 30 days	AT&T Customer network trouble reports which had a previous network trouble report within the last 30 days divided by the total number of customer network trouble reports multiplied by 100) is not more than 2.5 percent worse than the percent of GTE customer repeat trouble reports.	recurring charge per line out of service for which Quality Standard is not met in the reported month.
			Forecasting		
1	A	S	Resale requirements accurately forecast.	Volume of AT&T's resale requirements in a month is not greater than 10% below the amount forecast by AT&T in its most recent quarterly forecast (which shall have been made not later than 30 days prior to the quarter in question.)	20 percent of the Average Non-Recurring Charges for the number of service units below the forecast when the actual volume is greater than 10% and less than or equal to 30% under forecast. 40 percent of the Average Non-Recurring Charges for the number of service units below the forecast when the actual volume is greater than 30% and less than or equal to 40% under forecast.

			DESCRIPTION	MEASURE	REMEDY
					50 percent of the Average Non-Recurring Charges for the number of service units below the forecast when the actual volume is over 40% under the forecast.
			Billing		
1	G	N	Advance notification of late billing associated with the wholesale bill.	GTE agrees to develop, within six months of the Effective Date, a Quality Standard for the percent of notifications received by AT&T prior to late billing based upon a mutually agreed upon financially significant threshold. The documentation provided prior to late billing must include: 1) the anticipated bill date and 2) a reasonably accurate estimate of the adjustment or charge.	GTE will credit AT&T's national resale bill by $5,000 per month for each month in which commitment is not met.
2	G	N	Timeliness: Delivery of mechanized Customer Service Record (CSR) for wholesale billing verification.	GTE agrees to make by March 30, 1997, an initial assessment of its capability to measure the percent of CSRs received within 10 days of the actual bill date. The Implementation Team will determine the appropriate percent of CSRs to be delivered on time.	GTE will credit AT&T's national resale bill by $5,000 per month for each month in which commitment is not met.

1.3. Outage Credits

1.3.1 Local Services, Network Elements and Combinations: Outage credits apply to interruptions of Local Services, Network Elements or

Combinations, in accordance with applicable state Public Service Commission requirements.

1.3.1.1 If a Local Service, Network Element or Combination is interrupted, AT&T will be entitled to outage credits. An interruption period begins when AT&T reports to GTE that a Local Service, Network Element or Combination is interrupted (or GTE has knowledge that an interruption has occurred through service monitoring or other means). An interruption period ends when the Local Service, Network Element or Combination is repaired and returned to AT&T. A Local Service, Network Element or Combination is considered to be interrupted when there has been a loss of continuity, the Local Service, Network Element or Combination does not operate in accordance with the applicable service standards, or it is otherwise unavailable for use by AT&T. This definition is not intended to conflict with state Public Utility Commission requirements.

1.3.1.2 The Implementation Team will evaluate if and set the amount of outage credits for unbundled Network Elements and Combinations and determine when they should apply.

2. Category 2 DMOQs

2.1 Table 2 below lists the Category 2 DMOQs for each of the pre-ordering, maintenance, and billing classifications. For each Category 2 DMOQ classification, column 1 indicates the number of the DMOQ within the classification. Column 2 indicates which Party has the obligation to meet the DMOQ performance measurement, with a "G" indicating a GTE obligation and an "A" indicating an AT&T obligation. Column 3 indicates whether the relevant DMOQ performance measurement data is compiled on a national level ("N"), by state ("S"), or by each occurrence of the DMOQ ("P"). Column 4 contains a description of each DMOQ within each classification. Column 5 describes, for each DMOQ, the performance measurement that applies to the DMOQ.

2.2 The Parties agree to provide performance at or above the performance thresholds for each applicable DMOQ as indicated in Table 2 following.

TABLE 2

CATEGORY 2 DMOQs

			DESCRIPTION	MEASURE
			Pre-Ordering/Ordering/Provisioning	
1	G	N	Average speed of answer per inquiry by GTE's call center within 20 seconds.	80% of the time GTE will answer within 20 seconds
			Maintenance	
1	G	S	Average speed of answer per inquiry by GTE's call center within 20 seconds	80% of the time GTE will answer within 20 seconds.
			Billing	
1	G	N	Timeliness: Charges billed in current wholesale billing period for	GTE agrees to make, by March 30, 1997, an initial assessment of its capability to measure the percent of dollar amount due

			flat rated services.	for service orders billed in the current billing period in which the service order was completed and provide such assessment to AT&T so the Parties can agree on and establish performance thresholds.
2	G	N	Timeliness: Charges billed within 90 days for usage charges.	GTE agrees to make, by March 30, 1997, an initial assessment of its capability to measure the percent of dollar amount due for usage charges billed within 90 days from the date the service was rendered and provide such assessment to AT&T so the Parties can agree on and establish performance thresholds.
3	G	N	Accuracy: Financial accuracy of local OCC bills. Financial accuracy is the percent of total net dollars correctly billed.	GTE agrees to make, by March 30, 1997, an initial assessment of its capability to measure the percent of total net dollars accurately billed, excluding bill correcting adjustments resulting from AT&T's inaccurate LSRs, and provide such assessment to AT&T so the Parties can agree on and establish performance thresholds.
4	G	N	Timeliness: Making corrections and adjustments within agreed timeframes.	GTE agrees to make, by March 30, 1997, an initial assessment of its capability to measure the percent of all corrections and adjustments made within agreed timeframes and provide such assessment to AT&T so the Parties can agree on and establish performance threshold.
5	G	N	Customer Usage Data: File Transfer: GTE will initiate and transmit all files error free and without loss of signal.	Meets Expectations: 6 months of file transfers without a failure. Note: During the first 6 months after the Effective Date.
6	G	N	Customer Usage Data: Timeliness: Delivery of all messages delivered within 5 days of when the message	GTE's initial service performance threshold will be 94% of all messages delivered within 5 days from when the message was recorded. GTE agrees to make, by March

			was recorded.	30, 1997, an initial assessment as to what a parity level of performance should be. Within six months of the contract Effective Date, the Parties will agree on an ongoing performance measure and associated penalties.
8	G	N	Customer Usage Data: Accuracy of transmitted customer usage data.	An initial service delivery threshold will be established at 99% of recorded usage data correctly transmitted to AT&T. GTE agrees to make, by March 30, 1997 an initial assessment as to what a parity level of performance should be. Within six months of the contract effective date, the Parties will agree on an ongoing performance measure and associated penalties.

3. Category 3 DMOQs

3.1 Table 3 below lists the Category 3 DMOQs for each of the pre-ordering, ordering and provisioning, maintenance, and billing classifications. For each Category 3 DMOQ classification, column 1 indicates the number of the DMOQ within the classification. Column 2 indicates which Party may have the obligation to meet the DMOQ performance measurement, with a "G" indicating a potential GTE obligation, an "A" indicating a potential AT&T obligation and "T" indicating the party is to be determined. Column 3 indicates whether the relevant DMOQ performance measurement data might be compiled on a national level ("N"), by state ("S"), or by each occurrence of the DMOQ ("P"). Column 4 contains a description of each DMOQ within each classification.

3.2 The Parties agree to form an Implementation Team pursuant to Section 3.2 of Attachment 12, to consider and determine whether each Category 3 DMOQ shall be reclassified as a Category 1 or Category 2 DMOQ or should be removed as a Category 3 DMOQ without reclassification. If the Implementation Team agrees to reclassify a Category 3 DMOQ as either a Category 1 or Category 2 DMOQ, the Implementation Team will also establish a performance threshold and performance remedies for that DMOQ. The Implementation Team will set a schedule for considering and determining any such reclassifications under this Paragraph no later than six months after the Effective Date of this Agreement.

TABLE 3

CATEGORY 3 DMOQs

			DESCRIPTION
			Pre-Ordering/Ordering/Provisioning
1	A	N	Service Order Discrepancy: LSRs issued without material errors. The Implementation Team will evaluate and produce a plan to migrate from the 90% performance threshold to the 95% target performance threshold.
2	G	N	Real Time Solution: Tracks the time required to receive one or more telephone numbers via a system interface. The interval starts with the request message leaving AT&T's system and ends with the response message arriving at AT&T's system. The DMOQ tracks the percentage of intervals that are less than 5 seconds.

			DESCRIPTION
3	T	N	Real Time Solution: Tracks the time required to receive address confirmation information via a system interface.
4	T	N	Real Time Solution: Service Availability Inquiry Time.
5	T	N	Real Time Solution: Feature Availability Inquiry Time
6	T	N	Real Time Solution: Appointment Schedule Inquiry Time.
7	T	N	Real Time Solution: Customer Service Record (CSR) Inquiry Time.
8	T	N	Disconnect Order Completion Interval. Measures how long it takes to complete a disconnect. Residence: within twenty-four (24) hours after acceptance of a service order. Business: Within four (4) hours after acceptance of a service order if a software change is required. Business: Within twenty-four (24) hours after acceptance of a service order if a central office change is required. Business: Within ninety-six (96) hours after acceptance of a service order if a customer premises visit is required.
9	T	N	Installation line energizing commitments (request for establishment or changes in non-key, non-PBX and party line services that normally involve plant activity.
10	G	N	PIC Migration: Measures the percent of migration notifications sent to AT&T within forty-eight (48) hours of receipt of the migration order. As a measurement of performance standards, this metric will comply with the specific performance level shown below. Measurements will be calculated by Business (single and multi-line, Centrex, PBX trunks), Residence, LINK and ISDN.
11	G	N	Directory Assistance: Tracks the levels of Directory Assistance performance levels for resold services and unbundled network elements.
12	G	N	GTE shall provide LIDB performance standards. AT&T will specify expectations of performance such as 1) at least 99.9% reply rate to all query attempts; 2) Data in LIDB replys shall have at no more than 2% unexpected data value, for all inquiries.
13	A	S	Forecasting. Implementation Teams will work together to define sub-state forecasting levels. The Parties agree that no penalties shall apply to any sub-state levels that may be defined by the Implementation Team.
			Maintenance

			DESCRIPTION
1	G	S	Quoted restoral commitments met.
2	G	S	Status Call to AT&T: when restoral commitments are missed, on trouble progress, or on restoration.
3	T	S	Network event with blocked calls or lost features within one hour.
4	G	S	Time to Restore - Out of Service & Visit Required at 4, 8, or 16 hours after initial outage. - Out of Service & No Visit required at 2, 3, or 4 hours after initial outage. - All Other Troubles at twenty-four (24) hours after initial outage.
			Billing
1	G	N	Timeliness: GTE will mechanically transmit, via Connect: Direct, all usage records to AT&T's Message Processing Center three times per day at expected performance threshold of 99.94% of all messages delivered on the day the call was recorded.
2	G	N	Accuracy: GTE will provide Recorded Usage Data in the format and with the content as defined in the current Bellcore EMR document of expected performance threshold of 99.99% of all recorded records delivered.
3	G	N	DATA PACKS: GTE will transmit to AT&T all data packs error free in the format agreed at an expected performance threshold of 6 months of transmitted data packs without a rejected data pack.
4	G	N	Accuracy: Recorded Usage Data: GTE will ensure that the Recorded Usage Data is transmitted to AT&T error free, the level of detail includes but is not limited to: detail required to rate the call, Duration, and Correct Originating/Terminating information. The error is reported to GTE as a Modification Request (MR). Performance is to be measured at 2 levels defined below. AT&T will identify the priority of the MR at the time of handoff as Severity 1 or Severity 2 at expected performance threshold of less than or equal to 99% of the MR fixed in less than or equal to twenty-four (24) hours and 100% of the MR fixed in less than or equal to 5 days.

			DESCRIPTION
5	G	N	Usage Inquiry Responsiveness: GTE will respond to all usage inquiries within twenty-four (24) hours of AT&T's request for information. It is AT&T's expectation to receive continuous status reports until the request for information is satisfied.
6	G	N	Business and Residence Mechanized wholesale bills adhere to specifications in the (Local Services Billing System e.g. CABS, BOS, SAIR, CRIS, etc.) specifications/requirements document. Accurate bills are those mechanized access bills which pass AT&T's validation edit process the first time at expected performance threshold of less than or equal to 99.5%.
7	T	N	Business and Residence: Billing Period Closure agreements are signed within the agreed timeframe (typically 60 to 90 days) at expected performance threshold of 100% per agreed timeframe.

Appendix 3
to
Attachment 12

AT&T Supplier Performance Quality Management System

AT&T's approach to quality and reliability focuses on the attainment of excellence for products and services ordered from its suppliers and used by AT&T. This excellence is the result of a systematic effort that is sustained over time.

1. Quality Manual

By the end of Contract Month 4, GTE will develop a Quality Manual that addresses the requirements described herein for the following :

- Management Responsibility and Support
- Quality System
- Document Control
- Process Control
- Product Development Control
- Alignment of Process Output with Agreed-to Requirements
- Identification of Non-conforming Product or Service
- Analysis of the Identified Non-conformance
- Corrective Action Plans
- Quality Records
- Audits and Reviews
- Training

The Quality Manual will be updated by GTE from time to time as additional process are identified. The Quality Manual and its revisions are subject to review and approval by AT&T.

2. Process Ownership

For each process identified in the Quality Manual, GTE will identify those individuals and organizations who have management responsibilities for each process which affects services to be provided to AT&T by GTE.

The initial individuals and organizations will be identified by GTE by the end of Contract Month 1. GTE shall provide prompt updates to AT&T of changes in personnel, organization or linkages.

3. Process Definition

For each process included in the Quality Manual, the following items will be addressed:

a) input requirements;
b) value-added process functionality; and
c) output requirements which meet customer satisfaction

4. Measurement System

The Quality Manual will define the Measurement System to be used to obtain the data necessary to verify that DMOQs have been met, and to provide data needed to perform source cause and root cause analyses.

Changes to the agreed upon Measurement System must be reviewed with and concurred by AT&T prior to their implementation. GTE will review metrics on a monthly basis with AT&T and will be available for review and analysis, as mutually agreed to be necessary, for all services. Measures shall be AT&T specific and support AT&T service performance requirements.

5. Improvement Plan Implementation

GTE will establish monthly service performance and improvement reviews with AT&T.

Documentation will include Gap Closure Plans which result in compliance with agreed to performance standards and include:

a) evaluation of the opportunity for continuous improvement, systems enhancements and re-engineering;
b) forecasted improvement to the desired Direct Measure of Quality (DMOQ) for each issue or initiative;
c) current and improved upon processes;
d) control processes which GTE management will use for the transitional period;
e) evaluation of pertinent changes in periodic (monthly, weekly) results;
f) opportunities for source and root cause analyses; and
g) a date for compliance with Gap Closure Plans implementation.

These Gap Closure plans will be reviewed monthly or, more frequently as updated data and analyses are available.

6. AT&T Leadership Reviews

GTE Senior Leadership shall meet with AT&T on at least a quarterly basis. GTE shall assure that resources are provided within GTE to support implementation of the Supplier Quality Performance Management Program.

7. Integration of AT&T Requirements

GTE will integrate the techniques of the Supplier Quality Performance Management Program described in this Appendix 3 in all aspects of the work that it performs on AT&T's behalf.

Appendix 4
to
Attachment 12

Deployment Plan

1. Deployment Plan Activities:

The Parties agree to complete the activities applicable to them no later than the times indicated for said completion on the following Table:

CONTRACT MONTH*	ACTIVITY
Effective Date	Final agreement on DMOQs and Service Guarantees.
Month 1	1. Identification of individuals and organizations with management responsibilities (the Implementation Team) as described in Appendix 3 to Attachment 12. 2. Agreement on Supplier Performance Quality Management System (SPQMS), Deployment Plan, activities, Milestones, and Implementation Schedule. 3. Capacity planning for Contract Year 1 completed as described in Section 7 to Attachment 12. 4. Agreement on escalation and expedite procedures as described in Section 30.2.2 of the Agreement. 5. GTE furnishes a list of all emergency telephone numbers as described in Section 28.8 of the Agreement. 6. Appointment of a standing arbitrator as described in Attachment 1.
Month 2	1. Identification of single points of contact as described in and within Section 30 of the Agreement, Section 13 of Attachment 2, Sections 3 and 4 of Attachment 3, Section 2 of Attachment 4, Section 9 of Attachment 5, Section 2 of Attachment 6C, Section 5 of Attachment 7. and other Agreement or Attachment sections in this Agreement providing for such single points of contact. 2. GTE proposes the process for handling requests for new services, features and/or capabilities as described in Section 4.2 of Attachment 12.

* Unless indicated to be a specific date.

Month 3	1. Agreement on the procedures to handle law enforcement agency requests as described in Section 28.11 of this Agreement.
Month 4	1. Quarterly SLT Review of SPQMS with GTE. 2. Development of Quality Manual as described in Appendix 3 to Attachment 12.
Month 5	1. GTE will finalize the process for handling requests for new services, features and/or capabilities as described in Section 4.2 of Attachment 12. 2. Finalize Operations Plan as provided in Section 3.3 of Attachment 12.
Month 7	1. Quarterly SLT Review of SPQMS with GTE.
Month 10	1. Quarterly SLT Review of SPQMS with GTE.
Month 11	1. Annual Review of Performance Results Gap Closure plans per SPQMS. 2. Annual Capacity Planning for Contract Year 2 is completed as described in Section 7 to Attachment 12.

2. The Parties agree to negotiate by the end of Contract Month 4, additional requirements and milestones which relate to those obligations of GTE in this Agreement that are not addressed in the Deployment Plan, including, but not limited to, the implementation of the following:

- Electronic Interfaces as described in Section 29.1 of the Agreement and Section 5.1 of Attachment 4.
- Alternative Routing Capabilities as described in Section 28 of the Agreement.
- Service and Operational Readiness Testing as described in Attachment 29.8 of the Agreement.
- Alternative Interim Agreement for Local Service bills as described in Section 3 of Attachment 6A.
- Procedures for notifying AT&T of changes in retail services as described in Section 25.6 of the Agreement.
- Procedures for referring misdirected requests for AT&T products and services as described in Section 29.3 of the Agreement.
- Customer contact training as described in Section 29.6.6 of the Agreement.
- Procedures for referrals of misdirected calls for repair as described in Section 8 of Attachment 5.
- Replication of Access Billing Supplier Quality Certification Operating Agreement as described in Section 2.1.2 of Attachment 6.

- Interim arrangements for clearinghouse procedures as described in Section 9 of Attachment 7.
- Disaster recovery plans as described in Section 7 of Attachment 5.
- Route Indexing (RI) as described in Section 2.3 of Attachment 8.
- Processes for service ordering and provisioning of Local Services, Network Elements and Combinations.
- Processes for maintenance of Local Services, Network Elements and Combinations.

Appendix 5
to
Attachment 12

Bona Fide Request Process

1. Intent

The Bona Fide Request process is intended to be used when AT&T requests customized Service Orders for certain services, features, capabilities or functionality defined and agreed-upon by the Parties as services to be ordered as Bona Fide Requests.

2. Process

2.1 A Bona Fide Request shall be submitted in writing by AT&T and shall specifically identify the need to include technical requirements, space requirements and/or other such specifications that clearly define the request such that GTE has sufficient information to analyze and prepare a response.

2.2 Although not expected to do so, AT&T may cancel a Bona Fide Request in writing at any time prior to AT&T and GTE agreeing to price and availability. GTE will then cease analysis of the request.

2.3 Within two (2) business days of its receipt, GTE shall acknowledge in writing the receipt of the Bona Fide Request and identify a single point of contact and any additional information needed to process the request.

2.4 Except under extraordinary circumstances, within ten (10) days of its receipt of a Bona Fide Request, GTE shall provide a proposed price and availability date, or it will provide a detailed explanation as to why GTE is not able to meet AT&T's request. If extraordinary circumstances prevail, GTE will inform AT&T as soon as it realizes that it cannot meet the ten (10) day response due date. AT&T and GTE will then determine a mutually agreeable date for receipt of the request.

2.5 Unless AT&T agrees otherwise, all proposed prices shall be consistent with the pricing principles of the Act, FCC and/or the Commission. Payments for services purchased under a Bona Fide Request will be made upon delivery, unless otherwise agreed to by AT&T, in accordance with the applicable provisions of the Agreement.

2.6 Upon affirmative response from GTE, AT&T will submit in writing its acceptance or rejection of GTE's proposal. If at any time an agreement cannot be reached as to the terms and conditions or price of the request, the Dispute resolution procedures described in Attachment 1 may be used by a Party to reach a resolution.

2.7 If GTE responds that it cannot or will not offer the requested item in the Bona Fide Request and AT&T deems the item essential to its business operations, and deems GTE's position to be inconsistent with the Act, FCC or Commission regulations and/or the requirements of this Agreement, the Dispute resolution procedures described in Attachment 1 may be used by a Party to reach a resolution.

Appendix 6
to
Attachment 12

New Services Process

The Parties shall work cooperatively to establish a New Services Process with the objective of having this process in place within six (6) months following approval of this Agreement.

This process shall include consideration of the following principles:

1) AT&T will implement the process by submitting a request to GTE that defines the new services, features and/or capabilities in sufficient detail to permit GTE to analyze the request and prepare a preliminary response.

2) As part of the preliminary response, GTE will advise AT&T whether or not the request is technically feasible. If the requested service, feature and/or functionality is technically feasible, GTE will advise AT&T whether or not it is prepared to proceed with development and, if so, furnish a preliminary price estimate for the service, feature and/or functionality.

3) Upon affirmative response from GTE, AT&T will submit in writing its acceptance or rejection of GTE's proposal. If at any time an agreement cannot be reached as to the terms and conditions or price of the request, the Dispute resolution procedures described in Attachment 1 may be used by a Party to reach a resolution.

4) AT&T and GTE will jointly participate in the development of the new service, feature and/or functionality, using an agreed upon implementation plan.

5) Payments for the new service, feature and/or functionality will be made upon delivery, unless otherwise agreed to by AT&T, in accordance with the applicable provisions of the Agreement.

6) If GTE responds that it cannot or will not offer the requested service, feature and/or functionality and AT&T deems the item essential to its business operations, and deems GTE's position to be inconsistent with the Act, FCC or Commission regulations and/or the requirements of this Agreement, AT&T may use the Dispute resolution procedures described in Attachment 1 to reach a resolution.

ATTACHMENT 13

PRINCIPLES FOR IMPLEMENTING

ELECTRONIC INTERFACES FOR

OPERATIONS SUPPORT SYSTEMS

1. PREORDERING 1

2. ORDERING AND PROVISIONING INFORMATION EXCHANGE 2

3. MAINTENANCE AND REPAIR 4

4. LOCAL ACCOUNT MAINTENANCE 5

5. TESTING AND ACCEPTANCE 6

6. JOINT IMPLEMENTATION AGREEMENT DEVELOPMENT 6

1. PREORDERING

1.1 Transaction-Based Information Exchange

The Parties agree that preordering information exchange will be transmitted over the same interface according to the same content definition both for resold GTE services and for services provided using UNE. AT&T and GTE will work together to establish a transaction-based electronic communications interface. Both parties will diligently pursue completing mutually consistent translations within six (6) months after the Effective Date of this Agreement and proceed to systems readiness testing that will result in a fully operational interface for local service delivery within one (1) year from the Effective Date of this Agreement. AT&T and GTE agree to adapt the interface based upon evolving industry standards. Changes to ATIS guidelines and standards relevant to Transaction-Based Pre-Order information exchange will be implemented based upon a mutually agreeable schedule, but in no case will the time for adoption, including testing of the changes introduced, extend more than 6 to 12 months beyond the date of initial closure by the relevant ATIS committee or subcommittee. This preceding target implementation obligation may be modified by mutual agreement.

1.2 Batch Data Information Exchange

GTE will accept AT&T's request for an initial batch feed of information related to Switch/Feature Availability and Street Address Guide (or equivalent) data and relationship file information via an agreed upon format. At a minimum, this batch feed will include switch/feature availability, including but not limited to type of switching equipment and active features, and a means to reliably correlate a customer address with the assigned servicing office of GTE. AT&T and GTE agree to adapt the interface based upon evolving industry standards. Changes to ATIS guidelines and standards relevant to Batch Pre-Ordering Information Exchange will be implemented based upon a mutually agreeable schedule, but in no case will the time for adoption, including testing of the changes introduced, extend more than 6 to 12 months beyond the date of initial closure by the relevant ATIS committee or subcommittee. This preceding target implementation obligation may be modified by mutual agreement.

1.2.1 GTE will transmit the initial batch feed of the data within three (3) Business Days of receipt of the initial request by AT&T. In addition, GTE will provide complete refreshes of the data on a mutually agreeable monthly schedule. GTE will send the initial batch feed and subsequent monthly updates electronically over a mutually agreeable file transfer network (e.g., the Network Data Mover Network) using a mutually acceptable file transfer protocol. AT&T and GTE will translate necessary data elements used in their

internal processes into mutually agreeable and consistent file formats and record layouts. Both parties will diligently pursue completion of the definition of file formats, record layout and information content within six (6) months after the Effective Date of this Agreement and proceed to systems readiness testing that will result in a fully operational interface within one (1) year from the Effective Date of this Agreement.

2. ORDERING AND PROVISIONING INFORMATION EXCHANGE

2.1 AT&T Resells GTE Telecommunications Service(s)

The exchange of information relating to the ordering and provisioning of local service, when AT&T is the customer of record for the resold service(s), will be based upon the most current interpretations of the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12 Standards as documented by the Service Order Subcommittee (SOSC) of the Telecommunications Forum/Electronic Data Interexchange (TCIF/EDI) committee. AT&T and GTE agree to adapt Ordering and Provisioning Information Exchange based upon evolving industry standards for forms-based information exchange, using Local Service Request (LSR) Form, End User Information Form, the Resale Service Form and any other relevant form developed by the OBF. In accordance with OBF, SOSC forms and transaction codes (i.e. 850, 860, 855, 865 and 997), GTE and AT&T agree to convey all necessary data to connect, modify or disconnect retail local services of GTE that AT&T resells. AT&T and GTE will translate ordering and provisioning requests originating in their internal processes into the agreed upon forms and industry transactions. Both parties will diligently pursue completion of mutually consistent translations within six (6) months after the Effective Date of this Agreement and proceed to systems readiness testing that will result in a fully operational interface for local service delivery within one (1) year from the Effective Date of this Agreement.

Changes to guidelines and standards relevant to ordering of services for resale will be implemented based upon a mutually agreeable schedule, but in no case will the time for adoption, including testing of the changes introduced, extend more than 6 to 12 months beyond the date of initial closure by the relevant ATIS committee or subcommittee. This preceding target implementation obligation may be modified by mutual agreement.

2.2 AT&T Provides Service Using GTE Unbundled Network Elements

2.2.1 The Parties understand and agree that baseline information such as a main billing account, intercompany contact points, the 800 number for GTE to transfer a misdirected end user UNE customer's call, geographic coverage for common use UNE, and other mutually agreeable information is required prior

to the first UNE customer specific order. The parties also agree to document, in the Joint Implementation Agreement, the relevant information from the AT&T Infrastructure Footprint Form and the GTE CLEC Profile into a mutually acceptable notification mechanism. GTE will respond to the initial notification request with a batch feed of information related to Switch/Feature Availability and Street Address Guide (SAG) and relationship file that are further discussed in Section 1 (PREORDERING). AT&T and GTE may mutually agree to use an alternative format for exchange of Footprint Order related information, provided that the same information content is delivered. GTE will accept the Infrastructure/ Footprint Form developed by AT&T or the mutually agreed-upon equivalent format, until such time as AT&T and GTE agree that the OBF has adopted an acceptable alternative form. AT&T and GTE recognize that modifications to routing tables may be necessary in order to accomodate the treatment of customer calling associated with the combination of UNEs that AT&T may employ to deliver service. Both parties agree that a mutually agreeable mechanism for communicating routing changes, at the local office level, will be documented in the Joint Implementation Agreement relating to this interface. Unless another mutually agreeable mechanism is established, GTE will accept delivery of these forms through the ASR process, including passing of the information over a mutually agreeable file transfer network (e.g. the Network Data Mover Network) and file transfer protocol.

2.2.2 Unless otherwise agreed by the Parties, the customer specific provisioning order will be based upon OBF LSR forms. The applicable implementation guidelines described in the prior paragraphs relating to resale of GTE retail services also apply to the customer specific provisioning orders. GTE agrees that the information exchange will be forms-based using the Local Service Request Form, End User Information Form, Loop Service Form and Port Form, Loop Form with Number Portability, and Number Portability Form developed by the OBF. The SOSC interpretation of 850, 860, 855, 865, and 997transactions, in accordance with the OBF forms, will be used to convey all the necessary data to connect, modify or disconnect GTE customer-specific UNEs employed by AT&T to deliver retail local services. Customer-specific elements include, but are not limited to, the customer loop, the network interface device, the customer-dedicated portion of the local switch and any combination thereof. AT&T and GTE will translate ordering and provisioning requests originating in their internal processes into the agreed upon forms and industry standard transactions. Both parties will diligently pursue completing mutually consistent translations within six (6) months after the Effective Date of this Agreement and proceed to systems readiness testing that will result in a fully operational interface for ordering UNEs within one (1) year from the Effective Date of this Agreement. Unless otherwise mutually agreed because of time, cost and compatibility with existing systems, AT&T

and GTE agree to adapt the interface based upon evolving industry standards. Adaptations to SOSC implementation guidelines, to the extent relevant to local service ordering and provisioning for customer specific UNEs, will be implemented based upon a mutually agreeable schedule. Changes to ATIS guidelines and standards relevant to Ordering and Provisioning Information Exchange will be implemented based upon a mutually agreeable schedule, but in no case will the time for adoption, including testing of the changes introduced, extend more than 6 to 12 months beyond the date of initial closure by the relevant ATIS committee or subcommittee. This preceding target implementation obligation may be modified by mutual agreement.

2.3 Treatment of Subsequent/Supplemental Transactions

A mutually acceptable treatment of subsequent/supplemental transactions will be adopted by both parties until the SOSC explicitly clarifies the information exchanges associated with supplementing orders. AT&T and GTE will agree upon a mutually acceptable time frame for adapting their internal systems to accommodate the OBF clarifications.

3. MAINTENANCE AND REPAIR

3.1 Maintenance and repair information exchange will be transmitted over the same interface according to the same content definition both for resold GTE retail local services and for services AT&T provides using a GTE UNE or combinations of GTE UNEs. AT&T and GTE will, for the purpose of exchanging fault management information, establish an electronic bonding interface, based upon ANSI standards T1.227-1995 and T1.228-1995, and Electronic Communication Implementation Committee (ECIC) Trouble Report Format Definition (TRFD) Number 1 as defined in ECIC documents ECIC/TRA/95-003, and all standards referenced within those documents. The parties will use and acknowledge functions currently implemented for reporting access circuit troubles. These functions include Enter Trouble, Request Trouble Report Status, Add Trouble Information, Modify Trouble Report Attributes, Trouble Report Attribute Value Change Notification and Cancel Trouble Report, all of which are fully explained in clauses 6 and 9 of ANSI T1.228-1995.

3.2 AT&T and GTE will exchange requests over a mutually agreeable X.25 network or, if both AT&T's and GTE's platforms are capable, a mutually agreeable TCP/IP based network may be employed. AT&T and GTE will translate maintenance requests or responses originating in their internal processes into the agreed upon attributes and elements. Both parties will diligently pursue completing mutually consistent translations within six (6) months after the Effective Date of this Agreement and proceed to systems readiness testing that will result in a fully operational interface for local service delivery within one (1) year after the Effective Date of this Agreement. AT&T and GTE agree to adapt the interface based upon evolving industry standards. Changes to ATIS guidelines and standards relevant to Local Service Maintenance will be implemented based upon a mutually agreeable schedule, but in no case will the time for adoption, including testing of the changes introduced, extend more than 6 to 12 months beyond the date of initial closure by the relevant ATIS committee or subcommittee. This preceding target implementation obligation may be modified by mutual agreement.

4. LOCAL ACCOUNT MAINTENANCE

4.1 When acting as the switch provider for AT&T, where AT&T either is reselling retail services of GTE or employing UNEs to provide local service, GTE will notify AT&T whenever the local service customer transfers service from AT&T to another local service provider. GTE will provide this notification via a mutually agreeable 4 digit Local Use Transaction Code Status Indicator (TCSI) that will indicate the retail customer is terminating local service with AT&T. GTE will transmit the notification, via a mutually agreeable file transfer network (e.g., the Network Data Mover Network) and file transfer protocol, within twenty-four (24) hours of GTE provisioning the switch. The TCSI, sent by GTE will be in the 960 byte industry standard CARE record format.

4.2 GTE will accept account changes that affect only the pre-subscribed intraLATA and/or interLATA toll provider (PIC) through a local service order. Additionally, AT&T and GTE will work together diligently to develop industry standard CARE processes to process account changes.

4.3 In addition, GTE will reject, via the industry standard CARE Record TCSI Code 3148, any interexchange carrier initiated change of the Primary Interexchange Carrier (PIC), where GTE is the switch provider either for the retail local services of GTE that AT&T resells or UNEs of GTE that AT&T employs in providing service.

4.4 AT&T and GTE agree to adapt the interface based upon evolving industry standards. Changes to ATIS guidelines and standards relevant to Local Account Maintenance will be implemented based upon a mutually agreeable schedule, but in no case will the time for adoption, including testing of the changes introduced, extend more than 6 to 12 months beyond the date of initial closure by the relevant ATIS committee or subcommittee. This preceding target implementation obligation may be modified by mutual agreement.

4.5 Agreement by the Parties to the Local Account Maintenance described above does not, in any way, set a precedent or remove any obligation for the Parties to work toward an industry solution for supporting customer movement between and among other ILECs and CLECs.

5. TESTING AND ACCEPTANCE

AT&T and GTE agree that no interface will be represented as either generally available or as operational until end-to-end integrity and load testing, as agreed to in a Joint Implementation Agreement or other mutually acceptable document are completed to the satisfaction of both Parties. The intent of the end-to-end integrity testing is to establish, through the submission and processing of test scenarios, that transactions agreed to by AT&T and GTE will successfully process, in a timely and accurate manner, through both Parties' support OSS as well as the interfaces. The testing will include the use of mutually agreeable test transactions, designed to represent no less than 95 percent of the transaction types that AT&T and GTE expect to send and receive through the interface undergoing end-to-end testing. In addition, AT&T and GTE will establish either a mutually agreeable testing environment or an audit process sufficient to demonstrate that the interfaces established between AT&T and GTE have the capability and capacity to exchange busy period transaction volumes reasonably projected to occur during the forward-looking twelve month period following implementation of the interface. AT&T will provide mutually agreeable forecast data to GTE for the forward-looking twelve month period, necessary to determine capability and capacity. The test environment or audit process, which ever is utilized, must validate that GTE can accept and process the anticipated busy period load without degradation of overall end-to-end performance of the information exchange delivered to AT&T even when other CLEC transactions are simultaneously processed by GTE.

6. JOINT IMPLEMENTATION AGREEMENT DEVELOPMENT

AT&T and GTE recognize that this Attachment is not sufficient to fully resolve all technical and operational details related to the interfaces described. Therefore, AT&T and GTE agree to document the additional technical and

operational details in the form of a Joint Implementation Agreement (JIA). Both parties further agree that any technical, operational or implementation issues, once identified at the working team level, may be escalated by the initiative of either Party, thirty days after an issue is identified, to the dispute resolution procedures of Attachment 1 for binding resolution. In addition, AT&T and GTE will document both a topical outline for the JIAs as well as establish a schedule for identifying, discussing, resolving and documenting resolution of issues related to each aspect of the JIA topical outline for each interface discussed in this document. In no event will either end-to-end integrity testing or load testing begin unless the parties agree that for each interface to be tested, the JIA properly documents the intended operation of the interface scheduled for testing. Any issues identified and subsequently resolved through either the end-to-end integrity or load testing processes will be incorporated into the impacted interface JIA within 30 days of issue resolution.

Attachment 14

AT&T/GTE Pricing Agreement

TABLE OF CONTENTS

1. LOCAL SERVICE RESALE 1

2. UNBUNDLED NETWORK ELEMENTS 2

3. COLLOCATION 2

4. INTERCONNECTION SERVICES 3

5. OTHER 3

Appendix 1 - Local Service Resale
Appendix 1 - Annex 1 - Schedule of Wholesale Discounts
Appendix 1 - Annex 2 - Summary of Wholesale Charges
Appendix 2 - Prices for Unbundled Network Elements
Florida (Per Order)
Appendix 3 - Prices for Collocation
Appendix 3 - Annex 1 - Charges State of Florida
Appendix 4 - Reciprocal Compensation
Appendix 4 - Annex 1 - Prices for Reciprocal Compensation
Appendix 5 - Prices for Local Number Portability
Appendix 6 - Prices for Trunking Interconnection
Appendix 7 - Prices for E911/911 Services
Appendix 8 - Rights-of-Way, Conduits, Ducts and Pole Attachments

Attachment 14

AT&T/GTE Pricing Agreement

1. Local Service Resale

The prices charged to AT&T for Local Service shall be calculated using the avoided cost discount applicable in the State determined on the basis of the retail rate 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 GTE, as further specified in Appendix 1 to this Attachment 14.

The prices shall be GTE's retail rates applicable on the Effective Date, less the applicable discount. If GTE reduces or increases its retail rates after AT&T executes this Agreement, the applicable discount shall be applied to the reduced or increased retail rates.

2. Unbundled Network Elements

The prices charged to AT&T for Network Elements shall be as further specified in Appendix 2 to this Attachment 14.

3. Collocation

Prices and terms for collocation are specified in Appendix 3 to this Attachment 14.

4. **Interconnection Services**

GTE will make interconnection arrangements available at all tandem switching and end office switching locations. At the discretion of AT&T, local interconnection may be accomplished via one-way local trunks, or two way local trunks, or AT&T may chose to deliver both local and toll traffic over the same trunk group(s). With respect to the latter scenario, AT&T will have to provide an available Percent Local Usage (PLU) to facilitate billing if it desires application of the local interconnection rate.

Prices and terms for Interconnection Services are specified in Appendix 4 to this Attachment 14.

5. **Other**

Prices and terms for local number portability, trunking interconnection, E911/911 and pole attachments, conduit and rights-of-way services are specified in Appendix 5, Appendix 6, Appendix 7 and Appendix 8 to this Attachment 14, respectively.

6. Numerous provisions in this Agreement and its Attachments refer to prices or pricing principles set forth in Attachment 14. If a provision references prices in Attachment 14 and there are no corresponding prices already set forth in Attachment 14 for such item, such price shall be considered "To Be Determined" ("TBD"). With respect to all TBD prices, prior to AT&T ordering any such TBD item, the Parties shall meet and confer to establish a price. If the Parties are unable to reach agreement on a price for such item, an interim price shall be set for such item that is equal to the price for the nearest analogous item for which a price has been established (for example, if there is not an established price for a non-recurring charge ("NRC") for a specific Network Element, the Parties would use the NRC for the most analogous retail service for which there is an established price); provided, however, that if the Parties are unable to agree on what is the nearest analogous item for purposes of setting an interim price or if there is no such analogous item, they will submit the dispute to arbitration for purposes of establishing an interim price in accordance with the procedures set forth in Attachment 1. Any interim prices so set shall be subject to modification by any subsequent decision of the Commission. If an interim price is different from the rate subsequently established by the Commission, any underpayment shall be paid by AT&T to GTE, or any overpayment refunded by GTE to AT&T, within forty-five (45) days after the establishment of the price by the Commission.

Appendix 1 - Local Service Resale

Beginning with the Effective Date of this Agreement, Resale Services will be priced in accordance with the standards and prices described below.

1. The wholesale rates for Local Service Resale will be calculated based upon the discounts described in Annex 1. Such discounts will be applied against the Retail Rates for each GTE Retail Offering.

1.1 "Retail Rates" are the effective rates a GTE retail customer would have paid GTE under the Retail Offering selected by AT&T, taking into consideration all applicable discounts, including, but not limited to, volume, term and time of day.

1.2 A "Retail Offering" is an individual contract or retail service rate element, or package of rate elements, which GTE offers to its retail customers, including, but not limited, to Grandfathered Services.

2. Nonrecurring "change" or "record" charges, rather than service establishment charges, shall apply for the conversion of existing Customers of GTE services, received either directly from GTE or through another reseller, to AT&T local service.

Appendix 1 - Annex 1 - Schedule of Wholesale Discounts

Florida

Basic Local Service (Residence & Business)	13.04%
Line Charge	13.04%
Usage Charge	13.04%
Features	13.04%
Listing Charges	13.04%
Non-recurring Charges	13.04%
Toll Service	13.04%
Operator Services	13.04%
Directory Assistance	13.04%
Business Trunk and Service Arrangements	13.04%
ISDN Services	13.04%
CENTRANET Services	13.04%
Private Line Services	13.04%
Inbound/Outbound Services	13.04%
Promotional Offerings (90 days or more)	13.04%
Promotional Offerings (less than 90 days)	Not subject to wholesale discount
Services for disabled persons (including free directory assistance)	13.04%
In Contact Services	13.04%
Public and Semi-Public Payphone Services	13.04%
Contract Services	13.04%
Grandfathered Services	13.04%
All other retail Telecommunications Services not excluded from resale by order of the Commission	13.04%

Appendix 1 - Annex 2 - Summary of Wholesale Charges

This Annex refers to contract or retail service charges.

Local Services-Residence and Business.

Line Charges: These services should include but not be limited to the exchange line charges, by rate area within the jurisdiction. The price structure should encompass flat rates, measured rate service, one and/or two-party lines and any other subcategory that pertains to that jurisdiction. Line prices that reflect usage for such services as call-packs, extended area service, community calling would be included in this category.

Usage Charges: Includes all usage not captured in the line charge, such as messages or minutes in excess of any limited calling-plan.

Features: Custom calling features and advanced custom calling features as designed to be compatible with single and multi-line residence and business customer exchange lines. Custom calling features would include month and pay per attempt charges. Associated feature discounts for quantity or other marketing bundles would also be included. (Central office features that support CENTRANET and private line services would be included with each specific service category.).

Listings: All forms of directory listings for both local and toll services. Prices for customer listing options such as bold type, dual name, business name and custom advertising for the white and yellow pages are included.

Non-recurring charges: Charges associated with the installation, addition, changing or moving of service and equipment for local service.

Toll Services: Charges for any service that has been ordered by the Commission to be open to intraLATA presubscription whether charged on a per minute of use or other basis. This includes the non-recurring and listing charges associated with installation or record affecting work for toll service or toll usage plans and for listings, advertising and associated services in the 800 service directory.

Operator Services: Charges associated with, but not limited to, obtaining operator assistance for call placement, busy-line verification and interruption, time and weather and, if priced as such, DA call completion.

Directory Assistance Services: Charges associated with the use of directory assistance operators in obtaining local telephone numbers.

Business Trunks and Service Arrangements: Charges associated with PBX trunk arrangements for single and multi-line customers. Included are line and usage charges, features and service arrangements for direct inward (and/or outward) dialing.

ISDN Services: Charges associated with Integrated Services Digital Network Service for residence and business customers for the transmission of voice, data and packet switched signals.

CENTRANET Services: Charges associated with the provision and use of central office based private branch exchange services using equipment located on the premises owned or leased or controlled by GTE and connected by local loops to the premises of the customer or an authorized user.

Private Line Services: Charges associated with the provision and use of dedicated facilities between two or more customer locations.

Inbound/Outbound Services: Charges associated with the provision and use of WATS 800 (inbound) and Wide Area Telephone service (outbound) and other like services.

End User Access Services: Charges associated with the provision and use of common and dedicated facilities to provide access service to end user customers.

Appendix 2 - Prices for Unbundled Network Elements

Beginning with the Effective Date of this Agreement, Network Elements and Combinations will be priced in accordance with the standards and prices described in this Appendix 2.

Other than the prices identified as interim, the prices listed in this Appendix 2 will remain in effect for three (3) years (Initial Contract Period) unless amended pursuant to pricing orders applicable to Network Elements and Combinations provided by GTE to AT&T in the State. The prices identified as interim are subject to further order of the Commission pending submission of cost studies by GTE. At the end of the Initial Contract Period, the agreement will automatically renew for an additional one year term, unless one party gives 90 days written notice of a wish to terminate. Upon the giving of such written notice by a Party, the Parties agree to renegotiate any or all of the prices, subject to the then applicable pricing standards established by the FCC and/or the state regulatory commission. If the Parties are unable to agree upon revised prices within sixty (60) days of the request to terminate, a Party may invoke the Dispute resolution procedures of Attachment 1. Until such time as the revised prices are agreed to, or established by the decision of the Arbitrator in the dispute resolution procedure, the prices described in this Appendix 2 will continue to remain in effect.

Nonrecurring charges for Dedicated Transport, Database and Signaling Systems, and Channelization System to be provided following review of GTE cost data.

Appendix 2 - Annex 1

FLORIDA

Summary of PSC Modified Monthly Recurring Costs
For GTE Florida, Inc.

	Rates
Unbundled Loops	
2-Wire Analog Loop	$20.00
4-Wire Analog Loop	$25.00
Loop Distribution	$7.50 -interim
Loop Feeder	$3.00 -interim
NID	
Basic NID	$1.45
12x NID	$2.10
Cross Connects	
DS-0	$1.60
DS-1	$4.00
DS-3	$31.00
Local Switching	
Per Originating MOU	$.004
Per Terminating MOU	$.00375
Port Charges per Month:	
2-wire Analog Port	$4.75
4-wire Analog Port	Cost study due
DS-1 Port	$72.25
Tandem Switching	
Per MOU	$.0009512
Common Transport	
Transport Termination	$.0001
Transport Facility / per mile	$.0000017
Dedicated Transport	

Entrance Facility:	
2-wire voice	$29.00
4-wire voice	$35.00
DS-1 system - first	$135.00
DS-1 system - add'l	$125.00
DS-3 protected	$960.00
Voice facility	$2.60
DS-1 facility per mile	$0.50
DS-1 per termination	$30.00
DS-3 facility per mile	$13.00
DS-3 per termination	$285.00
Channelization System	
DS3 to DS1 multiplexing	$305.00
DS1 to DS0 multiplexing	$205.00
Database and Signaling Systems	
Signaling Links and STP	
56 Kbps Links	$80.00
DS-1 Link	$125.00
Signal Transfer Point (STP)	
Port Termination	$350.00
Call Related Databases	
Line Information Database	
ABS	$.04
Toll Free Calling Databases	
DB800 Queries	$.011
Operations Support Systems	Cost study due
Operator Services	
Operator Systems	Cost study due
Directory Assistance	Cost study due
911 Service	Cost study due

Summary of PSC Modified Non-Recurring Costs
For GTE Florida, Inc.

Unbundled Element	Non-Recurring Charge
Loop or Port Service Ordering	
Initial Service Order	$47.25
Transfer of Service	$16.00
Subsequent Service Order	$24.00
Customer Service Record	$ 5.25
Research	
Installation:	
Unbundled loop, per loop	$10.50
Unbundled port, per port	$10.50
Loop Facility Charge	$62.50

Appendix 3 - Prices for Collocation

3. **Charges.**

Beginning with the Effective Date of this Agreement, Collocation will be priced in accordance with the standards and prices described in Annex 1 of this Appendix 3.

4. **Payment.**

AT&T will pay the charges for Collocation upon receipt of an itemized invoice from GTE. GTE will provide AT&T with an itemized invoice of all charges on a per LSO basis.

Appendix 3 - Annex 1

FLORIDA

Summary of Commission-Approved Charges for Collocation
For GTEFL

Collocation Element	Recurring Rate
DS-0	$1.60/per month
DS-1	$4.00/per month
DS-3	$31.00/per month
Partitioned space/square foot	$1.85/per month
DC power	$405.00/per month
Cable space	$14.00/per month

Collocation Element	Non-Recurring Rate
Physical Engineering Fee	$6,946.00/per request
Building Modification Costs:	
Simple	$13,484.00/per office
Moderate	$18,448.00/per office
Complex	$23,514.00/per office
DC power	$2,900.00/per 40 amps
Cable Pull	$1,213.00/per 12 fibers
Cage Enclosure	$4,559.00/per cage

Appendix 4 - Reciprocal Compensation

5. **Scope.**

This Appendix prescribes the methods and means for reciprocal compensation of interconnect traffic between GTE's and AT&T's networks as well as transiting traffic between AT&T and third party LECs or ILECs.

6. **Interconnecting Local Traffic.**

On each three (3) month anniversary of the Interconnection Activation Date in a Market Area, the Parties will review the minutes of usage for interconnect traffic for the prior quarter. If the minutes of usage imbalance for interconnect traffic for that period is less than ten (10%) percent, neither Party shall charge the other for services provided under this Appendix. If an imbalance is greater than ten (10%) percent, then the appropriate party may bill the other using the rates discussed in this Appendix. In the event of a disagreement regarding reciprocal compensation billing, either Party may invoke the dispute resolution procedures of Attachment 1.

7. **Transiting Traffic.**

AT&T shall pay to GTE a Transiting Service Charge for the use of its Tandem Switching as described in Annex 1 to this Appendix 4.

8. **BLV/BLVI Traffic.**

Each party shall charge the other for BLV/BLVI Services on a reciprocal basis as provided in Section of this Agreement.

Appendix 4 - Annex 1 - Prices for Reciprocal Compensation

These prices will remain in effect for the first three (3) Contract Years of this Agreement ("Initial Contract Period"), unless amended pursuant to pricing orders applicable to the services provided to each other by AT&T and GTE listed in this Appendix 4. Upon expiration of the Initial Contract Period, upon written notice by a Party, the Parties agree to renegotiate any or all of the prices, subject to the then applicable pricing standards established by the FCC and/or the state regulatory Commission. A Party may deliver only one request to renegotiate during a Contract Year. If the Parties are unable to agree upon revised prices within sixty (60) days of the request to renegotiate, a Party may invoke the Dispute resolution procedures of Attachment 1. Until such time as the revised prices are agreed to, or established by the decision of the Arbitrator in the dispute resolution procedure, the prices described in this Annex will continue to remain in effect.

Dedicated transport - See Appendix 2 - Annex 1 to this Attachment 14

Common transport - See Appendix 2 - Annex 1 to this Attachment 14

End Office Switching - $0.0025 per minute

Tandem Switching - $.00125 per minute

Transiting Service Charge - TBD

Appendix 5 - Prices for Local Number Portability

There will be no charge for number portability provided by one Party for the other. Pending further study and order by the Commission, each party will pay its own costs in the provision of interim number portability solutions. Recovery of the costs of implementing interim number portability will be made in a competitively neutral manner.

Appendix 6 - Prices for Trunking Interconnection

The prices listed in this Appendix are not subject to change for the first three (3) Contract Years of this Agreement ("Initial Contract Period"). Upon expiration of the Initial Contract Period, upon written notice by a Party, the Parties agree to renegotiate any or all of the prices, subject to the then applicable pricing standards established by the FCC and/or the state regulatory commission. A Party may deliver only one request to renegotiate during a Contract Year. If the Parties are unable to agree upon revised prices within sixty (60) days of the request to renegotiate, a Party may invoke the Dispute resolution procedures of Attachment 1. Until such time as the revised prices are agreed to, or established by the decision of the Arbitrator in the dispute resolution procedure, the prices described in this Appendix will continue to remain in effect.

Dedicated Transport Rates

AT&T Dedicated Transport

See Appendix 2 - Annex 1 to this Attachment 14

GTE Dedicated Transport -

See Appendix 2 - Annex 1 to this Attachment 14

Nonrecurring charges to be provided following review of GTE cost data.

Appendix 7 - Prices for E911/911 Services

The prices listed in this Appendix are not subject to change for the first three (3) Contract Years of this Agreement ("Initial Contract Period"). Upon expiration of the Initial Contract Period, upon written notice by a Party, the Parties agree to renegotiate any or all of the prices, subject to the then applicable pricing standards established by the FCC and/or the state regulatory commission. A Party may deliver only one request to renegotiate during a Contract Year. If the Parties are unable to agree upon revised prices within sixty (60) days of the request to renegotiate, a Party may invoke the Dispute resolution procedures in Attachment 1. Until such time as the revised prices are agreed to, or established by the decision of the Arbitrator in the dispute resolution procedure, the prices described in this Appendix will continue to remain in effect.

[To be provided following review of GTE cost data]

Appendix 8 - Rights-of-Way, Conduits, Ducts, and Pole Attachments

Prices. The prices charged to AT&T for supplying facilities will be based on a pro rata share of the TSLRIC. AT&T will pay for work needed to condition capacity for AT&T's use and administrative fees and rental fees associated with AT&T's occupancy of GTE's facilities.

If GTE advises AT&T that a route is available and subsequently it is determined that a portion of the route is not available, then AT&T will not be required to pay for any work performed by GTE with respect to such route and any prepaid amounts will be refunded to AT&T.

GTE and AT&T shall agree on a verifiable mechanism or process to ensure that AT&T is properly charged for such work and that, where necessary, costs are allocated and prorated in a nondiscriminatory and competitively neutral manner in accordance with methodology approved by the FCC or the Commission. When AT&T places a request with GTE for work to be performed for AT&T in connection with Rights of Way, Conduit and Pole Attachments, GTE shall submit to AT&T a detailed estimate for such work as soon as practicable after the receipt of the request. GTE shall not commence work on the request until it receives prior authorization from AT&T. All invoices submitted by GTE shall include a detailed itemization of all work covered thereunder.

ATTACHMENT 15

RECIPROCAL COMPENSATION FOR CALL TERMINATION AGREEMENT

1. This Attachment describes the reciprocal compensation arrangements between AT&T and GTE for Local Traffic, Toll, and Switched Access Services. The Parties shall compensate each other for transport and termination of such traffic at the rates provided in Attachment 14 (Pricing) and/or the appropriate Parties' Switched Access Tariff.

2. Compensation for Call Termination

   A. Reciprocal compensation does not apply in a resale environment.

   B. The following compensation terms, as specified in Unbundled Network Element pricing listed in Attachment 14, shall apply in all cases where AT&T purchases GTE's unbundled Local Switching:

      1. For Local intra-switch calls between lines connected to GTE's switch where AT&T has purchased GTE's unbundled Local Switching, the Parties agree to impose no call termination charges on each other. GTE's Local Switching charge will apply as described below where the call is :

         (a) Originated by AT&T's customer and completed to a GTE customer:

            (1) (For use of the local switch:) Local Switching charge at the originating office will apply to AT&T.

         (b) Originated by AT&T's customer and completed to the customer of a third party LEC (not affiliated with AT&T) using GTE's unbundled Local Switching:

            (1) (For use of the local switch:) Local Switching charge at the originating office will apply to AT&T.

         (c) Originated by AT&T's customer and completed to another of AT&T's customers using GTE's unbundled Local Switching.

            (1) (For use of the local switch:) Local Switching charge at the originating office will apply to AT&T.

         (d) Originated by a GTE customer and terminated to AT&T's customer using GTE's unbundled Local Switching.

(1) No Local Switching charge will apply to AT&T.

(e) Originated by the customer of a third party LEC (not affiliated with AT&T) using GTE's Unbundled Local Switching and terminated to AT&T's customers using GTE's unbundled Local Switching.

(1) No Local Switching charge will apply to AT&T.

2. For Local inter-switch calls where AT&T has purchased GTE's unbundled Local Switching, the Parties agree to call termination charges as applicable and as described in Attachment 14, Appendix 4, Section 2.

GTE's charges will apply to AT&T as described below where the call is:

(a) Originated from AT&T's end-user customer using GTE's unbundled Local Switching and completed to a GTE customer.

(1) (For use of the local switch:) Local Switching charge at the originating office will apply to AT&T.

(2) A mileage-based transport charge will apply when AT&T uses GTE's transport.

(3) (For call termination) Charges for local interconnection/call termination, when applicable, as set forth in Attachment 14, Appendix 4.

(b) Originated from AT&T's customer using GTE's unbundled Local Switching and completed to a third party LEC (not affiliated with AT&T) customer using GTE's unbundled Local Switching.

(1) (For use of the local switch:) Local Switching charge at the originating office will apply to AT&T.

(2) A mileage-based transport charge will apply when AT&T uses GTE's transport.

(c) Originated from AT&T's customer using GTE's unbundled Local Switching and completed to the interconnected network of a third party LEC (not affiliated with AT&T).

(1) (For use of the local switch:) Local Switching charge at the originating office will apply to AT&T.

(2) A mileage-based transport charge will apply when AT&T uses GTE's transport, and mileage shall be measured between the originating office and the POI of the third party's network.

(d) Originated from AT&T's customer using GTE's unbundled Local Switching and completed to AT&T's customer using GTE's unbundled Local Switching.

(1) (For use of the local switch:) Local Switching charge at the originating office will apply to AT&T.

(2) A mileage-based transport charge will apply when AT&T uses GTE's transport.

(3) (For use of the local switch:) Local Switching charge at the terminating office.

(e) Originated by a GTE customer and terminated to AT&T's customer using GTE's unbundled Local Switching.

(1) (For use of the local switch:) Local Switching Charge at the terminating office will apply to AT&T.

(2) (For call termination) AT&T shall charge GTE for local interconnection/call termination, when applicable, as set forth in Attachment 14, Appendix 4.

(f) Originated by a customer of a third-party LEC (not affiliated with AT&T) using GTE's unbundled Local Switching and terminated to AT&T's customer using GTE's unbundled Local Switching.

(1) (For use of the local switch:) Local Switching charge at the terminating office will apply to AT&T.

(g) Originated by a customer on the interconnected network of a third-party LEC (not affiliated with AT&T) and terminated to AT&T's customer using GTE's unbundled Local Switching.

(1) (For use of the local switch:) Local Switching charge at the terminating office will apply to AT&T.

3. For intraLATA toll calls where AT&T has purchased GTE's unbundled Local Switching, charges per Unbundled Network Element pricing listed in Attachment 14 shall apply as follows:

(a) Originated by AT&T's customer and completed to a GTE customer.

(1) (For use of the local switch:) Local Switching charge plus RIC (Residual Interconnection Charge, also called the Transport Interconnection Charge or the Interconnection Charge) and CCLC (Common Carrier Line Charge) at the originating office will apply to AT&T, if such charges are required by the Commission.

(2) Shared transport charge between the two offices will apply when AT&T uses GTE's transport.

(3) (For call termination) End Office Switching charge at the terminating office (Switched Access Rate) will apply to AT&T.

(4) RIC at the terminating office, if such charge is required by the Commission.

(b) Originated by AT&T's customer and completed to the customer of a third-party LEC (not affiliated with AT&T) using GTE's unbundled Local Switching in a distant end office.

(1) (For use of the local switch:) Local Switching charge plus RIC and CCLC at the originating office will apply to AT&T, if such charges are required by the Commission.

(2) Shared transport charge between the two offices will apply when AT&T uses GTE's transport.

(c) Originated by AT&T's customer and completed to the network of third-party LEC (not affiliated with AT&T) interconnected with GTE's network.

(1) (For use of the local switch:) Local Switching charge, plus RIC and CCLC, at the originating office will apply to AT&T, if such charges are required by the Commission.

(2) Common transport charge will apply when AT&T uses GTE's transport, and mileage shall be measured

between the originating office and the POI of the third party's network.

(3) Tandem Switching, where applicable.

(d) Originated by AT&T's customer and completed to another of AT&T's customers being served through GTE's unbundled Local Switching in a distant office.

(1) (For use of the local switch:) Local Switching charge plus RIC and CCLC at the originating office will apply to AT&T, if such charges are required by the Commission.

(2) Shared transport charge between the two offices will apply when AT&T uses GTE's transport.

(3) (For use of the local switch:) Local Switching charge plus RIC and CCLC at the terminating office will apply to AT&T, if such charges are required by the Commission.

(e) Originated by a GTE customer and terminated to AT&T's customer using GTE's unbundled Local Switching.

(1) (For use of the local switch:) Local Switching charge plus RIC and CCLC at the terminating office, if such charges are required by the Commission.

(2) (For call termination:) AT&T will charge GTE Local Switching at the terminating office (Switched Access Rate).

(3) (For call termination:) AT&T will charge GTE RIC at the terminating office, if such charge is required by the Commission.

(f) Originated by the customer of a third-party LEC (not affiliated with AT&T) using GTE's unbundled Local Switching in a distant end office and terminated to AT&T's customer using GTE's unbundled Local Switching.

(1) (For use of the local switch:) Local Switching charge plus RIC and CCLC at the terminating office will apply to AT&T, if such charges are required by the Commission.

(g) Originated by a customer on the network of a third-party LEC (not affiliated with AT&T) interconnected with GTE's network

and terminated to AT&T's customer using GTE's unbundled Local Switching.

(1) (For use of the local switch:) Local Switching charge plus RIC and CCLC at the terminating office will apply to AT&T, if such charges are required by the Commission.

4. For intrastate Switched Access calls where AT&T is using GTE's unbundled Local Switching for calls originated from or terminated to an IXC for completion:

(a) For calls originated from AT&T's customer to AT&T's own IXC switch (or that of an affiliate) for completion.

(1) (For use of the local switch:) Local Switching charge at the originating office.

(2) Originating RIC and CCLC, if such charges are required by the Commission.

(3) GTE will charge AT&T's IXC affiliate the following Switched Access elements on a meet-point basis:

a. Local Transport

b. Tandem Switching

(b) For calls originated from AT&T's customer to an IXC's switch not affiliated with AT&T.

(1) (For use of the local switch:) Local Switching charge at the originating office.

(2) Originating RIC and CCLC, if such charges are required by the Commission.

(3) GTE shall charge the non-affiliated IXC for the following originating Switched Access on a meet-point basis:

a. Local Transport

b. Tandem Switching

(c) For calls terminating to AT&T's end-user customer from AT&T's own IXC switch (or that of an affiliate) for completion.

(1) (For use of the local switch:) Local Switching charge at the terminating office.

(2) Terminating RIC and CCLC, if such charges are required by the Commission.

(3) GTE will charge AT&T's IXC (affiliate) the following Switched Access elements on a meet-point basis:

a. Local Transport

b. Tandem Switching

(d) For calls terminating to AT&T's customer from an IXC switch not affiliated with AT&T.

(1) (For use of the local switch:) Local Switching charge at the terminating office.

(2) Terminating RIC and CCLC, if such charges are required by the Commission.

(3) GTE shall charge the IXC for the following terminating Switched Access on a meet-point basis:

a. Local Transport

b. Tandem Switching

5. For interstate Switched Access calls where AT&T is using GTE's unbundled Local Switching for calls originated from or terminated to an IXC for completion:

(a) For calls originated from AT&T's customer to AT&T's own IXC switch (or that of an affiliate) for completion..

(1) (For use of the local switch:) Local Switching charge at the originating office.

(2) Originating RIC and CCLC, if such charges are required by the Commission.

(3) GTE shall charge AT&T's IXC affiliate for the following originating Switched Access on a meet-point basis:

a. Local Transport

b. Tandem Switching

(b) For calls originated from AT&T's customer to an IXC's switch not affiliated with AT&T.

(1) (For use of the local switch:) Local Switching charge at the originating office.

(2) Originating RIC and CCLC, if such charges are required by the Commission.

(3) GTE shall charge the IXC for the following originating Switched Access on a meet-point basis:

a. Local Transport

b. Tandem Switching

(c) For calls terminating to AT&T's customer from AT&T's own IXC switch (or that of an affiliate) for completion.

(1) (For use of the local switch:) Local Switching charge at the terminating office.

(2) Terminating RIC and CCLC, if such charges are required by the Commission.

(3) GTE will charge AT&T's IXC (affiliate) the following Switched Access elements on a meet-point basis:

a. Local Transport

b. Tandem Switching

(d) For calls terminating to AT&T's customer from an IXC switch not affiliated with AT&T.

(1) (For use of the local switch:) Local Switching charge at the terminating office.

(2) Terminating RIC and CCLC, if such charges are required by the Commission.

(3) GTE shall charge the non-affiliated IXC for the following terminating Switched Access on a meet-point basis:

a. Local Transport

b. Tandem Switching

C. The following terms apply where AT&T and GTE interconnect using their own networks.

1. For Local Traffic and intraLATA Toll traffic originated by AT&T (or CLECs subtending its network) to GTE, AT&T agrees to pay GTE the following:

(a) Local calls: Unless otherwise provided in Attachment 14, Bill and Keep shall apply to Local Traffic. In the event traffic (as defined from the point of interconnection) is out of balance, the rate specified in Attachment 14 shall apply.

(b) Toll calls: The following GTE Intrastate Switched Access rate elements are applicable to intraLATA toll calls, if such charges are required by the Commission.

(1) For common switched transport where GTE's tandem is used:

(a) Fixed - per minute of use.

(b) Variable - per mile per minute of use. Mileage shall be calculated based on the airline miles between the Vertical and Horizontal ("V&H") coordinates of the POI, and the GTE end office or Competitive Local Carrier routing point.

(c) Tandem Switching.

(2) End Office switching.

(3) Information Surcharge

(4) RIC

(5) CCLC

2. For Local Traffic and intraLATA Toll traffic originated from GTE to AT&T, GTE agrees to pay AT&T the following:

(a) Local calls: Unless otherwise provided in Attachment 14, Bill and Keep shall apply to Local Traffic. In the event traffic (as defined from the point of interconnection) is out of balance, the rate specified in Attachment 14, Appendix 4, Annex 1 shall apply.

(b) Toll calls: The following AT&T Intrastate Switched Access rate elements are applicable to intraLATA toll calls, if such charges are required by the Commission.

(1) For common switched transport where AT&T's tandem is used:

(a) Fixed - per minute of use.

(b) Variable - per mile per minute of use. Mileage shall be calculated based on the airline miles between the Vertical and Horizontal ("V&H") coordinates of the POI, and the AT&T end office or Competitive Local Carrier/AT&T routing point.

(c) Tandem Switching.

(2) End Office switching.

(3) Information Surcharge

(4) RIC

(5) CCLC

PUBLIC VERSION – CONFIDENTIAL MATERIAL REDACTED

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	
Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida, for review of a decision by The American Arbitration Association in accordance with Attachment 1 Section 11.2(a) of the Interconnection Agreement between GTE Florida Inc. and TCG South Florida	)	Docket No. 030643-TP Filed: September 5, 2003

EXHIBIT B TO

PETITION OF VERIZON FLORIDA, INC.

EXHIBIT REDACTED IN ITS ENTIRETY

PUBLIC VERSION – CONFIDENTIAL MATERIAL REDACTED

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	
Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida, for review of a decision by The American Arbitration Association in accordance with Attachment 1 Section 11.2(a) of the Interconnection Agreement between GTE Florida Inc. and TCG South Florida	)	Docket No. 030643-TP Filed: September 5, 2003

EXHIBIT C TO

PETITION OF VERIZON FLORIDA, INC.

EXHIBIT REDACTED IN ITS ENTIRETY

RECEIVED
MAR 24 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Access Charge Reform	CC Docket No. 96-262
Price Cap Performance Review for Local Exchange Carriers	CC Docket No. 94-1
Transport Rate Structure and Pricing	CC Docket No. 91-213
Usage of the Public Switched Network by Information Service and Internet Service Providers	CC Docket No. 96-263

EXHIBIT
witness
D

COMMENTS OF AT&T CORP.

Mark C. Rosenblum
Ava B. Kleinman

Room 3252J1
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8312

Gene C. Schaerr
James P. Young

1722 Eye Street N.W.
Washington, D.C. 20006
(202) 736-8141

March 24, 1997

SEP 09 2002 10:52 AM FR VERIZON 7033513655 TO 92023287999 P.02

TABLE OF CONTENTS

SUMMARY i

INTRODUCTION 1

I. PACKET-SWITCHED DATA SERVICES CARRIED OVER THE PUBLIC SWITCHED NETWORK ARE GROWING RAPIDLY, BUT THE EXISTING ACCESS NETWORKS ARE NEITHER DESIGNED NOR PRICED TO ACCOMMODATE THIS GROWTH. 9

A. The Enhanced Services Market Has Grown Rapidly In Recent Years. 10

B. Packet-Switched Technologies Are Already Beginning To Compete With Traditional Telephony. 12

II. REQUIRING ESPs TO PAY COST-BASED CHARGES FOR NETWORK USAGE IS NECESSARY TO ACHIEVE THE COMMISSION'S TWIN OBJECTIVES OF FACILITATING THE DEVELOPMENT OF HIGH-BANDWIDTH NETWORKS AND PRESERVING EFFICIENT INCENTIVES FOR INVESTMENT AND INNOVATION IN THE EXISTING VOICE NETWORK. 17

A. Cost-Based Network Charges Are Necessary To Encourage Prudent Investment In Building The Packet-Switched, Higher-Speed Networks Of The Future. 17

B. Cost-Based Network Charges Are Also Necessary To Encourage Efficient Utilization Of Existing Networks. 21

III. RATIONALIZATION OF NETWORK PRICING WILL NOT ADVERSELY AFFECT THE HEALTH OF THE INFORMATION SERVICES INDUSTRY OR GIVE THE LECS A WINDFALL. 25

IV. TRAFFIC GENERATED BY ESPS SHOULD BE CLASSIFIED AS INTERSTATE TRAFFIC SUBJECT TO THE COMMISSION'S JURISDICTION. 28

CONCLUSION 35

P.03 7033513555 TO 92023257999 SEP 09 2002 10:53 AM FR VERIZON

SUMMARY

As the Commission notes in the Notice of Inquiry, the proliferation of new packet-switched services offered by information service and Internet service providers now warrants reexamination of existing regulations regarding information services. The demand for packet-switched data services is growing rapidly, and the information services industry is growing rapidly to meet that demand. But information and other enhanced service providers (collectively, "ESPs") today still use the public local switched network to deliver dial-up services to their customers.

The public switched local network, however, is neither designed nor priced to carry data traffic efficiently. And, as demand continues to grow, packet-switched access networks will be necessary to carry this data traffic. The Commission's current policies have not facilitated the deployment of such networks and have, in fact, created artificial incentives to use existing, circuit-switched networks inefficiently. These failures are due in part to the ESPs' exemption from the obligation to pay federal access charges, even though ESPs clearly use interstate exchange access just as interexchange carriers do.

Contrary to the arguments of some local exchange carriers (LECs), however, the solution is *not* to subject ESPs to the same inflated and subsidy-laden access charges currently paid by IXCs. For reasons explained by AT&T in its comments in the Commission's access charge proceeding, those charges should be set at a level equal to the LECs' total element long-run incremental cost of service (TELRIC) – for everyone,

SEP 09 2002 10:53 AM FR VERIZON 7033513655 TO 92023267999 P.04

including the IXCs. But even if the Commission forces some carriers to pay access charges in excess of TELRIC, it should not force the ESPs to do so.

On the other hand, the ESPs' blanket exemption from access charges no longer produces benefits that exceed its costs to the public. The Commission granted ESPs this exemption in 1983, but only as a transitional measure, and only because imposition of subsidy-laden access charges on ESPs would have likely resulted in severe rate impacts. Fourteen years later, however, ESPs have grown dramatically and can afford to pay *TELRIC-based* charges for their use of the local network.

Imposition of TELRIC-based access charges on ESPs will not require significant rate increases to consumers, but will remove most of the inefficiencies and perverse effects of the current system. First, under that system, access services provided to ESPs are not priced efficiently. In particular, ESPs typically buy access as a flat-rate business line from state tariffs. This provides an artificial incentive to continue loading data traffic onto the existing public switched network, even though public switched networks cannot handle such traffic efficiently. Second, the current system blunts the incentive to build more efficient packet-switched access networks, because the exemption keeps access through the public switched network priced artificially below-cost. And third, ending the blanket exemption will facilitate consideration of whether and how ESPs should participate in fostering the goal of universal service.

By contrast, pricing the existing network at cost will give both the incumbents and competitors the incentive to build more efficient packet-switched access networks.

P.05 7033513655 TO 92023267999 SEP 09 2002 10:53 AM FR VERIZON

Moreover, although network congestion is clearly not a problem today, TELRIC-based, traffic-sensitive pricing will send appropriate economic signals and thereby help deter any potential network congestion. And cost-based pricing will protect the universal service contribution base, by stanching the flow of *artificially induced* migration of traffic from the public switched network to the Internet.

Cost-based access charges will not harm the enhanced service industry. Analysis of information provided by CompuServe in the access reform proceeding shows that the transition from state-regulated business lines to TELRIC-based interstate access charges would increase CompuServe's costs by only 56 cents per customer per month. Such an increase will not materially affect overall demand for ESPs' services (assuming the increase is passed on to customers) and, in all events, would not impose significant financial harm upon ESPs operating in competitive environments. Requiring the ESPs to pay cost-based access rates also will not provide a windfall to the incumbent LECs because the Commission can (and should) adjust their price caps to reflect this exogenous increase in revenue.

Finally, there can be little doubt that most ESP services fall squarely within the Commission's jurisdiction. Particularly with respect to the Internet and online services, ESPs and LECs are incapable of dividing the traffic into interstate and intrastate communications, and therefore such services are "inseverably" interstate. Such traffic is therefore fully subject to the Commission's jurisdiction.

P.05 7033513655 TO 92023287999 SEP 09 2002 10:53 AM FR VERIZON

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket. No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
	)	
Usage of the Public Switched Network by Information Service and Internet Service Providers	)	CC Docket No. 96-263
	)	

COMMENTS OF AT&T CORP.

Pursuant to the Commission's December 24 Notice of Inquiry ("NOI"),[1] and its subsequent January 24 Order,[2] AT&T Corp. ("AT&T") hereby submits these comments concerning usage of the public switched network by information service and Internet service providers ("ISPs").

INTRODUCTION

AT&T welcomes the Commission's effort to determine whether "additional actions relating to interstate information services and the Internet" are warranted in view of the sweeping changes that have occurred in the information services industry in recent years,

---

[1] *Usage of the Public Switched Network by Information Service and Internet Service Providers*, CC Docket No. 96-263, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry (released December 24, 1996).

[2] *Usage of the Public Switched Network by Information Service and Internet Service Providers*, CC Docket No. 96-263, Order (released January 24, 1997).

P.07 7033513655 TO 92023267999 SEP 09 2002 10:54 AM FR VERIZON

and in light of the Commission's ongoing access reform and universal service proceedings. -- NOI at ¶ 312. AT&T agrees that the time has come to examine the extent to which advances in technology, and the proliferation of new digital services accessed through the circuit-switched networks of the LECs, warrant changes to the regulation of local exchange and exchange access services.

Recent technological and market developments make such an examination both timely and necessary. New information services based on packet-switched technology are becoming increasingly available to American consumers and businesses on a dial-up basis over their residential and business narrow-band phone lines, creating enormous demand for packet-switched higher-speed data services. The information services industry is growing exponentially to meet this growing demand.

Nevertheless, the packet-switched local networks that would be capable of providing those services efficiently have not yet emerged. As a result, these packet-switched services continue to utilize the local public circuit-switched network, which has not been expanded to accommodate, and in all events is not designed or priced to provide, efficient data services. Accordingly, it is becoming increasingly clear that existing regulatory policies neither "facilitate the development of the high-bandwidth data networks of the future" nor "preserv[e] efficient incentives for investment and innovation in the underlying voice network." NOI at ¶ 311.

The tremendous growth of packet-switched services -- and the lack of a market-based response to the demand for new networks to accommodate that growth -- exacerbate

P.08 7033513655 TO 92022267999 SEP 09 2002 10:54 AM FR VERIZON

the economic inefficiencies of the current access pricing scheme. These inefficiencies can be traced, in part, to the exemption from access charges that the Commission granted to enhanced service providers ("ESPs") in 1983.[3] At that time, the exemption was a reasonable accommodation to the then-fledgling ESP industry. ESPs had been paying for use of the local network by purchasing business lines under state-tariffed rates, in the same manner as MCI and other common carriers that could not obtain full-feature access services from the LECs. The Commission recognized that the newly created interstate access charge structure it developed in 1983 had many uneconomic subsidies built into it, and that access charges would therefore be considerably higher than the business rates the ESPs were accustomed to paying.[4] Thus, even though the Commission acknowledged that ESPs "employ exchange access for jurisdictionally interstate communications," the Commission found that ESPs would "experience severe rate impacts were we immediately to assess carrier access charges upon them," and classified them under its rules as "end users," thereby removing them from carrier access charges.

In granting this exemption, the Commission explained that it would apply only during a "transition" period.[5] The ESP exemption, however, has now been in place nearly fourteen years, even though the Commission has eliminated a similar exemption for data

---

[3] In these comments, AT&T generally uses the term ESP to refer to all categories of enhanced services providers, including Internet service providers ("ISPs"), online service providers, and electronic business information service providers.

[4] *MTS and WATS Market Structure*, Memorandum Report and Order, 97 F.C.C. 2d 682, 715 (1983) ("*MTS Market Structure Order*").

[5] *Id.*

P.09 7033513655 TO 92023267999 SEP 09 2002 10:54 AM FR VERIZON

and telex carriers.[6] Like those carriers, ESPs are now capable of paying *cost-based* local network charges, which would represent only a modest increase in the rates ESPs currently pay.

Moreover, it is increasingly clear that perpetuation of the access charge exemption to ESPs causes greater public harm – in the form of market distortions that send the wrong economic signals to network suppliers, network customers, and end users – than benefit. For example, new technologies have made it possible for ESPs to provide services that were unimaginable in 1983, such as allowing subscribers to make traditional phone calls over the Internet. As a result, enhanced services are beginning to compete directly with traditional telephony – to the point that an estimated 16 percent of all U.S. long distance traffic will have migrated to the Internet by 2000.[7] And the ability to provide voice and data services over the same packet-switched networks is leading to a rapid convergence in *all* communications markets.

---

[6] *MTS and WATS-Related and Other Amendments of Part 69 of the Commission's Rules*, CC Docket No. 86-1, Second Report and Order, 60 Rad. Reg. 2d 1542 (¶ 11) (rel. Aug. 26, 1986) ("As we indicated in the Supplemental Notice, telex and data carriers, like carriers offering MTS/WATS-type services, use ordinary subscriber lines and end office facilities through their dial-up connections, and should therefore pay the same charges as those assessed on other interexchange carriers for their use of these local switched access facilities. We believe that the non-MTS/WATS nature of these services is irrelevant in determining whether these carriers should pay access charges. Our intention in adopting the exemption in question . . . was not to exempt carriers who provide non-MTS/WATS-type services permanently from carrier access charges, but only to grant them some transitional relief.").

[7] John W. Verity, "Calling All Net Surfers," Business Week, August 5, 1996, p. 27.

P.10 7033513855 TO 92023267999 SEP 09 2002 10:54 AM FR VERIZON

The growth of these services presents two distinct and important problems. First, the ESPs' use of the LEC networks is not priced efficiently. ESPs use interstate exchange access from the LECs that is the same as to that provided to the interexchange carriers. Yet ESPs still purchase that access by buying flat-rate business lines, because they remain exempt from paying interstate access charges. This irrational pricing system encourages usage patterns by ESPs that may be efficient when occurring over a totally packet-switched network, but are extremely inefficient over the public switched network. The existing system also maintains powerful incentives to continue loading data traffic onto the existing local circuit-switched networks that are not adequate for that purpose.

Second, to carry traffic between the end-user and the ESP's network, the ESPs that provide packet-switched data services must rely on the incumbent LECs' existing circuit-switched networks, which were not designed for data traffic and are not efficient for that purpose. To best accommodate the continued rapid growth of enhanced services, new packet-switched access networks are already necessary. Yet the access charge exemption, in the Commission's words, "hinder[s] the development of emerging packet-switched data networks" by blunting the incentives to build them. NOI at ¶ 311.

To address these concerns, parties have proposed a range of options. At one extreme are the incumbent local exchange carriers ("ILECs"), who have made grossly exaggerated claims that the growth of packet-switched services is causing severe network congestion that threatens the public switched network. Although access charges paid by IXCs already provide the ILECs with billions of dollars every year in uneconomic and unwarranted

P.11 7033513655 TO 92023267999 SEP 09 2002 10:54 AM FR VERIZON

subsidies, the ILECs nonetheless ask for additional revenues to respond to what is still only a limited congestion "problem." The Commission should resist the ILECs' efforts to subject ESPs to the same inflated and inefficient access charges that the ILECs currently impose on IXCs.

At the same time, however, the Commission should not simply perpetuate the status quo. If the status quo is maintained, circuit-switched networks will continue to be used inefficiently, thereby creating a risk of greater congestion, and adequate incentives will not be in place to build alternative packet-switched access networks that are more effective for the delivery of packet-switched data services. In particular, prospective new providers will have little incentive to invest in new networks that will compete against the incumbents' artificially inexpensive circuit-switched access. And the migration of long-distance traffic to the Internet based on these distorted pricing advantages will threaten the funding for the Commission's and Congress' universal service priorities.

The Commission should therefore heed the mandate of Congress in the 1996 Telecommunications Act by removing implicit subsidies from access charges and by pricing access elements under a total element long-run incremental cost (TELRIC) standard. When prices for the local network components provided by incumbent LECs are brought down to their true costs, sound economic and regulatory principles will require that *all* users of those services pay the same prices for those access services, regardless of the nature of the communications being transmitted.

P.12 7033513655 TO 92023287999 SEP 09 2002 10:55 AM FR VERIZON

But even if the Commission initially maintains the IXCs' access charges above TELRIC levels for other (and, in AT&T's view, flawed) reasons, the Commission should require the ESPs to pay that TELRIC-based amount. This would help reduce the marketplace distortions and unfair advantages that the current system fosters, even while the Commission moves toward a fully cost-based regime. And the tools for calculating TELRIC costs are readily available; indeed, many states have adopted those costing tools today.

In considering these changes, moreover, the Commission should not be deterred by concerns that such a policy would somehow mire the Commission in "regulating the Internet." As a provider of Internet and other online services, AT&T staunchly opposes unnecessary regulation of truly competitive markets, including the enhanced services market.[8] However, the Commission already regulates (through the ESP exemption) the prices of the basic telecommunications services that ESPs currently use as an input in their own services. The substitution of access charges for the flat-rate business lines ESP purchase today will simply replace the current pricing system with one that more accurately reflects the costs imposed by the ESPs and the manner in which those costs are incurred. Requiring ESPs to pay the true economic cost of the telecommunications services they employ thus does not constitute "regulation of the Internet" any more than price regulation

[8] The enhanced services industry is already demonstrating that it can regulate itself in content-related areas, such as individual privacy, primarily through technology solutions that enable customer empowerment and customer choice.

P.13 7033513855 TO 92023267999 SEP 09 2002 10:55 AM FR VERIZON

of electricity used at an automobile factory can be said to "regulate" the automobile industry.

In short, AT&T supports cost-based pricing for all users of the network as the most rational, pro-competitive, and efficient means of achieving the Commission's twin objectives in this proceeding, namely, "facilitat[ing] the development of the high-bandwidth data networks of the future, while preserving efficient incentives for investment and innovation in the underlying network." NOI at ¶ 311. As an Internet and online service provider (through its AT&T WorldNet℠ service), AT&T supports the imposition of cost-based rates on all network users because such reform would give both incumbent and prospective local exchange carriers the proper incentives to build the packet-switched networks that AT&T wants for the delivery of its information services. As a potential entrant into the local and exchange access market, AT&T supports that policy because it would eliminate the distortions that currently allow ESPs to obtain circuit-switched access at below-market prices, and thus make investments in newer, competing technologies less attractive than they otherwise would be. And, as an exchange access customer, AT&T supports that policy because it is the only way to eliminate the uneconomic subsidies that inflate the price of access (and therefore toll) services and artificially drives traffic from the public switched network to the Internet.

The remainder of these Comments is organized as follows. Section I describes the rapid transformation of and growth in the information services market, and explains why existing circuit-switched networks are neither designed nor priced to accommodate this

P.14 7033513555 TO 92023257999 SEP 09 2002 10:55 AM FR VERIZON

growth. Section II explains why cost-based pricing for access services would provide the proper incentives for the deployment of packet-switched networks and the efficient pricing of all information services. Section III explains why such a policy would not threaten the viability of ESPs, or give the LECs a windfall. And Section IV explains why the Commission has statutory authority to impose cost-based access charges on these entities.

I. PACKET-SWITCHED DATA SERVICES CARRIED OVER THE PUBLIC SWITCHED NETWORK ARE GROWING RAPIDLY, BUT THE EXISTING ACCESS NETWORKS ARE NEITHER DESIGNED NOR PRICED TO ACCOMMODATE THIS GROWTH.

The Commission first seeks comment on "the effects of the current system on network usage, incumbent LEC cost-recovery, and the development of the information services marketplace." NOI at ¶ 315. In fact, a broad array of new information services based on packet-switched technology are becoming increasingly available on a dial-up basis over residential and business narrow-band phone lines. The rapid growth of these new packet-switched services is most welcome, because of the innovative new features and functions that they provide. Their emergence, however, is also profoundly important because they are becoming directly competitive with traditional telephony. Thus, as the Commission notes, the growth of these services and the subsidies they enjoy presents questions that "concern no less than the future of the public switched telephone network in a world of digitalization and growing importance of data technologies." NOI at ¶ 311.

P.15 7033513655 TO 92023267999 SEP 09 2002 10:55 AM FR VERIZON

A. The Enhanced Services Market Has Grown Rapidly In Recent Years.

The recent growth rates of packet-switched data services have been dramatic. For example, Internet service revenue in the United States was expected to grow more than 200 percent from 1995 to 1996 (from $956 million to $3.1 billion).[9] Consumer online services revenues are also anticipated to grow 120 percent over the same period,[10] outpacing the expected increase in the number of subscribers to consumer online services during that same period.[11] It is estimated that there are currently more than 18 million Internet and consumer online subscribers,[12] and that there will be 23.3 million by year-end.[13]

These astonishing growth rates are expected to continue. Internet service revenue in the U.S. is expected to grow at a compound average growth rate of 76 percent from 1995 through 2000, which would lead to nearly $16.2 billion in revenue in 2000.[14] Revenues from U.S. consumer online services are predicted to grow at a compound average growth rate of 64 percent from 1995 to 2000, from $384 million to $4.6 billion.[15]

---

[9] International Data Corporation (IDC), "U.S.-Based Worldwide ISP Market Overview 1996-2000" (IDC No. 12373), November 1996, p. 6.

[10] The Yankee Group, "Internet Service Provider Market Analysis," July 1996, ch. 1, p. 2.

[11] Consumer online services subscribers increased from 10.3 million in 1995 to 14.7 million in mid-1996 -- a 42 percent increase. *Id.*

[12] Information and Interactive Services Report, January 31, 1997, p. 1.

[13] IDC, "Interactive Services Bulletin, US Consumer Online Services Forecast 1997-2001," March 1997, Table 2.

[14] IDC, "U.S.-Based Worldwide ISP Market Overview 1996-2000," p. 6.

[15] Yankee Group, ch. 1, p. 2.

P.18 7033513555 TO 92023267999 SEP 09 2002 10:56 AM FR VERIZON

Consistent with recent historical trends, moreover, this huge revenue growth is expected to surpass the growth in subscribers. The number of Internet and consumer online subscribers is expected to grow to 43.2 million households by 2000 (a compound average growth rate of 33 percent).[16] Others have estimated that 40 percent of U.S. households will be online by 2000.[17] And the number of Internet users is almost doubling every year: it will grow from about 35 million worldwide today to 160 million in 2000.[18]

Another sign of the emerging stability in the Internet and on-line services market is the consolidation of Internet providers from 1525 in 1995 to 1310 in 1996. Analysts predict that there will be 95 such providers in the year 2000.[19] Moreover, all of the major interexchange carriers now provide consumer Internet and online services. The RBOCs, too, have begun or are about to begin providing such services.[20]

While the Internet and consumer online services providers have been achieving increased growth and approaching stability, other ESPs have already grown into mature,

---

[16] *Id.* at ch. 1, p. 1.

[17] IDC, Interactive Services Bulletin, at 5. Most consumers already own or have access to the equipment necessary for Internet use. For example, more than two-thirds (71%) of all Americans have access to a computer at home or at work. Moreover, 45 percent have access to commercial or Internet-based online services at home or at work. Odyssey Report, Taking Off: The State of Electronic Commerce in America, Fall 1996, p. 7.

[18] Kevin Maney, "Online Community grapples with gridlock on info highway," USA Today, January 20, 1997, p. B1.

[19] Yankee Group, "Internet Service Provider Market Analysis," Executive Summary, p. i.

[20] Veronis, Suhler & Associates, "The Veronis, Suhler and Associates Communications Industry Forecast," August 1996, Ch. 14, Interactive Digital Media, p. 319.

P.17 7033513555 TO 92022267999 SEP 09 2002 10:56 AM FR VERIZON

highly profitable industries. For example, electronic business information service, which includes electronic messaging services, is already a multi-billion dollar business that is expected to grow at a compound average rate of 10 percent annually from 1996 to 2000.[21] Well-established companies such as Dow Jones & Co., Dun & Bradstreet, Equifax, Knight-Ridder and McGraw-Hill enjoy healthy revenue growth from such activities and generate millions of dollars in profits.[22] Remote dial-up access to corporate networks and databases is also a well-established business. Such services have been provided for years by such major companies as IBM and GEIS.

B. Packet-Switched Technologies Are Already Beginning To Compete With Traditional Telephony.

Moreover, packet-switched technology, and the equipment used with such technology, is quickly evolving to enable ESPs to offer telecommunications over their networks. Packet-switched networks carry digitized information -- *i.e.*, information converted into a common language of 0s and 1s. Virtually *any* form of information, however, can be converted into digital form. Thus, the same packet-switched communications network can deliver voice, data, or video to a customer; customers can use the same information appliance to receive voice, data and video, even in the same session; and the same information resource may create, distribute, and store information content. For example, with new product and service platforms that support multiple functions during

---

[21] IDC/Link, "Business Information Services Forecast, 1996 to 2000," November 1996, p. 1.

[22] SIMBA Information, Inc., Electronic Information Report, December 20, 1996, p. 3.

P.18 7033513655 TO 92023267999 SEP 09 2002 10:56 AM FR VERIZON

a single "session," a consumer can simultaneously send and receive electronic mail, browse the World Wide Web, and complete a phone call by clicking on an icon on a computer screen.

For these reasons, packet-switched networks are rapidly leading to a convergence in all communications markets. Packet-switched technology is already making substantial inroads into traditional telecommunications markets. A good example is the international fax business. ESPs have a significant cost advantage in that market, both because of the access charge exemption, and because of their ability to bypass international settlements. As a result, businesses are quickly moving their fax traffic to the Internet. One analyst has noted that "five months ago, no one was talking about it. Now all of a sudden, there are 40 or 50 companies with new services for faxing over the internet."[23] Analysts estimate that the Internet fax server and router market will grow to $38 million by 1998,[24] and AT&T

---

[23] Brett Mendel, "Net Faxing Awaits Its Day," LAN Times, December 19, 1996, at 25 (quoting Peter Davidson, president of Davidson Consulting).

[24] Barbara DePompa, "New Life for the Fax Machine," Information Week, October 14, 1996, at 62, 64. This projected growth is already being realized. For example, FaxSav offers international fax service, with nodes in England, Hong Kong, France, Germany, South Korea, and the U.S. Rates are quoted at a 90 percent savings over the telephone network. Charlotte Dunlap, "Beating Ma Bell at own game; Internet Faxing aims to replace long-distance calls," Computer Reseller News, June 6, 1996. PSINet Inc. is building Internet fax software into its network, which will allow for centralized management of transmissions. The company claims savings of at least 40 percent over the "high cost of sending faxes over standard phone lines." Wall Street Journal Technology Brief, "PSINet Inc.: Internet Provider to Install Fax Software in Network," December 12, 1996.

P.19 7033513655 TO 92023267999 SEP 09 2002 10:56 AM FR VERIZON

estimates that 20-40 percent of U.S. originated international fax traffic will migrate to the Internet before 2000.

Similarly significant migration of basic telephony may be just around the corner. Numerous companies -- including Microsoft, Netscape, Intel, VocalTec, and NetSpeak -- have already placed Internet telephony products on the market. These products have been broadly publicized in articles in the New York Times,[25] Newsweek,[26] Business Week,[27] and other similar publications. These companies may have shipped as many as 1.5 million Internet telephony software packages.[28] Indeed, Microsoft and Netscape are beginning to embed such telephony options into their standard Web browsers; other companies provide the software for free on the Internet.[29]

Although Internet telephony has some limitations, they are being quickly overcome by technological innovation. For example, Internet telephony today usually requires both parties to be online, using a computer. But that is already changing. Voice gateways between the Internet and the Public Switched Network are being deployed that allow telephony over the Internet using regular telephones, without the assistance of a personal

---

[25] Peter H. Lewis, "Free Long-Distance Phone Calls," New York Times, Aug. 5, 1996, p. D1; John H. Cushman, Jr., "Calling Long Distance, on a PC and the Internet," New York Times, May 19, 1996, p. 8.

[26] Steven Levy, "Calling All Computers," Newsweek, p. 43 (May 13, 1996).

[27] "Try Beating These Long Distance Rates," Business Week, p. 43 (April 22, 1996).

[28] *Id.*

[29] "Toll Free Net Calls," PC Computing, February 1997, pp. 130-32.

P.20 7033513655 TO 92023267999 SEP 09 2002 10:57 AM FR VERIZON

computer. Such technology includes signaling capability so that a call carried over the Internet can "ring" the called party's phone (or personal computer).

Once such technology becomes broadly available, large-scale migration of traffic from the public switched network to the Internet will be facilitated. While such migration may be the logical result of technological innovation, it is also being artificially stimulated by the large disparity in prices resulting largely from the access charge exemption. ISPs typically charge a flat fee of $19 95 per month to users. Using a conservative estimate of ten hours of usage per month per customer,[30] the customer effectively pays a retail price of $0.032 per minute, compared to the charges for "traditional" long distance calls, of which the switched access alone is about $0.05. (On a purely incremental basis, the retail price of such telephony services over the Internet is zero.) These prices are likely to induce many "traditional" long distance customers to switch even where the Internet is not the most efficient option. Thus, it is predicted that today's estimated 400,000 Internet telephony users could swell to 16 million by the end of 1999.[31] Indeed, Probe Research estimates that 16 percent of U.S. long distance traffic will migrate to the Internet by 2000.[32] And as many

---

[30] In 1996, the average time online was 12.1 hours per month. Newsweek, September 23, 1996, p. 14.

[31] PC Week, December 12, 1996.

[32] John W. Verity, "Calling All Net Surfers," Business Week, August 5, 1996, p. 27.

P.21 7033513655 TO 92023287999 SEP 09 2002 10:57 AM FR VERIZON

as 12.5 billion long distance minutes of use will be carried over packet-switched networks by 2001 -- a compound average growth rate of 137.9 percent over current levels.[31]

Such large-scale migration of traffic raises many issues. Although the demand for high speed data services is growing by leaps and bounds, the local networks capable of supporting such services have not emerged. Therefore, ESPs and their customers continue to use the public switched network inefficiently, and ESPs continue to invest heavily in infrastructure (*e.g.*, modems) to support more traffic over the public switched network. Moreover, flat-rate pricing has given ESPs an artificial economic advantage that only reinforces their incentives to use the network in an inefficient manner. So long as traffic-sensitive local switching and transport costs are being recovered through flat-rate business line charges, the incentive to load the maximum amount of usage onto the network will continue, even as flat-rate pricing provides no incentive to the incumbent LECs to upgrade their networks to accommodate additional traffic.

The 1996 Act has made these concerns especially urgent. As the local exchange and exchange access markets are opened to competition, new entrants can be expected -- and should be encouraged -- to deploy alternative facilities-based networks. The current irrational pricing system, however, sends incorrect signals, not only to ILECs, but also to competitive local exchange carriers ("CLECs"), that discourages the deployment of data networks, which must compete with the below-cost access the ESPs currently receive.

---

[31] IDC/LINK, "Residential Broadband Services, Internet Telephony: An Alternative Dialtone?," January 1997, p. 1.

SEP 09 2002 10:57 AM FR VERIZON 7033513855 TO 92022267999 P.22

II. REQUIRING ESPs TO PAY COST-BASED CHARGES FOR NETWORK USAGE IS NECESSARY TO ACHIEVE THE COMMISSION'S TWIN OBJECTIVES OF FACILITATING THE DEVELOPMENT OF HIGH-BANDWIDTH NETWORKS AND PRESERVING EFFICIENT INCENTIVES FOR INVESTMENT AND INNOVATION IN THE EXISTING VOICE NETWORK.

The solution to these anomalies, and a necessary condition to ensure the proper incentives for the efficient development of both the information services market and the networks of the future to support that market, is to require *all* users of the local network, including ESPs, to bear their fair share of their costs of using the local network. Such a policy is essential if the Commission is to achieve its stated objectives in this proceeding, namely, "facilitat[ing] the development of the high-bandwidth data networks of the future, while preserving efficient incentives for investment and innovation in the underlying voice network." NOI at ¶ 311.

A. Cost-Based Network Charges Are Necessary To Encourage Prudent Investment In Building The Packet-Switched, Higher-Speed Networks Of The Future.

First, cost-based pricing is necessary to provide the correct incentives for investment in the packet-switched local networks that are efficient for the delivery of packet-switched services. The ILECs' existing networks are circuit-switched networks that were designed primarily for voice traffic. Although these networks can carry data traffic, they are not the most efficient networks for those purposes. For example, during an Internet session, the circuit-switched connection must remain open for the entirety of the session, even though data are being transmitted only a small fraction of that time. *Cf.* NOI at ¶ 313.

P.23 7033513855 TO 9202328799 SEP 09 2002 10:57 AM FR VERIZON

A more appropriate solution -- and one that would facilitate the broader availability of packet-switched services -- would be the deployment of high-speed, packet-switched local networks. Such networks could efficiently route data packets from many users without the need to tie up individual switching and transport facilities, as is required in circuit-switched networks.

The access charge exemption, however, creates powerful *disincentives* to build or use such alternative packet-switched networks. Because of the exemption, ESPs today are using traffic-sensitive network facilities but paying for them on a flat-rate basis. As a result, neither the incumbent LECs nor prospective competitive LECs are receiving accurate economic signals that would encourage them to upgrade their existing networks -- or to engineer their planned networks -- to handle traffic more efficiently.[34]

In light of the Commission's (and Congress') overarching goals of opening up the local exchange and exchange access markets to competitive entry,[35] it is particularly important for the Commission to establish market-based rules that send the appropriate signals to potential competitors. Continued below-cost pricing of ILEC network facilities for some users subsidized by higher prices for others will make it *less* likely -- not more likely -- that the efficient packet-switched networks of the future will be built.

---

[34] Moreover, to the extent the LECs perceive that they are not being compensated for ESP traffic, that simply increases their incentives to keep access charges above cost as a source of cross-subsidies for the costs imposed by the ESPs.

[35] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 11 FCC Rcd. 14171, 14172-73 (1996).

SEP 09 2002 10:58 AM FR VERIZON 7033513855 TO 92023267999 P.24

A LEC's incentive to build an alternative network depends largely upon the demand a LEC expects for service on that network. But because the existing network is a substitute for the new network -- albeit an imperfect one -- demand for services on the new network necessarily depends upon the price being charged for service on the old network. And if that price is artificially low -- as it undoubtedly is because of the access charge exemption -- this will artificially suppress demand for service on the new network, thereby reducing both the ILECs' and CLECs' incentives to build a new network.

This is why the Commission should require ESPs to pay cost-based local network charges. The Commission, moreover, should do so promptly because the deployment of alternate networks will take years, and the sooner the pricing system is rationalized, the sooner companies can make rational business decisions to build such networks. Such action is by far the most effective means of encouraging the LECs to "install [] new high-bandwidth access technologies." NOI at ¶ 313. It would be far more effective and defensible than establishing any kind of mandated subsidy scheme in which non-ESPs subsidize the construction of "data-friendly" networks to be used for ESPs' packet-switched services. The Commission should not adopt such a scheme. The proper course is to establish all rates for exchange access at cost-based levels, and allow the marketplace to find and construct the most efficient networks.

Nor should the Commission pick and choose among possible technologies, or mandate the construction of particular networks based on particular technologies. Several data-friendly technologies already exist today. However, there will be a need for multiple

P.25 7033513555 TO 92023267999 SEP 09 2002 10:58 AM FR VERIZON

network solutions involving loop, switching, and transport, because of the inherent limitations of each technology. These technologies vary greatly in terms of speed, cost, technical maturity, availability for implementation, reliability, and limits on growth. For example, turning to new generation loop technologies, Integrated Services Digital Network ("ISDN") offers up to 128 Kbps speeds to the home or office over existing narrow-band local loop, and therefore could be widely deployed. Coverage is not universal, however, because of limitations of plant layout and physical loop distances. By contrast, Local Multipoint Distribution Service (LMDS) offers significant two-way voice, data and video delivery, but it is expensive and its coverage is highly limited by physical terrain. Another technology, Digital Subscriber Lines ("DSL"), offers digital communications over existing copper loops, and in one of its three formats (High bit-rate, or "HDSL") it operates at speeds of 2 Mbps. DSL technology is very expensive to deploy (*i.e.*, estimates are $1500 to $3000 per customer), and it suffers from the same limitations as ISDN in that load coils and bridged-taps must be removed from the local loop in order to maximize its capabilities.[36] Similar advantages and disadvantages exist for packet switching and transport as well.

Each of these technologies has advantages and limitations, and indeed, future networks will likely require some combination of a number of these technologies. Similarly, each technology makes possible a different set of features, and therefore which technology wins out will depend on what features customers will want and their willingness

[36] A table comparing the various alternative access technologies is appended as Attachment 1.

P.26 7033513655 TO 92023287999 SEP 09 2002 10:58 AM FR VERIZON

to pay. The Commission has no basis for predicting that one or another of these technologies will emerge as the superior technology, and it should not try. Rather, the soundest approach the Commission could take to ensure the development of new, needed higher-speed technologies is to create a pro-competitive environment in which such new services can emerge -- primarily through the establishment of cost-based pricing and enforcement of the local competition rules. Such a technology-neutral approach is consistent with the pro-competitive dictates of the 1996 Act.

B. Cost-Based Network Charges Are Also Necessary To Encourage Efficient Utilization Of Existing Networks.

The Commission also seeks comment on whether its current rules are encouraging inefficient use of the existing network and whether it should change its rules in response to the rise of Internet telephony. NOI at ¶¶ 315-16. The answer to both questions is "yes," but not for the reasons advanced by some RBOCs.

Those RBOCs claim that packet-switched services are causing serious network congestion. Those claims, however, are greatly exaggerated.[37] To be sure, virtually all of ESPs' traffic today is carried over incumbent LECs' facilities to ESP switching centers. Also, the ILECs' facilities were concededly designed to carry voice traffic of relatively

---

[37] "Report of Bell Atlantic on Internet Traffic," June 28, 1996; "Pacific Bell ESP Impact Study," July 2, 1996; Letter from NYNEX to James Schlichting, Chief, Competitive Pricing Division, FCC, dated July 10, 1996; "US West Communications ESP Network Study -- Final Results," October 1, 1996; Amir Atai, Ph.D., and James Gordon, Ph.D., "Impacts of Internet Traffic on LEC Networks and Switching Systems," Red Bank, New Jersey, Bellcore, 1996.

SEP 09 2002 10:58 AM FR VERIZON 7033513655 TO 92023287999 P.27

short duration, yet users of information services often stay online for significantly longer periods of time, tying up their phone lines when they do so.

ESPs, however, have convincingly shown that the RBOCs' studies purporting to show network congestion are seriously flawed.[38] Those studies are based on a very small set of selectively chosen exchanges where congestion was abnormally high.[39] Therefore, based on careful examination of the data provided in the RBOCs' own studies, it appears that network congestion is not a significant problem today outside of a very small handful of exchanges.[40]

There is nevertheless a significant risk of congestion in the future if the Commission's policies are not reformed. This risk arises from the fact that switching and transport costs are significantly traffic-sensitive,[41] and that the ESPs' use of those network elements therefore generates additional costs. Yet because the ESPs do not *pay* for access on a traffic-sensitive basis, they have an incentive to use it inefficiently.

For the same reasons, the ILECs do not receive the proper economic signals concerning this increased usage because this class of user is exempt from paying traffic-sensitive charges. The existing ESP exemption thus undermines the incentives that the

---

[38] Lee Selwyn and Joseph Laszlo, "The Effect of Internet Use on the Nation's Telephone Network," Economics and Technology, Inc. (January 22, 1997) ("ETI Study").

[39] *See id.*, pp. 19-22.

[40] AT&T agrees with the ETI Study (p. 13) that the overpricing of more efficient trunk-side connections has contributed to the proliferation of business line usage by ESPs.

[41] Comments of AT&T Corp. at 55-60 (January 29, 1997); Reply Comments of AT&T Corp. at 29-33 (February 14, 1997).

P.28 7033513555 TO 92023267999 SEP 09 2002 10:58 AM FR VERIZON

ILECs would otherwise have to perform the necessary upgrades to accommodate this increased usage. Both of these effects tend to exacerbate congestion. Thus, although there appears to be little network congestion today, network congestion is *potentially* a problem if uncompensated (or under compensated) usage continues to increase at the rate it has been increasing in recent years.

Moreover, as noted above, the access charge exemption and the resulting artificial cost advantages to ESPs are driving forces behind the rapid migration of traffic from the public switched network to the Internet. Such large-scale migration of traffic to services that are exempt from access charges will put enormous pressure on the remaining users of the public switched network to cross-subsidize this growing use of the network by ESPs. Today, interexchange carriers pay above-cost access charges that are used in part to subsidize the ESPs' use of the network. As traffic continues to migrate to the ESPs -- and it is migrating at a rapid rate -- the minutes of use that generate the revenue to pay for that usage will decline. Under the current access charge regime, that will put upward pressure on access charges, and thus on long distance rates.[42] This in turn will encourage all carriers to promote their Internet offerings and to induce more users to migrate to the networks that do not bear those costs.[43]

---

[42] This will result from artificially reducing (1) the growth ("G") factor in the common line formula; (2) the LECs' sharing obligations (to the extent that they have selected a sharing option); and/or (3) measured productivity growth and the "X" factor at subsequent price cap review proceedings.

[43] Indeed, the proliferation of Internet-based services is already blurring the distinction between basic and enhanced services, indicating that the exemption will be increasingly (continued...)

SEP 09 2002 10:59 AM FR VERIZON 7033513855 TO 92023287999 P.29

This will inevitably lead to two serious, adverse effects. First, it will separate the market into "haves" and "have-nots" -- *i.e.*, "haves" who have access to ESPs' services and thus can obtain telecommunications and enhanced services at low, subsidized rates, and "have-nots" who remain on the public switched network and pay higher rates.

More ominously, the artificially induced migration of traffic to the Internet will shrink the contribution base for universal service support. Ironically, the growth and popularity of ESPs' packet-switched data services may *increase* the demand for and usage of the public switched network, and yet the costs of carrying out the Commission's universal service priorities would have to be recovered from an ever smaller contribution base.

For all of these reasons, the Commission should require ESPs to pay their fair share, and should no longer exempt them from access charges based solely on the basis of technology they use to provide service.[44] Thus, even if the Commission determines, in the access charge reform docket, not to require TELRIC-based charges (and even if the Commission adopts -- improperly, in AT&T's view -- a flat charge per presubscribed line),

---

[43] (...continued)
difficult to administer.

[44] The Commission recognized in 1988 that the exemption given to ESPs constitutes discriminatory treatment vis-a-vis those carriers that must pay access charges, but concluded that "it remains, for the present, not an unreasonable discrimination within the meaning of Section 202(s) of the Communications Act." *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd. 2631, 2633 (1988). As demonstrated above, the events of the last nine years -- and especially of the last two years -- confirm that maintaining the exemption is indeed "unreasonable discrimination." Moreover, ending the exemption will facilitate consideration of whether and how ESPs should participate in fostering the goal of universal service.

SEP 09 2002 10:59 AM FR VERIZON 7033513855 TO 92023287999 P.30

the Commission can and should still address the imbalances created by the current ESP exemption in order to avert the adverse consequences its continuation will create. At a minimum, the Commission can assess TELRIC-based charges on ESPs, as a transitional step until network charges for all access customers are brought down to actual cost.[45]

III. RATIONALIZATION OF NETWORK PRICING WILL NOT ADVERSELY AFFECT THE HEALTH OF THE INFORMATION SERVICES INDUSTRY OR GIVE THE LECS A WINDFALL.

Rationalizing network pricing and assessing cost-based rates on ESPs and ISPs, moreover, will not adversely affect the health of the information services industry as long as the Commission proceeds in a sensible way. As AT&T and others have explained in the access reform docket, the mechanism the Commission should use to set access charges at cost is an immediate reinitialization of price caps so that the access charges paid by all users are based on TELRIC.[46] Significantly, under the TELRIC methodology, access charges would not include nontraffic-sensitive ("NTS") costs like the Common Carrier Line Charge ("CCLC"). Nor would it include non-cost-based charges like the Transport Interconnection Charge ("TIC"). Consistent with TELRIC, therefore, ESPs should pay only for local switching (about 0.21 cents per minute) and for transport (which would vary according to the nature of the facilities used but would be around 0.17 cents per minute) --

---

[45] Obviously, the long term viability of this approach would depend on the Commission rapidly moving all access charges to a TELRIC cost basis. Any long term disparity between access prices based on the technology utilized would only give rise to distortions and inefficiencies similar to those of the current access charge structure.

[46] *See* Comments of AT&T Corp., pp. 49-61 (January 29, 1997); Reply Comments of AT&T Corp., pp. 24-34 (February 14, 1997).

P.31 7033513655 TO 92022026799 SEP 09 2002 10:59 AM FR VERIZON

a total of approximately 0.38 cents per minute.[47] Whether or not the Commission adopts the proposal to establish TELRIC-based access charges in the access reform docket, the Commission can and should require ESPs to pay these TELRIC-based access charges now.

In the past, the Commission has been understandably reluctant to require ESPs to pay the inflated access charges that the Commission currently permits the LECs to charge to interexchange carriers, on the grounds that such high access charges might radically alter ESPs' rates.[48] That the imposition of TELRIC-based rates will not have this effect is made clear from an examination of data provided in CompuServe's Comments in the access reform proceeding.[49] Based on CompuServe's data, CompuServe is today effectively paying $0.24 cents per minute to the LECs.[50] AT&T estimates that TELRIC-based access charges would increase CompuServe's per minute charges by approximately 0.14 cents per minute -- from 0.24 cents to about 0.38 cents.[51] This increase would translate into an increase in

---

[47] *See* Attachment 2 for an illustration of access elements and costs.

[48] *MTS Market Structure Order*, 97 F.C.C. 2d at 715 ("it would be unreasonable immediately to increase as much as tenfold the charges paid by customers who do not presently come under the coverage of the current ENFIA tariffs").

[49] *See* Comments of CompuServe, pp. 10-11 (January 29, 1997). CompuServe is the second largest provider of on-line services in the country, with some 3 million users.

[50] CompuServe indicates that it spends $35,700,000 per year to purchase 85,000 business lines from the LECs; it also indicates that it uses those local lines "in the range of 240 hours per month." Id., p. 11 n.25. Multiplying that out, CompuServe pays 0.24306 cents per minute.

[51] *See* Attachment 2 for a comparison of current charges compared with TELRIC-based charges.

P.32 7033513655 TO 92023267999 SEP 09 2002 11:00 AM FR VERIZON

CompuServe's costs of 56 cents per month per customer.[52] Even if CompuServe chose to pass on that cost to its customers, the price increase resulting from cost-based access rates would not be very large.[53] Thus, the change to market-based pricing of access -- and the resulting economic benefits of such access pricing reform -- can be achieved with little if any adverse consumer impact.

This change, moreover, can and should be implemented in a way that does not create a windfall for the ILECs. To that end, as long as IXCs are required to pay access charges in excess of cost, the Commission should mandate an adjustment to the ILECs' price caps to ensure that the addition of ESP access revenues is revenue neutral to the ILECs. Today's access charges are grossly inflated and provide the ILECs with billions of dollars in pure uneconomic subsidy. The flaw in the current system is not that the LECs are under recovering -- far from it. Rather, the flaw in that system is that it results in a rate structure that does not reflect the way the costs are actually incurred. The ILECs should not be allowed to recover a windfall from the correction of that flaw.

---

[52] According to CompuServe, it uses about 1,224,000,000 minutes per month (240 hours x 60 minutes x. 85,000 lines). Since it has 3,000,000 subscribers (*see* Compuserve Comments at 10), an additional 0.13694 cents per minute x 1,224,000,000 minutes per month divided by 3,000,000 subscribers comes to 56 cents per month per customer.

[53] According to the Graphic, Visualization, and Usability Center's (GVU) WWW User Survey, the average household income of all Internet subscribers is $59,000. Nearly three-fourths of the respondents are from the U.S. *See* GVU's WWW Users Survey, www.cc.gatech.edu/gvu/user, April 1996. This modest increase in the monthly price is not likely to repress demand significantly among users at this income level.

P.33 7033513655 TO 92023267999 SEP 09 2002 11:00 AM FR VERIZON

IV. TRAFFIC GENERATED BY ESPs SHOULD BE CLASSIFIED AS INTERSTATE TRAFFIC SUBJECT TO THE COMMISSION'S JURISDICTION.

The Commission also seeks comment on the scope of its jurisdiction over access charges paid by ESPs, especially in light of "the difficulty of applying jurisdictional divisions . . . to packet-switched networks such as the Internet." NOI at ¶ 315. The answer is that, in part because of that very difficulty, the Commission should adopt a rebuttable presumption that access services provided to an ESP are entirely subject to the Commission's jurisdiction because of their interstate character, but allow that presumption to be rebutted on a showing that the enhanced service for which access is provided is itself intrastate in nature.

Settled case law establishes that when a service or facility (1) has a significant interstate use or character but (2) cannot readily be broken down into distinct interstate and intrastate components, the service or facility can be treated as subject in its entirety to the Commission's jurisdiction under the Communications Act.[54] Both of these conditions are amply satisfied by most enhanced services, in particular Internet and online services.

First, access services provided to most ESPs are not only substantially interstate in character -- as the Commission expressly recognized in finding that ESPs "employ exchange access for jurisdictionally interstate communications"[55] -- but overwhelmingly so.

---

[54] *E.g., Louisiana Pub. Serv. Comm'n* v. *FCC*, 476 U.S. 355, 375-79 (1986); *Public Utility Comm'n of Texas* v. *FCC*, 886 F.2d 1325, 1331-34 (D.C. Cir. 1989); *California* v. *FCC*, 39 F.3d 919, 931-933 (9th Cir. 1994), *cert. denied*, 115 S. Ct. 1427 (1995).

[55] *MTS Market Structure Order*, 97 F.C.C. 2d 682, 715 (1983).

SEP 09 2002 11:00 AM FR VERIZON 7033513555 TO 92023287999 P.34

For the provision of Internet and online services, for example, the ESP typically routes calls from its POP along a dedicated line to its data center or web server, which is where its "home page" resides. ESPs generally have only a few data centers in the entire country, however, and therefore the caller and the data center are almost always in different states.

For example, AT&T WorldNet has two data centers in the United States, which means that simply accessing WorldNet's home page already involves interstate transmission for virtually all callers. Indeed, when a dial-up customer accesses AT&T's home page, AT&T does not necessarily route that call to the data center that is geographically nearer to the customer.[56]

But even in the small fraction of cases in which a call can reach the ESP's network or home page without crossing state boundaries, during most sessions a customer will still access *applications* and databases that require interstate transmission. For example, when a customer wants to use the Internet to access the home page of a retail business down the street, it is not unusual for that home page to be housed in a server thousands of miles away. Moreover, during a typical session, a customer accesses multiple applications and databases, a large fraction of which are likely to involve interstate transmission. Even a cursory review of the home pages of both large and small Internet service providers reveals literally a "world" of information available at the click of the mouse.[57] Therefore, it cannot

---

[56] Attachment 3 provides an illustrative diagram of AT&T WorldNet℠ Service's network, which is representative of how ESPs provide consumer mass market service.

[57] *See, e.g.*, the home pages for ISPs: America Online (www.aol.com); Prodigy (www.prodigy.com); Erol's Internet Service (www.erols.com); and SpectraNet (continued...)

P.35 7033513655 TO 92022287999 SEP 09 2002 11:00 AM FR VERIZON

be seriously questioned that the vast majority of ESPs' Internet and online services overwhelmingly involve interstate traffic which falls squarely within the Commission's jurisdiction.

For the same reasons, access services provided for the vast majority of enhanced services applications are just as "interstate" in character as access services provided to interexchange carriers. To be sure, under the Commission's current rules, ESPs benefit from their artificial classification as "end-users," and thus are allowed to buy state-tariffed business lines just like true business users. But the ESPs generally use the LEC's local switching and transport as part of a much more extensive transmission path, just as IXCs do. As already noted, calls to an ESP are typically routed over the local network to the ESP's node, or POP, and from there to a distant data center or Internet site. Thus, such calls made to an ESP do not *terminate* at the ESP's POP, as they would if the ESP were truly a business user. Like an IXC's POP, the ESP's node or POP merely collects traffic for interstate transmission. In fact, the ESPs today use business lines in precisely the same manner that MCI used business lines in providing its Execunet service, prior to the establishment of the current access charge regime.[58]

---

[57] (...continued)
(www.spectra.com).

[58] Prior to that time, carriers such as MCI obtained switched access for use in providing long distance service by purchasing line-side service, just as the ESPs do today. *See, e.g., Exchange Network Facilities for Interstate Access*, Memorandum Opinion and Order, 1 FCC Rcd. 618, 619 (1986); 71 F.C.C. 2d 440, 445 (1979). The Commission permitted this arrangement because, at that time, full-feature access services designed for use by competitive interexchange carriers were not available. The Commission mandated the (continued...)

P.35 7033513655 TO 92023267999 SEP 09 2002 11:01 AM FR VERIZON

Second, for Internet and online service applications, there is no way to separately identify (much less meter and bill) interstate and intrastate traffic for jurisdictional purposes. *A fortiori*, the LECs providing access to the ESPs likewise cannot possibly determine which calls being made to an ESP are wholly intrastate in character, or interstate.[59] The advent of new product and service platforms that allow customers to perform many different functions at once, coupled with the inability to track which of these applications involve interstate or intrastate communications, means that access services provided to the ESPs for their interstate communications are "inseverable" from access services provided to the ESPs for use in any "intrastate" services.

---

[58] (...continued)
development of switched access, however, and in the interim the Commission oversaw a series of transitional access charge arrangements (first the ENFIA tariffs, followed by Feature Group A access and other arrangements, and culminating in today's Feature Group D). In so doing, the Commission considered "the effect of sudden rate increases upon competition and concluded that the phase-in of [the ENFIA tariffs] as OCC revenues increased provided adequate time for OCCs to absorb the increased payments for exchange services." The Commission also found "that the practice of connecting the OCCs to local exchange facilities pursuant to local business exchange tariffs could not continue because the OCCs did not make a contribution to the interstate costs of local exchange service." *See* id. at 620; *see also* id. at 618-24; *Exchange Network Facilities for Interstate Access*, Memorandum Opinion and Order, 71 F.C.C. 2d 440 (1979); *MTS and WATS Market Structure*, Memorandum Opinion and Order, 97 F.C.C. 2d 834, 858-63 (1984) ("OCCs that receive equal access will pay the same per minute charges that are assessed for MTS or WATS usage as equal access becomes available in each end office"); *Investigation of Access and Divestiture Related Tariffs*, Memorandum Opinion and Order, 97 F.C.C. 2d 1082 (1984). In short, the Commission recognized that, as the interexchange market matured and as equal access became available, the interexchange carriers should move to a system in which they paid for the access they used.

[59] *See PUC of Texas* v. *FCC*, 886 F.2d at 1331 (recognizing this inability as key factor in determining that inseparability doctrine applied in that case).

P.37 7033513655 TO 92023267999 SEP 09 2002 11:01 AM FR VERIZON

In other contexts, the Commission has recognized that services involving both intrastate and interstate elements -- such as mixed-use special access -- are properly considered interstate in nature for precisely this reason. Most pertinently, the Commission found special access to be an interstate service in large part because attempting to separate the intrastate and interstate traffic "would involve substantial difficulties since . . . the LECs cannot readily measure state and interstate special access traffic . . .," and neither could their customers.[60] The Commission also noted that introducing divided federal-state jurisdiction into an area that has not been jurisdictionally divided in the past would "necessitate significant changes in the LECs' present billing systems," and "would greatly complicate customer bills since both state and interstate charges would apply to each mixed use special access line."[61] Similarly here, for the most prevalent ESP services, it is impossible to separate interstate and intrastate traffic--indeed, both types of communication often take place during the very same "call." Because of this inseverability, *all* access services provided in connection with such services should be presumed to be interstate in character and subject to the Commission's jurisdiction.

Such a presumption, moreover, is supported by sound policy considerations. As explained above, federally imposed, cost-based access charges will remove the existing disincentive for the construction of modern, packet-switched networks; reduce the risk of

---

[60] *MTS and WATS Market Structure*, Recommended Decision and Order, 4 FCC Rcd. at 1356; *see also PUC of Texas* v. *FCC*, 886 F.2d at 1331.

[61] *MTS and WATS Market Structure*, Recommended Decision and Order, 4 FCC Rcd. at 1356

P.38 7033513655 TO 92023267999 SEP 09 2002 11:01 AM FR VERIZON

future congestion on existing circuit-switched networks; and help protect the revenue base for the universal service fund. Imposition of such charges at the federal level, moreover, will discourage the states from imposing a patchwork of their own access charges on ESPs -- a result that could not only undermine each of these goals, but also hamper the full development and utilization of the Internet.[62]

To be sure, some enhanced services may be completely or almost completely intrastate in character, or their intrastate aspects may be capable of easy identification and separation from their interstate aspects.[63] For example, voice mail could be jurisdictionally intrastate, depending on its network configuration. For these services, and upon a proper showing, the ESP could properly purchase intrastate access (or local network) services, which would not be subject to the Commission's jurisdiction.[64]

---

[62] Although the Commission might have authority to preempt such state regulation under the court decisions cited above, AT&T is not requesting such action and, indeed, does not believe there is any need or basis to consider such action here.

[63] *Cf. MTS and WATS Market Structure*, CC Docket Nos. 78-72, 80-286, Recommended Decision and Order, 4 FCC Rcd. 1352 (1989); *MTS and WATS Market Structure*, CC Docket Nos. 78-72, 80-286, Decision and Order, 4 FCC Rcd. 5660 (1989); *Petition of New York Telephone Co. for a Declaratory Ruling with Respect to the Physically Intrastate Private Line and Special Access Channels Utilized for Sales Agents to Computer New York Lottery Communications*, Memorandum Opinion and Order, 5 FCC Rcd. 1080 (Feb. 21, 1990).

[64] The Commission also seeks comment (¶ 315) on metering and billing issues, "given the difficulty of applying jurisdictional divisions or time-sensitive rates to packet-switched networks such as the Internet." With respect to the feasibility of requiring ESPs to pay access charges, metering and billing issues are red herrings. The only issue is how to measure local switching and transport, and the LECs have a system in place for measuring such usage. Indeed, ESPs would receive bills just as the IXCs do today. ESPs, in turn, are certainly capable of billing their customers on a usage-sensitive basis if they choose, as (continued...)

P.39 7033513655 TO 92023267999 SEP 09 2002 11:02 AM FR VERIZON

Finally, although the Commission clearly should regulate the prices ESPs pay for network access services, there is no need for the Commission to consider here whether to exercise jurisdiction over any of the services ESPs provide.[65] Indeed, if the Commission adopts cost-based pricing for all users of exchange access -- or at a minimum requires ESPs to pay TELRIC-based access charges -- there will be no need to explore substantive regulation of any services provided on non-traditional networks. The market incentives that cost-based pricing will generate for deployment of new high-speed technologies (provided meaningful local competition is permitted to develop) should send the appropriate signals to suppliers and customers. It would be especially premature for the Commission either to forbear from regulation of new services that constitute "basic" services under the Commission's current rules, or to impose traditional common carrier regulation on them.[66]

---

[64] (...continued)
many have done in the past. Even today, many ESPs offer tiered usage plans. For example, America Online offers a Light-Usage Program that allows three hours a month for $9.95, and $2.95 for each additional hour. Prodigy, CompuServe and other providers have similar pricing plans.

[65] *See* NOI ¶ 316 (seeking comment on how new services such as Internet telephony (which appears to be a basic service), as well as real-time streaming of audio and video services over the Internet, "should affect its [the Commission's] analysis")

[66] The Commission also seeks comment (¶ 315) on whether it should distinguish different categories of enhanced and information services for differing regulatory treatment. The answer is no. ESPs use local switching and transport today, and therefore should pay the TELRIC cost of using those services, regardless how their services are classified. Indeed, it has become difficult, if not impossible, to distinguish between the existing regulatory classifications of "basic" and "enhanced" services in today's world of converging communications services.

SEP 09 2002 11:02 AM FR VERIZON 7033513855 TO 9202326799 P.40

CONCLUSION

The Commission has before it, in several related dockets, overwhelming evidence that the rational pricing of monopoly LEC network components will create the proper incentives to meet the requirements of the 1996 Act to promote competition in the local exchange and exchange access markets. This docket illustrates the wisdom of that mandate. By pricing the elements of the local network at their actual cost, all entities in the market will receive the proper incentives to upgrade existing networks, develop and deploy new networks and technologies, and build innovative new services to meet customer needs.

For the reasons discussed above, AT&T urges the Commission to issue a Notice of Proposed Rulemaking to eliminate the exemption from Part 69 access charges for enhanced service providers, establish TELRIC pricing for those providers, and adopt a presumption

SEP 09 2002 11:02 AM FR VERIZON 7033513655 TO 92023267999 P.41

that all enhanced communications are interstate in nature. AT&T neither recommends nor supports any "regulation" of Internet or online services at this time, and further recommends that the Commission not seek at this time to distinguish between different categories of information or enhanced services for different regulatory treatment.

Respectfully submitted,

/s/ Mark C. Rosenblum
Mark C. Rosenblum
Ava B. Kleinman

Room 3252J1
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8312

Gene C. Schaerr
James P. Young

1722 Eye Street N.W.
Washington, D.C. 20006
(202) 736-8141

March 24, 1997

SEP 09 2002 11:02 AM FR VERIZON 7033513555 TO 92023267999 P.42

ATTACHMENT 1

Comparison of Alternative Access Service Technologies

ALTERNATIVE ACCESS SERVICE TECHNOLOGIES

Technology Comparison:
Probable Relative Capabilities & Limitations

Downstream Bandwidth	Low	Medium	Very High	Very High	High	High	High
Upstream Bandwidth	Low	Medium	Very High	Medium	Low	Medium	Medium
Maximum Territory Coverage	100%	70%	60%	90%	85%	80%	85%
Range	3 mi	2 mi	3 mi	2 mi	U.S.	1 mi	10+ mi
Customer Cost	Low	Medium	High	Medium	High	Medium	Medium
Likelihood of widespread deployment	Exists	High	Medium	Medium	Exists	Low	Lower

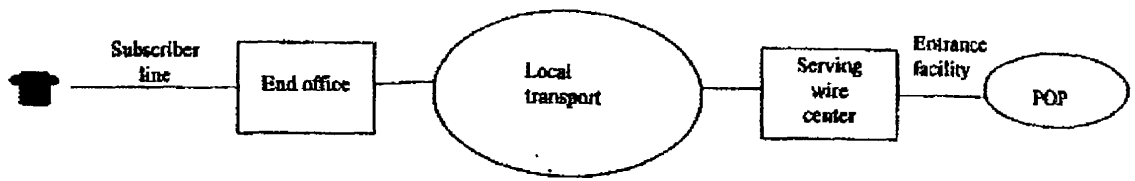
ISDN - Integrated Services Digital Network
DSL - Digital Subscriber Line
HFC - Hybrid Fiber Coax
DBS - Direct Broadcast Satellite
LMDS - Local Multipoint Distribution Service
MMDS - Multichannel Multipoint Distribution Service

ATTACHMENT 2

Illustration of Access Elements and Costs

SEP 09 2002 11:03 AM FR VERIZON 7033513655 TO 92023267999 P.46

ILLUSTRATION OF ACCESS ELEMENTS AND COSTS



Current Access Rates: Average Costs (Cents per Minute)[1]

	Subscriber line	End office[2]	Local transport	Entrance facility	Total
IXC	CCLC = 0.78	LS = 0.92 Other TS = 0.12 TIC = 0.69	Combined = 0.28 per minute		2.79
ESP - with exemption	0	0	0[3]	Business line rates, depending on type of connectivity. 0.24/MOU according to CompuServe[4].	0.24+

Cost-based Access Rates: Average Costs (Cents per Minute)[5]

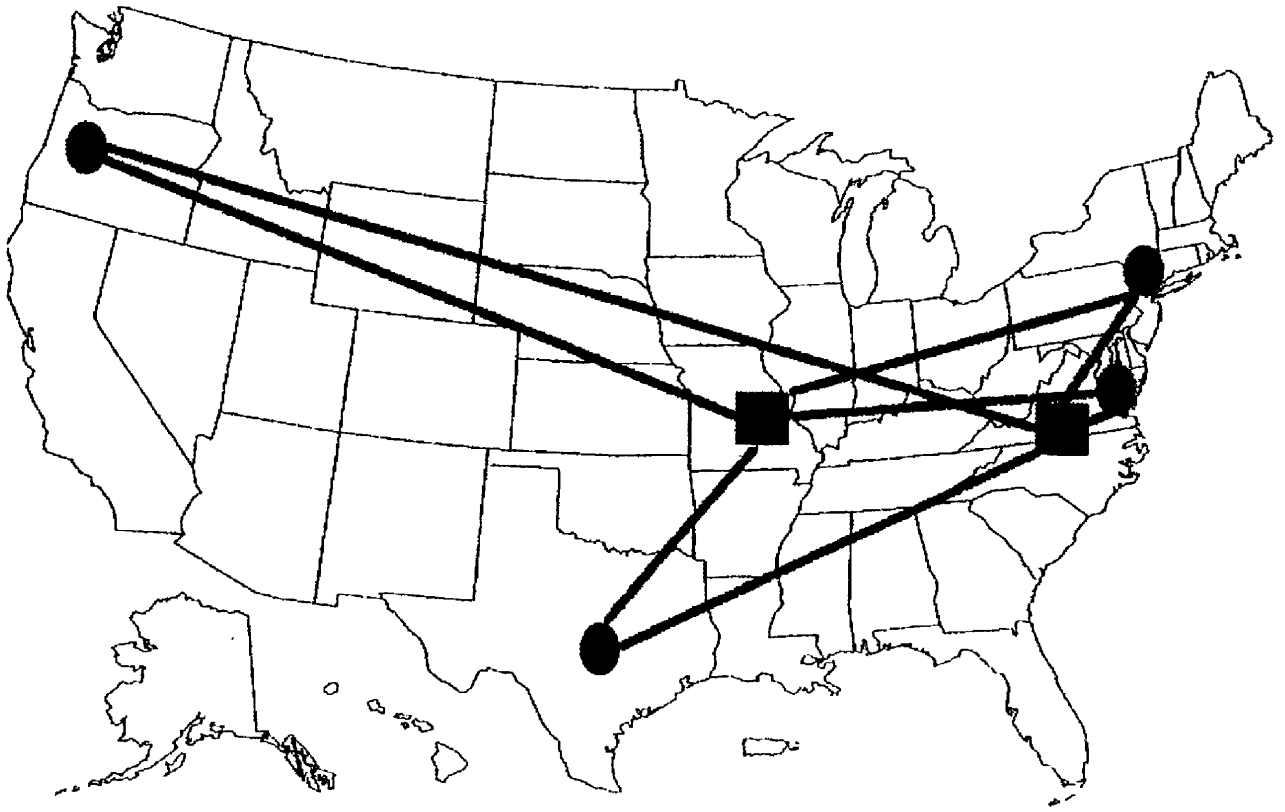
	Subscriber line	End office	Local transport	Entrance facility	Total
IXC	0	LS & signaling = 0.21	Combined = 0.17 per minute		0.38
ESP - with exemption	0	0	0 (See note 2)	Business line rates, depending on type of connectivity	0.24+
ESP - without exemption	0	LS & signaling = 0.21	Combined = 0.17 to 0.27 per minute[6], depending on the type of facilities and connectivity.		0.38 to 0.48

[1] Based on 1996 annual access filings of the RBOCs and GTE, and includes both usage and flat-rated elements.
[2] LS is the abbreviation for Local Switching; Other TS for Other Traffic Sensitive; and TIC for Transport Interconnection Charge
[3] If the ESP and end user are not in the same local calling area, the ESP may purchase FX lines (at private line rates) to the end offices near its customers.
[4] Calculated from data presented in Comments of CompuServe and Prodigy in Docket 96-262, 1/29/97, pp. 10-11.
[5] Based on results from Hatfield model, version 3.1, for LECs with more than 100,000 lines.
[6] Represents a range based on relative use of tandem switching, from 20% (the average for IXCs) up to 50%

ATTACHMENT 3

Diagram of AT&T WorldNet℠ Services Network

ILLUSTRATIVE DIAGRAM OF AT&T WORLDNET℠ SERVICES DIAL-UP NETWORK



■ Data Center/Web Svrs ● Representative Dial-up POP

CERTIFICATE OF SERVICE

I, Thomas A. Blaser, do hereby certify that on this 24th day of March, 1997, I caused a copy of the foregoing Comments of AT&T Corp. to be served upon each of the parties listed on the attached Service List by U.S. first class mail, postage prepaid.

/s/ Thomas A. Blaser
THOMAS A. BLASER

SEP 09 2002 11:03 AM FR VERIZON 7033513655 TO 9202326799 P.49

SERVICE LIST

Mary E. Newmeyer
Federal Affairs Advisor
Alabama Public Service Commission
P.O. Box 991
Montgomery, AL 36101

James Rowe
Executive Director
Alaska Telephone Association
4341 B St. - Suite 304
Anchorage, AK 99503

Gerald Depo, President
Alliance for Public Technology
901 15th St., NW - Suite 230
Washington, DC 20005

Carolyn C. Hill
ALLTEL Telephone Services Corporation
655 Fifteenth Street, NW - Suite 220
Washington, DC 20005

Donna Lampert
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo
701 Pennsylvania Ave., NW - Suite 900
Washington, DC 20004

John Rother, Esq.
Director, Legislation & Public Policy
American Association of Retired Persons
601 E. St., NW
Washington, DC 20049

Carol C. Henderson, Executive Director
American Library Association
1301 Pennsylvania Ave., NW - Suite 403
Washington, DC 20004

America's Carriers Telecommunication Association
c/o Charles H. Helein, General Counsel
Helein & Associates, P.C.
8180 Greensboro Drive - Suite 700
McLean, VA 22102

Michael S. Pabian
Ameritech
Rm. 4H82
2000 W. Ameritech Center Dr.
Hoffman Estates, IL 60196-1025

Edward Shakin
1320 North Court House Road - 8th Floor
Arlington, VA 22201
Attorney for Bell Atlantic Telephone Companies

Joseph Di Bella
1300 I Street, NW - Suite 400 West
Washington, DC 20005
Attorney for NYNEX Telephone Companies

Richard M. Sbaratta
BellSouth Corporation
BellSouth Telecommunications, Inc.
1155 Peachtree St., NE - Suite 1700
Atlanta, GA 30309-3610

Christopher J. Wilson
Frost & Jacobs
2500 PNC Center
201 E. Fifth St.
Cincinnati, OH 45202
Attorney for Cincinnati Bell Telephone Co.

Richard M. Tettelbaum
Associate General Counsel
Citizens Utilities Company
1400 16th St., NW - Suite 500
Washington, DC 20036

Diane Smith
ALLTEL Corporate Services, Inc.
655 15th Street, NW - Suite 220
Washington, DC 20005-5701
Attorney for Independent Telephone & Telecommunications Alliance

Thomas K. Crowe, P.C.
2300 M St., NW - Suite 800
Washington, DC 20037
Attorney for Commonwealth of the Northern Marianas Islands

Ronald J. Binz, President
Competition Policy Institute
1156 15th Street, NW - Suite 310
Washington, DC 20005

Randolph J. May
Sutherland, Asbill & Brennan
1275 Pennsylvania Ave., NW
Washington, DC 20004-2404
Attorney for CompuServe Incorporated

Kent Larsen
Cathey, Hutton & Associates
2711 LBJ Freeway, Suite 560
Dallas, TX 75234

Mary Mack Adu
People of the State of California and Public Utilities Commission of the State of California
505 Van Ness Ave.
San Francisco, CA 94102

Henry D. Levine
Levine, Blaszak, Block & Boothby
1300 Connecticut Ave., NW - Suite 500
Washington, DC 20036
Attorney for Bankers Clearinghouse, Mastercard, and Visa

Ronald L. Plesser
Piper & Marbury L.L.P.
1200 19th St., NW, 7th Floor
Washington, DC 20036
Attorney for Commercial Internet Exchange Association

Morton Bahr, President
Communications Workers of America
501 Third St., NW
Washington, DC 20001-2797

Genevieve Morelli
Executive V.P. and General Counsel
Competitive Telecommunications Association
1900 M Street, NW - Suite 800
Washington, DC 20036

Danny E. Adams
Kelley Drye & Warren, LLP
1200 19th Street, NW - Suite 500
Washington, DC 20036-2423
Attorney for Competition Policy Institute

Wayne V. Black
Keller and Heckman, LLP
1001 G Street, NW - Suite 500 West
Washington, DC 20001
Attorney for American Petroleum Institute

Christopher W. Savage
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Ave., NW - Suite 200
Washington, DC 20006
Attorney for Centennial Cellular Corporation

James Love
Director
Consumer Project On Technology
P.O. Box 19367
Washington, DC 20036

DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
APR 23 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:	)	
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263
	)	

EXHIBIT
E

REPLY COMMENTS OF GTE

GTE SERVICE CORPORATION,
on behalf of its affiliated companies

Ward W. Wueste
Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, DC 20036

R. Michael Senkowski
Richard T. Pfohl
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, DC 20006

Its Attorneys

April 23, 1997

No. of Copies rec'd 0+2
List A B C D E

TABLE OF CONTENTS

Page

I. INTRODUCTION AND SUMMARY 1

II. THE RECORD DEMONSTRATES THAT A DRAMATIC INCREASE IN INTERNET TRAFFIC HAS REQUIRED EXTRAORDINARY EFFORTS TO PREVENT DETERIORATION OF NETWORK PERFORMANCE 3

A. Additional Data Collected By GTE Demonstrate That Traffic Levels Have Increased Dramatically Due To A Substantial Rise In Usage Levels On Internet-Related Lines 4

B. LECs Face Significant Increases In Expenditures For Network Upgrades In Order To Accommodate The Increase In Internet-Related Traffic 9

III. SUB-LOOP UNBUNDLING FOR THE USE OF ISPs SHOULD NOT BE MANDATED 11

A. A General Requirement For Sub-Loop Unbundling Would Impair Service Quality And Raise Grave Risks To Network Reliability 12

B. Sub-Loop Unbundling For ISPs Is Particularly Unwarranted 13

IV. GTE CONCURS IN AT&T'S SHOWING THAT INTERNET ACCESS TRAFFIC IS PRESUMPTIVELY INTERSTATE AND SUBJECT TO THE COMMISSION'S JURISDICTION 14

A. The Presumption That Internet Access Traffic Is Interstate In Character Accurately Reflects The Nature Of The Internet 15

B. Mutual Compensation Should Not Apply To Internet Access Traffic In Order To Prevent Gaming Of The System 16

V. THE CURRENT SYSTEM DOES NOT PROVIDE FOR SUFFICIENT RECOVERY OF ACTUAL COSTS BY LECS 17

A. Business Line Rates And Flat-Rated Residential Charges Do Not Provide Sufficient Revenues To Recover ILECs' Actual Costs. 17

B. TELRIC Does Not Provide An Effective Measure Of ILEC Costs For Compensation Purposes 18

C. Failure To Allow Full Recovery Of Costs Will Create A Massive Disincentive To Investment In Data-Friendly Networks. 20

VI. CONCLUSION 23

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of:	)	
	)	
Usage of the Public Switched	)	**CC Docket No. 96-263**
Network by Information Services	)	
and Internet Access Providers	)	

REPLY COMMENTS OF GTE

GTE Service Corporation ("GTE"), on behalf of its affiliated companies,[1] hereby submits its reply to comments received in response to the above-captioned Notice of Inquiry ("NOI").[2]

I. INTRODUCTION AND SUMMARY

Broad record support exists for the positions articulated in GTE's Comments. As the empirical data of GTE and other LEC commenters make clear, Internet access usage is creating the need for unscheduled network upgrades that result in unrecovered costs for ILECs. Additional data recently compiled by GTE confirms GTE's earlier showing that

---

[1] GTE is a world leader in the provision of wireline, wireless, Internet and directory services.

[2] *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; Usage of the Public Switched Network by Information Service and Internet Access Providers*, FCC 96-488 (Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry), 1996 FCC LEXIS 7105, 5 Comm. Reg. (P & F) 604 (Dec. 24, 1996).

Internet access-related traffic presents an increasing threat of congestion for ILECs, necessitating dedication of increasing amounts of network capacity. Specifically, a study just completed by GTE indicates that ISP-related traffic constitutes a substantial portion of all terminating interoffice Public Switched Telephone Network ("PSTN") traffic, including a large percentage of such traffic during busy hours. Recovery of costs for this Internet use is both required by the Telecommunications Act and necessary from a public policy standpoint in order to establish proper market-based price signals that will spur deployment of data-friendly networks that the FCC and all commenters agree are desirable.

In contrast, no persuasive arguments have been presented for continuing to require LECs to effectively subsidize Internet access usage. Both the Telecommunications Act and longstanding Commission policy favor recovery of costs from the cost causer, with any necessary subsidies made specific and predictable, not implicit and uncontrollable as here. Moreover, as numerous commenters point out, the current system, which renders much Internet access usage essentially free, is the largest existing regulatory impediment to deployment and use of data-friendly services.

Arguments that the Commission should require sub-loop unbundling for the use of ISPs are similarly misplaced. The severe technical and other constraints on such unbundling render it impracticable to offer, if at all, on anything but an individual case basis. Moreover, even if available, sub-loop unbundling would likely not be an economically viable alternative for ISPs because of the substantial attendant costs. Further, the risk to network reliability from such unbundling would be even greater given the involvement of ISPs, which are not subject to regulatory oversight.

GTE also agrees with AT&T that Internet access usage should be presumptively classified as jurisdictionally interstate. Such a presumption comports with the overwhelmingly interstate character of Internet traffic, but would be rebuttable in order to protect legitimate state interests. Most importantly, the interstate classification of Internet traffic will prevent CLECs from "gaming the system" by signing up ISP customers in order to inflate their receipts of mutual compensation revenues.

Finally, the record establishes that ILECs are currently being denied full recovery of the network costs attributable to increased Internet usage. Neither business line rates nor second line revenues are sufficient to recover these costs. Moreover, application of the FCC's TELRIC standard to Internet access pricing would exacerbate current shortfalls by guaranteeing a systematic under-recovery of costs. Noncompensatory pricing of existing analog services is a principal impediment to the deployment of new data-friendly technologies.

II. THE RECORD DEMONSTRATES THAT A DRAMATIC INCREASE IN INTERNET TRAFFIC HAS REQUIRED EXTRAORDINARY EFFORTS TO PREVENT DETERIORATION OF NETWORK PERFORMANCE

Virtually the only record support relied upon by ISPs for their contention that increases in Internet access usage do not pose a serious risk to the PSTN is the Selwyn/Laszlo Study,[3] which was financed by and appended to the Comments of the Internet Access Coalition. As GTE pointed out in its Comments, that study suffers from numerous fatal shortcomings and misconceptions that render its conclusions fundamentally flawed.[4] Contrary to the suggestions

---

[3] Lee L. Selwyn and Joseph W. Laszlo, "The Effect of Internet Use on the Nation's Telephone Network," Comments of the Internet Access Coalition, Append. C.

[4] *See* Comments of GTE at 14-20.

of Selwyn, *et al.*, traffic congestion created by burgeoning levels of Internet access traffic now poses an unprecedented threat to network performance. The dearth of examples of Internet-related network breakdowns to date does not undermine this fact. Rather, serious service disruptions have been avoided only due to ILECs' efforts to implement massive, uncompensated emergency capital upgrades as stopgaps against network overload.

Network congestion caused by increasing Internet use cannot be "simpl[y]" or "easily" addressed through techniques such as load balancing, switch deloading, and use of trunk-side terminations, as certain commenters claim.[5] As GTE explained in detail in its Comments, such contentions misunderstand telephone network architecture and ignore the significant costs of the technology required to implement network capacity augmentation techniques.[6] Both additional data collected by GTE and the experiences of other ILECs confirm GTE's earlier showings in this regard.

A. Additional Data Collected By GTE Demonstrate That Traffic Levels Have Increased Dramatically Due To A Substantial Rise In Usage Levels On Internet-Related Lines

A study commissioned by GTE confirms the conclusions of preliminary data set forth in GTE's Comments: Internet-related traffic constitutes an increasing proportion of PSTN traffic, and such traffic is contributing to PSTN congestion problems during both busy and off-peak hours. The study, performed using a commercially available link monitoring system, measured the traffic on the SS7 ("Signaling System 7") links into the three central offices in

---

5 *See, e.g.*, Comments of Internet Access Coalition at 10-14.

6 Comments of GTE at 14-22.

the Tampa, Florida metropolitan region during one full week in April, 1997.[7] All traffic routed to these three central offices was measured to determine the traffic load destined for the ISPs served by these offices as well as non-ISP traffic load.[8] The study measured the load of calls measured in CCS,[9] a product of the number and duration of calls.[10]

The study illustrates the contribution of Internet access related traffic to terminating interoffice PSTN traffic congestion in the metropolitan area studied, both in peak and off-peak hours. As the following table demonstrates, during the five consecutive weekdays studied, ISP traffic constituted fully ***40.75%*** of total terminating interoffice PSTN traffic. (*See* Table 1).[11]

---

[7] The study measured the traffic destined for these central offices 24 hours a day for the seven day period from April 13, 1997 through April 19, 1997.

[8] The study did not measure intra-office traffic, *i.e.*, traffic originating and terminating within the office studied.

[9] As explained in GTE's Comments, CCS, or "centum or hundred call seconds," measures actual traffic loads, by measuring the volume *and* duration of calls. Comments of GTE at 11 n.13. This measure is most important, because it determines the load on the network.

[10] The study data shows the hour in the day that calls were connected and the average holding time for all calls that were connected during that hour regardless of the actual release time. It also shows the CCS load to each of the ISP numbers during the hour as well as the CCS load to all other numbers served by the studied offices. Traffic measured includes all of the traffic originated from all of the offices in the surrounding local calling area, traffic terminating in these offices from offices that generate 1+7D Intra-LATA toll calls into these offices, and traffic terminating in these offices from points outside the LATA.

[11] Table 1 replicates the Table presented on the basis of preliminary data in GTE's Comments, and validates the conclusions drawn from that table. *See* Comments of GTE at 13.

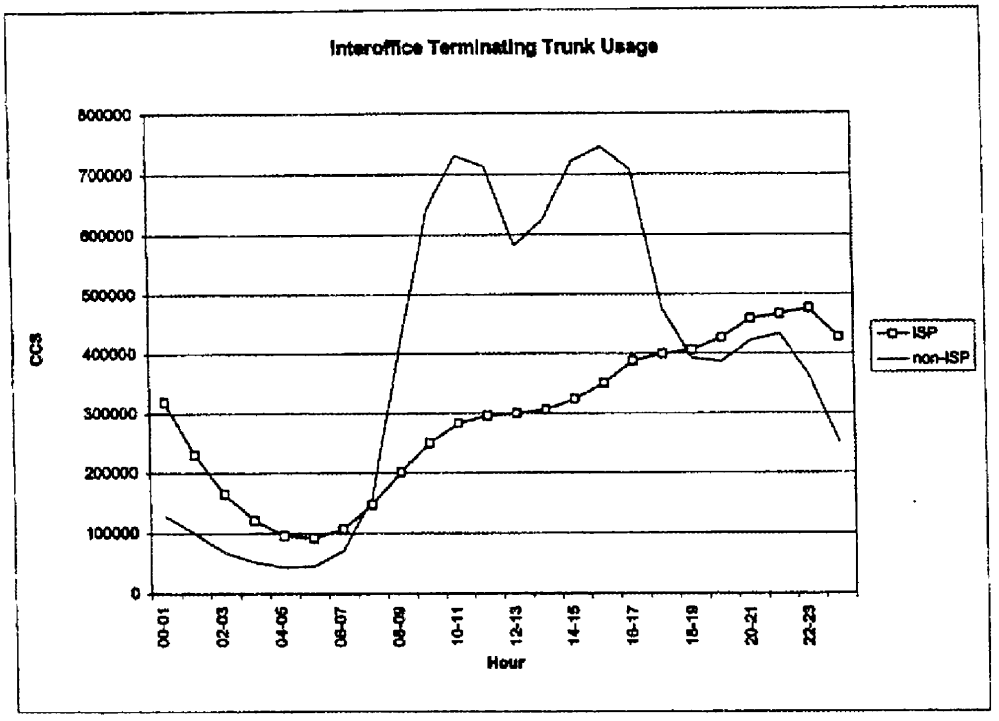
Table 1
March 1997 Study
Five Weekdays Studied

	Completed Calls	Duration in Minutes	Average Holding Time in Minutes	Non-Completed Calls	Percent Completed Calls	Percent of Total Traffic Minutes
ISP Traffic	347,280	8,629,908	24.85	155,988	69.00%	40.75%
Non-ISP Traffic	4,958,065	12,543,904	2.53	1,881,457	72.50%	59.25%
Total Traffic	5,305,345	21,173,812	3.99	2,037,445	72.25%	100%

Furthermore, contrary to the unsupported contentions of a number of ISP commenters,[12] Internet access-related traffic was significant not only during off-peak hours, but during PSTN busy hours as well. During the peak busy hour, ISP traffic constituted nearly *33%* of total terminating interoffice PSTN traffic. (*See* Chart 1).

[12] *See, e.g.*, Comments of WorldCom at 19-20; Comments of General Services Administration ("GSA") at 13-15; Comments of The Association of Online Professionals at 4; Comments of Internet Access Coalition at 8-9.

Chart 1



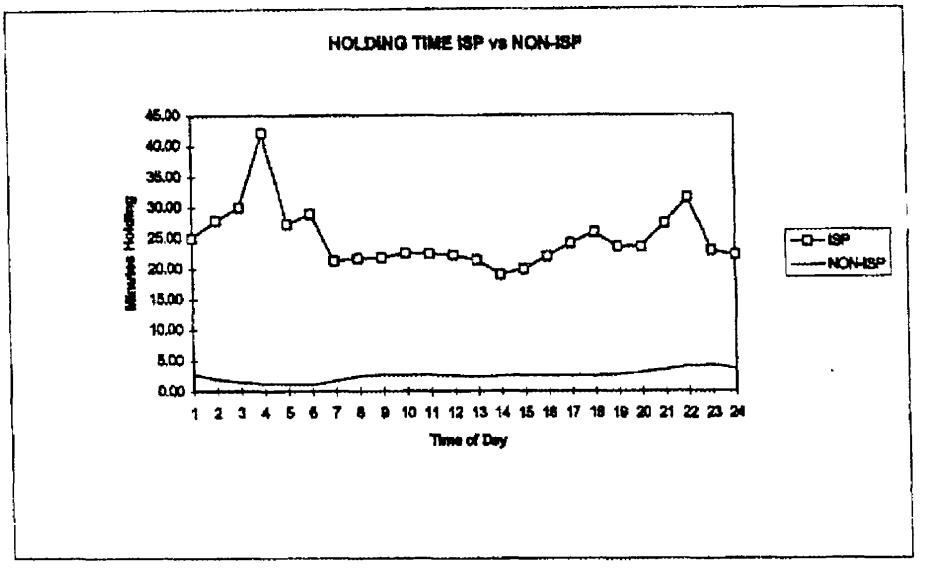
As Chart 1 demonstrates, ISP traffic load increases steadily during the day from 5:00 A.M. until 11:00 P.M (with a slight flattening at noon). ISP traffic load during the busy hour (3:00 - 4:00 P.M.) is equivalent to approximately 73% of ISP traffic load during the ISP busy hour (10:00 - 11:00 P.M.).

Furthermore, the study data demonstrates that ISP contentions regarding total number/volume of calls during the busy hour are, in and of themselves, incorrect. As Chart 2 illustrates, average holding time during busy hours on calls to ISPs is nearly ***nine times*** longer than average holding time on non-ISP traffic in this metropolitan network. (*See* Chart 2).[13]

---

[13] *See also* Table 1; Affidavit of H. Lee Jones, attached as Append. A, at 2.

Chart 2



Holding times are relevant, because it is both the number and the duration of calls that determine call load, network congestion, and switch and trunk line capacity needed.[14] For example, GTE's data demonstrates that ISP calls during the busy hour constituted nearly 33% of total terminating interoffice traffic load, despite constituting only 4.35 percent of the total number of completed terminating interoffice calls during that hour. Therefore, it is clear that the long average holding time of ISP traffic is largely responsible for causing the need for

---

[14] *See* Affidavit of H. Lee Jones, attached as Append. 1, at 3; *see also* Comments of WorldCom at 19 (admitting that "the ILECs' local switches typically are engineered based on the number of lines, expected call attempts per busy hour, and call holding time.")

Contrary to the contention of the GSA, Comments of GSA at 12-13, volume and duration of calls, rather than amount of information transmitted, are the relevant factors in determining burden on the PSTN. The circuit switched nature of the PSTN requires occupation of a circuit during the entire connection time, unlike in a packet switched environment.

additional facilities in the network. Thus, ISP data that relates solely the volume of calls and fails to address call duration or total call load presents a one-dimensional slice that is, at best, irrelevant and, at worst, misleading.

B. LECs Face Significant Increases In Expenditures For Network Upgrades In Order To Accommodate The Increase In Internet-Related Traffic

The additional data collected by GTE are consistent with the findings described in the comments of GTE and other LECs, which demonstrate that ILECs have been forced to incur significant, uncompensated increases in expenditures for network upgrades in order to accommodate the rise in Internet access traffic. As GTE noted in its comments, its operating companies have already committed between $50 million and $85 million, due solely to increased Internet access traffic, in order to avoid a potentially crippling overload of its network.[15]

The Comments of other ILECs confirm GTE's experience. For example, Pacific Telesis found that at the end of 1996, Internet usage accounted for approximately 27 percent of Pacific Bell's total residential traffic, or 30 billion minutes of use.[16] If the exemption is not removed, Pacific Telesis forecasts that by 2001, there will be almost as much residential dial-up Internet traffic as residential voice traffic.[17] Moreover, Pacific Telesis expects that Pacific Bell will generate about $150 million in incremental revenue from ISPs but spend over *$300*

---

15 Comments of GTE at 22.

16 Comments of Pacific Telesis Group at 10.

17 *Id.*

million to support Internet-related traffic over the next five years.[18] As Pacific Telesis notes, because of the disincentives to recovery of costs invested in data networks, these funds will be misdirected to investment in voice public switched networks rather than development of advanced data services.[19]

Similarly, Bell Atlantic alone spent nearly $200 million above its planned network construction budget in 1996 to avoid failures that would impair service to all customers.[20] Bell Atlantic expenditures in 1997 are expected to exceed $300 million, including installation of a large number of new line units and ISDN terminations in central office switches to accommodate additional traffic volumes, and interoffice trunks to carry the traffic between offices.[21] Sprint likewise has experienced Internet-related congestion problems that have required hundreds of thousands of dollars in network expansions to resolve.[22]

Furthermore, new Internet technologies now being implemented are expected to exacerbate the congestion problem. For example, "push" technology will require that the end-user remain connected to the Internet program source during the entire time that the customer's computer is turned on.[23] This technology is likely to increase holding times

---

18 *Id.* at 31.

19 *Id.*

20 Jt. Comments of Bell Atlantic and NYNEX at 6.

21 *Id.*

22 *See* Comments of Sprint Corp. at 5 (Sprint LECs have been required to spend between $350,000 and $400,000 to add additional trunks to address spikes in traffic levels each time a major Internet access provider has offered flat-rate service to the Internet).

23 Jt. Comments of Bell Atlantic and NYNEX at 8-9. "Push" technology sends

(Continued...)

dramatically, as well as require far higher emergency investment in existing networks to prevent congestion.[24]

As the data provided by GTE and by other commenters make clear, ample evidence of the increase in network traffic and congestion problems exists to warrant FCC action. Calls for the collection of additional information or other deferrals of FCC action[25] are simply delay tactics to maintain preferential treatment of ISPs and should not be credited.[26] Instead, the Commission should move expeditiously to address this real and growing concern.

III. SUB-LOOP UNBUNDLING FOR THE USE OF ISPs SHOULD NOT BE MANDATED

A number of ISPs and other commenters have suggested that ILECs should be required to provide them with unbundled access to various parts of the local loop such as feeder and distribution facilities.[27] However, as the Commission has previously found, it is not possible to provide sub-loop unbundling on a generic basis due to serious network reliability

---

(...Continued)
predetermined types of information to the end user's computer without the end user having to retrieve it. It requires that the end user remain connected to the Internet during the entire time the end user's computer is turned on, in order for the information to be "pushed" to that computer as soon as it is available -- with consequential dramatic increases in holding times. *Id.*

[24] *Id.*

[25] *See, e.g.*, Comments of Internet Access Coalition at 61; Comments of Association of Online Professionals at 4.

[26] *See* Comments of AT&T at 19.

[27] *See, e.g.*, Comments of America Online at 24-25; Comments of Internet Access Coalition at 41-42; Comments of WorldCom at 23-24.

concerns.[28] Nor is it likely to be an economically viable distribution option for ISPs. Accordingly, sub-loop unbundling should not be required herein.

A. A General Requirement For Sub-Loop Unbundling Would Impair Service Quality And Raise Grave Risks To Network Reliability

The FCC properly declined to require sub-loop unbundling in its First Interconnection Order on the grounds that proponents of sub-loop unbundling could not adequately respond to the network reliability concerns raised by various ILECs.[29] As GTE explained in its Comments in that proceeding, it is impossible to establish a uniform national requirement for sub-loop unbundling for a number of reasons:

- There are literally dozens of different loop provisioning configurations, each engineered for network integrity purposes as an end-to-end transmission path and frequently lacking any cross-connect box or other demarcation between the feeder and distribution portions of the plant at which a generic unbundling requirement could be implemented.
- There are no industry standards governing what combinations of network elements are used to create a local loop or even the appropriate delineation between feeder and distribution plant.
- Existing ILEC operations support systems are not designed or configured to support the separate provisioning of sub-loop facilities.
- The cost of making available a sub-loop facility for provisioning will vary widely depending upon the network configuration.
- Because there is a lack of compatibility between the different types of analog and digital transmission services that may be provided via local loops, there is a severe

---

[28] Thus, to the extent that sub-loop unbundling is proposed as a precondition to addressing the issue of usage of the PSTN by ISPs, it is a mere delaying tactic and should be dismissed out of hand.

[29] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (Aug. 8, 1996)("First Interconnection Order"), ¶ 391.

risk of inter-service interference from uncoordinated usage of sub-loop facilities due to lack of spectrum management.

- Because of the complexity of feeder-distribution interfaces resulting from the thousands of cross-connects required at each box, the introduction of new or additional installation and maintenance personnel into such sites for provisioning purposes will increase the potential for service degradation or failure and, thereby, undermine network reliability.

As a result of these factors, the viability of providing any unbundled sub-loop facilities must be considered on a specific, individual case basis. Only where: (i) the necessary facilities exist, (ii) procedures for provisioning and coordinated use can be established, and (iii) the requester agrees to pay all associated costs, can the availability of a sub-loop product even be considered. GTE's experience suggests that these situations will be exceedingly few in number.[30] Although the Commission has indicated that it will further review the question of sub-loop unbundling in 1997,[31] the record here is clearly inadequate to support a reversal of the agency's earlier determinations in this regard.

B. Sub-Loop Unbundling For ISPs Is Particularly Unwarranted

In the Telecommunications Act, Congress established the rights of regulated *carriers* to acquire unbundled network elements from ILECs for the purpose of creating new competitive alternatives for users. The limitation to carriers is clearly reasonable given the inherent risks to service to the public associated with permitting entities to piece out the ILECs'

---

[30] The FCC has required CLECs to bear the cost of any higher than normal quality network elements they request. Thus, if the Commission were to grant the Internet Access Coalition's related request for authority to acquire digitally conditioned loop facilities (Comments at 45-46), the ISP would be required to pay the cost of such conditioning, equipment removal or other reconfiguration in that circumstance as well.

[31] First Interconnection Order, ¶ 391.

communications networks in order to integrate their own facilities. For obvious reasons, providing such a right to ISPs, which are not subject to governmental oversight, would present an even greater risk to the network and the services provided to others without offering any such pro-competitive justification. The risks would be particularly great in the context of sub-loop unbundling.

Absent the imposition of similar regulatory responsibilities upon both parties to a sub-loop provisioning arrangement, it will be impossible to obtain the necessary level of assurance that the risks identified above can be avoided or that, if problems occur, they will be promptly remedied. The burden of enforcement would fall solely on the ILEC, and its customers would bear the costs. This would be both manifestly unfair and ill-advised as a matter of public policy.

IV. GTE CONCURS IN AT&T'S SHOWING THAT INTERNET ACCESS TRAFFIC IS PRESUMPTIVELY INTERSTATE AND SUBJECT TO THE COMMISSION'S JURISDICTION

GTE concurs in the Comments of AT&T that the Commission should adopt a rebuttable presumption that Internet access services are subject to the Commission's jurisdiction due to their overwhelmingly interstate character.[32] Such a presumption comports with the characteristics of Internet traffic and with settled case law for regulating services that, like Internet traffic, have a significant interstate use or character but cannot readily be broken down into distinct interstate and intrastate components.[33]

---

[32] *See* Comments of AT&T at 28.

[33] *See, e.g., Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 375-79 (1986); *Cal. v. FCC*, 39 F.3d 919, 931-33 (9th Cir. 1994), *cert. Denied*, 115 S. Ct. 1427 (1995); *Pub. Utility*

(Continued...)

A. The Presumption That Internet Access Traffic Is Interstate In Character Accurately Reflects The Nature Of The Internet

Internet access traffic is overwhelmingly interstate in character, and even where this is not the case, customers will almost inevitably access multiple applications and databases during a typical session, a large fraction of which are likely to involve interstate transmission.[34] The use of new "push" technologies will further reinforce the interstate character of Internet transmissions. In any event, the predominant interstate and, indeed, international scope of the Internet clearly warrants treatment of Internet access arrangements under uniform policies established *and administered* at the federal level.

As pointed out by U S WEST, the current regime results in a massive allocation of costs to the intrastate jurisdiction,[35] but states are limited in their flexibility to recover those costs from the cost causers. This jurisdictional mismatch of costs and cost recovery has fostered the current noncompensatory predicament facing ILECs and presents a major disincentive to the deployment of new data-friendly technologies.[36] Given the Commission's and the nation's interest in promoting the Internet and related offerings, it would clearly be reasonable for the agency to assert an appropriate level of federal jurisdiction in this context.

(...Continued)
Comm'n of Texas v. FCC, 886 F.2d 1325, 1331-34 (D.C. Cir. 1989).

[34] *See* Comments of AT&T at 28-30.

[35] *See* Comments of U S WEST at 22.

[36] Furthermore, this creates, in effect, a reverse subsidy in which costs of predominantly interstate service are recovered in intrastate rates. Such an outcome is wholly inconsistent with the historical policy of subsidizing local service through interstate rates.

Nonetheless, GTE also agrees with AT&T that the presumption that particular Internet access traffic is jurisdictionally interstate could be rebutted by a convincing showing that the traffic is, in fact, intrastate in character. Such a showing could be based on traffic studies, network design, server locations, or other factors analogous to those used to dispute classification of dedicated line services under the Joint Board's jurisdictional allocation regime.[37] In this manner, legitimate state prerogatives would not be trampled.

B. Mutual Compensation Should Not Apply To Internet Access Traffic In Order To Prevent Gaming Of The System

As GTE noted in its Comments, competitive LECs are currently marketing their offerings to Internet access providers and other ISPs for the sole purpose of capturing those entities' overwhelmingly terminating traffic in order to obtain transport and termination charges from LECs under reciprocal local compensation arrangements.[38] Other commenters confirm the existence of such practices.[39] If CLECs are successful in this attempt, ILECS will remain responsible for the vast majority of the network cost increases caused by Internet access usage, incur a new cost burden in terminating payments to CLECs, and lose all revenues from ISPs themselves.

CLECs should not be permitted to game the system in this manner or otherwise allowed to take advantage of arbitrage possibilities that lack any reasonable technological or

---

[37] *See* Jt. Comments of Bell Atlantic and NYNEX at 14 n.25 (similarly arguing that the FCC should follow its "10 percent rule").

[38] Comments of GTE at 32-33.

[39] *See* Comments of Pacific Telesis Group at 21; Jt. Comments of Bell Atlantic and NYNEX at 9.

economic basis. Rather, costs should be recovered from those who cause them to be incurred. When public policy determines that end users are entitled to below cost services, appropriate mechanisms should be established that explicitly recover the costs associated with the subsidized services. Classification of Internet traffic as interstate, interexchange usage will further this goal by ensuring that this traffic is not subject to mutual compensation arrangements.[40]

V. THE CURRENT SYSTEM DOES NOT PROVIDE FOR SUFFICIENT RECOVERY OF ACTUAL COSTS BY LECS

A. Business Line Rates And Flat-Rated Residential Charges Do Not Provide Sufficient Revenues To Recover ILECs' Actual Costs.

The ISP access charge exemption effectively precludes ILECs from recouping their substantial costs in network investments, thereby creating an implicit subsidy system in contravention of sound economic and regulatory policy, as well as applicable legal requirements.[41] GTE explained in its comments that current rates business and residential telephone do not adequately compensate ILECs for services provided to ISPs. Other

---

40 *See* First Interconnection Order, ¶ 1034.

41 As the Commission observed in another proceeding:

> Carriers under the Commission's jurisdiction must be allowed to recover the reasonable costs of providing service to ratepayers, including reasonable and prudent expenses and a fair return on investment. This fundamental requirement is unchanged by the Telecommunications Act of 1996.

Accounting for Judgments and Other Costs Associated with Litigation, CC Docket No. 93-240, FCC 97-80, ¶ 2 (rel. Mar. 13, 1997)(citation omitted).

commenters agree that second-line revenues and business line rates are insufficient to recover ILEC costs.[42]

In any event, no statistical support exists for the ISPs' claim that the demand for second lines is primarily caused by Internet use or that second line revenues should be credited to Internet traffic.[43] The proliferation of facsimile technology, telecommunicating, children's lines, and a host of other uses all contribute to the increase in use of residential second lines. As GTE has explained, where Internet traffic is involved, the additional revenue is insufficient to compensate for the increased usage, particularly given the lack of vertical services purchased on such lines.

B. TELRIC Does Not Provide An Effective Measure Of ILEC Costs For Compensation Purposes

Contrary to the suggestions of a number of ISPs and other commenters who have an interest in perpetuating ILECs' subsidization of ISPs,[44] TELRIC, or "total element long-run incremental costs," does not provide an appropriate measure of the actual costs of the communications services utilized by ISPs. Under the Commission's TELRIC standard, prices would be set based solely on the incremental forward-looking costs of a hypothetical, ideally

---

[42] *See* Comments of Southwestern Bell at 11 (revenues received from second lines used to access the Internet do not recover their costs); Comments of GTE at 24-25; Jt. Comments of Bell Atlantic and NYNEX at 10 n.19 (although some customers may pay message units for originating calls, there is no usage charge for terminating traffic, and message unit charges fall far short of compensating for delivering Internet access traffic). *See generally* Comments of GTE, CC Docket No. 96-98 ("GTE Interconnection Comments").

[43] *See* Jt. Comments of Bell Atlantic & NYNEX at 10-11.

[44] *See, e.g.*, Comments of CompuServe & Prodigy at 12; Comments of AT&T at 25-26; Comments of MCI at 6.

efficient, state-of-the-art network.[45] It would, thus, preclude recovery of the actual costs of ILEC operations.[46] For these reasons, the U.S. Court of Appeals for the Eighth Circuit has tentatively concluded that TELRIC pricing is unlawfully non-compensatory.[47]

Application of TELRIC would also provide a disincentive to development of state-of-the-art data-friendly networks, contrary to the professed goals of the FCC and all commenters. It would be irrational for any competitor to build its own facilities when the FCC has guaranteed it a right to use the incumbent's facilities at the incremental cost of the best up-to-the-moment technologies. No entrant can hope to be more efficient - and to achieve lower cost - than the hypothetical, ideally-efficient network contemplated by TELRIC. As a consequence, no new entrant will incur the expense or take the risk of building facilities of its own.[48]

Application of a TELRIC-based Internet pricing methodology to access services would likewise discourage incumbent LECs from investing in their own networks. On any given

---

[45] First Interconnection Order, ¶¶ 685, 690.

[46] *See id.* ¶¶ 672, 204-07.

[47] *Iowa Utilities Bd. V. FCC*, No. 96-3321, 1996 WL 589204 (8th Cir. Oct. 15, 1996). For similar reasons, the assertion by the Commercial Internet Exchange Association ("CIX") that business line rates must be compensatory because they exceed the FCC's prescribed TELRIC-based proxy prices for comparable functionality is wholly without foundation. *See* Comments of CIX at 12.

[48] MFS, for example, announced plans last fall to "re-orient []its network build-out focus away from building to end-users . . . connect []customer via incumbent local exchange carrier (ILEC) unbundled loops." *MFS Communications*, Merrill Lynch Capital Markets, Nov. 7, 1996, at 2. *See also*, *London On The Line*, The Washington Post (Nov. 10, 1996) (British Telecom has no plans to build facilities of its own here but instead will "purchase bulk capacity from local telephone carriers" and thereby "leverage other people's infrastructure").

day, regulators would always be able to hypothesize technology that is more efficient than what an incumbent LEC was able to purchase yesterday.[49] TELRIC pricing would, thus, guarantee a systematic under-recovery of costs for incumbent LECs and, thereby, simply perpetuate the current cost recovery crisis.[50]

C. Failure To Allow Full Recovery Of Costs Will Create A Massive Disincentive To Investment In Data-Friendly Networks.

GTE submits that the principle of payment of actual costs should apply equally to ISPs as it does to other carriers and service providers. The current contrary practice creates a direct *disincentive* to development of data-friendly, packet-switched networks that can adequately accommodate increased Internet usage.[51] As GTE noted in its Comments, Internet access usage of local business lines is effectively subsidized, because such lines generate few outgoing calls, instead receiving calls from ISP customers and paying only the basic flat rate portion of the business line charges.[52] This subsidy, which results in the provision of

---

[49] *See* Declaration of Alfred E. Kahn and Timothy J. Tardiff, ¶ 8(a), filed with the Reply Comments of Bell Atlantic, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 96-328 (May 30, 1996) (Appendix at 63).

[50] *See* Affidavit of Jerry Hausman, ¶¶ 5-8, filed with the Reply Comments of the United States Telephone Ass'n, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 96-328 (May 30, 1996) (Appendix at 81).

[51] *See* Comments of AT&T at 5, 16, 18-19. The Commercial Internet Exchange Association is simply wrong in arguing that ISP affiliates of LECs are, unlike their ISP competitors, unaffected by access charges, because such charges are "a mere accounting entry between affiliated companies." Comments of CIX at 19. LECs are precluded by their Cost Allocation Manuals, *i.e.*, the Docket 86-111 rules, from cross subsidizing between regulated and nonregulated services.

[52] *See* Comments of GTE 23. The vast majority of ISPs' largely residential customers, in turn, also use flat-rated local services to access their Internet offerings. Id.

(Continued...)

effectively "free" incremental service to ISPs, retards the development of data-friendly networks,[53] contrary to what the FCC[54] and *all* commenters agree is the preferable means for supporting Internet-related traffic.

This conclusion is confirmed by the experience of Bell Atlantic. Since Bell Atlantic has begun offering its new packet-based Internet access service, no ISPs have subscribed.[55] Thus, the FCC's current practice provides ISPs with a direct and massive economic incentive to continue to rely upon local business lines using voice-based PSTN, rather than supporting investment in data-based packet-switching networks. Such a result directly undermines

---

(...Continued)

ISPs' one-way directionality, together with their call volumes and holding times -- which, as the experience of LECs to date illustrates, *see supra*, Section II, makes them a particularly heavy burden upon LECs without a proportional increase in revenue -- distinguish ISPs from other business users. Thus, WorldCom's contention that because local business rates include a universal service subsidy, ESPs must be paying more than their fair share of costs, Comments of WorldCom at 15, fails entirely to recognize the unique characteristics of ISP use. Although average business customers do subsidize residential customers, since LECs realize no margin above cost when serving ISPs, no such subsidy exists. In any event, any universal service subsidy is directed to universal service, and is therefore not available to LECs to defray ISP use.

GSA's claim that ISPs and business user customers of local exchange services pay local message charges for all voice and data messages that transit local networks, Comments of GSA at 16, is incorrect. Businesses do not pay message charges to terminate traffic. Similarly, GSA's assertions that local usage is "almost invariably" priced "far in excess of incremental cost," and that the incremental costs of furnishing additional lines to residential users are "extremely low," are unsupported.

[53] Comments of AT&T at 19; Comments of Pacific Telesis Group at 35; Comments of US WEST at 26.

[54] NOI, ¶ 313.

[55] Jt. Comments of Bell Atlantic & NYNEX at 13. Other ILEC-offered packet access services have similarly failed to attract significant interest from unaffiliated ISPs. Comments of MCI at 10.

Congress' express intention in passing the 1996 Act to "accelerate rapidly private sector deployment of advanced telecommunications [ ] and information technologies,"[56] as well as the FCC's goal to "create incentives for the deployment of services and facilities to allow more efficient transport of data traffic to and from end users."[57]

GTE agrees with commenters that the Commission's rules and policies should "encourage service providers to take business risks and make capital investments in data communications technologies that respond to consumer demand,"[58] and that investments should be based on the anticipation of future revenues generated by new or improved services.[59] GTE notes however, that: i) risk is always related to pricing, but ILECs have been denied the opportunity to adjust prices to reflect risk; and ii) ILECs are unable to realize any further revenues as long as the access service charge exemption is in place. Current FCC rules provide a disincentive to invest in long-term facilities that have no potential to produce future revenues.[60] Only by allowing prices to reflect underlying costs, making subsidies explicit, eliminating unreimbursed subsidies, and giving ILECs necessary pricing flexibility can the FCC encourage ILECs to assume the appropriate risks of building new networks for Internet-related traffic..

---

56 H.R. Conf. Rep. No. 104-458, at 113 (1996).

57 NOI, ¶ 313.

58 Comments of Internet Access Coalition at 4.

59 Comments of General Services Administration at 10.

60 *Cf.* Jt. Comments of Bell Atlantic and NYNEX at 5.

VI. CONCLUSION

GTE again urges the Commission to promulgate a consistent and comprehensive pricing policy to govern all jurisdictionally interstate services. Such a pricing policy should permit LECs to recover their actual costs from cost causers and ensure that all users, service applications, and technologies are subject to correct, cost-based economic signals, so that rational investment choices can be made that will best promote the development of an efficient, economical, and technologically advanced network.

Respectfully submitted,

GTE SERVICE CORPORATION,
on behalf of its affiliated companies

Ward W. Wueste
Gail L. Polivy
1850 M Street, N.W
Suite 1200
Washington, DC 20036

R. Michael Senkowski
Richard T. Pfohl
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, DC 20006

April 23, 1997

PUBLIC VERSION – CONFIDENTIAL MATERIAL REDACTED

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	
Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida, for review of a decision by The American Arbitration Association in accordance with Attachment 1 Section 11.2(a) of the Interconnection Agreement between GTE Florida Inc. and TCG South Florida	)	Docket No. 030643-TP Filed: September 5, 2003

EXHIBIT F TO

PETITION OF VERIZON FLORIDA, INC.

EXHIBIT REDACTED IN ITS ENTIRETY

PUBLIC VERSION – CONFIDENTIAL MATERIAL REDACTED

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	
Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida, for review of a decision by The American Arbitration Association in accordance with Attachment 1 Section 11.2(a) of the Interconnection Agreement between GTE Florida Inc. and TCG South Florida	)	Docket No. 030643-TP Filed: September 5, 2003

EXHIBIT G TO

PETITION OF VERIZON FLORIDA, INC.

EXHIBIT REDACTED IN ITS ENTIRETY

PUBLIC VERSION – CONFIDENTIAL MATERIAL REDACTED

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	
Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida, for review of a decision by The American Arbitration Association in accordance with Attachment 1 Section 11.2(a) of the Interconnection Agreement between GTE Florida Inc. and TCG South Florida	)	Docket No. 030643-TP Filed: September 5, 2003

EXHIBIT H TO

PETITION OF VERIZON FLORIDA, INC.

EXHIBIT REDACTED IN ITS ENTIRETY

PUBLIC VERSION – CONFIDENTIAL MATERIAL REDACTED

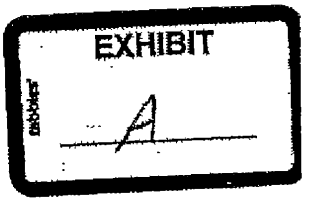
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	
Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida, for review of a decision by The American Arbitration Association in accordance with Attachment 1 Section 11.2(a) of the Interconnection Agreement between GTE Florida Inc. and TCG South Florida	)	Docket No. 030643-TP Filed: September 5, 2003

EXHIBIT I TO

PETITION OF VERIZON FLORIDA, INC.

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



In the Matter of	)	
	)	
STARPOWER COMMUNICATIONS, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. EB-00-MD-19
	)	
VERIZON SOUTH INC.,	)	
	)	
Respondent.	)	
	)	
STARPOWER COMMUNICATIONS, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. EB-00-MD-20
	)	
VERIZON VIRGINIA INC.,	)	
	)	
Respondent.	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 28, 2002 **Released: April 8, 2002**

By the Commission: Commissioner Martin approving in part, dissenting in part, and issuing a statement.

I. INTRODUCTION

1. In this order, pursuant to sections 208 and 252(e)(5) of the Communications Act of 1934, as amended ("Act"),[1] we deny a formal complaint that Starpower Communications, LLC ("Starpower") filed against Verizon Virginia Inc. ("Verizon Virginia"), and we grant a formal complaint that Starpower filed against Verizon South Inc. ("Verizon South").[2] In its complaints, Starpower seeks to recover, pursuant to three interconnection agreements with

[1] 47 U.S.C. §§ 208, 252(e)(5).

[2] Verizon Virginia Inc. formerly was known as Bell Atlantic-Virginia, Inc. Answer of Verizon Virginia Inc., File No. EB-00-MD-20 (filed Dec. 27, 2000) ("Verizon Virginia Answer") at 1. Verizon South Inc. formerly was known as GTE South Incorporated. Answer of Verizon South Inc., File No. EB-00-MD-19 (filed Dec. 27, 2000) ("Verizon South Answer") at 1. We refer to Verizon Virginia and Verizon South collectively as "Verizon."

Verizon, payment of reciprocal compensation for the delivery of traffic bound for Internet service providers ("ISPs"). We conclude that the two interconnection agreements between Starpower and Verizon Virginia do not obligate Verizon Virginia to pay reciprocal compensation for ISP-bound traffic. We reach the contrary conclusion (*i.e.*, that reciprocal compensation for ISP-bound traffic must be paid) with respect to the interconnection agreement between Starpower and Verizon South.

II. BACKGROUND

A. The Parties and the Interconnection Agreements

2. Starpower is licensed to provide local exchange services in Virginia.[3] Verizon Virginia and Verizon South are incumbent local exchange carriers ("ILECs") also licensed to provide local exchange services in Virginia.[4]

3. Starpower and Verizon interconnect their networks to enable an end user subscribing to Starpower's local exchange service to place calls to and receive calls from end users subscribing to Verizon's local exchange service.[5] Toward this end, Starpower entered into two interconnection agreements with Verizon Virginia and an interconnection agreement with Verizon South.[6] We describe below the relevant terms of each agreement.

1. Starpower-Verizon Virginia Agreements

a. The First Starpower-Verizon Virginia Agreement

4. On July 17, 1996, Verizon Virginia executed an interconnection agreement ("MFS-Verizon Virginia Agreement") with MFS Intelnet of Virginia, Inc. pursuant to section 252(a) of the Act.[7] The MFS-Verizon Virginia Agreement was filed with, and approved by, the

---

[3] Joint Statement, File No. EB-00-MD-20 (filed Jan. 12, 2001) ("Starpower-Verizon Virginia Joint Statement") at 1, ¶ 1; Joint Statement, File No. EB-00-MD-19 (filed Jan. 12, 2001) ("Starpower-Verizon South Joint Statement") at 1, ¶ 1.

[4] Starpower-Verizon Virginia Joint Statement at 1, ¶ 2; Starpower-Verizon South Joint Statement at 1, ¶ 2. Specifically, Verizon Virginia serves a portion of the Washington, D.C. local access and transport area ("LATA"), including parts of Arlington and Fairfax counties in Virginia, while Verizon South serves a different portion of the Washington, D.C. LATA, including the area surrounding Dulles International Airport in Virginia. Starpower-Verizon Virginia Joint Statement at 8, ¶ 38; Starpower-Verizon South Joint Statement at 5, ¶ 21.

[5] Starpower-Verizon Virginia Joint Statement at 8, ¶ 37; Starpower-Verizon South Joint Statement at 4, ¶ 19.

[6] Formal Complaint, File No. EB-00-MD-19 (filed Nov. 27, 2000) ("Starpower-Verizon South Complaint"), Exhibit A (MFS/GTE Interim Virginia Co-Carrier Agreement ["Starpower-Verizon South Agreement"]); Formal Complaint, File No. EB-00-MD-20 (filed Nov. 27, 2000) ("Starpower-Verizon Virginia Complaint"), Exhibits D (Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, dated as of March 9, 1998, by and between Bell Atlantic-Virginia, Inc. and Starpower Communications, LLC) ["First Starpower-Verizon Virginia Agreement"]) and I (Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, dated as of October 19th, 1999, by and between Bell Atlantic-Virginia, Inc. and Starpower Communications, LLC ["Second Starpower-Verizon Virginia Agreement"]).

[7] Starpower-Verizon Virginia Joint Statement at 2, ¶ 4. *See* 47 U.S.C. § 252(a) (ILECs may negotiate and voluntarily enter into interconnection agreements with requesting carriers, which then must be submitted for approval to the appropriate State commission).

Virginia State Corporation Commission ("Virginia SCC") on October 11, 1996.[8]

5. By letter dated February 4, 1998, and pursuant to section 252(i) of the Act,[9] Starpower notified Verizon Virginia that it elected to obtain interconnection, services, and network elements upon the same terms and conditions as those provided in the MFS-Verizon Virginia Agreement.[10] On February 19, 1998, Verizon Virginia provided Starpower with a draft interconnection agreement based upon the MFS-Verizon Virginia Agreement.[11] At that time, Verizon Virginia expressed its opinion that the "reciprocal compensation provisions set forth in the [MFS-Verizon Virginia Agreement] . . . do not apply to Internet-bound traffic because such traffic is not intraLATA traffic."[12] In a March 4, 1998 memorandum from Starpower to Verizon Virginia, Starpower disagreed with Verizon Virginia's interpretation of the reciprocal compensation provisions of the MFS-Verizon Virginia Agreement.[13] Despite this dispute, in March 1998, Starpower and Verizon Virginia executed an interconnection agreement – the First Starpower-Verizon Virginia Agreement – based on the terms of the MFS-Verizon Virginia Agreement.[14] The First Starpower-Verizon Virginia Agreement was filed with, and approved by, the Virginia SCC on June 17, 1998.[15]

6. Section 1.61 of the First Starpower-Verizon Virginia Agreement defines "Reciprocal Compensation" in the following manner:

> As described in the Act and refers to the payment arrangements that recover costs incurred for the transport and termination of Local Traffic originating on one Party's network and terminating on the other Party's network.[16]

According to the First Starpower-Verizon Virginia Agreement, "As Described in the Act" means "as described in or required by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the [Virginia SCC]."[17] "Local Traffic" is "traffic that is originated by a Customer of one Party on that Party's network and terminates to a

[8] Starpower-Verizon Virginia Joint Statement at 2, ¶ 5.

[9] 47 U.S.C. § 252(i) ("A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.").

[10] Starpower-Verizon Virginia Joint Statement at 2, ¶ 6.

[11] Starpower-Verizon Virginia Joint Statement at 2, ¶ 7.

[12] Starpower-Verizon Virginia Complaint, Exhibit B (Letter dated February 19, 1998 from Sara Cole, Senior Legal Assistant, Bell Atlantic, to Russell M. Blau, counsel for Starpower); Verizon Virginia Answer at 10, ¶ 19.

[13] Starpower-Verizon Virginia Joint Statement at 2, ¶ 8.

[14] Starpower-Verizon Virginia Joint Statement at 2, ¶ 9.

[15] Starpower-Verizon Virginia Joint Statement at 2, ¶ 10.

[16] Starpower-Verizon Virginia Joint Statement at 3, ¶ 11; Starpower-Verizon Virginia Complaint, Exhibit D (First Starpower-Verizon Virginia Agreement) at 8, ¶ 1.61.

[17] Starpower-Verizon Virginia Joint Statement at 3, ¶ 12; Starpower-Verizon Virginia Complaint, Exhibit D (First Starpower-Verizon Virginia Agreement) at 2, ¶ 1.7.

Customer of the other Party on that other Party's network, within a given local calling area, or expanded area service ('EAS') area, as defined in [Verizon Virginia's] effective Customer tariffs . . . ."[18] This language closely resembles the language that the Commission used in April 1996 to describe the type of traffic that was likely subject to reciprocal compensation under section 251(b)(5) of the Act:[19] "The statutory provision appears at least to encompass telecommunications traffic that *originates on the network of one LEC and terminates on the network of a competing LEC in the same local service area* . . . ."[20]

7. Section 5.7 of the First Starpower-Verizon Virginia Agreement delineates the parties' reciprocal compensation obligations as follows:

> The Parties shall compensate each other for transport and termination of Local Traffic in an equal and symmetrical manner at the rates provided in the Detailed Schedule of Itemized Charges (Exhibit A hereto) or, if not set forth therein, in the applicable Tariff(s) of the terminating party, as the case may be . . . .
>
> The Reciprocal Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service. All Switched Exchange Access Service and all Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state Tariffs.
>
> * * *
>
> The designation of Traffic as Local or Toll for purposes of compensation shall be based on the actual originating and terminating points of the complete end-to-end call, regardless of the carriers involved in carrying any segment of the call.[21]

These provisions are the only ones in the First Starpower-Verizon Virginia Agreement governing

[18] Starpower-Verizon Virginia Joint Statement at 3-4, ¶ 14; Starpower-Verizon Virginia Complaint, Exhibit D (First Starpower-Verizon Virginia Agreement) at 6, ¶ 1.44.

[19] 47 U.S.C. § 251(b)(5).

[20] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 11 FCC Rcd 14171, 14249, ¶ 230 (1996) ("*Local Competition Order NPRM*") (emphasis added) (subsequent history omitted).

[21] Starpower-Verizon Virginia Joint Statement at 3, ¶ 13; Starpower-Verizon Virginia Complaint, Exhibit D (First Starpower-Verizon Virginia Agreement) at 17-18, ¶¶ 5.7.2, 5.7.3, 5.7.5. "Switched Exchange Access Service" is defined in section 1.66 of the First Starpower-Verizon Virginia Agreement as the "offering of transmission and switching services for the purpose of the origination or termination of Toll Traffic." Starpower-Verizon Virginia Joint Statement at 4, ¶ 15; Starpower-Verizon Virginia Complaint, Exhibit D (First Starpower-Verizon Virginia . Agreement) at 9, ¶ 1.66. "Toll Traffic," in turn, means "traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that Party's network and is not Local Traffic or Ancillary Traffic. Toll Traffic may be either 'IntraLATA Toll Traffic' or 'InterLATA Toll Traffic,' depending on whether the originating and terminating points are within the same LATA." Starpower-Verizon Virginia Joint Statement at 4, ¶ 16; Starpower-Verizon Virginia Complaint, Exhibit D (First Starpower-Verizon Virginia Agreement) at 9, ¶ 1.76.

compensation for Local Traffic,[22] and the word "termination" is undefined.[23]

8. After the First Starpower-Verizon Virginia Agreement took effect, the parties exchanged traffic.[24] Starpower subsequently submitted invoices to Verizon Virginia seeking, among other things, compensation for transporting and terminating calls originating with Verizon Virginia's customers and delivered to Starpower's customers, including calls to ISPs and calls accessing the Internet through ISPs served by Starpower.[25] Starpower asserts that such ISP-bound calls from Verizon Virginia customers constitute "Local Traffic" within the meaning of the First Starpower-Verizon Virginia Agreement.[26] Verizon Virginia disagrees, and has paid only a portion of the amounts billed by Starpower.[27]

9. By letter dated April 1, 1999, Verizon Virginia notified Starpower that it had elected to terminate the First Starpower-Verizon Virginia Agreement, according to the agreement's terms.[28] Following Verizon Virginia's notice, the First Starpower-Verizon Virginia Agreement terminated as of July 1, 1999, although the agreement continued in effect pending execution or adoption of a new agreement.[29]

b. The Second Starpower-Verizon Virginia Agreement

10. On June 16, 1997, Verizon Virginia entered into an interconnection agreement ("MCImetro-Verizon Virginia Agreement") with MCImetro Access Transmission Services of Virginia, Inc. pursuant to section 252(a) of the Act.[30] The MCImetro-Verizon Virginia Agreement was filed with, and approved by, the Virginia SCC on July 16, 1997.[31]

11. By letter dated June 10, 1999, Starpower notified Verizon Virginia that, following expiration of the First Starpower-Verizon Virginia Agreement, Starpower wished to adopt the MCImetro-Verizon Virginia Agreement pursuant to section 252(i) of the Act.[32] Effective October 19, 1999, the parties entered into a written agreement, known as the "Adoption Agreement," memorializing Starpower's adoption of the terms and conditions of the MCImetro-Verizon Virginia Agreement.[33] The Virginia SCC approved the resulting interconnection

[22] Starpower-Verizon Virginia Joint Statement at 4, ¶ 18.

[23] Starpower-Verizon Virginia Joint Statement at 4, ¶ 17.

[24] Starpower-Verizon Virginia Joint Statement at 9, ¶ 42.

[25] Starpower-Verizon Virginia Joint Statement at 9, ¶ 41.

[26] Starpower-Verizon Virginia Joint Statement at 9, ¶ 42.

[27] Starpower-Verizon Virginia Joint Statement at 9, ¶ 43.

[28] Starpower-Verizon Virginia Joint Statement at 5, ¶ 22.

[29] Starpower-Verizon Virginia Joint Statement at 5, ¶ 22. The reason that the First Starpower-Verizon Virginia Agreement remained in effect beyond July 1, 1999 is unclear from the record.

[30] Starpower-Verizon Virginia Joint Statement at 5, ¶ 24; Starpower-Verizon Virginia Complaint, Exhibit F (MCImetro/Bell Atlantic Interconnection Agreement 1997).

[31] Starpower-Verizon Virginia Joint Statement at 6, ¶ 25.

[32] Starpower-Verizon Virginia Joint Statement at 6, ¶ 26.

[3] Starpower-Verizon Virginia Joint Statement at 6, ¶ 27.

agreement ("Second Starpower-Verizon Virginia Agreement") on April 25, 2000.[34] The Adoption Agreement contains a clause in which the parties essentially agree to disagree about the applicability of the interconnection agreement's reciprocal compensation provisions to ISP-bound traffic.[35] Specifically, Starpower articulated its belief that the agreement's reciprocal compensation arrangements "apply to Internet traffic," but acknowledged that Verizon Virginia takes the opposite view and that, by signing the Adoption Agreement, Verizon Virginia does not waive any claims or defenses pertaining to the issue.[36]

12. Part B of the Second Starpower-Verizon Virginia Agreement defines "Reciprocal Compensation" as:

> refer[ring] to a reciprocal compensation arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of Local Traffic that originates on the network facilities of the other carrier.[37]

According to the agreement, "Local Traffic" is:

> traffic that is originated by an end user subscriber of one Party on that Party's network and terminates to an end user subscriber of the other Party on that other Party's network within a given local calling area, or expanded area ("EAS") service, as defined in Bell Atlantic's Tariffs, or, if the Commission has defined local calling areas applicable to all Local Exchange Carriers, then as so defined by the Commission.[38]

This language closely resembles the Commission's then-existing rule regarding the types of traffic subject to reciprocal compensation under section 251(b) of the Act:

> For purposes of this subpart, local telecommunications traffic means . . .Telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission . . . .[39]

13. Section 4 of Attachment I to the Second Starpower-Verizon Virginia Agreement

[34] Starpower-Verizon Virginia Joint Statement at 6, ¶ 27.

[35] Starpower-Verizon Virginia Joint Statement at 6, ¶ 28.

[36] Starpower-Verizon Virginia Complaint, Exhibit I (Second Starpower-Verizon Virginia Agreement) at 5, ¶ 2.1.

[37] Starpower-Verizon Virginia Joint Statement at 6, ¶ 29. The parties did not include a complete copy of the Second Starpower-Verizon Virginia Agreement as an exhibit to any of their pleadings. Rather than referencing multiple exhibits when discussing the agreement, we hereafter cite exclusively to the parties' joint stipulations regarding the agreement's terms.

[38] Starpower-Verizon Virginia Joint Statement at 7, ¶ 31.

[39] 47 C.F.R. § 51.701(b) (amended 2001).

governs the parties' reciprocal compensation obligations and provides, in relevant part:

> [Starpower] may choose to deliver both Local Traffic and toll traffic over the same trunk group(s), pursuant to the provisions of Attachment IV. In the event [Starpower] chooses to deliver both types of traffic over the same traffic exchange trunks, and desires application of the local call transport and termination rates, it will provide Percent Local Usage ("PLU") information to [Verizon Virginia] as set forth in Attachment IV. In the event [Starpower] includes both interstate and intrastate toll traffic over the same trunk, it will provide Percent Interstate Usage ("PIU") to [Verizon Virginia] as set forth in Attachment IV. [Verizon Virginia] shall have the same options, and to the extent it avails itself of them, the same obligation, to provide PLU and PIU information to [Starpower]. To the extent feasible, PLU and PIU information shall be based on the actual end-to-end jurisdictional nature of each call sent over the trunk.[40]

14. The above reciprocal compensation provisions are the only ones in the Second Starpower-Verizon Virginia Agreement governing compensation for Local Traffic,[41] and the word "termination" is undefined.[42]

15. The parties exchanged traffic under the Second Starpower-Verizon Virginia Agreement as they did under the First Starpower-Verizon Virginia Agreement,[43] and Starpower submitted invoices to Verizon Virginia seeking, among other things, compensation for transporting and terminating ISP-bound traffic.[44] Verizon Virginia denies that such traffic constitutes "Local Traffic" and has refused to pay reciprocal compensation.[45] The Second Starpower-Verizon Virginia Agreement currently governs the exchange of traffic between Starpower and Verizon Virginia.[46]

2. Starpower-Verizon South Agreement

16. On September 5, 1996, MFS Intelnet of Virginia, Inc. and Verizon South executed an interconnection agreement ("MFS-Verizon South Agreement") pursuant to section 252(a) of the Act,[47] which the Virginia SCC approved on July 9, 1997.[48] By letter dated

[40] Starpower-Verizon Virginia Joint Statement at 6-7, ¶ 30.

[41] Starpower-Verizon Virginia Joint Statement at 8, ¶ 34.

[42] Starpower-Verizon Virginia Joint Statement at 7, ¶ 32.

[43] Starpower-Verizon Virginia Joint Statement at 9, ¶ 42.

[44] Starpower-Verizon Virginia Joint Statement at 9, ¶ 41.

[45] Starpower-Verizon Virginia Joint Statement at 9, ¶ 43.

[46] Supplemental Joint Statement, File No. EB-00-MD-20 (filed Oct. 26, 2001) ("Starpower-Verizon Virginia Supplemental Joint Statement") at 2.

[47] Starpower-Verizon South Joint Statement at 2, ¶ 4.

[48] Starpower-Verizon South Joint Statement at 2, ¶ 5.

February 17, 1998, Starpower notified Verizon South that it had elected to obtain interconnection with Verizon South by adopting the MFS-Verizon South Agreement pursuant to section 252(i) of the Act.[49] Verizon South subsequently advised the Virginia SCC of Starpower's adoption of the MFS-Verizon South Agreement.[50] The Virginia SCC declined to take any action to approve Starpower's adoption of the MFS-Verizon South Agreement, however, because Starpower's adoption of the agreement had not been negotiated or arbitrated.[51] By letter dated October 1, 1998, the parties "agree[d] they will honor the [section] 252(i) adoption by . . . Starpower of the rates terms and conditions of the [MFS-Verizon South Agreement] as effective and binding upon . . . [Verizon South] and Starpower in accordance with the 252(i) adoption letter[] executed by the parties on . . . March 11, 1998. . . ."[52]

17. Section VI.A of the Starpower-Verizon South Agreement provides that the parties "shall reciprocally terminate POTS calls originating on each others' networks."[53] "POTS" stands for "Plain Old Telephone Service" traffic, which "includes local traffic (including EAS) as defined in [Verizon South's] tariff."[54] Verizon South's General Customer Services Tariff, in turn, defines Local Service as "[t]elephone service furnished between customer's stations [*sic*] located within the same exchange area."[55] The Starpower-Verizon South Agreement obligates the parties to pay reciprocal compensation "[f]or the termination of local traffic."[56] The agreement, however, does not separately define the word "termination,"[57] and no other provisions of the agreement govern compensation of local traffic.[58] The Starpower-Verizon South Agreement remains in effect today.[59]

B. Procedural History

18. In 1999, Starpower filed petitions with the Virginia SCC seeking declarations requiring Verizon South and Verizon Virginia to pay reciprocal compensation to Starpower for the delivery of ISP-bound traffic pursuant to the terms of the foregoing interconnection agreements.[60] The Virginia SCC declined jurisdiction over Starpower's petitions and

[49] Starpower-Verizon South Joint Statement at 2, ¶ 6.

[50] Starpower-Verizon South Joint Statement at 2, ¶¶ 6-7.

[51] Starpower-Verizon South Joint Statement at 2, ¶ 8.

[52] Starpower-Verizon South Joint Statement at 2, ¶ 9.

[53] Starpower-Verizon South Joint Statement at 3, ¶ 10.

[54] Starpower-Verizon South Joint Statement at 3, ¶ 11.

[55] Starpower-Verizon South Joint Statement at 3, ¶ 12.

[56] Starpower-Verizon South Joint Statement at 3, ¶ 13.

[57] Starpower-Verizon South Joint Statement at 4, ¶ 17.

[58] Starpower-Verizon South Joint Statement at 4, ¶ 18.

[59] Supplemental Joint Statement, File No. EB-00-MD-19 (filed Oct. 26, 2001) ("Starpower-Verizon South Supplemental Joint Statement") at 2.

[60] *Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, Memorandum Opinion and Order, 15 FCC Rcd 11277, 11278, ¶ 3 (2000) ("*Preemption Order*").

encouraged Starpower to seek relief from this Commission.[61]

19. In March 2000, Starpower filed a petition with the Commission requesting that, pursuant to section 252(e)(5) of the Act,[62] the Commission preempt the jurisdiction of the Virginia SCC over the Starpower/Verizon South and Starpower/Verizon Virginia contract disputes.[63] On June 14, 2000, the Commission granted Starpower's preemption petition, stating that it would resolve the following question: "whether the existing interconnection agreements between Starpower and GTE [*i.e.*, Verizon South] and Bell Atlantic [*i.e.*, Verizon Virginia] require GTE and Bell Atlantic to pay compensation to Starpower for the delivery of ISP-bound traffic."[64]

20. On November 28, 2000, Starpower filed formal complaints with the Commission against Verizon Virginia and Verizon South. In short, the complaints allege that Verizon violated the unambiguous terms of the interconnection agreements with Starpower by failing to compensate Starpower for the "transportation and termination of local calls originated by [Verizon] end-users and bound for [ISPs] purchasing local exchange service from Starpower."[65] The complaints seek orders from the Commission declaring that (1) Starpower is entitled to be compensated for transporting and terminating calls to ISPs under the terms of the interconnection agreements; and (2) Verizon is liable to pay Starpower all past due amounts under the agreements, together with applicable interest and/or late fees, and to compensate Starpower for transporting and terminating calls to ISPs until the Second Starpower-Verizon Virginia Agreement and the Starpower-Verizon South Agreement are "superceded [*sic*] in accordance with the Act and the terms of the Agreement[s]."[66]

21. In a December 8, 2000 Supplemental Submission, Starpower requested that, in addition to the relief sought in the complaints, the Commission enter an award of damages in a subsequent phase of the proceeding.[67] The Commission treated the Supplemental Submission as a motion to bifurcate the issue of liability from the issue of damages and, on January 16, 2001, granted the motion.[68]

22. On December 27, 2000, Verizon filed answers to Starpower's complaints. The

---

[61] *Preemption Order*, 15 FCC Rcd at 11278, ¶ 4.

[62] 47 U.S.C. § 252(e)(5) ("If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.").

[63] *Preemption Order*, 15 FCC Rcd at 11278, ¶ 4.

[64] *Preemption Order*, 15 FCC Rcd at 11281, ¶ 9.

[65] *See* Starpower-Verizon Virginia Complaint at 1; Starpower-Verizon South Complaint at 1.

[66] Starpower-Verizon Virginia Complaint at 41; Starpower-Verizon South Complaint at 33.

[67] Supplemental Submission, File Nos. EB-00-MD-19, -20 (filed Dec. 8, 2000) ("Supplemental Submission") at 2.

[68] Letter dated January 19, 2001 from William H. Davenport, Special Counsel, Market Disputes Resolution Division, Enforcement Bureau, to Russell M. Blau and Michael L. Shor, counsel for Starpower, and Lawrence W. Katz and Aaron M. Panner, counsel for Verizon, File Nos. EB-00-MD-19, -20 (rel. Jan. 19, 2001) at 1. *See* 47 C.F.R. § 1.722.

answers assert, *inter alia*, that ISP-bound traffic is not eligible for reciprocal compensation under the unambiguous terms of the interconnection agreements, because under an "end-to-end" analysis such traffic is jurisdictionally interstate.[69]

III. DISCUSSION

A. The Interconnection Agreements Determine the Parties' Reciprocal Compensation Obligations for ISP-Bound Traffic.

23. The Commission twice has held, and the parties do not dispute, that during the period relevant here, carriers could address in their interconnection agreements the issue of compensation for the delivery of ISP-bound traffic.[70] The parties appear to agree that their interconnection agreements do, in fact, address and conclusively govern this compensation issue.[71] Thus, the question we confront in this proceeding is whether any of the three interconnection agreements at issue entitle Starpower to receive reciprocal compensation for the delivery of ISP-bound traffic.

B. The "Plain Meaning" Rule under Virginia Law Governs Our Interpretation of the Parties' Interconnection Agreements.

24. In interpreting the interconnection agreements at issue in this case, we stand in the shoes of the Virginia SCC.[72] We agree with the parties that Virginia law supplies the applicable rules of contract interpretation.[73] Virginia adheres to the "plain meaning" rule: "where the terms

---

[69] *See, e.g.*, Starpower-Verizon Virginia Answer at 1-2; Starpower-Verizon South Answer at 1-2.

[70] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9160, ¶ 16 (2001) ("*Order on Remand*") (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd 3689, 3703, ¶ 22 (1999) ("*Declaratory Ruling*"), *vacated and remanded sub nom. Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C Cir. 2000) ("*Bell Atlantic Remand Order*")). On April 27, 2001, the Commission adopted an interim compensation mechanism pertaining to the exchange of ISP-bound traffic. *See Order on Remand*, 16 FCC Rcd at 9151. The established regime, however, "applies as carriers renegotiate expired or expiring interconnection agreements. It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions." *Id.*, 16 FCC Rcd at 9189, ¶ 82. The three interconnection agreements involved in the instant proceeding do not contain change of law provisions that would be triggered by the *Order on Remand*.

[71] Starpower-Verizon Virginia Joint Statement at 4, ¶ 8; at 8, ¶¶ 34, 37; Starpower-Verizon South Joint Statement at 4, ¶¶ 18-19. *See also* Starpower-Verizon Virginia Complaint at 21-25; Starpower-Verizon South Complaint at 13-17; Starpower-Verizon Virginia Answer at 32-50; Starpower-Verizon South Answer at 20-32; Starpower Supplemental Brief at 11-27; Brief of Defendants Verizon Virginia Inc. and Verizon South Inc., File Nos. EB-00-MD-19, -20 ("Verizon Brief") at 4-13.

[72] *See* 47 U.S.C. § 252(e)(5); *Preemption Order*, 15 FCC Rcd 11277, 11278, ¶ 5.

[73] *See* Starpower Supplemental Brief at 12; Verizon Brief at 2, n.2. *See also* Starpower-Verizon Virginia Complaint, Exhibit D (First Starpower-Verizon Virginia Agreement) at 57, ¶ 29.5 ("The construction, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the state in which this Agreement is to be performed [Virginia], except for its conflict of laws provisions. In addition, insofar as and to the extent federal law may apply, federal law will control."); Starpower-Verizon Virginia Complaint, Exhibit F (MCImetro-Verizon Virginia Agreement) at Part A-7, ¶ 7.1 ("The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties, shall be governed by the Act and the laws of the Commonwealth of Virginia, without regard to its conflicts of laws rules."); Starpower-Verizon

(continued....)

of the contract are clear and unambiguous, we will construe those terms according to their plain meaning."[74] Although the cornerstone of a "plain meaning" analysis is a contract's language,[75] in ascertaining the parties' intent "as expressed by them in the words they have used,"[76] a court also may examine the "surrounding circumstances, the occasion, and [the] apparent object of the parties."[77] In particular, as both parties acknowledge, a court may consider the legal context in which a contract was negotiated, because the laws in force at the time a contract is made become "as much a part of the contract as if incorporated therein."[78] Moreover, "custom and usage may be used to supplement or explain a contract," as long as this type of evidence is not inconsistent with the contract's express terms.[79] Furthermore, course-of-performance evidence can be considered to ascertain a contract's meaning rather than to "create a new, additional contract right."[80]

25. All parties invoke the "plain meaning" rule in support of their case.[81] According to Starpower, "as interpreted under the 'plain meaning' rule . . . the Agreements unambiguously comprehend ISP-bound traffic within the ambit of the term 'local traffic,'" which renders the delivery of such traffic compensable.[82] Verizon similarly relies upon the "plain meaning" rule to argue that the interconnection agreements unambiguously do not require payment of reciprocal

---

(...continued from previous page)
South Complaint, Exhibit A (MFS-Verizon South Agreement) at 27, ¶ XIX.J ("This Agreement shall be governed by and construed in accordance with the domestic laws of the state of Virginia and shall be subject to the exclusive jurisdiction of the courts therein."). *See generally Southwestern Bell Tel. Co. v. PUC of Tex.*, 208 F.3d 475, 485 (5th Cir. 2000) (applying Texas law in construing reciprocal compensation provisions of interconnection agreements) ("*Southwestern Bell*").

[74] *American Spirit Ins. Co. v. Owens*, 261 Va. 270, 275, 541 S.E.2d 553, 555 (2001). *See also Berry v. Klinger*, 225 Va. 201, 208, 300 S.E.2d 792, 796 (1983).

[75] *See, e.g., Lerner v. Gudelsky Co.*, 230 Va. 124, 132, 334 S.E.2d 579, 584 (1985) ("The writing is the repository of the final agreement of the parties."); *Berry v. Klinger*, 225 Va. at 208, 300 S.E.2d at 796 (a court must construe a contract's "language as written").

[76] *Ames v. American Nat'l Bank*, 163 Va. 1, 38, 176 S.E. 204, 216 (1932).

[77] *Flippo v. CSC Assoc. III, L.L.C.*, 262 Va. 48, 64, 547 S.E.2d 216, 226 (2001) (quoting *Christian v. Bullock*, 215 Va. 98, 102, 205 S.E.2d 635, 638 (1974)).

[78] *Marriott v. Harris*, 235 Va. 199, 215, 368 S.E.2d 225, 232 (1988); *Paul v. Paul*, 214 Va. 651, 653, 203 S.E.2d 123, 125 (1974). *See* Starpower Supplemental Brief at 15; Verizon Brief at 14.

[79] *Chas. H. Tompkins Co. v. Lumbermans Mut. Cas. Co.*, 732 F. Supp. 1368, 1374 (E.D. Va. 1990) (applying Va. law) ("*Chas. H. Tompkins Co.*"). *See Piland Corp. v. REA Constr. Co.*, 672 F. Supp. 244, 247 (E.D. Va. 1987); Va. Code Ann. § 8.1-205(4) ("The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.").

[80] *Chas. H. Tompkins Co.*, 732 F. Supp. at 1375.

[81] Starpower-Verizon Virginia Complaint at 22; Starpower-Verizon South Complaint at 14; Starpower Supplemental Brief at 12-16; Starpower-Verizon Virginia Answer at 32-33; Starpower-Verizon South Answer at 21-22; Verizon Brief at 2-3. We note, however, that a contract is not rendered ambiguous simply because each side argues that the contract plainly means the opposite of what the other side contends. *Dominion Savings Bank, FSB v. Costello*, 257 Va. 413, 416, 512 S.E.2d 564, 566 (1999) (citing *Ross v. Craw*, 231 Va. 206, 212-13, 343 S.E.2d 312, 316 (1986)).

[82] Starpower-Verizon Virginia Complaint at 22-25; Starpower-Verizon South Complaint at 14-17; Starpower Supplemental Brief at 11.

compensation for the delivery of ISP-bound traffic.[83] For the reasons described below, applying Virginia's rules of contract interpretation, we agree with the parties that all three agreements at issue are unambiguous regarding compensation for the delivery of ISP-bound traffic. We further conclude that the Starpower-Verizon South Agreement requires reciprocal compensation for the delivery of ISP-bound traffic, whereas the Starpower-Verizon Virginia Agreements do not.

C. Neither the First Starpower-Verizon Virginia Agreement nor the Second Starpower-Verizon Virginia Agreement Obligates Verizon Virginia to Pay Reciprocal Compensation to Starpower for the Delivery of ISP-Bound Traffic.

1. The Starpower-Verizon Virginia Agreements Do Not Require Reciprocal Compensation for the Delivery of Traffic that Is Jurisdictionally Interstate under the Commission's Traditional End-to-End Analysis.

26. We begin by examining the relevant terms of the First and Second Starpower-Verizon Virginia Agreements. Under both agreements, the parties must pay reciprocal compensation for the transport and termination of only "Local Traffic."[84] Neither agreement states expressly whether ISP-bound traffic is "Local Traffic." Instead, both agreements generally define "Local Traffic" according to whether a call from one party's network "terminates" on the other party's network.[85] Although neither agreement defines the word "terminates," both agreements provide a criterion for determining whether traffic terminates on the other party's network for the purposes of the agreements' reciprocal compensation provisions. Specifically, paragraph 5.7.5 of the First Starpower-Verizon Virginia Agreement provides that traffic shall be designated local or non-local based upon the "actual originating and terminating points of the complete *end-to-end* call."[86] Paragraph 4.1 of the Second Starpower-Verizon Virginia Agreement similarly states that whether traffic is subject to local call transport and termination rates depends on the "actual *end-to-end* jurisdictional nature of each call sent over the trunk."[87]

27. We believe that each agreement's use of the phrase "end-to-end" is an incorporation of the Commission's long-standing method of determining the *jurisdictional* nature of particular traffic. Specifically, the Commission traditionally has determined the jurisdictional nature of communications by the end points of the communications, rejecting attempts to divide communications at any intermediate points of switching or exchanges between carriers.[88] In

[83] Verizon Virginia Answer at 34-37; Verizon South Answer at 21-25; Verizon Brief at 13.

[84] Starpower-Verizon Virginia Joint Statement at 3, ¶¶ 11, 13; at 6, ¶ 29; Starpower-Verizon Virginia Complaint, Exhibit D (First Starpower-Verizon Virginia Agreement) at 8, ¶ 1.61; at 18, ¶ 5.7.2.

[85] Starpower-Verizon Virginia Joint Statement at 3-4, ¶ 14; at 6, ¶ 29; Starpower-Verizon Virginia Complaint, Exhibit D (First Starpower-Verizon Virginia Agreement) at 18, ¶ 5.7.2.

[86] Starpower-Verizon Virginia Joint Statement at 3, ¶ 13; Starpower-Verizon Virginia Complaint, Exhibit D (First Starpower-Verizon Virginia Agreement) at 18, ¶ 5.7.5 (emphasis added).

[87] Starpower-Verizon Virginia Joint Statement at 7, ¶ 30 (emphasis added).

[88] *See Teleconnect Co. v. Bell Telephone Co of Pa.*, Memorandum Opinion and Order, 10 FCC Rcd 1626 (1995) ("*Teleconnect*"), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 116 F.3d 593 (D.C. Cir. 1997); *Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation*, Memorandum Opinion and Order, 7 FCC Rcd 1619 (1992); *Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order, 4 (continued....)

Teleconnect, for example, the Commission stated that, in assessing the jurisdictional nature of a all, "both court and Commission decisions have considered the *end-to-end* nature of the communications more significant than the facilities used to complete such communication."[89] And in the *ONA Plans Order*, the Commission stated that a service is jurisdictionally interstate "when it involves communications or transmissions between points in different states on an *end-to-end* basis."[90] In fact, the District of Columbia Circuit Court of Appeals expressly has acknowledged that "the *end-to-end* analysis applied by the Commission here is one that it has traditionally used to determine whether a call is within its interstate jurisdiction."[91] This Court also said that "[t]here is no dispute that the Commission has historically been justified in relying on this [end-to-end] method when determining whether a particular communication is jurisdictionally interstate."[92]

28. In light of this pervasive precedent, we believe that the phrase "end-to-end," used in the context of classifying communications traffic, had achieved a customary meaning in the telecommunications industry.[93] Thus, the two agreements' use of the term of art "end-to-end" signifies that the determination whether certain traffic falls within the category of compensable "Local Traffic" turns on the jurisdictional nature of the traffic, as divined via the Commission's traditional mode of analysis. In other words, according to the agreements, a call constitutes compensable "Local Traffic" only if it is not jurisdictionally interstate under the Commission's end-to-end analysis.

29. Indeed, Starpower acknowledges – at least with respect to the First Starpower-Verizon Virginia Agreement – that the compensation due under the agreement for the delivery of ISP-bound traffic hinges on the traffic's jurisdictional nature. In particular, a declarant on behalf of Starpower who participated in the negotiation of the MFS-Verizon Virginia Agreement states: "[Verizon Virginia] is correct that the parties 'intended to ensure that the actual jurisdictional nature of the traffic—as traditionally construed by the FCC—would control its characterization for compensation purposes.'"[94] Although the declarant further states that ISP-bound traffic nonetheless is subject to reciprocal compensation, "given the parties' understanding and stated

---

(...continued from previous page)
FCC Rcd 1 (1988) ("*ONA Plans Order*"), *aff'd sub nom. California v. FCC*, 4 F.3d 1505 (9th Cir. 1993); *In the Matter of Southwestern Bell Telephone Company*, Order Designating Issues for Investigation, 3 FCC Rcd 2339 (1988) ("*SWBT Order*").

[89] *Teleconnect*, 10 FCC Rcd at 1629, ¶ 12 (emphasis added).

[90] *ONA Plans Order*, 4 FCC Rcd at 141, ¶ 274 (emphasis added). *See SWBT Order*, 3 FCC Rcd at 2341, ¶ 28 (concluding that "switching at the credit card switch is an intermediate step in a single *end-to-end* communication") (emphasis added).

[91] *Bell Atlantic Remand Order*, 206 F.3d at 3.

[92] *Bell Atlantic Remand Order*, 206 F.3d at 5.

[93] *See generally* Va. Code Ann. § 8.1-205(2) ("A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question.").

[94] Starpower Supplemental Brief, Attachment 1 (Declaration of Gary J. Ball ["Ball Decl."] at 6, ¶ 16). Although Starpower does not make a similar admission with respect to the Second Starpower-Verizon Virginia Agreement, e centrality of jurisdiction cannot be disputed, given the agreement's specific reference to the actual end-to-end "jurisdictional nature" of calls. *See* Starpower-Verizon Virginia Joint Statement at 7, ¶ 30.

belief that calls to ISPs were Local Traffic,"[95] his admission regarding the importance of the jurisdictional nature of traffic is clear.[96]

30. Given that the First and Second Starpower-Verizon Virginia Agreements link compensation to jurisdiction, those agreements exclude ISP-bound traffic from the scope of their reciprocal compensation provisions. This is because the Commission has long categorized traffic to enhanced service providers ("ESPs"), including ISPs, as predominantly interstate for jurisdictional purposes.[97] The Commission recently affirmed this conclusion: "Most Internet-bound traffic traveling between a LEC's subscriber and an ISP is indisputably interstate in nature when viewed on an end-to-end basis."[98] Accordingly, under the unambiguous terms of the First and Second Starpower-Verizon Virginia Agreements, ISP-bound traffic does not constitute compensable "Local Traffic," because ISP-bound traffic is jurisdictionally interstate.

31. Buttressing this conclusion is the fact that the agreements' definitions of "Local Traffic" closely resemble the Commission's preexisting descriptions of the kind of traffic subject to the reciprocal compensation mandate of section 251(b)(5) of the Act. Specifically, the First Starpower-Verizon Virginia Agreement defines "Local Traffic" as traffic that originates on one party's network and terminates on another party's network within a local calling area or expanded service area.[99] This tracks the *Local Competition Order NPRM*'s description of telecommunications encompassed by section 251(b)(5) as (at least) traffic that originates on one LEC's network and terminates on a competing LEC's network in the same local service area.[100] Moreover, the Second Starpower-Verizon Virginia Agreement defines "Local Traffic" as traffic that originates on one party's network and terminates on another party's network within a local calling area as defined by tariff or the Commission.[101] Former section 51.701(b) of the Commission's rules similarly characterized "local telecommunications traffic" as telecommunications traffic between a LEC and another telecommunications carrier that

---

[95] Starpower Supplemental Brief, Attachment 1 (Ball Decl. at 6, ¶ 16).

[96] Our conclusion that the First Starpower-Verizon Virginia Agreement invokes the Commission's end-to-end jurisdictional analysis for determining reciprocal compensation obligations is confirmed by the agreement's definition of "Reciprocal Compensation." Specifically, "Reciprocal Compensation" means as "As Described in the Act," which, in turn, means ". . . as from time to time interpreted in the duly authorized rules and regulations of the FCC or the [Virginia SCC]." *See* Starpower-Verizon Virginia Joint Statement at 3, ¶¶ 11, 12; Starpower-Verizon Virginia Complaint, Exhibit D (First Starpower-Verizon Virginia Agreement) at 2, ¶ 1.7; at 8, ¶ 1.61.

[97] *See, e.g., MTS and WATS Market Structure*, Memorandum Opinion and Order, 97 FCC2d 682, 711, ¶ 78 (1983) ("[a]mong the variety of users of access service are . . . enhanced service providers"); *Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, Notice of Proposed Rulemaking, 2 FCC Rcd 4305, 4305, ¶ 1 (1987) (noting that ESPs use "exchange access service"); *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523, 543 (8th Cir. 1998) (affirming the jurisdictionally-mixed nature of ISP-bound traffic).

[98] *Order on Remand*, 16 FCC Rcd at 9178, ¶ 58. *See also Order on Remand*, 16 FCC Rcd at 9175, ¶ 52 ("ISP traffic is properly classified as interstate, and it falls under the Commission's section 201 jurisdiction"). Because the Commission's treatment of ISP-bound traffic for jurisdictional purposes has remained consistent over time, there is no need for us to consider the effect of any changes in the law regarding reciprocal compensation for the delivery of ISP-bound traffic. *See* Starpower Supplemental Brief at 27-35.

[99] Starpower-Verizon Virginia Joint Statement at 3-4, ¶ 14; Starpower-Verizon Virginia Complaint, Exhibit D (First Starpower-Verizon Virginia Agreement) at 6, ¶ 1.44.

[100] *Local Competition Order NPRM*, 11 FCC Rcd at 14249, ¶ 230.

[101] Starpower-Verizon Virginia Joint Statement at 7, ¶ 31.

originates and terminates within a local service area as defined by a state commission.[102] These striking similarities reveal an intent to track the Commission's interpretation of the scope of section 251(b)(5), *i.e.*, whatever the Commission determines is compensable under section 251(b)(5) will be what is compensable under the agreements. Although the Commission's rationale has evolved over time, the Commission consistently has concluded that ISP-bound traffic does not fall within the scope of traffic compensable under section 251(b)(5). Consequently, for this reason, as well, we find that the First and Second Starpower-Verizon Virginia Agreements exclude ISP-bound traffic from the definition of "Local Traffic" (and therefore from reciprocal compensation obligations).

32. One final note. In his Separate Statement, Commissioner Martin dissents from our conclusions regarding the First and Second Starpower-Verizon Virginia Agreements, because he does not wish to "support[] the use of the Commission's end-to-end analysis," on which the "D.C. Circuit [has]cast serious doubt."[103] We find no tension between this decision and the D.C. Circuit's ruling in the *Bell Atlantic Remand Order*.[104] The end-to-end jurisdictional analysis is used here strictly to assist in a matter of *contract interpretation.* The Commission indisputably utilized the "end-to-end" jurisdictional analysis at the time the parties entered the First and Second Starpower-Verizon Virginia Agreements, and we conclude only that the parties incorporated that analysis into their contracts.

2. The Context of the Starpower-Verizon Virginia Agreements Does Not Trump Their Plain Language Linking Compensation to Jurisdiction.

33. Starpower contends that the "purpose, structure and substance" of the First and Second Starpower-Verizon Virginia Agreements support its interpretation of the term "Local Traffic."[105] In particular, Starpower points out that (1) the primary purpose of the agreements is to set forth the types of traffic the parties will exchange and the terms and conditions under which exchange and compensation will occur; (2) no provision of the agreements excludes ISP-bound traffic from the definition of "Local Traffic"; (3) no provision of the agreements provides an alternative designation for ISP-bound traffic, if it is not "Local Traffic"; (4) the agreements do not provide an alternative means of compensation for ISP-bound traffic, if it does not qualify for reciprocal compensation; and (5) no provision of the agreements requires the parties to transport ISP-bound traffic separately or to maintain a separate accounting for the traffic.[106] Starpower argues that, in light of these circumstances, the parties must have intended compensable "Local Traffic" to include ISP-bound traffic.[107]

34. We disagree with Starpower's argument. As an initial matter, even assuming that

[102] 47 C.F.R. § 51.701(b) (amended 2001).

[103] *Starpower Communications, LLC v. Verizon South Inc.; Starpower Communications, LLC v. Verizon Virginia, Inc.*, File Nos. EB-00-MD-019, EB-00-MD-020, Separate Statement of Commissioner Kevin J. Martin, Approving in Part and Dissenting in Part at 1-2 (citing *Bell Atlantic Remand Order*, 206 F.3d at 5)).

[104] 206 F.3d at 5-6.

[105] Starpower-Verizon Virginia Complaint at 21-22; Starpower Supplemental Brief at 18.

[106] Starpower-Verizon Virginia Complaint at 34-35; Starpower Supplemental Brief at 19. *See also* Starpower-Verizon Virginia Complaint at 7, ¶ 20, 22; at 11, ¶ 39; at 13, ¶ 46; at 17-18, ¶¶ 61-62; at 21, ¶ 73.

[107] Starpower Supplemental Brief at 19.

Starpower correctly characterizes the "purpose" of the agreements, that does not mean that the agreements were intended to provide compensation for *every* type of traffic the parties exchange. To the contrary, as discussed above, paragraphs 5.7.5 and 4.1 require ISP-bound traffic to be characterized as jurisdictionally interstate, thereby removing it from the definition of "Local Traffic."[108] This undermines Starpower's second observation as well, because the agreements do, in fact, contain provisions (*i.e.*, paragraphs 5.7.5 and 4.1) specifically excluding ISP-bound traffic from the definition of "Local Traffic." Starpower's third, fourth, and fifth assertions focus on the absence of language providing an alternative designation for ISP-bound traffic, an alternative means of compensating the parties for transport and termination of ISP-bound traffic, or a requirement that the parties separately track ISP-bound traffic. Even assuming Starpower's characterization of the contracts is correct (and Verizon Virginia argues that it is not),[109] we cannot conclude that the absence of certain contractual language has more persuasive force than the existence of other language addressing the precise question at hand – *i.e.*, whether ISP-bound traffic constitutes "Local Traffic," as that term is defined in the agreements.

35. As stated above, Starpower asserts correctly[110] (and Verizon Virginia concurs)[111] that, in construing the agreements, the Commission may take account of the regulatory context in which the parties negotiated the agreements. Starpower further asserts correctly[112] (and Verizon Virginia concurs)[113] that the relevant regulatory context in which the parties negotiated was that, for many purposes, the Commission treated ISP-bound traffic as though it were local.[114] For example, ISPs may purchase their links to the public switched telephone network through local business tariffs rather than through interstate access tariffs;[115] moreover, for separations purposes, ILECs must characterize expenses and revenues associated with ISP-bound traffic as intrastate.[116] Starpower then argues that, because the Commission treats ISP-bound traffic as local for many regulatory purposes, the parties had a reasonable expectation that the term "Local Traffic" includes ISP-bound traffic.[117]

---

[108] Moreover, as Verizon Virginia correctly notes, Starpower was not without a means to recover its costs of delivering ISP-bound traffic, if such traffic were not eligible for compensation under the agreements. *See* Verizon Brief at 12-13. Nothing prohibited Starpower from looking to its ISP customers to recover its costs.

[109] *See* Verizon Brief at 11-13.

[110] *See* Starpower Supplemental Brief at 22-24.

[111] *See* Verizon Brief at 14.

[112] Starpower-Verizon Virginia Complaint at 33-34; Starpower-Verizon South Complaint at 21-23; Starpower Supplemental Brief at 24-25.

[113] Verizon Brief at 16-17.

[114] *See, e.g.*, *Order on Remand*, 16 FCC Rcd at 9158, ¶ 11; at 9176-77, ¶ 55; *Declaratory Ruling*, 14 FCC Rcd at 3703, ¶ 23.

[115] *See, e.g.*, *Order on Remand*, 16 FCC Rcd at 9158, ¶ 11; *Declaratory Ruling*, 14 FCC Rcd at 3703, ¶ 23.

[116] *See, e.g.*, *Order on Remand*, 16 FCC Rcd at 9176, ¶ 55 n.105; *General Communication, Inc. v. Alaska Communications Systems Holdings, Inc. and Alaska Communications Systems, Inc. d/b/a ATU Telecommunications d/b/a Anchorage Telephone Utility*, Memorandum Opinion and Order, 16 FCC Rcd 2834, 2843, ¶ 22 (2001); *Declaratory Ruling*, 14 FCC Rcd at 3692, ¶ 5.

[117] Starpower-Verizon Virginia Complaint at 34-35; Starpower-Verizon South Complaint at 23-27; Starpower Supplemental Brief at 24-26.

36. Again, we disagree. First, although the context cited by Starpower has some force, another part of the relevant regulatory context is that, under an end-to-end analysis, the Commission has long held that ISP-bound traffic is interstate for jurisdictional purposes. The agreements' compensation provisions specifically refer to this latter context. Moreover, the Commission's regulatory treatment of ISP-bound traffic as local for certain purposes only makes it *possible* that parties agreed in interconnection agreements to include such traffic within the ambit of calls eligible for reciprocal compensation. It does not mean that the parties *inevitably* did so. With respect to the Starpower-Verizon Virginia Agreements, we believe the parties unambiguously agreed *not* to treat ISP-bound traffic as "Local Traffic" for reciprocal compensation purposes. They did so by linking compensation to the jurisdictional nature of the traffic, rather than to the separations, tariff, or other local-pointing nature of the traffic. They also did so by tracking the Commission's construction of section 251(b)(5). In the face of such language, we cannot find the regulatory context cited by Starpower to be dispositive.

37. In a related vein, Starpower correctly notes that, in granting Starpower's Petition for Preemption, we stated that we would apply, *inter alia*, the principles that we previously suggested state commissions utilize when construing the reciprocal compensation provisions of interconnection agreements.[118] Specifically, in the *Declaratory Ruling*, we observed that "state commissions have the opportunity to consider all the relevant facts, including the negotiation of the agreements in the context of this Commission's longstanding policy of treating [ISP-bound] traffic as local, and the conduct of the parties pursuant to those agreements."[119] Accordingly, we identified several "illustrative" factors that it "may be appropriate for state commissions to consider," including:

> whether incumbent LECs serving ESPs (including ISPs) have done so out of intrastate or interstate tariffs; whether revenues associated with those services were counted as intrastate or interstate revenues; whether there is evidence that incumbent LECs or CLECs made any effort to meter this traffic or otherwise segregate it from local traffic, particularly for the purpose of billing one another for reciprocal compensation; whether, in jurisdictions where incumbent LECs bill their end users by message units, incumbent LECs have included calls to ISPs in local telephone charges; and whether, if ISP traffic is not treated as local and subject to reciprocal compensation, incumbent LECs and CLECs would be compensated for this traffic.[120]

38. Starpower argues that application of these factors requires a ruling in its favor.[121] Starpower observes, *inter alia*, that Verizon serves ISPs out of intrastate tariffs and counts

[118] *Preemption Order*, 15 FCC Rcd at 11281, ¶ 9.

[119] *Declaratory Ruling*, 14 FCC Rcd at 3704, ¶ 24.

[120] *Declaratory Ruling*, 14 FCC Rcd at 3704, ¶ 24.

[121] Starpower-Verizon Virginia Complaint at 31-35; Starpower-Verizon South Complaint at 23-27; Starpower Supplemental Brief at 24-26.

revenues associated with calls to ISPs as intrastate revenue.[122] These facts are true,[123] and we remain of the view that they are relevant context that we should consider in construing the First and Second Starpower-Verizon Virginia Agreements. We do not believe, however, that this evidence of context outweighs the specific language in the First and Second Starpower-Verizon Virginia Agreements characterizing the compensability of traffic on the basis of its jurisdictional nature. Again, the unambiguous language of the First and Second Starpower-Verizon Virginia Agreements compels the conclusion that ISP-bound traffic is not "Local Traffic," as that term is defined in the agreements. To be sure, the *Declaratory Ruling* acknowledged that parties to interconnection agreements could have agreed to treat ISP-bound traffic as local traffic.[124] The converse, however, is equally true.[125]

3. State Regulatory Decisions Construing Other Interconnection Agreements Are Not Dispositive.

39. We do not find dispositive the many state regulatory commission decisions cited by Starpower and holding that ISP-bound traffic is subject to reciprocal compensation.[126] As Starpower's own brief highlights,[127] none of these decisions specifically construes the contractual language at issue in this case, which, as discussed above, makes the jurisdictional nature of traffic determinative of whether it constitutes compensable "Local Traffic."[128]

40. One decision merits additional discussion. Starpower contends that the Virginia SCC's decision in *Cox Virginia Telcom*[129] is dispositive, because, as to Verizon Virginia, it is

---

[122] Starpower-Verizon Virginia Complaint at 16-17, ¶ 58; Starpower-Verizon South Complaint at 10-11, ¶ 34; Starpower Supplemental Brief at 25-26. Starpower further observes that no provision of the interconnection agreements requires segregation of ISP-bound traffic, and that, in the absence of reciprocal compensation for ISP-bound traffic, the parties would not be compensated for transporting and terminating the traffic. *Id.* We already addressed these assertions in connection with Starpower's argument that the purpose, structure, and substance of the agreements support its interpretation of the term "Local Traffic." *See* discussion, *supra*, paragraph 34.

[123] Verizon Virginia Answer at 58.

[124] *See Declaratory Ruling*, 14 FCC Rcd at 3704, ¶ 24.

[125] Furthermore, we decline Starpower's invitation to consider evidence regarding Verizon Virginia's negotiation of and performance under the underlying MFS-Verizon Virginia and MCImetro-Verizon Virginia Agreements. *See* Starpower Supplemental Brief at 19-22. As stated above, course-of-performance evidence cannot be used to contradict clear contractual language.

[126] Starpower-Verizon Virginia Complaint at 18-20, ¶¶ 68-69; at 27-38; at 35-39; Starpower-Verizon South Complaint at 19-20; at 27-31; Starpower Supplemental Brief at 4; at 22-23; at 33-34.

[127] *See* Starpower Supplemental Brief at 23-24.

[128] Indeed, even decisions discussing agreements containing terms that are virtually identical to the Starpower-Verizon Virginia Agreements did not substantively address the import of the language that we find to be controlling. *See Complaint of MFS Intelnet of Md., Inc. against Bell Atlantic-Maryland, Inc. for Breach of Interconnection Terms and Request for Immediate Relief*, Case No. 8731, Order (Md. P.U.C. June 11, 1999) ("*MFS/Bell Atlantic*"); *Petition for Declaratory Order of TCG Delaware Valley, Inc. for Clarification of Section 5.7.2. of Its Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc.*, Case No. P-00971256, Opinion and Order (Pa. P.U.C. June 16, 1998) at 22-23.

[129] *Petition of Cox Virginia Telcom, Inc.*, Case No. PUC970069, Final Order (Va. S.C.C. Oct. 27, 1997) ("*Cox Virginia Telcom*") at 2 (holding that "calls to ISPs as described in the Cox petition constitute local traffic under the terms of the agreement between Cox and [Verizon Virginia] and that the companies are entitled to reciprocal compensation for the termination of this type of traffic").

preclusive under the doctrine of collateral estoppel, and because it is a binding determination by a state commission that, pursuant to the *Order on Remand*, the Commission cannot preempt.[130] We disagree. First, Starpower has not demonstrated that the requirements for collateral estoppel have been satisfied. Under Virginia law, in order for collateral estoppel to apply, the "factual issue sought to be litigated actually must have been litigated in the prior action."[131] The meaning of the agreements between Starpower and Verizon Virginia was not at issue in *Cox Virginia Telcom*. Accordingly, Starpower cannot avail itself of the collateral estoppel doctrine in this proceeding. In any event, at Starpower's request, this Commission already has preempted the Virginia SCC's authority to interpret the "interconnection agreements *between Starpower and GTE and Bell Atlantic*."[132] The Virginia SCC has not yet addressed the dispute between the parties to these agreements, and we believe the case is appropriate for our resolution.

* * *

41. In sum, utilizing a plain meaning analysis, we find that the First and Second Starpower-Verizon Virginia Agreements exclude ISP-bound traffic from the scope of their reciprocal compensation provisions. Specifically, for purposes of defining compensable "Local Traffic," the language of the agreements expressly references and incorporates the Commission's historic reliance on an "end-to-end" analysis of traffic for determining the traffic's jurisdictional nature. Because the Commission long has held, under an end-to-end analysis, that ISP-bound traffic is predominantly interstate for jurisdictional purposes, such traffic falls outside the definition of "Local Traffic," as used in the agreements. Moreover, the language of the agreements manifests an intent to track the Commission's construction of the scope of compensable traffic under section 251(b)(5), and the Commission consistently has excluded ISP-bound traffic from the reach of that statutory provision. In our view, therefore, the language of *these agreements* outweighs the contrary evidence of context on which Starpower relies. Thus, neither the First Starpower-Verizon Virginia Agreement nor the Second Starpower-Verizon Virginia Agreement requires Verizon Virginia to pay Starpower reciprocal compensation for the delivery of ISP-bound traffic.

---

[130] Starpower-Verizon Virginia Complaint at 29-31; Second Supplemental Brief of Starpower Communications, LLC, File Nos. EB-00-MD-19, -20 (filed May 30, 2001) ("Starpower Second Supplemental Brief") at 4-7; Reply Brief of Starpower Communications, LLC, File Nos. EB-00-MD-19, -20 (filed June 6, 2001) ("Starpower Reply Brief") at 3.

[131] *See, e.g., Angstadt v. Atlantic Mut. Ins. Co.*, 249 Va. 444, 446-47, 457 S.E.2d 86, 87 (1995) (citing *Hampton Roads San. Dist. v. City of Va. Beach*, 240 Va. 209, 213, 396 S.E.2d 656, 658 (1990)). The parties urge us to apply Virginia law of collateral estoppel rather than federal law. *See* Starpower-Verizon Virginia Complaint at 31; Starpower Second Supplemental Brief at 4; Verizon Virginia Answer at 55-56; Supplemental Reply Brief of Verizon Virginia Inc. and Verizon South Inc., File Nos. EB-00-MD-19, -20 (filed June 6, 2001) ("Verizon Supplemental Reply Brief") at 2. We need not decide whether Virginia law or federal law controls, because federal law similarly requires that an issue actually be litigated for collateral estoppel to apply. *See, e.g.*, 1B J. Moore, Federal Practice ¶ 0.405[1], pp. 622-24 (2d ed. 1974) (*quoted in Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327 (1979)).

[132] *Preemption Order*, 15 FCC Rcd at 11281, ¶ 9 (emphasis added).

D. The Starpower-Verizon South Agreement Obligates Verizon South to Pay Reciprocal Compensation to Starpower for the Delivery of ISP-Bound Traffic.

42. Compared to the Starpower-Verizon Virginia Agreements, the Starpower-Verizon South Agreement is relatively terse regarding reciprocal compensation. It obligates the parties to "reciprocally terminate [Plain Old Telephone Service] calls originating on each others' networks,"[133] including "local traffic . . . as defined in [Verizon South's] tariff."[134] According to Verizon South's General Customer Services Tariff ("Tariff"),[135] "Local Service" is "[t]elephone service furnished between customer's stations [*sic*] located within the same exchange area."[136] The parties agreed to compensate each other at an "equal, identical and reciprocal rate" for the "termination of local traffic."[137] The Starpower-Verizon South Agreement does not separately define the phrase "local traffic" or the word "termination."

43. As with the Starpower-Verizon Virginia Agreements, each party argues that the "plain meaning" of the Starpower-Verizon South Agreement supports its position: Starpower contends that the agreement clearly compels payment of reciprocal compensation for the delivery of ISP-bound traffic;[138] Verizon maintains that the agreement clearly does not.[139] For the reasons discussed below, we find that the Starpower-Verizon South Agreement requires Verizon South to pay Starpower reciprocal compensation for the delivery of ISP-bound traffic.

44. As noted above, the Starpower-Verizon South Agreement's definition of compensable "local traffic" is derived from the Tariff.[140] Thus, whatever traffic is "local" under the Tariff is compensable traffic under the Starpower-Verizon South Agreement.

45. The parties agree that ISP-bound traffic is "local traffic" under the Tariff. Specifically, the parties stipulate that, when a Verizon South customer places a call to the Internet through an ISP, using a telephone number associated with the caller's local calling area, Verizon South rates and bills that customer for a local call pursuant to the terms of the Tariff.[141] Consequently, ISP-bound traffic falls within the Tariff's definition of "Local Service." Accordingly, because the Starpower-Verizon South Agreement adopts the Tariff's conception of local traffic, we conclude that the Agreement plainly requires Verizon to pay reciprocal compensation for the delivery of ISP-bound traffic.

---

[133] Starpower-Verizon South Joint Statement at 3, ¶ 10.

[134] Starpower-Verizon South Joint Statement at 3, ¶ 11.

[135] The parties agree that Verizon South's General Customer Services Tariff is the tariff to which the relevant provisions of the interconnection agreement refer. Starpower-Verizon South Joint Statement at 3, ¶ 12; Letter from Aaron Panner, counsel for Verizon, to David Strickland, Attorney-Advisor, Market Disputes Resolution Division, Enforcement Bureau, File No. EB-00-MD-19 (dated Jan. 9, 2002).

[136] Starpower-Verizon South Joint Statement at 3, ¶ 12.

[137] Starpower-Verizon South Joint Statement at 3, ¶ 13.

[138] Starpower-Verizon South Complaint at 14-17; Starpower Supplemental Brief at 16-27.

[139] Starpower-Verizon South Answer at 20-32; Verizon Brief at 4-13.

[140] Starpower-Verizon South Joint Statement at 3, ¶ 11.

[141] Starpower-Verizon South Joint Statement at 7-8, ¶ 36.

46. Verizon South contends that it would be "remarkably unfair" for the Commission to rely on Verizon South's manner of billing for termination of ISP-bound traffic, because it merely reflects Verizon South's adherence to the "positive requirements of federal law."[142] This objection is meritless, because Verizon South voluntarily agreed to link the compensability of traffic under the Starpower-Verizon South Agreement to the classification of traffic in the Tariff.

47. Verizon South further claims that the parties intended the Starpower-Verizon South Agreement to follow the requirements of federal law, by distinguishing in the agreement between "local traffic" on the one hand and exchange access traffic on the other.[143] According to Verizon South, this difference "tracks precisely the distinction that the Commission drew in [paragraph 1034] of the *Local Interconnection Order*,"[144] where the Commission concluded that "reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area . . . ."[145] We disagree. The Starpower-Verizon South Agreement does not track the language used by the Commission to implement section 251(b)(5). In particular, the agreement's definition of "local traffic" neither speaks in terms of "origination" and "termination" of traffic, nor references local calling areas. In this way, it differs significantly from the Starpower-Verizon Virginia Agreements.[146] Moreover, unlike the Starpower-Verizon Virginia Agreements,[147] the Starpower-Verizon South Agreement does not link a call's compensability to the Commission's traditional end-to-end jurisdictional analysis.

48. Finally, we believe Verizon South places too much stock in a recent decision by the United States Court of Appeals for the Fourth Circuit, which found that "many so-called 'negotiated' provisions [of interconnection agreements] represent nothing more than an attempt to comply with the requirements of the 1996 Act."[148] *AT&T v. BellSouth* is inapposite, because the interconnection provision at issue in that case (pertaining to unbundled network elements) obligated BellSouth to offer a service that it clearly was required to provide by then-controlling federal law. "Where a provision plainly tracks the controlling law," the Court said, "there is a strong presumption that the provision was negotiated with regard to the [Act] and the controlling law."[149] The Court found that, where an interconnection agreement "was clearly negotiated with regard to the 1996 Act and law thereunder," the contested provision could be reformed if there were a change in controlling law.[150] In this case, there was no controlling federal law mandating

---

[142] Verizon South Answer at 35; Verizon Brief at 31-32.

[143] Verizon South Answer at 24; Verizon Brief at 8-10.

[144] Verizon South Answer at 24; Verizon Brief at 8 (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) (subsequent history omitted) ("*Local Competition Order*")).

[145] *Local Competition Order*, 11 FCC Rcd at 16013, ¶ 1034.

[146] *See* discussion, *supra*, section III.C.

[147] *See* discussion, *supra*, section III.C.

[148] *AT&T Communications of S. States, Inc. v. BellSouth Telecommunications*, 223 F.3d 457, 465 (4th Cir. 2000) ("*AT&T v. Bell South*"). *See* Verizon South Answer at 24-25; Verizon Brief at 9-10; Supplemental Brief of Verizon Virginia Inc. and Verizon South Inc., File Nos. EB-00-MD-19, -20 (filed May 30, 2001) ("Verizon Supplemental Brief") at 2-3.

[149] *Id.*

[150] *Id.*

a particular compensation arrangement for ISP-bound traffic. To the contrary, the Commission explicitly allowed the parties to negotiate regarding the issue and settle on whatever compensation terms they deem appropriate.[151]

49. In sum, given the Starpower-Verizon South Agreement's reference to the Tariff, whatever calls Verizon South bills to its customers as local calls under the Tariff must be compensable local calls under the Starpower-Verizon South Agreement. Because it is undisputed that Verizon bills ISP-bound traffic as local calls under the Tariff, such calls are compensable under the Starpower-Verizon South Agreement. Thus, Verizon must pay reciprocal compensation to Starpower for the termination of ISP-bound traffic.

IV. CONCLUSION AND ORDERING CLAUSES

50. For the above reasons, we find that the two interconnection agreements between Starpower and Verizon Virginia do not require Verizon Virginia to pay reciprocal compensation to Starpower for the delivery of ISP-bound traffic. We further find, however, that the interconnection agreement between Starpower and Verizon South does require Verizon South to pay reciprocal compensation to Starpower for the delivery of ISP-bound traffic.

51. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 208, and 252(e)(5) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 208, and 252(e)(5), that the complaint filed by Starpower against Verizon Virginia is hereby DENIED.

52. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 4(j), 208, and 252(e)(5) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 208, and 252(e)(5), that the complaint filed by Starpower against Verizon South is hereby GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[151] *See Declaratory Ruling*, 14 FCC Rcd at 3703, ¶ 24.

SEPARATE STATEMENT OF COMMISSIONER KEVIN J. MARTIN, APPROVING IN PART AND DISSENTING IN PART

Re: *Starpower Communications, LLC v. Verizon South Inc.*; *Starpower Communications, LLC v. Verizon Virginia Inc.*, Memorandum Opinion and Order, File Nos. EB-00-MD-19 & EB-00-MD-20

I dissent in part from this Order, because I question its analysis of the two Verizon Virginia interconnection agreements. As the Order acknowledges, both of these agreements require the payment of reciprocal compensation for "Local Traffic," and both agreements define "Local Traffic" in terms of where a call "terminates." The Order finds that ISP-bound traffic is not "Local Traffic," because, the Order concludes, under an "end-to-end" analysis, ISP-bound traffic does not terminate within a local service area. The Order does not offer any definition of "termination."

This analysis is essentially the same as that employed by the Commission in its first declaratory ruling on reciprocal compensation, which was subsequently vacated by the D.C. Circuit. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling, 14 FCC Rcd 3689 (1999). In that ruling, the Commission applied an "end-to-end" analysis and concluded that calls to ISPs do not terminate at the ISP's local server, but instead continue to the "ultimate destination or destinations, specifically at a[n] Internet website that is often located in another state." *Id.* ¶ 12.

The D.C. Circuit cast serious doubt on this analysis, concluding that the Commission had not adequately explained its reasoning. *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1, 5 (D.C. Cir. 2000). Among other things, the Court stated:

> [U]nder 47 CFR § 51.701(b)(1), "telecommunications traffic" is local if it "originates and terminates within a local service area." But, observes MCI WorldCom, the Commission failed to apply, or even to mention, its definition of "termination," namely "the switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises." *Calls to ISPs appear to fit this definition: the traffic is switched by the LEC whose customer is the ISP and then delivered to the ISP, which is clearly the "called party."*

Id. at 6 (citations omitted; emphasis added).

The current Order appears to suffer the same flaws as those identified by the D.C. Circuit. While this proceeding is not the appropriate place to reconsider the Commission's treatment of reciprocal compensation – that issue is again before the D.C. Circuit – I am not comfortable supporting the use of the Commission's end-to-end analysis here without a better explanation and more full response to the questions raised by the D.C. Circuit. Accordingly, I dissent in part from this Order.

PUBLIC VERSION – CONFIDENTIAL MATERIAL REDACTED

EXHIBIT B TO EXHIBIT I REDACTED IN ITS ENTIRETY

FCC 96-325

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	

FIRST REPORT AND ORDER

Adopted: August 1, 1996 Released: August 8, 1996

By the Commission: Chairman Hundt and Commissioners Quello, Ness, and Chong issuing separate statements.

Table of Contents

I. INTRODUCTION, OVERVIEW, AND EXECUTIVE SUMMARY 1
- A. The Telecommunications Act of 1996 - A New Direction 1
- B. The Competition Trilogy: Section 251, Universal Service Reform and Access Charge Reform 6
- C. Economic Barriers 10
- D. Operational Barriers 16
- E. Transition 21
- F. Executive Summary 24

II. SCOPE OF THE COMMISSION'S RULES 41
- A. Advantages and Disadvantages of National Rules 44
- B. Suggested Approaches for FCC Rules 63
- C. Legal Authority of the Commission to Establish Regulations Applicable to Intrastate Aspects of Interconnection, Resale of Services, and Unbundled Network Elements 69

legal matter, that transport and termination of local traffic are different services than access service for long distance telecommunications. Transport and termination of local traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 252(d)(2), while access charges for interstate long-distance traffic are governed by sections 201 and 202 of the Act. The Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic.

1034. We conclude that section 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area, as defined in the following paragraph. We disagree with Frontier's contention that section 251(b)(5) entitles an IXC to receive reciprocal compensation from a LEC when a long-distance call is passed from the LEC serving the caller to the IXC. Access charges were developed to address a situation in which three carriers -- typically, the originating LEC, the IXC, and the terminating LEC -- collaborate to complete a long-distance call. As a general matter, in the access charge regime, the long-distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service.[2474] By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call. This reading of the statute is confirmed by section 252(d)(2)(A)(i), which establishes the pricing standards for section 251(b)(5). Section 251(d)(2)(A)(i) provides for "recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."[2475] We note that our conclusion that long distance traffic is not subject to the transport and termination provisions of section 251 does not in any way disrupt the ability of IXCs to terminate their interstate long-distance traffic on LEC networks. Pursuant to section 251(g), LECs must continue to offer tariffed interstate access services just as they did prior to enactment of the 1996 Act. We find that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic.

1035. With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs. Traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges. We expect the states to determine whether intrastate transport and termination of traffic between competing LECs, where a portion of their local

[2474] In addition, both the caller and the party receiving the call pay a flat-rated interstate access charge – the end-user common line charge – to the respective incumbent LEC to whose network each of these parties is connected.

[2475] 47 U.S.C. § 252(d)(2)(A)(i).

service areas are not the same, should be governed by section 251(b)(5)'s reciprocal compensation obligations or whether intrastate access charges should apply to the portions of their local service areas that are different. This approach is consistent with a recently negotiated interconnection agreement between Ameritech and ICG that restricted reciprocal compensation arrangements to the local traffic area as defined by the state commission.[2476] Continental Cablevision, in an *ex parte* letter, states that many incumbent LECs offer optional expanded local area calling plans, in which customers may pay an additional flat rate charge for calls within a wider area than that deemed as local, but that terminating intrastate access charges typically apply to calls that originate from competing carriers in the same wider area.[2477] Continental Cablevision argues that local transport and termination rates should apply to these calls. We lack sufficient record information to address the issue of expanded local area calling plans; we expect that this issue will be considered, in the first instance, by state commissions. In addition, we expect the states to decide whether section 251(b)(5) reciprocal compensation provisions apply to the exchange of traffic between incumbent LECs that serve adjacent service areas.

1036. On the other hand, in light of this Commission's exclusive authority to define the authorized license areas of wireless carriers, we will define the local service area for calls to or from a CMRS network for the purposes of applying reciprocal compensation obligations under section 251(b)(5).[2478] Different types of wireless carriers have different FCC-authorized licensed territories, the largest of which is the "Major Trading Area" (MTA).[2479] Because wireless licensed territories are federally authorized, and vary in size, we conclude that the largest FCC-authorized wireless license territory (*i.e.*, MTA) serves as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5) as it avoids creating artificial distinctions between CMRS providers. Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges.

1037. We conclude that section 251(b)(5) obligations apply to all LECs in the same state-defined local exchange service areas, including neighboring incumbent LECs that fit within this description. Contrary to the arguments of NYNEX and Pacific Telesis, neither the plain language of the Act nor its legislative history limits this subsection to the transport and termination of telecommunications traffic between new entrants and incumbent LECs. In addition, applying

---

[2476] *See* letter from Albert H. Kramer, Dickstein, Shapiro, Morin & Oshinsky LLP to John Nakahata, Senior Legal Advisor to the Chairman, FCC, July 11, 1996.

[2477] Letter from Brenda L. Fox, Vice President, Federal Relations, Continental Cablevision, to Robert Pepper, Chief, Office of Plans and Policy, FCC, July 22, 1996, attached to Letter from Donna N. Lampert, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., to William F. Caton, Acting Secretary, FCC, July 22, 1996.

[2478] *See also infra*, Section XI.A.c.3.

[2479] *See* Rand McNally, Inc., *1992 Commercial Atlas & Marketing Guide* 38-39 (1992).

code of federal regulations

Telecommunication

47

PARTS 40 TO 69

Revised as of October 1, 1997

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF OCTOBER 1, 1997

With Ancillaries

Published by
the Office of the Federal Register
National Archives and Records
Administration

as a Special Edition of
the Federal Register

(b) With respect to any restrictions on resale not permitted under paragraph (a), an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory.

(c) *Branding.* Where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on resale.

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

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

§51.615 Withdrawal of services.

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

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

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

(b) When an incumbent LEC provides telephone exchange service to a requesting carrier at wholesale rates for resale, the incumbent LEC shall continue to assess the interstate access charges provided in part 69 of this chapter, other than the end user common line charge, upon interexchange carriers that use the incumbent LEC's facilities to provide interstate or international telecommunications services to the interexchange carriers' subscribers.

Subpart H—Reciprocal Compensation for Transport and Termination of Local 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 local telecommunications traffic between LECs and other telecommunications carriers.

(b) *Local telecommunications traffic.* For purposes of this subpart, local telecommunications traffic means:

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

(2) Telecommunications traffic 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 local 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 local 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 local telecommunications traffic that originates on the network facilities of the other carrier.

§ 51.703 Reciprocal compensation obligation of LECs.

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

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

§ 51.705 Incumbent LECs' rates for transport and termination.

(a) An incumbent LEC's rates for transport and termination of local telecommunications traffic shall be established, at the election of the state commission, on the basis of:

(1) The forward-looking economic costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511;

(2) Default proxies, as provided in § 51.707; or

(3) A bill-and-keep arrangement, as provided in § 51.713.

(b) In cases where both carriers in a reciprocal compensation arrangement are incumbent LECs, state commissions shall establish the rates of the smaller carrier on the basis of the larger carrier's forward-looking costs, pursuant to § 51.711.

§ 51.707 Default proxies for incumbent LECs' transport and termination rates.

(a) A state commission may determine that the cost information available to it with respect to transport and termination of local telecommunications traffic does not support the adoption of a rate or rates for an incumbent LEC that are consistent with the requirements of §§ 51.505 and 51.511. In that event, the state commission may establish rates for transport and termination of local telecommunications traffic, or for specific components included therein, that are consistent with the proxies specified in this section, provided that:

(1) Any rate established through use of such proxies is superseded once that state commission establishes rates for transport and termination pursuant to §§ 51.705(a)(1) or 51.705(a)(3); and

(2) The state commission sets forth in writing a reasonable basis for its selection of a particular proxy for transport and termination of local telecommunications traffic, or for specific components included within transport and termination.

(b) If a state commission establishes rates for transport and termination of local telecommunications traffic on the basis of default proxies, such rates must meet the following requirements:

(1) *Termination.* The incumbent LEC's rates for the termination of local telecommunications traffic shall be no greater than 0.4 cents ($0.004) per minute, and no less than 0.2 cents ($0.002) per minute, except that, if a state commission has, before August 8, 1996, established a rate less than or equal to 0.5 cents ($0.005) per minute for such calls, that rate may be retained pending completion of a forward-looking economic cost study.

(2) *Transport.* The incumbent LEC's rates for the transport of local telecommunications traffic, under this section, shall comply with the proxies described in § 51.513(c) (3), (4), and (5) of this part that apply to the analogous unbundled network elements used in transporting a call to the end office that serves the called party.

[61 FR 45619, Aug. 29, 1996, as amended at 61 FR 52709, Oct. 8, 1996]

§ 51.709 Rate structure for transport and termination.

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

Code of Federal Regulations

47

Parts 40 to 69

Revised as of October 1, 2001

Telecommunication

Containing a codification of documents of general applicability and future effect

As of October 1, 2001

With Ancillaries

Published by
Office of the Federal Register
National Archives and Records
Administration

A Special Edition of the Federal Register

§ 51.807 Arbitration and mediation of agreements by the Commission pursuant to section 252(e)(5) of the Act.

(a) The rules established in this section shall apply only to instances in which the Commission assumes jurisdiction under section 252(e)(5) of the Act.

(b) When the Commission assumes responsibility for a proceeding or matter pursuant to section 252(e)(5) of the Act, it shall not be bound by state laws and standards that would have applied to the state commission in such proceeding or matter.

(c) In resolving, by arbitration under section 252(b) of the Act, any open issues and in imposing conditions upon the parties to the agreement, the Commission shall:

(1) Ensure that such resolution and conditions meet the requirements of section 251 of the Act, including the rules prescribed by the Commission pursuant to that section;

(2) Establish any rates for interconnection, services, or network elements according to section 252(d) of the Act, including the rules prescribed by the Commission pursuant to that section; and

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

(d) An arbitrator, acting pursuant to the Commission's authority under section 252(e)(5) of the Act, shall use final offer arbitration, except as otherwise provided in this section:

(1) At the discretion of the arbitrator, final offer arbitration may take the form of either entire package final offer arbitration or issue-by-issue final offer arbitration.

(2) Negotiations among the parties may continue, with or without the assistance of the arbitrator, after final arbitration offers are submitted. Parties may submit subsequent final offers following such negotiations.

(3) To provide an opportunity for final post-offer negotiations, the arbitrator will not issue a decision for at least fifteen days after submission to the arbitrator of the final offers by the parties.

(e) Final offers submitted by the parties to the arbitrator shall be consistent with section 251 of the Act, including the rules prescribed by the Commission pursuant to that section.

(f) Each final offer shall:

(1) Meet the requirements of section 251, including the rules prescribed by the Commission pursuant to that section;

(2) Establish rates for interconnection, services, or access to unbundled network elements according to section 252(d) of the Act, including the rules prescribed by the Commission pursuant to that section; and

(3) Provide a schedule for implementation of the terms and conditions by the parties to the agreement. If a final offer submitted by one or more parties fails to comply with the requirements of this section or if the arbitrator determines in unique circumstances that another result would better implement the Communications Act, the arbitrator has discretion to take steps designed to result in an arbitrated agreement that satisfies the requirements of section 252(c) of the Act, including requiring parties to submit new final offers within a time frame specified by the arbitrator, or adopting a result not submitted by any party that is consistent with the requirements of section 252(c) of the Act, and the rules prescribed by the Commission pursuant to that section.

(g) Participation in the arbitration proceeding will be limited to the requesting telecommunications carrier and the incumbent LEC, except that the Commission will consider requests by third parties to file written pleadings.

(h) Absent mutual consent of the parties to change any terms and conditions adopted by the arbitrator, the decision of the arbitrator shall be binding on the parties.

[61 FR 45619, Aug. 29, 1996, as amended at 66 FR 8520, Feb. 1, 2001]

§ 51.809 Availability of provisions of agreements to other telecommunications carriers under section 252(i) of the Act.

(a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to

which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any individual interconnection, service, or network element only to those requesting carriers serving a comparable class of subscribers or providing the same service (*i.e.*, local, access, or interexchange) as the original party to the agreement.

(b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:

(1) The costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or

(2) The provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible.

(c) Individual interconnection, service, or network element arrangements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(f) of the Act.

PART 52—NUMBERING

Subpart A—Scope and Authority

Sec.
52.1 Basis and purpose.
52.3 General.
52.5 Definitions.

Subpart B—Administration

52.7 Definitions.
52.9 General requirements.
52.11 North American Numbering Council.
52.12 North American Numbering Plan Administrator and B&C Agent.
52.13 North American Numbering Plan Administrator.
52.15 Central office code administration.
52.16 Billing and Collection Agent.
52.17 Costs of number administration.
52.19 Area code relief.

Subpart C—Number Portability

52.20 Thousands-block number pooling.
52.21 Definitions.
52.23 Deployment of long-term database methods for number portability by LECs.
52.25 Database architecture and administration.
52.26 NANC Recommendations on Local Number Portability Administration.
52.27 Deployment of transitional measures for number portability.
52.29 Cost recovery for transitional measures for number portability.
52.31 Deployment of long-term database methods for number portability by CMRS providers.
52.32 Allocation of the shared costs of long-term number portability.
52.33 Recovery of carrier-specific costs directly related to providing long-term number portability.
52.34–52.99 [Reserved]

Subpart D—Toll Free Numbers

52.101 General definitions.
52.103 Lag times.
52.105 Warehousing.
52.107 Hoarding.
52.109 Permanent cap on number reservations.
52.111 Toll free number assignment.
APPENDIX TO PART 52—DEPLOYMENT SCHEDULE FOR LONG-TERM DATABASE METHODS FOR LOCAL NUMBER PORTABILITY

AUTHORITY: Sec. 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. §151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

SOURCE: 61 FR 38637, July 25, 1996, unless otherwise noted.

Subpart A—Scope and Authority

SOURCE: 61 FR 47353, Sept. 6, 1996, unless otherwise noted.

§ 52.1 Basis and purpose.

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C. 151 *et. seq.*

(b) *Purpose.* The purpose of these rules is to establish, for the United States, requirements and conditions for the administration and use of telecommunications numbers for provision of telecommunications services.

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

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68

ORDER ON REMAND AND REPORT AND ORDER

Adopted: April 18, 2001 **Released:** April 27, 2001

By the Commission: Chairman Powell issuing a statement; Commissioner Furchtgott-Roth dissenting and issuing a statement.

TABLE OF CONTENTS

Paragraph No.

I. INTRODUCTION 1

II. EXECUTIVE SUMMARY 3

III. BACKGROUND 9

IV. DISCUSSION 18

A. Background 18

B. Statutory Analysis 23

1. Introduction 24
2. Section 251(g) Excludes Certain Categories of Traffic from the Scope of "Telecommunications" Subject to Section 251(b)(5) 31
3. ISP-Bound Traffic Falls within the Categories Enumerated in Section 251(g) 42
4. Section 251(i) Preserves the Commission's Authority to Regulate Interstate Access Services 48
5. ISP-Bound Traffic Falls Within the Purview of the Commission's Section 201 Authority 52

C. Efficient Intercarrier Compensation Rates and Rate Structures 66

1. CPNP Regimes Have Distorted the Development of Competitive Markets 67
2. Intercarrier Compensation for ISP-bound Traffic 77
3. Relationship to Section 251(b)(5) 89

D. Conclusion 95

V. Procedural Matters 96

A. Final Regulatory Flexibility Analysis 96

1. Need for, and Objectives of, this Order on Remand and Report and Order 97
2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA 99
3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply 103
4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements 109
5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered 110

VI. Ordering Clauses 112

I. INTRODUCTION

1. In this Order, we reconsider the proper treatment for purposes of intercarrier compensation of telecommunications traffic delivered to Internet service providers (ISPs). We previously found in the *Declaratory Ruling*[1] that such traffic is interstate traffic subject to the jurisdiction of the Commission under section 201 of the Act[2] and is not, therefore, subject to the reciprocal compensation provisions of section 251(b)(5).[3] The Court of Appeals for the District of Columbia Circuit held on appeal, however, that the *Declaratory Ruling* failed adequately to explain why our jurisdictional conclusion was relevant to the applicability of section 251(b)(5)

[1] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd 3689 (1999) (*Declaratory Ruling* or *Intercarrier Compensation NPRM*).

[2] *See* 47 U.S.C. § 201, Communications Act of 1934 (the Act), as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act). Hereinafter, all citations to the Act and to the 1996 Act will be to the relevant section of the United States Code unless otherwise noted.

[3] 47 U.S.C. § 251(b)(5).

and remanded the issue for further consideration.[4] As explained in more detail below, we modify the analysis that led to our determination that ISP-bound traffic falls outside the scope of section 251(b)(5) and conclude that Congress excluded from the "telecommunications" traffic subject to reciprocal compensation the traffic identified in section 251(g), including traffic destined for ISPs. Having found, although for different reasons than before, that the provisions of section 251(b)(5) do not extend to ISP-bound traffic, we reaffirm our previous conclusion that traffic delivered to an ISP is predominantly interstate access traffic subject to section 201 of the Act, and we establish an appropriate cost recovery mechanism for the exchange of such traffic.

2. We recognize that the existing intercarrier compensation mechanism for the delivery of this traffic, in which the originating carrier pays the carrier that serves the ISP, has created opportunities for regulatory arbitrage and distorted the economic incentives related to competitive entry into the local exchange and exchange access markets. As we discuss in the *Unified Intercarrier Compensation NPRM*,[5] released in tandem with this Order, such market distortions relate not only to ISP-bound traffic, but may result from any intercarrier compensation regime that allows a service provider to recover some of its costs from other carriers rather than from its end-users. Thus, the *NPRM* initiates a proceeding to consider, among other things, whether the Commission should replace existing intercarrier compensation schemes with some form of what has come to be known as "bill and keep."[6] The *NPRM* also considers modifications to existing payment regimes, in which the calling party's network pays the terminating network, that might limit the potential for market distortion. The regulatory arbitrage opportunities associated with intercarrier payments are particularly apparent with respect to ISP-bound traffic, however, because ISPs typically generate large volumes of traffic that is virtually all one-way -- that is, delivered to the ISP. Indeed, there is convincing evidence in the record that at least some carriers have targeted ISPs as customers merely to take advantage of these intercarrier payments. Accordingly, in this Order we also take interim steps to limit the regulatory arbitrage opportunity presented by ISP-bound traffic while we consider the broader issues of intercarrier compensation in the *NPRM* proceeding.

---

[4] *See Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000) (*Bell Atlantic*).

[5] Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132 (rel. April 27, 2001) ("*Unified Intercarrier Compensation NPRM*" or "*NPRM*").

[6] "Bill and keep" refers to an arrangement in which neither of two interconnecting networks charges the other for terminating traffic that originates on the other network. Instead, each network recovers from its own end-users the cost of both originating traffic that it delivers to the other network and terminating traffic that it receives from the other network. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 16045 (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) (*CompTel*), *aff'd in part and vacated in part sub nom. Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997) (*Iowa Utils. Bd.*), *aff'd in part and rev'd in part sub nom., AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); Order on Reconsideration, 11 FCC Rcd 13042 (1996); Second Order on Reconsideration, 11 FCC Rcd 19738 (1996); Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460 (1997); *further recon. pending*. Bill and keep does not, however, preclude intercarrier charges for transport of traffic between carriers' networks. *Id.*

II. EXECUTIVE SUMMARY

3. As presaged above, we must wrestle with two difficult issues in this Order: first, whether intercarrier compensation for ISP-bound traffic is governed by section 251 or section 201; and, if the latter, what sort of compensation mechanism should apply. The first question is difficult because we do not believe it is resolved by the plain language of section 251(b)(5) but, instead, requires us to consider the relationship of that section to other provisions of the statute. Moreover, we recognize the legitimate questions raised by the court with respect to the rationales underlying our regulatory treatment of ISPs and ISP traffic. We seek to respond to those questions in this Order. Ultimately, however, we conclude that Congress, through section 251(g),[7] expressly limited the reach of section 251(b)(5) to exclude ISP-bound traffic. Accordingly, we affirm our conclusion in the *Declaratory Ruling* that ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5).

4. Because we determine that intercarrier compensation for ISP-bound traffic is within the jurisdiction of this Commission under section 201 of the Act, it is incumbent upon us to establish an appropriate cost recovery mechanism for delivery of this traffic. Based upon the record before us, it appears that the most efficient recovery mechanism for ISP-bound traffic may be bill and keep, whereby each carrier recovers costs from its own end-users. As we recognize in the *NPRM*, intercarrier compensation regimes that require carrier-to-carrier payments are likely to distort the development of competitive markets by divorcing cost recovery from the ultimate consumer of services. In a monopoly environment, permitting carriers to recover some of their costs from interconnecting carriers might serve certain public policy goals. In order to promote universal service, for example, this Commission historically has capped end-user common line charges and required local exchange carriers to recover any shortfall through per-minute charges assessed on interexchange carriers.[8] These sorts of implicit subsidies cannot be sustained, however, in the competitive markets for telecommunications services envisioned by the 1996 Act. In the *NPRM*, we suggest that, given the opportunity, carriers always will prefer to recover their costs from other carriers rather than their own end-users in order to gain competitive advantage. Thus carriers have every incentive to compete, not on basis of quality and efficiency, but on the basis of their ability to shift costs to other carriers, a troubling distortion that prevents market forces from distributing limited investment resources to their most efficient uses.

5. We believe that this situation is particularly acute in the case of carriers delivering traffic to ISPs because these customers generate extremely high traffic volumes that are entirely one-directional. Indeed, the weight of the evidence in the current record indicates that precisely the types of market distortions identified above are taking place with respect to this traffic. For example, comments in the record indicate that competitive local exchange carriers (CLECs), on average, terminate eighteen times more traffic than they originate, resulting in annual CLEC reciprocal compensation billings of approximately two billion dollars, ninety percent of which is

[7] 47 U.S.C. § 251(g).

[8] Access Charge Reform, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, 15998-99 (1997) (*Access Charge Reform Order*), *aff'd, Southwestern Bell Telephone Co. v FCC*, 153 F.3d 523 (8th Cir. 1998).

for ISP-bound traffic.[9] Moreover, the traffic imbalances for some competitive carriers are in fact much greater, with several carriers terminating more than forty times more traffic than they originate.[10] There is nothing inherently wrong with carriers having substantial traffic imbalances arising from a business decision to target specific types of customers. In this case, however, we believe that such decisions are driven by regulatory opportunities that disconnect costs from end-user market decisions. Thus, under the current carrier-to-carrier recovery mechanism, it is conceivable that a carrier could serve an ISP free of charge and recover all of its costs from originating carriers. This result distorts competition by subsidizing one type of service at the expense of others.

6. Although we believe this arbitrage opportunity is particularly manifest with respect to ISP-bound traffic, we suggest in the *NPRM* that any compensation regime based on carrier-to-carrier payments may create similar market distortions. Accordingly, we initiate an inquiry as to whether bill and keep is a more economically efficient compensation scheme than the existing carrier-to-carrier payment mechanisms. Alternatively, the record developed in that proceeding may suggest modifications to carrier-to-carrier cost recovery mechanisms that address the competitive concerns identified above. Based upon the current record, however, bill and keep appears the preferable cost recovery mechanism for ISP-bound traffic because it eliminates a substantial opportunity for regulatory arbitrage. We do not fully adopt a bill and keep regime in this Order, however, because there are specific questions regarding bill and keep that require further inquiry, and we believe that a more complete record on these issues is desirable before requiring carriers to recover most of their costs from end-users. Because these questions are equally relevant to our evaluation of a bill and keep approach for other types of traffic, we will consider them in the context of the *NPRM*. Moreover, we believe that there are significant advantages to a global evaluation of the intercarrier compensation mechanisms applicable to different types of traffic to ensure a more systematic, symmetrical treatment of these issues.

7. Because the record indicates a need for immediate action with respect to ISP-bound traffic, however, in this Order we will implement an interim recovery scheme that: (i) moves aggressively to eliminate arbitrage opportunities presented by the existing recovery mechanism for ISP-bound by lowering payments and capping growth; and (ii) initiates a 36-month transition towards a complete bill and keep recovery mechanism while retaining the ability to adopt an alternative mechanism based upon a more extensive evaluation in the *NPRM*

[9] *See, e.g.*, Letter from Robert T. Blau, BellSouth, to Magalie Roman Salas, Secretary, FCC (November 6, 2000); *see also* Verizon Remand Comments at 2 (Verizon will be billed more than one billión dollars in 2000 for Internet-bound calls); Letter from Richard J. Metzger, Focal, to Deena Shetler, Legal Advisor to Commissioner Gloria Tristani, FCC (Jan. 11, 2001)(ILECs owed $1.98 billion in reciprocal compensation to CLECs in 2000). On June 23, 2000, the Commission released a Public Notice seeking comment on the issues raised by the court's remand. *See* Comment Sought on Remand of the Commission's Reciprocal Compensation Declaratory Ruling by the U.S. Court of Appeals for the D.C. Circuit, CC Docket Nos. 96-98, 99-68, Public Notice, 15 FCC Rcd 11311 (2000) (*Public Notice*). Comments and reply comments filed in response to the *Public Notice* are identified herein as "Remand Comments" and "Remand Reply Comments," respectively. Comments and replies filed in response the 1999 *Intercarrier Compensation NPRM* are identified as "Comments" and "Reply Comments," respectively.

[10] *See, e.g.*, Verizon Remand Comments at 11, 21.

proceeding. Specifically, we adopt a gradually declining cap on the amount that carriers may recover from other carriers for delivering ISP-bound traffic. We also cap the amount of traffic for which any such compensation is owed, in order to eliminate incentives to pursue new arbitrage opportunities. In sum, our goal in this Order is decreased reliance by carriers upon carrier-to-carrier payments and an increased reliance upon recovery of costs from end-users, consistent with the tentative conclusion in the *NPRM* that bill and keep is the appropriate intercarrier compensation mechanism for ISP-bound traffic. In this regard, we emphasize that the rate caps we impose are not intended to reflect the costs incurred by each carrier that delivers ISP traffic. Some carriers' costs may be higher; some are probably lower. Rather, we conclude, based upon all of the evidence in this record, that these rates are appropriate limits on the amounts recovered from other carriers and provide a reasonable transition from rates that have (at least until recently) typically been much higher. Carriers whose costs exceed these rates are (and will continue to be) able to collect additional amounts from their ISP customers. As we note above, and explain in more detail below, we believe that such end-user recovery likely is the most efficient mechanism.

8. The basic structure of this transition is as follows:

* Beginning on the effective date of this Order, and continuing for six months, intercarrier compensation for ISP-bound traffic will be capped at a rate of $.0015/minute-of-use (mou). Starting in the seventh month, and continuing for eighteen months, the rate will be capped at $.0010/mou. Starting in the twenty-fifth month, and continuing through the thirty-sixth month or until further Commission action (whichever is later), the rate will be capped at $.0007/mou. Any additional costs incurred must be recovered from end-users. These rates reflect the downward trend in intercarrier compensation rates contained in recently negotiated interconnection agreements, suggesting that they are sufficient to provide a reasonable transition from dependence on intercarrier payments while ensuring cost recovery.

* We also impose a cap on total ISP-bound minutes for which a local exchange carrier (LEC) may receive this compensation. For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to compensation under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation for ISP-bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation for ISP-bound minutes up to a ceiling equal to the 2002 ceiling. These caps are consistent with projections of the growth of dial-up Internet access for the first two years of the transition and are necessary to ensure that such growth does not undermine our goal of limiting intercarrier compensation and beginning a transition toward bill and keep. Growth above these caps should be based on a carrier's ability to provide efficient service, not on any incentive to collect intercarrier payments.

* Because the transitional rates are *caps* on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps or on a bill and keep basis (or otherwise have not required payment of

compensation for this traffic). The rate caps are designed to provide a transition toward bill and keep, and no transition is necessary for carriers already exchanging traffic at rates below the caps.

* In order to limit disputes and costly measures to identify ISP-bound traffic, we adopt a rebuttable presumption that traffic exchanged between LECs that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic subject to the compensation mechanism set forth in this Order. This ratio is consistent with those adopted by state commissions to identify ISP or other convergent traffic that is subject to lower intercarrier compensation rates. Carriers that seek to rebut this presumption, by showing that traffic above the ratio is not ISP-bound traffic or, conversely, that traffic below the ratio is ISP-bound traffic, may seek appropriate relief from their state commissions pursuant to section 252 of the Act.

* Finally, the rate caps for ISP-bound traffic (or such lower rates as have been imposed by states commissions for the exchange of ISP-bound traffic) apply only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate. An incumbent LEC that does not offer to exchange section 251(b)(5) traffic at these rates must exchange ISP-bound traffic at the state-approved or state-negotiated reciprocal compensation rates reflected in their contracts. The record fails to demonstrate that there are inherent differences between the costs of delivering a voice call to a local end-user and a data call to an ISP, thus the "mirroring" rule we adopt here requires that incumbent LECs pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.

III. BACKGROUND

9. In the *Declaratory Ruling* released on February 26, 1999, we addressed the regulatory treatment of ISP-bound traffic. In that order, we reached several conclusions regarding the jurisdictional nature of this traffic, and we proposed several approaches to intercarrier compensation for ISP-bound traffic in an accompanying *Intercarrier Compensation NPRM*. The order, however, was vacated and remanded on appeal.[11] This Order, therefore, again focuses on the regulatory treatment of ISP-bound traffic and the appropriate intercarrier compensation regime for carriers that collaborate to deliver traffic to ISPs.

10. As we noted in the *Declaratory Ruling*, an ISP's end-user customers typically access the Internet through an ISP server located in the same local calling area.[12] Customers generally pay their LEC a flat monthly fee for use of the local exchange network, including connections to their local ISP.[13] They also generally pay their ISP a flat monthly fee for access to the Internet.[14] ISPs then combine "computer processing, information storage, protocol

[11] *See Bell Atlantic*, 206 F.3d 1.

[12] *Declaratory Ruling*, 14 FCC Rcd at 3691.

[13] *Declaratory Ruling*, 14 FCC Rcd at 3691.

[14] *Declaratory Ruling*, 14 FCC Rcd at 3691.

conversion, and routing with transmission to enable users to access Internet content and services."[15]

11. ISPs, one class of enhanced service providers (ESPs),[16] also may utilize LEC services to provide their customers with access to the Internet. In the *MTS/WATS Market Structure Order*, the Commission acknowledged that ESPs were among a variety of users of LEC interstate access services.[17] Since 1983, however, the Commission has exempted ESPs from the payment of certain interstate access charges.[18] Consequently ESPs, including ISPs, are treated as end-users for the purpose of applying access charges and are, therefore, entitled to pay local business rates for their connections to LEC central offices and the public switched telephone network (PSTN).[19] Thus, despite the Commission's understanding that ISPs use *interstate* access services, pursuant to the ESP exemption, the Commission has permitted ISPs to take service under *local* tariffs.

12. The 1996 Act set standards for the introduction of competition into the market for local telephone service, including requirements for interconnection of competing telecommunications carriers.[20] As a result of interconnection and growing local competition, more than one LEC may be involved in the delivery of telecommunications within a local service area. Section 251(b)(5) of the Act addresses the need for LECs to agree to terms for the mutual

---

[15] *Declaratory Ruling*, 14 FCC Rcd at 3691 (citing Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11531 (1998) (*Universal Service Report to Congress*)).

[16] The Commission defines "enhanced services" as "services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information." 47 C.F.R. § 64.702(a). The 1996 Act describes these services as "information services." *See* 47 U.S.C. § 153(20) ("information service" refers to the "offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications."). *See also Universal Service Report to Congress*, 13 FCC Rcd at 11516 (the "1996 Act's definitions of telecommunications service and information service essentially correspond to the pre-existing categories of basic and enhanced services").

[17] MTS and WATS Market Structure, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 682, 711 (1983)(*MTS/WATS Market Structure Order)*(ESPs are "[a]mong the variety of users of access service" and "obtain[] local exchange services or facilities which are used, in part or in whole, for the purpose of completing interstate calls which transit [their] location and, commonly, another location.").

[18] This policy is known as the "ESP exemption." *See MTS/WATS Market Structure Order*, 97 FCC 2d at 715 (ESPs have been paying local business service rates for their interstate access and would experience rate shock that could affect their viability if full access charges were instead applied); *see also* Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket 87-215, Order, 3 FCC Rcd 2631, 2633 (1988) (*ESP Exemption Order*) ("the imposition of access charges at this time is not appropriate and could cause such disruption in this industry segment that provision of enhanced services to the public might be impaired"); *Access Charge Reform Order*, 12 FCC Rcd at 16133 ("[m]aintaining the existing pricing structure ... avoids disrupting the still-evolving information services industry").

[19] *ESP Exemption Order*, 3 FCC Rcd at 2635 n.8, 2637 n.53. *See also Access Charge Reform Order*, 12 FCC Rcd at 16133-35.

[20] 47 U.S.C. §§ 251-252.

exchange of traffic over their interconnecting networks. It specifically provides that LECs have the duty to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[21] The Commission determined, in the *Local Competition Order*, that section 251(b)(5) reciprocal compensation obligations "apply only to traffic that originates and terminates within a local area," as defined by state commissions.[22]

13. As a result of this determination, the question arose whether reciprocal compensation obligations apply to the delivery of calls from one LEC's end-user customer to an ISP in the same local calling area that is served by a competing LEC.[23] The Commission determined at that time that resolution of this question turned on whether ISP-bound traffic "originates and terminates within a local area," as set forth in our rule.[24] Many competitive LECs argued that ISP-bound traffic is local traffic that terminates at the ISP's local server, where a second, packet-switched "call" then begins.[25] Thus, they argued, the reciprocal compensation obligations of section 251(b)(5) apply to this traffic. Incumbent LECs, on the other hand, argued that no reciprocal compensation is due because ISP-bound traffic is interstate telecommunications traffic that continues through the ISP server and terminates at the remote Internet sites accessed by ISP customers.[26]

14. The Commission concluded in the *Declaratory Ruling* that the jurisdictional nature of ISP-bound traffic should be determined, consistent with Commission precedent, by the end points of the communication.[27] Applying this "end-to-end" analysis, the Commission

---

[21] 47 U.S.C. § 251(b)(5).

[22] *See Local Competition Order*, 11 FCC Rcd at 16013 ("With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered 'local areas' for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs."); *see also* 47 C.F.R. § 51.701(b)(1-2). For CMRS traffic, the Commission determined that reciprocal compensation applies to traffic that originates and terminates within the same Major Trading Area (MTA). *See* 47 C.F.R. § 51.701(b)(2).

[23] *See, e.g.*, Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, 61 Fed. Reg. 53922 (1996); Petition for Partial Reconsideration and Clarification of MFS Communications Co., Inc. at 28; Letter from Richard J. Metzger, ALTS, to Regina M. Keeney, Chief, Common Carrier Bureau, FCC (June 20, 1997); Pleading Cycle Established for Comments on Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, CCB/CPD 97-30, DA 97-1399 (rel. July 2, 1997); Letter from Edward D. Young and Thomas J. Tauke, Bell Atlantic, to William E. Kennard, Chairman, FCC (July 1, 1998). The Commission later directed parties wishing to make *ex parte* presentations regarding the applicability of reciprocal compensation to ISP-bound traffic to make such filings in CC Docket No. 96-98, the local competition proceeding. *See Ex Parte* Procedures Regarding Requests for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, CC Docket No. 96-98, Public Notice, 13 FCC Rcd. 15568 (1998).

[24] *Declaratory Ruling*, 14 FCC Rcd at 3693-94.

[25] *Declaratory Ruling*, 14 FCC Rcd at 3694.

[26] *Declaratory Ruling*, 14 FCC Rcd at 3695.

[27] *Declaratory Ruling*, 14 FCC Rcd at 3695-3701; *see also* Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation, Memorandum Opinion and Order, 7 FCC Rcd 1619 (1992) (*BellSouth*

(continued....)

determined that Internet communications originate with the ISP's end-user customer and continue beyond the local ISP server to websites or other servers and routers that are often located outside of the state.[28] The Commission found, therefore, that ISP-bound traffic is not local because it does not "originate[] and terminate[] within a local area."[29] Instead, it is jurisdictionally mixed and largely interstate, and, for that reason, the Commission found that the reciprocal compensation obligations of section 251(b)(5) do not apply to this traffic.[30]

15. Despite finding that ISP-bound traffic is largely interstate, the Commission concluded that it had not yet established a federal rule to govern intercarrier compensation for this traffic.[31] The Commission found that, in the absence of conflicting federal law, parties could voluntarily include ISP-bound traffic in their interconnection agreements under sections 251 and 252 of the Act.[32] It also found that, even though section 251(b)(5) does not *require* reciprocal compensation for ISP-bound traffic, nothing in the statute or our rules prohibits state commissions from determining in their arbitrations that reciprocal compensation for this traffic is appropriate, so long as there is no conflict with governing federal law.[33] Pending adoption of a federal rule, therefore, state commissions exercising their authority under section 252 to arbitrate, interpret, and enforce interconnection agreements would determine whether and how interconnecting carriers should be compensated for carrying ISP-bound traffic.[34] In the *Intercarrier Compensation NPRM* accompanying the *Declaratory Ruling*, the Commission requested comment on the most appropriate intercarrier compensation mechanism for ISP-bound traffic.[35]

16. On March 24, 2000, prior to release of a decision addressing these issues, the court of appeals vacated certain provisions of the *Declaratory Ruling* and remanded the matter to the Commission.[36] The court observed that, although "[t]here is no dispute that the Commission has

(Continued from previous page)
MemoryCall), *aff'd, Georgia Pub. Serv. Comm'n v. FCC*, 5 F.3d 1499 (11th Cir. 1993)(table); Teleconnect Co. v. Bell Telephone Co. of Penn., E-88-83, 10 FCC Rcd 1626 (1995) (*Teleconnect*), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 116 F.3d 593 (D.C. Cir. 1997).

[28] *Declaratory Ruling*, 14 FCC Rcd at 3695-97.

[29] *Declaratory Ruling*, 14 FCC Rcd at 3697.

[30] *Declaratory Ruling*, 14 FCC Rcd at 3690, 3695-3703.

[31] *Declaratory Ruling*, 14 FCC Rcd at 3703.

[32] *Declaratory Ruling*, 14 FCC Rcd at 3703.

[33] *Declaratory Ruling*, 14 FCC Rcd at 3706.

[34] *Declaratory Ruling*, 14 FCC Rcd at 3703-06. The Commission did recognize, however, that its conclusion that ISP-bound traffic is largely interstate might cause some state commissions to re-examine their conclusions that reciprocal compensation is due to the extent that those conclusions were based on a finding that this traffic terminates at the ISP's server. *Id.* at 3706.

[35] *Declaratory Ruling*, 14 FCC Rcd at 3707-09.

[36] *See Bell Atlantic*, 206 F.3d 1.

historically been justified in relying on this [end-to-end] method when determining whether a particular communication is jurisdictionally interstate,"[37] the Commission had not adequately explained why the jurisdictional analysis was dispositive of, or indeed relevant to, the question whether a call to an ISP is subject to the reciprocal compensation requirements of section 251(b)(5).[38] The court noted that the Commission had not applied its definition of "termination" to its analysis of the scope of section 251(b)(5),[39] and the court distinguished cases upon which the Commission relied in its end-to-end analysis because they involve continuous communications switched by interexchange carriers (IXCs), as opposed to ISPs, the latter of which are not telecommunications providers.[40] As an "independent reason" to vacate, the court also held that the Commission had failed to address how its conclusions "fit . . . within the governing statute."[41] In particular, the court found that the Commission had failed to explain why ISP-bound traffic was not "telephone exchange service," as defined in the Act.[42]

17. In a public notice released June 23, 2000, the Commission sought comment on the issues raised by the court's remand.[43] The *Public Notice* specifically requested that parties comment on the jurisdictional nature of ISP-bound traffic, the scope of the reciprocal compensation requirement of section 251(b)(5), and the relevance of the concepts of "termination," "telephone exchange service," "exchange access service," and "information access."[44] It invited parties to update the record by responding to any *ex parte* presentations filed after the close of the reply period on April 27, 1999. It also sought comment on any new or innovative intercarrier compensation arrangements for ISP-bound traffic that parties may have considered or entered into during the pendency of the proceeding.

IV. DISCUSSION

A. Background

18. The nature and character of communications change over time. Over the last decade communications services have been radically altered by the advent of the Internet and the nature of Internet communications. Indeed, the Internet has given rise to new forms of communications such as e-mail, instant messaging, and other forms of digital, IP-based services. Many of these new services and formats have been layered over and integrated with the existing

[37] *Bell Atlantic*, 206 F.3d at 5.

[38] *Bell Atlantic*, 206 F.3d at 5; *see also id.* at 8 (the Commission had not "supplied a real explanation for its decision to treat end-to-end analysis as controlling" with respect to the application of section 251(b)(5)).

[39] *See Bell Atlantic*, 206 F.3d at 6-7.

[40] *See Bell Atlantic*, 206 F.3d at 6-7.

[41] *Bell Atlantic*, 206 F.3d at 8.

[42] *Bell Atlantic*, 206 F.3d at 8-9; 47 U.S.C. § 153(47) (defining "telephone exchange service").

[43] *Public Notice*, 15 FCC Rcd 11311.

[44] *Id.; see also* 47 U.S.C. § 251(g); 47 U.S.C. § 153(20).

public telephone systems. Most notably, Internet service providers have come into existence in order to facilitate mass market access to the Internet. A consumer with access to a standard phone line is able to communicate with the Internet, because an ISP converts the analog signal to digital and converts the communication to the IP protocol. This allows the user to access the global Internet infrastructure and communicate with users and websites throughout the world. In a narrowband context, the ISP facilitates access to this global network.

19. The Commission has struggled with how to treat Internet traffic for regulatory purposes, given the bevy of its rules premised on the architecture and characteristics of the mature public switched telephone network. For example, Internet consumers may stay on the network much longer than the design expectations of a network engineered primarily for voice communications. Additionally, the "bursty" nature of packet-switched communications skews the traditional assumptions of per minute pricing to which we are all accustomed. The regulatory challenges have become more acute as Internet usage has exploded.[45]

20. The issue of intercarrier compensation for Internet-bound traffic with which we are presently wrestling is a manifestation of this growing challenge. Traditionally, telephone carriers would interconnect with each other to deliver calls to each other's customers. It was generally assumed that traffic back and forth on these interconnected networks would be relatively balanced. Consequently, to compensate interconnecting carriers, mechanisms like reciprocal compensation were employed, whereby the carrier whose customer initiated the call would pay the other carrier the costs of using its network.

21. Internet usage has distorted the traditional assumptions because traffic to an ISP flows exclusively in one direction, creating an opportunity for regulatory arbitrage and leading to uneconomical results. Because traffic to ISPs flows one way, so does money in a reciprocal compensation regime. It was not long before some LECs saw the opportunity to sign up ISPs as customers and collect, rather than pay, compensation because ISP modems do not generally call anyone in the exchange. In some instances, this led to classic regulatory arbitrage that had two troubling effects: (1) it created incentives for inefficient entry of LECs intent on serving ISPs exclusively and not offering viable local telephone competition, as Congress had intended to facilitate with the 1996 Act; (2) the large one-way flows of cash made it possible for LECs serving ISPs to afford to pay their own customers to use their services, potentially driving ISP rates to consumers to uneconomical levels. These effects prompted the Commission to consider the nature of ISP-bound traffic and to examine whether there was any flexibility under the statute to modify and address the pricing mechanisms for this traffic, given that there is a federal statutory provision authorizing reciprocal compensation.[46] In the *Declaratory Ruling*, the Commission concluded that Internet-bound traffic was jurisdictionally interstate and, thus, not subject to section 251(b)(5).

22. In *Bell Atlantic*, the court of appeals vacated the *Declaratory Ruling* and remanded the case to the Commission to determine whether ISP-bound traffic is subject to

[45] *See* Digital Economy 2000, U.S. Department of Commerce (June 2000) ("Three hundred million people now use the Internet, compared to three million in 1994.")

[46] 47 U.S.C. § 251(b)(5).

statutory reciprocal compensation requirements. The court held that the Commission failed to explain adequately why LECs did not have a duty to pay reciprocal compensation under section 251(b)(5) of the Act and remanded the case to the Commission.

B. Statutory Analysis

23. In this section, we reexamine our findings in the *Declaratory Ruling* and conclude that ISP-bound traffic is not subject to the reciprocal compensation requirement in section 251(b) because of the carve-out provision in section 251(g), which excludes several enumerated categories of traffic from the universe of "telecommunications" referred to in section 251(b)(5). We explain our rationale and the interrelationship between these two statutory provisions in more detail below. We further conclude that section 251(i) affirms the Commission's role in continuing to develop appropriate pricing and compensation mechanisms for traffic -- such as Internet-bound traffic -- that travels over convergent, mixed, and new types of network architectures.

1. Introduction

24. In the *Local Competition Order*, the Commission determined that the reciprocal compensation provisions of section 251(b)(5) applied only to what it termed "local" traffic rather than to the transport and termination of interexchange traffic.[47] In the subsequent *Declaratory Ruling,* the Commission focused its discussion on whether ISP-bound traffic terminated within a local calling area such as to be properly considered "local" traffic. To resolve that issue, the Commission focused predominantly on an end-to-end jurisdictional analysis.

25. On review, the court accepted (without necessarily endorsing) the Commission's view that traffic was either "local" or "long distance" but faulted the Commission for failing to explain adequately why ISP-bound traffic was more properly categorized as long distance, rather than local. The Commission had attempted to do so by employing an end-to-end jurisdictional analysis of ISP traffic, rather than by evaluating the traffic under the statutory definitions of "telephone exchange service" and "exchange access." After acknowledging that the Commission "has historically been justified in relying on" end-to-end analysis for determining whether a communication is jurisdictionally interstate, the court stated: "But [the Commission] has yet to provide an explanation of why this inquiry is relevant to discerning whether a call to an ISP should fit within the local call model of two collaborating LECs or the long-distance model of a long-distance carrier collaborating with two LECs."[48] After reviewing the manner in which the Commission analyzed the parameters of section 251(b)(5) traffic in the *Declaratory Ruling*, the court found that the central issue was "whether a call to an ISP is local or long distance."[49] The court noted further that "[n]either category fits clearly."[50]

---

[47] *Local Competition Order*, 11 FCC Rcd at 16012.

[48] *Bell Atlantic*, 206 F.3d at 5.

[49] *Id.*

[50] *Id.*

26. Upon further review, we find that the Commission erred in focusing on the nature of the service (*i.e.*, local or long distance) and in stating that there were only two forms of telecommunications services -- telephone exchange service and exchange access -- for purposes of interpreting the relevant scope of section 251(b)(5).[51] Those services are the only two expressly defined by the statute. The court found fault in the Commission's failure to analyze communications delivered by a LEC to an ISP in terms of these definitions.[52] Moreover, it cited the Commission's own confusing treatment of ISP-bound traffic as local under the ESP exemption and interstate for jurisdictional purposes.[53]

27. Part of the ambiguity identified by the court appears to arise from the ESP exemption, a long-standing Commission policy that affords one class of entities using interstate access -- information service providers -- *the option* of purchasing interstate access services on a flat-rated basis from intrastate local business tariffs, rather than from interstate access tariffs used by IXCs. Typically, information service providers have used this exemption to their advantage by choosing to pay local business rates, rather than the tariffed interstate access charges that other users of interstate access are required to pay.[54] In fending off challenges from those who argued that information service providers must be subject to access charges because they provide interexchange service, the Commission has often tried to walk the subtle line of arguing that the service provided by the LEC to the information service provider is an access service, but can justifiably be treated as akin to local telephone exchange service for purposes of the rates the LEC may charge. This balancing act reflected the historical view that there were only two kinds of intercarrier compensation: one for local telephone exchange service, and a second (access charges) for long distance services. Attempting to describe a hybrid service (the nature being an access service, but subject to a compensation mechanism historically limited to local service) was always a bit of mental gymnastics.

28. The court opinion underscores a tension between the jurisdictional nature of ISP-bound traffic, which the Commission has long held to be interstate, and the alternative compensation mechanism that the ESP exemption has permitted for this traffic. The court seems to recognize that, if an end-to-end analysis were properly applied to this traffic, this traffic would be predominantly interstate, and consequently "long distance." Yet it also questions whether this traffic should be considered "local" for purposes of section 251(b)(5) in light of the ESP exemption, by which the Commission has allowed information service providers at their option to be treated for compensation purposes (but *not* for jurisdictional purposes) as end-users.

29. The court also expresses consternation over what it perceives as an inconsistency in the Commission's reasoning. On the one hand, the court observes, the Commission has

---

[51] *Id.* at 8.

[52] *Id.* at 8-9.

[53] *Id.*

[54] Significantly, however, the compensation mechanism effected for this predominantly interstate access traffic is the result of a federal mandate, which requires states to treat ISP-bound traffic for compensation purposes in a manner similar to local traffic if ISPs so request. *See infra* note 105.

argued that calls to ISPs are predominantly interstate for jurisdictional purposes because they terminate at the ultimate destination of the traffic in a distant website or e-mail server (*i.e.*, the "one call theory"). On the other hand, the court notes, the Commission has defended the ESP exemption by analogizing an ISP to a high-volume business user, such as a pizza parlor or travel agent, that has different usage patterns and longer call holding times than the average customer.[55] The court questioned whether any such differences should not, as some commenters argued, lend support to treating this traffic as "local" for purposes of section 251(b)(5). As discussed in further detail below, while we continue to believe that retaining the ESP exemption is important in order to facilitate growth of Internet services, we conclude in section IV.C.1, *infra*, that reciprocal compensation for ISP-bound traffic distorts the development of competitive markets.

30. We respond to the court's concerns, and seek to resolve these tensions, by reexamining the grounds for our conclusion that ISP-bound traffic falls outside the scope of section 251(b)(5). A more comprehensive review of the statute reveals that Congress intended to exempt certain enumerated categories of service from section 251(b)(5) when the service was provided to interexchange carriers or information service providers. The exemption focuses not only on the nature of the service, but on to whom the service is provided. For services that qualify, compensation is based on rules, regulations, and policies that preceded the 1996 Act and not on section 251(b)(5), which was minted by the Act. As we explain more fully below, the service provided by LECs to deliver traffic to an ISP constitutes, at a minimum, "information access" under section 251(g) and, thus, compensation for this service is not governed by section 251(b)(5), but instead by the Commission's policies for this traffic and the rules adopted under its section 201 authority.[56]

2. Section 251(g) Excludes Certain Categories of Traffic from the Scope of "Telecommunications" Subject to Section 251(b)(5)

a. Background

31. Section 251(b)(5) imposes a duty on all local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[57] On its face, local exchange carriers are required to establish reciprocal

[55] *Access Charge Reform Order*, 12 FCC Rcd at 16134 ("Internet access does generate different usage patterns and longer call holding times than average voice usage.").

[56] Some critics of the Commission's order may contend that we rely here on the same reasoning that the court rejected in *Bell Atlantic*. We acknowledge that there is a superficial resemblance between the Commission's previous order and this one: Here, as before, the Commission finds that ISP-bound traffic falls outside the scope of section 251(b)(5)'s reciprocal compensation requirement and within the Commission's access charge jurisdiction under section 201(b). The rationale underlying the two orders, however, differs substantially. Here the Commission bases its conclusion that ISP-bound traffic falls outside section 251(b)(5) on its construction of sections 251(g) and (i) -- not, as in the previous order, on the theory that section 251(b)(5) applies only to "local" telecommunications traffic and that ISP-bound traffic is interstate. Furthermore, to the extent the Commission continues to characterize ISP-bound traffic as interstate for purposes of its section 201 authority, it has sought in this Order to address in detail the *Bell Atlantic* court's concerns.

[57] 47 U.S.C. § 251(b)(5).

compensation arrangements for the transport and termination of *all* "telecommunications" they exchange with another telecommunications carrier, without exception. The Act separately defines "telecommunications" as the "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[58]

32. Unless subject to further limitation, section 251(b)(5) would require reciprocal compensation for transport and termination of *all* telecommunications traffic, -- *i.e.*, whenever a local exchange carrier exchanges telecommunications traffic with another carrier. Farther down in section 251, however, Congress explicitly exempts certain telecommunications services from the reciprocal compensation obligations. Section 251(g) provides:

> On or after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier . . . shall provide exchange access, *information access*, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the [Federal Communications] Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment.[59]

33. The meaning of section 251(g) is admittedly not transparent. Indeed, section 251(g) clouds any plain reading of section 251(b)(5). Nevertheless, the Commission believes the two provisions can be read together consistently and in a manner faithful to Congress's intent.[60]

b. Discussion

34. We conclude that a reasonable reading of the statute is that Congress intended to exclude the traffic listed in subsection (g) from the reciprocal compensation requirements of subsection (b)(5).[61] Thus, the statute does not mandate reciprocal compensation for "exchange

---

[58] 47 U.S.C. § 153(43).

[59] 47 U.S.C. § 251(g) (emphasis added).

[60] *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 397 (1999)("It would be a gross understatement to say that the Telecommunications Act of 1996 is not a model of clarity. It is in many important respects a model of ambiguity or indeed even self-contradiction. . . . But Congress is well aware that the ambiguities it chooses to produce in a statute will be resolved by the implementing agency. . . . We can only enforce the clear limits that the 1996 Act contains.").

[61] In the *Declaratory Ruling*, the Commission did not explain the relevance of section 251(g) nor discuss the categories of traffic exempted from reciprocal compensation by that provision, at least until the Commission should act otherwise. Reflecting this omission in the underlying order, the *Bell Atlantic* court does not mention the relationship of sections 251(g) and 251(b)(5), nor the enumerated categories of services referenced by subsection (g). Rather, the court focuses its review on the possible categorization of ISP-bound traffic as "local," terminology we now find inappropriate in light of the more express statutory language set forth in section 251(g).

access, information access, and exchange services for such access" provided to IXCs and information service providers. Because we interpret subsection (g) as a carve-out provision, the focus of our inquiry is on the universe of traffic that falls within subsection (g) and *not* the universe of traffic that falls within subsection (b)(5). This analysis differs from our analysis in the *Local Competition Order*, in which we attempted to describe the universe of traffic that falls within subsection (b)(5) as all "local" traffic. We also refrain from generically describing traffic as "local" traffic because the term "local," not being a statutorily defined category, is particularly susceptible to varying meanings and, significantly, is not a term used in section 251(b)(5) or section 251(g).

35. We agree with the court that the issue before us requires more than just a jurisdictional analysis. Indeed, as the court recognized, the 1996 Act changed the historic relationship between the states and the federal government with respect to pricing matters.[62] Instead, we focus upon the statutory language of section 251(b) as limited by 251(g). We believe this approach is not only consistent with the statute, but that it resolves the concerns expressed by the court in reviewing our previous analysis. Central to our modified analysis is the recognition that 251(g) is properly viewed as a limitation on the scope of section 251(b)(5) and that ISP-bound traffic falls under one or more of the categories set forth in section 251(g). For that reason, we conclude that ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5). We reach that conclusion regardless of the compensation mechanism that may be in place for such traffic under the ESP exemption.

36. We believe that the specific provisions of section 251(g) demonstrate that Congress did not intend to interfere with the Commission's pre-Act authority over "nondiscriminatory interconnection . . . obligations (including receipt of compensation)"[63] with respect to "exchange access, information access, and exchange services for such access" provided to IXCs or information service providers. We conclude that Congress specifically exempted the services enumerated under section 251(g) from the newly imposed reciprocal compensation requirement in order to ensure that section 251(b)(5) is not interpreted to override either existing or future regulations prescribed by the Commission.[64] We also find that ISP-bound traffic falls within at least one of the three enumerated categories in subsection (g).

---

[62] *Bell Atlantic*, 206 F.3d at 6; *see also AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. at 377-87.

[63] Authority over rates (or "receipt of compensation") is a core feature of "equal access and nondiscriminatory interconnection" obligations. Indeed, one of the Commission's primary goals when designing an access charge regime was to ensure that access users were treated in a nondiscriminatory manner when interconnecting with LEC networks in order to transport interstate communications. *See National Ass'n of Regulatory Util. Comm'nrs v. FCC*, 737 F.2d 1095, 1101-1108, 1130-34 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985)(*NARUC v. FCC*).

[64] This view is consistent with previous Commission orders construing section 251(g). The Commission recognized in the *Advanced Services Remand Order*, for example, that section 251(g) preserves the requirements of the AT&T Consent Decree (*see United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982)(hereinafter AT&T Consent Decree or Modification of Final Judgment ("MFJ"), but that order does not conclude that section 251(g) preserves *only* MFJ requirements. Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 et al., Order on Remand, 15 FCC Rcd 385, 407 (1999)(*Advanced Services Remand Order*). Indeed, the ultimate issue addressed in that part of the order was *not* the status or scope of section 251(g) as a carve-out provision at all, but rather the question -- irrelevant for our purposes here -- whether "information access" is a (continued....)

37. This limitation in section 251(g) makes sense when viewed in the overall context of the statute. All of the services specified in section 251(g) have one thing in common: they are all access services or services associated with access.[65] Before Congress enacted the 1996 Act, LECs provided access services to IXCs and to information service providers in order to connect calls that travel to points – both interstate and intrastate – beyond the local exchange. In turn, both the Commission and the states had in place access regimes applicable to this traffic, which they have continued to modify over time. It makes sense that Congress did not intend to disrupt these pre-existing relationships.[66] Accordingly, Congress excluded all such access traffic from the purview of section 251(b)(5).

38. At least one court has already affirmed the principle that the standards and obligations set forth in section 251 are not intended automatically to supersede the Commission's authority over the services enumerated under section 251(g). This question arose in the Eighth Circuit Court of Appeals with respect to the access that LECs provide to IXCs to originate and terminate interstate long-distance calls. Citing section 251(g), the court concluded that the Act contemplates that "LECs will continue to provide exchange access to IXCs for long-distance service, and continue to receive payment, under the *pre-Act* regulations and rates."[67] In

(Continued from previous page)
category of service that is mutually exclusive of "exchange access," as the latter term is defined in section 3(16) of the Act. *See id.* at 407-08; *see also infra* para. 42 & note 76. By contrast, when the Commission first addressed the scope of the reciprocal compensation obligations of section 251(b)(5) in the *Local Competition Order*, it expressly cited section 251(g) in support of the decision to exempt from those obligations the tariffed interstate access services provided by all LECs (not just Bell companies subject to the MFJ) to interexchange carriers. 11 FCC Rcd at 16013. The *Bell Atlantic* court did not take issue with the Commission's earlier conclusion that section 251(b)(5) is so limited. 206 F.3d at 4. The interpretation we adopt here – that section 251(g) exempts from section 251(b)(5) information access services provided to information service providers, as well as access provided to IXCs – thus is fully consistent with the Commission's initial construction of section 251(g), in the *Local Competition Order*, as extending beyond the MFJ to *our own* access rules and policies.

[65] The term "exchange service" as used in section 251(g) is not defined in the Act or in the MFJ. Rather, the term "exchange service" is used in the MFJ as part of the definition of the term "exchange access," which the MFJ defines as "the provision of exchange services for the purpose of originating or terminating interexchange telecommunications." *United States v. AT&T*, 552 F. Supp. at 228. Thus, the term "exchange service" appears to mean, in context, the provision of services in connection with *interexchange* communications. Consistent with that, in section 251(g), the term is used as part of the longer phrase "exchange services for such [exchange] access to interexchange carriers and information service providers." The phrasing in section 251(g) thus parallels the MFJ. All of this indicates that the term "exchange service" is closely related to the provision of exchange access and information access.

[66] Although section 251(g) does not itself compel this outcome with respect to *intrastate* access regimes (because it expressly preserves only *the Commission's* traditional policies and authority over *interstate* access services), it nevertheless highlights an ambiguity in the scope of "telecommunications" subject to section 251(b)(5) -- demonstrating that the term must be construed in light of other provisions in the statute. In this regard, we again conclude that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access regulations, because "it would be incongruous to conclude that Congress was concerned about the effects of potential disruption to the interstate access charge system, but had no such concerns about the effects on analogous intrastate mechanisms." *Local Competition Order*, 11 FCC Rcd at 15869.

[67] *CompTel*, 117 F.3d at 1073 (emphasis added). The court continued that the Commission would be free under section 201 to alter its traditional regulatory treatment of interstate access service in the future, but that the standards set out in sections 251 and 252 would *not* be controlling. *Id.*

CompTel, the IXCs had argued that the interstate access services that LECs provide properly fell within the scope of "interconnection" under section 251(c)(2), and that, notwithstanding the carve-out of section 251(g), access charges therefore should be governed by the cost-based standard of section 252(d)(1), rather than determined under the Commission's section 201 authority. The Eighth Circuit rejected that argument, holding that access service does not fall within the scope of section 251(c)(2), and observing that "it is clear from the Act that Congress did *not* intend all access charges to move to cost-based pricing, at least not immediately."[68] Neither the court nor the parties in *CompTel* distinguished between the situation in which *one LEC* provides access service (directly linking the end-user to the IXC) and the situation here in which *two LECs* collaborate to provide access to either an information service provider or IXC. In both circumstances, by its underlying rationale, *CompTel* serves as precedent for establishing that pre-existing regulatory treatment of the services enumerated under section 251(g) are carved out from the purview of section 251(b).

39. Accordingly, unless and until the Commission by regulation should determine otherwise, Congress preserved the pre-Act regulatory treatment of all the access services enumerated under section 251(g). These services thus remain subject to Commission jurisdiction under section 201 (or, to the extent they are *intra*state services, they remain subject to the jurisdiction of state commissions), whether those obligations implicate pricing policies as in *CompTel* or reciprocal compensation.[69] This analysis properly applies to the access services that incumbent LECs provide (either individually or jointly with other local carriers) to connect subscribers with ISPs for Internet-bound traffic. Section 251(g) expressly preserves the Commission's rules and policies governing "access . . . to information service providers" in the same manner as rules and policies governing access to IXCs.[70] As we discuss in more detail

[68] *CompTel*, 117 F.3d at 1072 (emphasis added).

[69] For further discussion of the jurisdictionally interstate nature of ISP-bound traffic, *see infra* paras. 55-64. *See also NARUC v. FCC*, 737 F.2d at 1136 (determining that traffic to ESPs may properly constitute interstate access traffic); Access Billing Requirements for Joint Service Provision, CC Docket 87-579, Memorandum Opinion and Order, 4 FCC Rcd 7183 (1989).

[70] The Commission has historically dictated the pricing policies applicable to services provided by LECs to information service providers, although those policies differ from those applicable to LEC provision of access services to IXCs. Prior to the 1996 Act, it was the Commission that determined that ESPs either may purchase their interstate access services from interstate tariffs or (at their discretion) pay a combination of local business line rates, the *federal* subscriber line charges associated with those business lines, and, where appropriate, the *federal* special access surcharge. *See* note 105, *infra*. We conclude that section 251(g) preserves our ability to continue to dictate the pricing policies applicable to this category of traffic. We do not believe, moreover, that section 251(g) extends only to those specific carriers providing service on February 7, 1996. At the very least, subsection (g) is ambiguous on this point. On the one hand, the first sentence of this provision states that its terms apply to "each local exchange carrier, to the extent that it provides wireline services," without regard to whether it may be a BOC or a competitive LEC. 47 U.S.C. § 251(g). On the other hand, that same sentence refers to restrictions and obligations applicable to "such carrier" prior to February 8, 1996. *Id.* We believe that the most reasonable interpretation of that sentence, in this context, is that subsection (g) was intended to preserve pre-existing regulatory treatment for the enumerated *categories* of carriers, rather than requiring disparate treatment depending upon whether the LEC involved came into existence before or after February 1996.

below, ISP-bound traffic falls under the rubric of "information access," a legacy term carried over from the MFJ.[71]

40. By its express terms, of course, section 251(g) permits the Commission to supersede pre-Act requirements for interstate access services. Therefore the Commission may make an affirmative determination to adopt rules that subject such traffic to obligations different than those that existed pre-Act. For example, consistent with that authority, the Commission has previously made the affirmative determination that certain categories of interstate access traffic should be subject to section 251(c)(4).[72] Similarly, in implementing section 251(c)(3), the Commission has required incumbent LECs to unbundle certain network elements used in the provision of xDSL-based services.[73] In this instance, however, for the reasons set forth below,[74] we decline to modify the restraints imposed by section 251(g) and instead continue to regulate ISP-bound traffic under section 201.

41. Some may argue that, although the Commission did not analyze subsection (g) in the *Declaratory Ruling*, a passing reference to section 251(g) in one paragraph of the Commission's brief filed with the court in that proceeding suggests that the argument we make here has been specifically rejected by the court. We disagree. Because our analysis of subsection (g) was not raised in the order, the court, under established precedent, probably did not consider the argument when rendering its decision.[75] Indeed, subsection (g) is not mentioned in the court's opinion.

3. ISP-Bound Traffic Falls within the Categories Enumerated in Section 251(g)

42. Having determined that section 251(g) serves as a limitation on the scope of "telecommunications" embraced by section 251(b)(5), the next step in our inquiry is to determine whether ISP-bound traffic falls within one or more of the categories specified in section 251(g): exchange access, information access, and exchange services for such access provided to IXCs and information service providers. Regardless of whether this traffic falls under the category of

---

[71] *See United States v. AT&T*, 552 F. Supp. at 229; *Advanced Services Remand Order*, 15 FCC Rcd at 406-08.

[72] *See* Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Second Report and Order, 14 FCC Rcd 19237 (1997), *petition for review pending, Ass'n of Communications Enterprises v. FCC*, D.C. Circuit No. 00-1144. In effect, we have provided for concurrent authority under that provision and section 201 by permitting a party to purchase the same service under filed tariffs or to proceed under interconnection arrangements to secure resale services.

[73] *See* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3775 (1999). *See also Advanced Services Remand Order*, 15 FCC Rcd at 385, 386. We emphasize that these two examples are illustrative and may not be the only instances where the Commission chooses to supersede pre-Act requirements for interstate access services.

[74] *See infra* paras. 67-71.

[75] *See, e.g., SEC v. Chenery Corp.*, 318 U.S. 80, 88 (1943).

"exchange access" -- an issue pending before the D.C. Circuit in a separate proceeding[76] - - we conclude that this traffic, at a minimum, falls under the rubric of "information access," a legacy term imported into the 1996 Act from the MFJ, but not expressly defined in the Communications Act.

a. Background

43. Section 251(g) by its terms indicates that, in the provision of exchange access, information access, and exchange services for such access to IXCs and information service providers, various pre-existing requirements and obligations "including receipt of compensation" are preserved, whether these obligations stem from "any court order, *consent decree*, or regulation, order or policy of the Commission." (Emphasis added.) Similarly, in discussing this provision, the Joint Explanatory Statement of the Committee of Conference explicitly refers to preserving the obligations under the "AT&T Consent Decree."[77]

b. Discussion

44. We conclude that Congress's reference to "information access" in section 251(g) was intended to incorporate the meaning of the phrase "information access" as used in the AT&T Consent Decree.[78] The ISP-bound traffic at issue here falls within that category because it is traffic destined for an information service provider.[79] Under the consent decree, "information access" was purchased by "information service providers" and was defined as "the provision of specialized exchange telecommunications services . . . in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services."[80] We conclude that this definition of "information access" was meant to include all access traffic that was routed by a LEC "to or from" providers of information services, of which ISPs are a subset.[81] The record in this

---

[76] *See Worldcom, Inc. v. FCC*, No. 00-1022 et al. (D.C. Cir.). In that proceeding, the Commission has argued that the category previously labeled "information access" under the MFJ is a subset of those services now falling under the category "exchange access" as set forth in section 3(16) of the Act, 47 U.S.C. 153(16), while incumbent LECs and others have argued that the two categories are mutually exclusive. We need not reargue here whether "information access" is a subset of "exchange access" or whether instead they are mutually exclusive categories. The only issue relevant to our section 251(g) inquiry in this case is whether ISP-bound traffic falls, at a minimum, within the legacy category of "information access." Both the Commission and incumbent LECs have agreed that the access provided to ISPs satisfies the definition of information access.

[77] *Joint Explanatory Statement of the Committee of Conference*, S. Conf. Rep. No. 230, 104th Cong., 2d Session at 123 (February 1, 1996).

[78] *United States v. AT&T*, 552 F. Supp. at 196, 229.

[79] *See* Letter from Gary L. Phillips, SBC, to Jon Nuechterlein, Deputy General Counsel, FCC, at 9 (Dec. 14, 2000)(stating that section 251(g) applies by its very terms to "information access").

[80] *United States v. AT&T*, 552 F. Supp. at 196, 229.

[81] This finding is consistent with our past statements on the issue. In the *Non-Accounting Safeguards Order*, we found that the access that LECs provide to enhanced service providers, including ISPs, constitutes "information access" as the MFJ defines that term. Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed (continued....)

proceeding also supports our interpretation.[82] When Congress passed the 1996 Act, it adopted new terminology. The term "information access" is not, therefore, part of the new statutory framework. Because the legacy term "information access" in section 251(g) encompasses ISP-bound traffic, however, this traffic is excepted from the scope of the "telecommunications" subject to reciprocal compensation under section 251(b)(5).

45. We recognize, as noted earlier, that based on the rationale of the *Declaratory Ruling*, the court indicated that the question whether this traffic was "local or interstate" was critical to a determination of whether ISP-bound traffic should be subject to reciprocal compensation.[83] We believe that the court's assessment was a result of our statement in paragraph nine of the *Declaratory Ruling* that "when two carriers collaborate to complete a *local call*, the originating carrier is compensated by its end user and the terminating carrier is entitled to reciprocal compensation pursuant to section 251(b)(5) of the Act."[84] We were mistaken to have characterized the issue in that manner, rather than properly (and more naturally) interpreting the scope of "telecommunications" within section 251(b)(5) as being limited by section 251(g). By indicating that all "local calls," however defined, would be subject to reciprocal compensation obligations under the Act, we overlooked the interplay between these two inter-related provisions of section 251 -- subsections (b) and (g). Further, we created unnecessary ambiguity for ourselves, and the court, because the statute does not define the term "local call," and thus that term could be interpreted as meaning either traffic subject to local *rates* or traffic that is *jurisdictionally* intrastate. In the context of ISP-bound traffic, as the court observed, our use of the term "local" created a tension that undermined the prior order because the ESP

(Continued from previous page)
Rulemaking, 11 FCC Rcd 21905, 22024 & n.621 (1996). Although we subsequently overruled our statement in that order that ISPs do not also purchase "exchange access" under section 3(16), we have not altered our finding that the access provided to enhanced service providers (including ISPs) is "information access." *Advanced Services Remand Order*, 15 FCC Rcd at 404-05.

[82] *See, e.g.*, Letter from Gary L. Phillips, SBC, to Jon Nuechterlein, Deputy General Counsel, FCC, at 9 (Dec. 14, 2000). Some have argued that "information access" includes only certain specialized functions unique to the needs of enhanced service providers and does not include basic telecommunications links used to provide enhanced service providers with access to the LEC network. *See, e.g.*, Brief of WorldCom, Inc., D.C. Circuit No. 00-1002, *et al.*, filed Oct. 3, 2000, at 16 n.12. The MFJ definition of information access, however, includes the telecommunications links used for the "origination, termination, [and] transmission" of information services, *and* "*where necessary*, the provision of network signalling" and other functions. *United States v. AT&T*, 552 F. Supp. at 229 (emphasis added). Others have argued that the "information access" definition engrafts a geographic limitation that renders this service category a subset of telephone exchange service. *See* Letter from Richard Rindler, Swindler, Berlin, to Magalie Roman Salas, Secretary, FCC, at 3 (Apr. 12, 2001). We reject that strained interpretation. Although it is true that "information access" is necessarily initiated "in an exchange area," the MFJ definition states that the service is provided "*in connection with* the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services" *United States v. AT&T*, 552 F. Supp. at 229 (emphasis added). Significantly, the definition does not further require that the transmission, once handed over to the information service provider, terminate within the same exchange area in which the information service provider first received the access traffic.

[83] *Bell Atlantic*, 206 F.3d at 5.

[84] *Declaratory Ruling*, 14 FCC Rcd at 3695 (emphasis added).

exemption permitted ISPs to purchase access through local business tariffs,[85] yet the jurisdictional nature of this traffic has long been recognized as interstate.

46. For similar reasons, we modify our analysis and conclusion in the *Local Competition Order*.[86] There we held that "[t]ransport and termination of *local* traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 251(d)(2)." We now hold that the telecommunications subject to those provisions are all such telecommunications not excluded by section 251(g). In the *Local Competition Order*, as in the subsequent *Declaratory Ruling*, use of the phrase "local traffic" created unnecessary ambiguities, and we correct that mistake here.

47. We note that the exchange of traffic between LECs and commercial mobile radio service (CMRS) providers is subject to a slightly different analysis. In the *Local Competition Order*, the Commission noted its jurisdiction to regulate LEC-CMRS interconnection under section 332 of the Act[87] but decided, at its option, to apply sections 251 and 252 to LEC-CMRS interconnection.[88] At that time, the Commission declined to delineate the precise contours of or the relationship between its jurisdiction over LEC-CMRS interconnection under sections 251 and 332,[89] but it made clear that it was not rejecting section 332 as an independent basis for jurisdiction.[90] The Commission went on to conclude that section 251(b)(5) obligations extend to traffic transmitted between LECs and CMRS providers, because the latter are telecommunications carriers.[91] The Commission also held that reciprocal compensation, rather than interstate or intrastate access charges, applies to LEC-CMRS traffic that originates and terminates within the same Major Trading Area (MTA).[92] In so holding, the Commission expressly relied on its "authority under section 251(g) to preserve the current interstate access charge regime" to ensure that interstate access charges would be assessed only for traffic "currently subject to interstate access charges,"[93] although the Commission's section 332 jurisdiction could serve as an alternative basis to reach this result. Thus the analysis we adopt in this Order, that section 251(g) limits the scope of section 251(b)(5), does not affect either the

[85] This is the compensation mechanism chosen by the ISPs. *See* note 105, *infra*.

[86] *Local Competition Order*, 11 FCC Rcd at 1033-34.

[87] 47 U.S.C. § 332; *Local Competition Order*, 11 FCC Rcd at 16005-06.

[88] *Local Competition Order*, 11 FCC Rcd at 16005-06; *see also Iowa Utils. Bd. v. FCC*, 120 F.3d at 800 n. 21 (finding that the Commission had jurisdiction under section 332 to issue rules regarding LEC-CMRS interconnection, including reciprocal compensation rules).

[89] We seek comment on these issues in the *NPRM*.

[90] *Local Competition Order*, 11 FCC Rcd at 16005.

[91] *Id.* at 16016.

[92] *Id.* at 16016-17.

[93] *Id.* at 16017.

application of the latter section to LEC-CMRS interconnection or our jurisdiction over LEC-CMRS interconnection under section 332.

4. Section 251(i) Preserves the Commission's Authority to Regulate Interstate Access Services

48. Congress also included a "savings provision" – subpart (i) – in section 251, which provides that "[n]othing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201."[94] Under section 201, the Commission has the authority to regulate the *interstate* access services that LECs provide to connect end-users with IXCs or information service providers to originate and terminate calls that travel across state lines.

49. We conclude that subpart (i) provides additional support for our finding that Congress has granted us the authority on a going-forward basis to establish a compensation regime for ISP-bound traffic.[95] When read as a whole, the most natural reading of section 251 is as follows: subsection (b) sets forth reciprocal compensation requirements for the transport and termination of "telecommunications"; subsection (g) excludes certain access services (including ISP-bound traffic) from that requirement; and subsection (i) ensures that, on a going-forward basis, the Commission has the authority to establish pricing for, and otherwise to regulate, interstate access services.

50. When viewed in the overall context of section 251, subsections (g) and (i) serve compatible, but different, purposes. Subsection (g) preserves rules and regulations that existed at the time Congress passed the 1996 Act, and thus functions primarily as a "backward-looking" provision (although it does grant the Commission the authority to supersede existing regulations). In contrast, we interpret section 251(i) to be a "forward-looking" provision. Thus, subsection (i) expressly affirms the Commission's role in an evolving telecommunications marketplace, in which Congress anticipates that the Commission will continue to develop appropriate pricing and compensation mechanisms for traffic that falls within the purview of section 201. This reading of section 251 is consistent with the notion that section 251 generally broadens the Commission's duties, particularly in the pricing context.[96]

51. We expect that, as new network architectures emerge, the nature of telecommunications traffic will continue to evolve. As we have already observed, since Congress passed the 1996 Act, customer usage patterns have changed dramatically; carriers are sending traffic over networks in new and different formats; and manufacturers are adding creative features and developing innovative network architectures. Although we cannot

---

[94] 47 U.S.C. § 251(i).

[95] *See also* Letter from Gary L. Phillips, SBC, to Jon Nuechterlein, Deputy General Counsel, FCC, at 8 (Dec. 14, 2000).

[96] For example, section 251 has expanded upon our historic functions by providing us with the authority to set the framework for pricing rules applicable to unbundled network elements, purchased under interconnection agreements.

anticipate the direction that new technology will take us, we do expect the dramatic pace of change to continue. Congress clearly did not expect the dynamic, digital broadband driven telecommunications marketplace to be hindered by rules premised on legacy networks and technological assumptions that are no longer valid. Section 251(i), together with section 201, equips the Commission with the tools to ensure that the regulatory environment keeps pace with innovation.

5. ISP-Bound Traffic Falls Within the Purview of the Commission's Section 201 Authority

52. Having found that ISP-bound traffic is excluded from section 251(b)(5) by section 251(g), we find that the Commission has the authority pursuant to section 201 to establish rules governing intercarrier compensation for such traffic. Under section 201, the Commission has long exercised its *jurisdictional* authority to regulate the interstate access services that LECs provide to connect callers with IXCs or ISPs to originate or terminate calls that travel across state lines. Access services to ISPs for Internet-bound traffic are no exception. The Commission has held, and the Eighth Circuit has recently concurred, that traffic bound for information service providers (including Internet access traffic) often has an interstate component.[97] Indeed, that court observed that, although some traffic destined for information service providers (including ISPs) may be intrastate, the interstate and intrastate components cannot be reliably separated.[98] Thus, ISP traffic is properly classified as interstate,[99] and it falls under the Commission's section 201 jurisdiction.[100]

53. In its opinion remanding this proceeding, the court appeared to acknowledge that the end-to-end analysis was appropriate for determining the scope of the Commission's jurisdiction under section 201, stating that "[t]here is no dispute that the Commission has historically been justified in relying on this method when determining whether a particular communication is jurisdictionally interstate."[101] The court nevertheless found that we had not supplied a logical nexus between the jurisdictional end-to-end analysis (which delineates the contours of our section 201 authority) and our interpretation of the scope of section 251(b)(5). In that regard, the court appeared not to question the Commission's longstanding assertion of jurisdiction over ESP traffic, of which Internet-bound traffic is a subset.[102] It did, however, unambiguously question whether, for purposes of interpreting section 251(b)(5), the

---

[97] *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523, 543 (8th Cir. 1998) (affirming the jurisdictionally mixed nature of ISP-bound traffic).

[98] *Id.*

[99] *See, e.g., Louisiana PSC v. FCC*, 476 U.S. 355, 375 n.4.

[100] *See* Letter from John W. Kure, Qwest, to Magalie Roman Salas, Secretary, FCC (Dec. 8, 2000)(attaching *A Legal Roadmap for Implementing a Bill and Keep Rule for All Wireline Traffic*, at 10-11)(*Qwest Roadmap*).

[101] *Bell Atlantic*, 206 F.3d at 5; *see Qwest Roadmap* at 4.

[102] The D.C. Circuit itself has long recognized that ESPs use interstate access. *See, e.g., NARUC v. FCC*, 737 F.2d at 1136.

jurisdictional end-to-end analysis was dispositive. Accordingly, the court explained its basis for remand as follows: "Because the Commission has not supplied a real explanation for its decision to treat end-to-end analysis as controlling [in interpreting the scope of section 251(b)(5)] . . . we must vacate the ruling and remand the case."[103]

54. As explained above, we no longer construe section 251(b)(5) using the dichotomy set forth in the *Declaratory Ruling* between "local" traffic and interstate traffic. Rather, we have clarified that the proper analysis hinges on section 251(g), which limits the reach of the reciprocal compensation regime mandated in section 251(b). Thus our discussion no longer centers on the jurisdictional inquiry set forth in the underlying order. Nonetheless, we take this opportunity to respond to questions raised by the court regarding the differences between ISP-bound traffic (which we have always held to be predominantly interstate for jurisdictional purposes) and intrastate calls to "communications-intensive business end user[s],"[104] such as travel agencies and pizza parlors.

55. Contrary to the arguments made by some IXCs, the Commission has been consistent in its jurisdictional treatment of ISP-bound traffic. For compensation purposes, in order to create a regulatory environment that will allow new and innovative services to flourish, the Commission has exempted enhanced service providers (including ISPs) from paying for interstate access service at the usage-based rates charged to IXCs.[105] The ESP exemption was and remains an affirmative *exercise* of federal regulatory authority over interstate access service under section 201, and, in affirming pricing under that exemption, the D.C. Circuit expressly recognized that ESPs use *interstate* access service.[106] Moreover, notwithstanding the ESP exemption, the Commission has always *permitted* enhanced service providers, including ISPs, to purchase their interstate access out of interstate tariffs -- thus underscoring the Commission's

[103] *Bell Atlantic*, 206 F.3d. at 8.

[104] *Bell Atlantic*, 206 F.3d at 7.

[105] As noted, the Commission has permitted ESPs to pay local business line rates from intrastate tariffs for ILEC-provided access service, in lieu of interstate carrier access charges. *See, e.g., MTS/WATS Market Structure Order*, 97 FCC 2d at 715; *ESP Exemption Order*, 3 FCC Rcd at 2635 n.8, 2637 n.53. ESPs also pay the *federal* subscriber lines charges associated with those business lines and, where appropriate, the *federal* special access surcharge. The subscriber line charge (SLC) recovers a portion of the cost of a subscriber's line that is allocated, pursuant to jurisdictional separations, to the interstate jurisdiction. *See* 47 C.F.R. § 69.152 (defining SLC); 47 C.F.R. Part 36 (jurisdictional separations). The special access surcharge recovers for use of the local exchange when private line/PBX owners "circumvent the conventional long-distance network and yet achieve interstate connections beyond those envisioned by the private line service." *NARUC v. FCC*, 737 F.2d at 1138. *See* 47 C.F.R. § 69.115.

[106] With judicial approval, the Commission initially adopted this access service pricing policy in order to avoid rate shock to a fledgling enhanced services industry. *NARUC v. FCC*, 737 F.2d at 1136-37. In the decision affirming this pricing policy, the court expressly recognized that ESPs use interstate access service. *Id.* at 1136 (enhanced service providers "may, at times, heavily use exchange access"). The Commission recently decided to retain this policy, largely because it found that it made little sense to mandate, for the first time, the application of existing non-cost-based interstate access rates to enhanced services just as the Commission was reforming the access charge regime to eliminate implicit subsidies and to move such charges toward competitive levels. *Access Charge Reform Order*, 12 FCC Rcd at 16133, *aff'd, Southwestern Bell Telephone Co.*, 153 F.3d at 541-42.

consistent view that the link LECs provide to connect subscribers with ESPs is an interstate access service.[107]

56. We do not believe that the court's decision to remand the *Declaratory Ruling* reflects a finding that such traffic constitutes two calls, rather than a single end-to-end call, for jurisdictional purposes. The court expressly acknowledged that "the end-to-end analysis applied by the Commission here is one that it has traditionally used to determine whether a call is within its interstate jurisdiction."[108] The court also said that "[t]here is no dispute that the Commission has historically been justified in relying on this method when determining whether a particular communication is jurisdictionally interstate."[109] And the court appeared to suggest, at least for the sake of argument, that the Commission had not misapplied that analysis *as a jurisdictional matter* in finding that ISP-bound traffic was interstate.[110] We do recognize, however, that the court was concerned by how one would categorize this traffic under our *prior* interpretation of section 251(b)(5), which focused on whether or not ISP-bound calls were "local." That inquiry arguably implicated the compensation mechanism for the traffic (which included a local component), as well as the meaning of the term "termination" in the specific context of section 251(b); but neither of these issues is germane to our assertion of jurisdiction here under our section 201 authority.

57. For jurisdictional purposes, the Commission views LEC-provided access to enhanced services providers, including ISPs, on the basis of the end points of the communication, rather than intermediate points of switching or exchanges between carriers (or other providers).[111] Thus, in the *ONA Plans Order*, the Commission emphasized that "when an enhanced service is interstate (that is, when it involves communications or transmissions between points in different states on an end-to-end basis), the underlying basic services are subject to [our jurisdiction]."[112] Consistent with that view, when end-to-end communications involving

---

[107] *See, e.g., MTS/WATS Market Structure Order*, 97 FCC 2d at 711-12, 722; Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Memorandum Opinion and Order, 4 FCC Rd 1, 141 (1988), *aff'd, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*ONA Plans Order*); GTE Telephone Operating Cos., CC Docket No. 98-79, Memorandum Opinion and Order, 13 FCC Rcd 22466 (1998).

[108] *Bell Atlantic*, 206 F.3d at 3.

[109] *Id. at 5.*

[110] *See, e.g., id.* at 6, 7 (accepting, *arguendo*, that ISP-bound traffic is like IXC-bound traffic for jurisdictional purposes).

[111] *See, e.g., BellSouth MemoryCall*, 7 FCC Rcd at 1620 (voicemail is interstate because "there is a continuous path of communications across state line between the caller and the voice mail service"); *ONA Plans Order,* 4 FCC Rcd at 141 (an enhanced service is subject to FCC authority if it is interstate, "that is, when it involves communications or transmissions between points in different states on an end-to-end basis").

[112] *ONA Plans Order*, 4 FCC Rcd at 141; *see also id.*, Memorandum Opinion and Order on Reconsideration, 5 FCC Rcd 3084, 3088-89 (1990), *aff'd, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993)(rejecting claim that basic service elements, consisting of features and functions provided by telephone company's local switch for benefit of enhanced service providers and others, are separate *intra*state offerings even when used in connection with end-to-end transmissions).

enhanced service providers cross state lines, the Commission has categorized the link that the LEC provides to connect the end-user with an enhanced service provider as interstate access service.[113] Internet service providers are a class of ESPs. Accordingly, the LEC-provided link between an end-user and an ISP is properly characterized as *interstate* access.[114]

58. Most Internet-bound traffic traveling between a LEC's subscriber and an ISP is indisputably interstate in nature when viewed on an end-to-end basis. Users on the Internet are interacting with a global network of connected computers. The consumer contracts with an ISP to provide access to the Internet. Typically, when the customer wishes to interact with a person, content, or computer, the customer's computer calls a number provided by the ISP that is assigned to an ISP modem bank. The ISP modem answers the call (the familiar squelch of computers handshaking). The user initiates a communication over the Internet by transmitting a command. In the case of the web, the user requests a webpage. This request may be sent to the computer that hosts the webpage. In real time, the web host may request that different pieces of that webpage, which can be stored on different servers across the Internet, be sent, also in real time, to the user. For example, on a sports page, only the format of the webpage may be stored at the host computer in Chicago. The advertisement may come from a computer in California (and it may be a different advertisement each time the page is requested), the sports scores may come from a computer in New York City, and a part of the webpage that measures Internet traffic and records the user's visit may involve a computer in Virginia. If the user decides to buy something from this webpage, say a sports jersey, the user clicks on the purchase page and may be transferred to a secure web server in Maryland for the transaction. A single web address frequently results in the return of information from multiple computers in various locations globally. These different pieces of the webpage will be sent to the user over different network paths and assembled on the user's display.[115]

59. The "communication" taking place is between the dial-up customer and the global computer network of web content, e-mail authors, game room participants, databases, or bulletin board contributors. Consumers would be perplexed to learn regulators believe they are communicating with ISP modems, rather than the buddies on their e-mail lists. The proper focus for identifying a communication needs to be the user interacting with a desired webpage, friend, game, or chat room, not on the increasingly mystifying technical and mechanical activity in the middle that makes the communication possible.[116] ISPs, in most cases, provide services that

---

[113] *See, e.g., MTS/WATS Market Structure Order*, 97 FCC 2d at 711 ("[a]mong the variety of users of access service are ... enhanced service providers"); Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215, Notice of Proposed Rulemaking, 2 FCC Rcd 4305, 4305, 4306 (1987) (noting that enhanced service providers use "exchange access service"); *ESP Exemption Order*, 3 FCC Rcd at 2631 (referring to "certain classes of exchange access users, including enhanced service providers").

[114] *See, e.g., Access Charge Reform Order*, 12 FCC Rcd at 16131-32; GTE Telephone Operating Cos., 13 FCC Rcd at 22478. *Cf. Bell Atlantic*, 206 F.3d at 4, 6-7.

[115] Of course, the Internet provides applications other than the World Wide Web, such as e-mail, games, chat sites, or streaming media, which have different technical characteristics but all of which involve computers in multiple locations, often across state and national boundaries.

[116] *See Qwest Roadmap* at 4-5, 9-10.

permit the dial-up Internet user to communicate directly with some distant site or party (other than the ISP) that the caller has specified.

60. ISP service is analogous, though not identical, to long distance calling service. An AT&T long distance customer contracts with AT&T to facilitate communications to out-of-state locations. The customer uses the local network to reach AT&T's facilities (its point of presence). By dialing "1" and an area code, the customer is in essence addressing his call to an out of state party and is instructing his LEC to deliver the call to his long distance carrier, and instructing the long distance carrier to pick up and carry that call to his intended destination. The caller on the other end will pick up the phone and respond to the caller. The communication will be between these two end-users. This analogy is not meant to prove that ISP service is identical to long distance service, but is used merely to bolster, by analogy, the reasonableness of not characterizing an ISP as the destination of a call, but as a facilitator of communication.

61. Moreover, as the local exchange carriers have correctly observed, the technical configurations for establishing dial-up Internet connections are quite similar to certain network configurations employed to initiate more traditional long-distance calls.[117] In most cases, an ISP's customer first dials a seven-digit number to connect to the ISP server before connecting to a website. Long-distance service in some network configurations is initiated in a substantially similar manner. In particular, under "Feature Group A" access, 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.[118] Internet calls operate in a similar manner: after reaching the ISP's server by dialing a seven-digit number, the caller selects a website (which is identified by a 12-digit Internet address, but which often is, in effect, "speed dialed" by clicking an icon) and the ISP connects the caller to the selected website. Such calling should yield the same jurisdictional result as the analogous calls to IXCs using "Feature Group A" access.

62. Commission precedent also rejects the two-call theory in the context of calls involving enhanced services. In *BellSouth MemoryCall*, the Commission preempted a state commission order that had prohibited BellSouth from expanding its voice mail service -- an enhanced service -- beyond its existing customers.[119] In doing so, it rejected claims by the state that the Commission lacked jurisdiction to preempt because, allegedly, out-of-state calls to the voice mail service really constituted two calls: an *inter*state call from the out-of-state caller to the telephone company switch that routes the call to the intended recipient's location, and a separate *intra*state call that forwards the communication from the switch to the voice mail apparatus in the event that the called party did not answer.[120] The Commission explained that,

---

[117] *See, e.g.*, Verizon Remand Reply at 9 (Internet traffic is indistinguishable from Feature Group A access service).

[118] *See Local Competition Order*, 11 FCC Rcd at 15935 n. 2091 (describing "Feature Group A" access service); *see also MCI Telecomm. Corp. v. FCC*, 566 F.2d 365, 367 n.3 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1040 (1978).

[119] *BellSouth MemoryCall*, 7 FCC Rcd at 1619.

[120] *Id.* at 1620

whether a basic telecommunications service is at issue, or whether an enhanced service rides on the telephone company's telecommunications service, the Commission's jurisdiction does not end at the local switchboard, but continues to the ultimate destination of the call.[121]

63. The Internet communication is not analogous to traditional telephone exchange services. Local calls set up communication between two parties that reside in the same local calling area. Prior to the introduction of local competition, that call would never leave the network of the incumbent LEC. As other carriers were permitted to enter the local market, a call might cross two or more carriers' networks simply because the two parties to the communication subscribed to two different local carriers. The two parties intending to communicate, however, remained squarely in the same local calling area. An Internet communication is not simply a local call from a consumer to a machine that is lopsided, that is, a local call where one party does most of the calling, or most of the talking. ISPs are service providers that technically modify and translate communication, so that their customers will be able to interact with computers across the global Internet.[122]

64. The court in *Bell Atlantic* noted that FCC litigation counsel had differentiated ISP-bound traffic from ordinary long-distance calls by stating that the former "is really like a call to a local business" -- such as a pizza delivery firm, a travel reservation agency, a credit card verification firm, or a taxicab company -- "that then uses the telephone to order wares to meet the need."[123] We find, however, that this citation to a former litigation position does not require us to alter our analysis. First, the Commission itself has never analogized ISP-bound traffic in the manner cited in the agency's brief in *Southwestern Bell*. Indeed, in the particular order that the Commission was defending in *Southwestern Bell*, the Commission distinguished ISP-bound traffic from other access traffic on *other* grounds -- *e.g.*, call direction and call holding times[124] -- which have no arguable bearing on whether the traffic is one interstate call (as the Commission has always held) or two separate calls (one of which allegedly is intrastate) as some parties have contended. Second, the cited portion of the Commission's brief was not addressing jurisdiction at all. Rather, the brief was responding to a claim that the ESP exemption *discriminated* against IXCs and in favor of ISPs.[125] Finally, in the very case in which litigation counsel made the cited analogy, the Eighth Circuit affirmed the Commission's consistent view that ISP-bound traffic is, as a *jurisdictional* matter, predominantly interstate.[126] In any event, to the extent that our prior briefs could be read to conceptualize the nature of ISP service as local, akin to intense users of

---

[121] *Id.* at 1621.

[122] It is important to note that a dial-up call to an ISP will not even be required when broadband services arrive. Those connections will be always on and there will be no phone call in any traditional sense. Indeed, the only initiating event will be the end-user interacting with other Internet content or users. Thus, increasingly, notions of two calls become meaningless.

[123] *Bell Atlantic*, 206 F.3d at 8 (citing FCC Brief at 76, *Southwestern Bell v. FCC*, 153 F.3d 523).

[124] *Access Charge Reform Order*, 12 FCC Rcd at 16133-34.

[125] *See* FCC Brief at 75-76, *Southwestern Bell v. FCC*, 153 F.3d 523.

[126] *Southwestern Bell v. FCC*, 153 F.3d at 534.

local service, we now embrace a different conceptualization that we believe more accurately reflects the nature of ISP service.

65. For the foregoing reasons, consistent with our longstanding precedent, we find that we continue to have jurisdiction under section 201, as preserved by section 251(i), to provide a compensation mechanism for ISP-bound traffic.

C. Efficient Intercarrier Compensation Rates and Rate Structures

66. Carriers currently recover the costs of call transport and termination through some combination of carrier access charges, reciprocal compensation, and end-user charges, depending upon the applicable regulatory regime. Having concluded that ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5), we must now determine, pursuant to our section 201 authority, what compensation mechanism is appropriate when carriers collaborate to deliver calls to ISPs. In the companion *NPRM*, we consider the desirability of adopting a uniform intercarrier compensation mechanism, applicable to all traffic exchanged among telecommunications carriers, and, in that context, we intend to examine the merits of a bill and keep regime for all types of traffic, including ISP-bound traffic. In the meantime, however, we must adopt an interim intercarrier compensation rule to govern the exchange of ISP-bound traffic, pending the outcome of the *NPRM*. In particular, we must decide whether to impose (i) a "calling-party's-network-pays" (CPNP) regime, like reciprocal compensation, in which the calling party's network pays the network serving the ISP; (ii) a bill and keep regime in which all networks recover costs from their end-user customers and are obligated to deliver calls that originate on the networks of interconnecting carriers; or (iii) some other cost recovery mechanism. As set forth more fully below, our immediate goal in adopting an interim compensation mechanism is to address the market distortions created by the prevailing intercarrier compensation regime, even as we evaluate in a parallel proceeding what longer-term intercarrier compensation mechanisms are appropriate for this and other types of traffic.

1. CPNP Regimes Have Distorted the Development of Competitive Markets

67. For the reasons detailed below, we believe that a bill and keep approach to recovering the costs of delivering ISP-bound traffic is likely to be more economically efficient than recovering these costs from originating carriers. In particular, requiring carriers to recover the costs of delivering traffic to ISP customers directly from those customers is likely to send appropriate market signals and substantially eliminate existing opportunities for regulatory arbitrage. As noted above, we consider issues related to the broader application of bill and keep as an intercarrier compensation regime in conjunction with the *NPRM* that we are adopting concurrently with this Order. In this Order, however, we adopt an interim compensation mechanism for the delivery of ISP-bound traffic that addresses the regulatory arbitrage opportunities present in the existing carrier-to-carrier payments by limiting carriers' opportunity to recover costs from other carriers and requiring them to recover a greater share of their costs from their ISP customers.

68. In most states, reciprocal compensation governs the exchange of ISP-bound traffic

between local carriers.[127] Reciprocal compensation is a CPNP regime in which the originating carrier pays an interconnecting carrier for "transport and termination," *i.e.*, for transport from the networks' point of interconnection and for any tandem and end-office switching.[128] The central problem with any CPNP regime is that carriers recover their costs not only from their end-user customers, but also from *other carriers*.[129] Because intercarrier compensation rates do not reflect the degree to which the carrier can recover costs from its end-users, payments from other carriers may enable a carrier to offer service to its customers at rates that bear little relationship to its actual costs, thereby gaining an advantage over its competitors. Carriers thus have the incentive to seek out customers, including but not limited to ISPs, with high volumes of incoming traffic that will generate high reciprocal compensation payments.[130] To the extent that carriers offer these customers below cost retail rates subsidized by intercarrier compensation, these customers do not receive accurate price signals. Moreover, because the originating LEC typically charges its customers averaged rates, the originating end-user receives inaccurate price signals as the costs associated with the intercarrier payments are recovered through rates averaged across all of the originating carrier's end-users. Thus no subscriber faces a price that fully reflects the intercarrier payments. An ISP subscriber with extensive Internet usage may, for example, cause her LEC to incur substantial reciprocal compensation obligations to the LEC that serves her ISP, but that subscriber receives no price signals reflecting those costs because they are spread over all of her LEC's customers.

69. The resulting market distortions are most apparent in the case of ISP-bound traffic due primarily to the one-way nature of this traffic, and to the tremendous growth in dial-up Internet access since passage of the 1996 Act. Competitive carriers, regardless of the nature of their customer base, exchange traffic with the incumbent LECs at rates based on the incumbents' costs.[131] To the extent the traffic exchange is roughly balanced, as is typically the case when LECs exchange voice traffic, it matters little if rates reflect costs because payments in one direction are largely offset by payments in the other direction. The rapid growth in dial-up Internet use, however, created the opportunity to serve customers with large volumes of

---

[127] In the *Declaratory Ruling*, we stated that, pending adoption of a federal rule governing intercarrier compensation for ISP-bound traffic, state commissions would determine whether reciprocal compensation was due for such traffic. *Declaratory Ruling*, 14 FCC Rcd at 3706. Since that time, most, though not all, states have ordered the payment of reciprocal compensation for ISP-bound traffic.

[128] 47 C.F.R. § 51.703(a).

[129] Recovery from other carriers is premised on the economic assumption that the carrier whose customer originates the call has "caused" the transport and termination costs associated with that call, and the originating carrier should, therefore, reimburse the interconnecting carrier for "transport and termination." The companion *NPRM* evaluates the validity of that assumption and tentatively concludes that it is an incorrect premise.

[130] *Cf. Local Competition Order*, 11 FCC Rcd at 16043 (symmetrical termination payments to paging providers based on ILECs' costs "might create uneconomic incentives for paging providers to generate traffic simply in order to receive termination compensation").

[131] 47 C.F.R. § 51.705 (an incumbent LEC's rates for transport and termination shall be established on the basis of the forward-looking economic costs of such offerings); 47 C.F.R. § 51.711 (subject to certain exceptions, rates for transport and termination shall be symmetrical and equal to those that the incumbent LEC assesses upon other carriers for the same services).

exclusively *incoming* traffic. And, for the reasons discussed above, the reciprocal compensation regime created an incentive to target those customers with little regard to the costs of serving them – because a carrier would be able to collect some or all of those costs from *other* carriers that would themselves be unable to flow these costs through to their own customers in a cost-causative manner.

70. The record is replete with evidence that reciprocal compensation provides enormous incentive for CLECs to target ISP customers. The four largest ILECs indicate that CLECs, on average, terminate eighteen times more traffic than they originate, resulting in annual CLEC reciprocal compensation billings of approximately two billion dollars, ninety percent of which is for ISP-bound traffic.[132] Verizon states that it sends CLECs, on average, twenty-one times more traffic than it receives, and some CLECs receive more than forty times more traffic than they originate.[133] Although there may be sound business reasons for a CLEC's decision to serve a particular niche market, the record strongly suggests that CLECs target ISPs in large part because of the availability of reciprocal compensation payments.[134] Indeed, some ISPs even seek to become CLECs in order to share in the reciprocal compensation windfall, and, for a small number of entities, this revenue stream provided an inducement to fraudulent schemes to generate dial-up minutes.[135]

71. For these reasons, we believe that the application of a CPNP regime, such as reciprocal compensation, to ISP-bound traffic undermines the operation of competitive markets.[136] ISPs do not receive accurate price signals from carriers that compete, not on the basis of the quality and efficiency of the services they provide, but on the basis of their ability to shift costs to other carriers. Efficient prices result when carriers offer the lowest possible rates based on the costs of the service they provide to ISPs, not when they can price their services without regard to cost. We are concerned that viable, long-term competition among efficient providers of local exchange and exchange access services cannot be sustained where the intercarrier compensation regime does not reward efficiency and may produce retail rates that do not reflect the costs of the services provided. As we explain in greater detail in the companion *NPRM*, we

---

[132] Letter from Robert T. Blau, BellSouth, to Magalie Roman Salas, Secretary, FCC (November 6, 2000); *see also* Verizon Remand Comments at 2 (Verizon will be billed more than one billion dollars in 2000 for Internet-bound calls); Letter from Richard J. Metzger, Focal, to Deena Shetler, Legal Advisor to Commissioner Gloria Tristani, FCC (Jan. 11, 2001)(ILECs owed $1.98 billion in reciprocal compensation to CLECs in 2000).

[133] Verizon Remand Comments at 11, 21. Verizon also cites extreme cases of CLECs that terminate in excess of *eight thousand* times more traffic than they originate. *Id.* at 21. *See also* Letter from Robert T. Blau, BellSouth; Melissa Newman, Qwest; Priscilla Hill-Ardoin, SBC; and Susanne Guyer, Verizon, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC (Nov. 9, 2000).

[134] *See, e.g.,* Verizon Remand Comments at 15 (citing case of CLEC offer of free long distance service to dial-up Internet customers, an offer it did not extend to its customers that accessed the Internet via cable modem or DSL service); SBC Remand Comments at 45 (citing examples of CLEC offering free service to ISPs that collocated in its switching centers and CLECs offering to share reciprocal compensation revenues with ISPs).

[135] *See, e.g.,* Verizon Remand Comments at 17-18.

[136] The *NPRM* that we adopt in conjunction with this Order seeks comment on the degree to which a modified CPNP regime might address these concerns.

believe that a compensation regime, such as bill and keep, that requires carriers to recover more of their costs from end-users may avoid these problems.

72. We acknowledge that we did not always hold this view. In the *Local Competition Order*, the Commission concluded that state commissions may impose bill and keep arrangements for traffic subject to section 251(b)(5) *only* when the flow of traffic between interconnected carriers is roughly balanced and is expected to remain so.[137] The Commission reasoned that "bill-and-keep arrangements are not economically efficient because they distort carriers' incentives, encouraging them to overuse competing carriers' *termination* facilities by seeking customers that primarily *originate* traffic."[138] The concerns about the opportunity for cost recovery and economic efficiency are not present, however, to the extent that traffic between carriers is balanced and payments from one carrier will be offset by payments from the other carrier. In these circumstances, the Commission found that bill and keep arrangements may minimize administrative burdens and transaction costs.[139]

73. Since that time, we have observed the development of competition in the local exchange market, and we now believe that the Commission's concerns about economic inefficiencies associated with bill and keep missed the mark, particularly as applied to ISP-bound traffic. The Commission appears to have assumed, at least implicitly, that the calling party was the sole cost causer of the call, and it may have overstated any incentives that a bill and keep regime creates to target customers that primarily originate traffic. A carrier must provide originating switching functions and must recover the costs of those functions from the originating end-user, not from other carriers. Originating traffic thus lacks the same opportunity for cost-shifting that reciprocal compensation provides with respect to serving customers with disproportionately incoming traffic. Indeed, it has become apparent that the obligation to pay reciprocal compensation to interconnecting carriers may give rise to uneconomic incentives. As the current controversy about ISP-bound traffic demonstrates, reciprocal compensation encourages carriers to overuse competing carriers' *origination* facilities by seeking customers that *receive* high volumes of traffic.

74. We believe that a bill and keep regime for ISP-bound traffic may eliminate these incentives and concomitant opportunity for regulatory arbitrage by forcing carriers to look only to their ISP customers, rather than to other carriers, for cost recovery. As a result, the rates paid by ISPs and, consequently, their customers should better reflect the costs of services to which they subscribe. Potential subscribers should receive more accurate price signals, and the market should reward efficient providers.[140] Although we do not reach any firm conclusions about bill and keep as a permanent mechanism for this or any other traffic, our evaluation of the record evidence to date strongly suggests that bill and keep is likely to provide a viable solution to the

---

[137] *Local Competition Order*, 11 FCC Rcd at 16054-55; *see also* 47 C.F.R. § 51.713(b).

[138] *Local Competition Order*, 11 FCC Rcd at 16055 (emphases added).

[139] *Id.* at 16055.

[140] We also note that bill and keep arrangements are common among entities providing Internet backbone services, where the larger carriers engage in so-called "peering" arrangements.

market distortions caused by the application of reciprocal compensation to ISP-bound traffic. We take that observation into account, below, as we fashion an interim compensation mechanism for this traffic.

75. Bill and keep also may address the problem regulators face in setting intercarrier compensation rates that correlate to the costs carriers incur to carry traffic that originates on other networks. The record suggests that market distortions appear to have been exacerbated by the prevalence of excessively high reciprocal compensation rates. Many CLECs argue that the current traffic imbalances between CLECs and ILECs are the product of greediness on the part of ILECs that insisted on above-cost reciprocal compensation rates in the course of negotiating or arbitrating initial interconnection agreements.[141] CLECs argue that, because these rates were artificially high, they naturally responded by seeking customers with large volumes of incoming traffic. If the parties or regulatory bodies merely set cost-based rates and rate structures, they argue, arbitrage opportunities and the resulting windfalls would disappear.[142] They note that reciprocal compensation rates have fallen dramatically as initial agreements expire and the parties negotiate new agreements.[143]

76. We do not believe that the solution to the current problem is as simple as the CLECs suggest.[144] We seek comment in the accompanying *NPRM* on the potential for a modified CPNP regime, such as the CLECs advocate, to solve some of the problems we identify here. We are convinced, however, that intercarrier payments for ISP-bound traffic have created severe market distortions. Although it would be premature to institute a full bill and keep regime before resolving the questions presented in the *NPRM*,[145] in seeking to remedy an exigent market problem, we cannot ignore the evidence we have accumulated to date that suggests that a bill and keep regime has very fundamental advantages over a CPNP regime for ISP-bound traffic. Contrary to the view espoused by CLECs, we are concerned that the market distortions caused by applying a CPNP regime to ISP-bound traffic cannot be cured by regulators or carriers simply attempting to "get the rate right." A few examples may illustrate the vexing problems regulators face. Reciprocal compensation rates have been determined on the basis of the ILEC's average costs of transport and termination. These rates do not, therefore, reflect the costs incurred by any

[141] Time Warner Remand Comments at 15-16.

[142] Time Warner Remand Comments at 16. Some parties suggest that a bifurcated rate structure (a call set-up charge and a minute of use charge) would ensure appropriate cost recovery. *See* Sprint Remand Comments at 2-4. We seek comment on this approach in the *NPRM*.

[143] *See infra* note 158.

[144] We note that many CLECs expressed the same view following adoption of the *Declaratory Ruling* in 1999, yet the problems persist. *See, e.g.*, Cox Reply Comments at 6 (If termination "rates are too high, this is entirely at the ILEC's behest, and should be remedied in the next round of negotiations.").

[145] A number of questions must be resolved before we are prepared to implement fully a bill and keep regime where most costs are recovered from end-users. (We say most, not all, costs are recovered from end-users because a bill and keep regime may include intercarrier charges for transport between networks.) These questions include, for example, the allocation of transport costs between interconnecting carriers and the effect on retail prices of adopting a bill and keep regime that is not limited to ISP-bound traffic. We seek comment on these and other issues in the accompanying intercarrier *NPRM*

particular carrier for providing service to a particular customer. This encourages carriers to target customers that are, on average, less costly to serve, and reap a reciprocal compensation windfall. Conversely, new entrants lack incentive to serve customers that are, on average, more costly to serve, even if the new entrant is the most efficient provider. It is not evident that this problem can be remedied by setting reciprocal compensation rates on the basis of the costs of carrier serving the called party (or, in the case of ISP-bound traffic, the CLEC that serves the ISP).[146] Apart from our reluctance to require new entrants to perform cost studies, it is entirely impracticable, if not impossible, for regulators to set different intercarrier compensation rates for each individual carrier, and those rates still might fail to reflect a carrier's costs as, for example, the nature of its customer base evolves. Furthermore, most states have adopted per minute reciprocal compensation rate structures. It is unlikely that any minute-of-use rate that is based on average costs and depends upon demand projections will reflect the costs of any given carrier to serve any particular customer. To the extent that transport and termination costs are capacity-driven, moreover, virtually any minute-of-use rate will overestimate the cost of handling an additional call whenever a carrier is operating below peak capacity.[147] Regulators and carriers have long struggled with problems associated with peak-load pricing.[148] Finally, and most important, the fundamental problem with application of reciprocal compensation to ISP-bound traffic is that the intercarrier payments fail altogether to account for a carrier's opportunity to recover costs from its ISP customers. Modifications to intercarrier rate levels or rate structures suggested by CLECs do not address carriers' ability to shift costs from their own customers onto other carriers and their customers.

2. Intercarrier Compensation for ISP-bound Traffic

77. We believe that a hybrid mechanism that establishes relatively low per minute rates, with a cap on the total volume of traffic entitled to such compensation, is the most appropriate interim approach over the near term to resolve the problems associated with the current intercarrier compensation regime for ISP-bound traffic. Our primary goal at this time is to address the market distortions under the current intercarrier compensation regimes for ISP-bound traffic. At the same time, we believe it prudent to avoid a "flash cut" to a new compensation regime that would upset the legitimate business expectations of carriers and their customers. Subsequent to the Commission's *Declaratory Ruling*, many states have required the payment of reciprocal compensation for ISP-bound traffic, and CLECs may have entered into contracts with vendors or with their ISP customers that reflect the expectation that the CLECs would continue to receive reciprocal compensation revenue. We believe it appropriate, in tailoring an interim compensation mechanism, to take those expectations into account while simultaneously establishing rates that will produce more accurate price signals and substantially reduce current market distortions. Therefore, pending our consideration of broader intercarrier compensation issues in the *NPRM*, we impose an interim intercarrier compensation regime for

[146] *Cf.* Verizon Remand Reply Comments at 14-15.

[147] The problem of putting a per minute price tag, in the form of intercarrier payments, where no per minute cost exists is exacerbated in the case of local exchange carriers that, in most cases, recover costs from their end-users on a flat-rated basis.

[148] *See, e.g., Local Competition Order*, 11 FCC Rcd at 16028-29.

ISP-bound traffic that serves to limit, if not end, the opportunity for regulatory arbitrage, while avoiding a market-disruptive "flash cut" to a pure bill and keep regime. The interim regime we establish here will govern intercarrier compensation for ISP-bound traffic until we have resolved the issues raised in the intercarrier compensation *NPRM*.

78. Beginning on the effective date of this Order, and continuing for six months, intercarrier compensation for ISP-bound traffic will be capped at a rate of $.0015/minute-of-use (mou). Starting in the seventh month, and continuing for eighteen months, the rate will be capped at $.0010/mou. Starting in the twenty-fifth month, and continuing through the thirty-sixth month or until further Commission action (whichever is later), the rate will be capped at $.0007/mou. In addition to the rate caps, we will impose a cap on total ISP-bound minutes for which a LEC may receive this compensation. For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to compensation under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation under that agreement in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the 2002 ceiling applicable to that agreement.[149]

79. We understand that some carriers are unable to identify ISP-bound traffic. In order to limit disputes and avoid costly efforts to identify this traffic, we adopt a rebuttable presumption that traffic delivered to a carrier, pursuant to a particular contract, that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic that is subject to the compensation mechanism set forth in this Order. Using a rebuttable presumption in this context is consistent with the approach that numerous states have adopted to identify ISP-bound traffic or "convergent" traffic (including ISP traffic) that is subject to a lower reciprocal compensation rate.[150] A carrier may rebut the presumption, for example, by demonstrating to the appropriate state commission that traffic above the 3:1 ratio is in fact local traffic delivered to non-ISP customers. In that case, the state commission will order payment of the state-approved or state-

[149] This interim regime affects only the intercarrier *compensation* (*i.e.*, the rates) applicable to the delivery of ISP-bound traffic. It does not alter carriers' other obligations under our Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection.

[150] *See* Texas Public Utility Commission, Docket No. 21982, Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996, at 36 (July 12, 2000)(applying a blended tandem switching rate to traffic up to a 3:1 (terminating to originating) ratio; traffic above that ratio is presumed to be convergent traffic and is compensated at the end office rate unless the terminating carrier can prove tandem functionality); New York Public Service Commission, Op. No. 99-10, Proceeding on Motion of the Commission to Reexamine Reciprocal compensation, Opinion and Order, at 59-60 (Aug. 26, 1999) (traffic above a 3:1 ratio is presumed to be convergent traffic and is compensated at the end office rate unless the terminating carrier can demonstrate "that [the terminating] network and service are such as to warrant tandem-rate compensation"); Massachusetts Dept. of Telecommunications and Energy, D.T.E. 97-116-C, at 28-29 n.31 (May 19, 1999) (requiring reciprocal compensation for traffic that does not exceed a 2:1 (terminating to originating) ratio as a proxy to distinguish ISP-bound traffic from voice traffic; carriers may rebut that presumption).

arbitrated reciprocal compensation rates for that traffic. Conversely, if a carrier can demonstrate to the state commission that traffic it delivers to another carrier is ISP-bound traffic, even though it does not exceed the 3:1 ratio, the state commission will relieve the originating carrier of reciprocal compensation payments for that traffic, which is subject instead to the compensation regime set forth in this Order. During the pendency of any such proceedings, LECs remain obligated to pay the presumptive rates (reciprocal compensation rates for traffic below a 3:1 ratio, the rates set forth in this Order for traffic above the ratio), subject to true-up upon the conclusion of state commission proceedings.

80. We acknowledge that carriers incur costs in delivering traffic to ISPs, and it may be that in some instances those costs exceed the rate caps we adopt here. To the extent a LEC's costs of transporting and terminating this traffic exceed the applicable rate caps, however, it may recover those amounts from its own end-users.[151] We also clarify that, because the rates set forth above are *caps* on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps we adopt here or on a bill and keep basis (or otherwise have not required payment of compensation for this traffic).[152] The rate caps are designed to provide a transition toward bill and keep or such other cost recovery mechanism that the Commission may adopt to minimize uneconomic incentives, and no such transition is necessary for carriers already exchanging traffic at rates below the caps. Moreover, those state commissions have concluded that, at least in their states, LECs receive adequate compensation from their own end-users for the transport and termination of ISP-bound traffic and need not rely on intercarrier compensation.

81. Finally, a different rule applies in the case where carriers are not exchanging traffic pursuant to interconnection agreements prior to adoption of this Order (where, for example, a new carrier enters the market or an existing carrier expands into a market it previously had not served). In such a case, as of the effective date of this Order, carriers shall exchange ISP-bound traffic on a bill-and-keep basis during this interim period. We adopt this rule for several reasons. First, our goal here is to address and curtail a pressing problem that has created opportunities for regulatory arbitrage and distorted the operation of competitive markets. In so doing, we seek to confine these market problems to the maximum extent while seeking an

[151] We note that CLEC end-user recovery is generally not regulated. As non-dominant carriers, CLECs can charge their end-users what the market will bear. Access Charge Reform, CC Docket No. 96-262, Sixth Report and Order, 15 FCC Rcd 12962, 13005 (2000) (*CALLS Order*)("Competitive LECs are not regulated by the Commission and are not restricted in the same manner as price caps LECs in how they recover their costs."). Accordingly, we permit CLECs to recover any additional costs of serving ISPs from their ISP customers. ILEC end-user charges, however, are generally regulated by the Commission, in the case of interstate charges, or by state commissions, for intrastate charges. Pursuant to the ESP exemption, ILECs will continue to serve their ISP customers out of intrastate business tariffs that are subject to state regulation. As the Commission said in 1997, if ILECs feel that these rates are so low as to preclude cost recovery, they should seek relief from their state commissions. *Access Charge Reform Order*, 12 FCC Rcd at 16134 ("To the extent that some intrastate rate structures fail to compensate incumbent LECs adequately for providing service to customers with *high volumes of incoming calls*, incumbent LECs may address their concerns to state regulators." (emphasis added)).

[152] Thus, if a state has ordered all LECs to exchange ISP-bound traffic on a bill and keep basis, or if a state has ordered bill and keep for ISP-bound traffic in a particular arbitration, those LECs subject to the state order would continue to exchange ISP-bound traffic on a bill and keep basis.

appropriate long-term resolution in the proceeding initiated by the companion *NPRM*. Allowing carriers in the interim to expand into new markets using the very intercarrier compensation mechanisms that have led to the existing problems would exacerbate the market problems we seek to ameliorate. For this reason, we believe that a standstill on any expansion of the old compensation regime into new markets is the more appropriate interim answer.[153] Second, unlike those carriers that are presently serving ISP customers under existing interconnection agreements, carriers entering new markets to serve ISPs have not acted in reliance on reciprocal compensation revenues and thus have no need of a transition during which to make adjustments to their prior business plans.

82. The interim compensation regime we establish here applies as carriers re-negotiate expired or expiring interconnection agreements. It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions. This Order does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here. Because we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue. For this same reason, as of the date this Order is published in the Federal Register, carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic.[154] Section 252(i) applies only to agreements arbitrated or approved by state commissions pursuant to section 252; it has no application in the context of an intercarrier compensation regime set by this Commission pursuant to section 201.[155]

83. This interim regime satisfies the twin goals of compensating LECs for the costs of delivering ISP-bound traffic while limiting regulatory arbitrage. The interim compensation regime, as a whole, begins a transition toward what we have tentatively concluded, in the companion *NPRM*, to be a more rational cost recovery mechanism under which LECs recover more of their costs from their own customers. This compensation mechanism is fully consistent

---

[153] *See American Public Communications Council v. FCC*, 215 F.3d 51 (D.C. Cir. 2000)("Where existing methodology or research in a new area of regulation is deficient, the agency necessarily enjoys broad discretion to attempt to formulate a solution to the best of its ability on the basis of available information.").

[154] 47 U.S.C. § 252(i) (requiring LECs to "make available any interconnection, service, or network element provided under an agreement approved under this section" to "any other requesting telecommunications carrier"). This Order will become effective 30 days after publication in the Federal Register. We find there is good cause under 5 U.S.C. § 553(d)(3), however, to prohibit carriers from invoking section 252(i) with respect to rates paid for the exchange of ISP-bound traffic upon publication of this Order in the Federal Register, in order to prevent carriers from exercising opt in rights during the thirty days after Federal Register publication. To permit a carrier to opt into a reciprocal compensation rate higher than the caps we impose here during that window would seriously undermine our effort to curtail regulatory arbitrage and to begin a transition from dependence on intercarrier compensation and toward greater reliance on end-user recovery.

[155] In any event, our rule implementing section 252(i) requires incumbent LECs to make available "[i]ndividual interconnection, service, or network element arrangements" to requesting telecommunications carriers only "for a reasonable period of time." 47 C.F.R. § 51.809(c). We conclude that any "reasonable period of time" for making available rates applicable to the exchange of ISP-bound traffic expires upon the Commission's adoption in this Order of an intercarrier compensation mechanism for ISP-bound traffic.

with the manner in which the Commission has directed incumbent LECs to recover the costs of serving ESPs, including ISPs.[156] The three-year transition we adopt here ensures that carriers have sufficient time to re-order their business plans and customer relationships, should they so choose, in light of our tentative conclusions in the companion *NPRM* that bill and keep is the appropriate long-term intercarrier compensation regime. It also affords the Commission adequate time to consider comprehensive reform of all intercarrier compensation regimes in the *NPRM* and any resulting rulemaking proceedings. Both the rate caps and the volume limitations reflect our view that LECs should begin to formulate business plans that reflect decreased reliance on revenues from intercarrier compensation, given the trend toward substantially lower rates and the strong possibility that the *NPRM* may result in the adoption of a full bill and keep regime for ISP-bound traffic.

84. We acknowledge that there is no exact science to setting rate caps to limit carriers' ability to draw revenue from other carriers, rather than from their own end-users. Our adoption of the caps here is based on a number of considerations. First, rates that produce meaningful reductions in intercarrier payments for ISP-bound traffic must be at least as low as rates in existing interconnection agreements. Second, although we make no finding here regarding the actual costs incurred in the delivery of ISP-bound traffic, there is evidence in the record to suggest that technological developments are reducing the costs incurred by carriers in handling all sorts of traffic, including ISP-bound traffic.[157] Third, although the process has proceeded too slowly to address the market distortions discussed above, we note that negotiated reciprocal compensation rates continue to decline as ILECs and CLECs negotiate new interconnection agreements. Finally, CLECs have been on notice since the 1999 *Declaratory Ruling* that it might be unwise to rely on the continued receipt of reciprocal compensation for ISP-bound traffic, thus many have begun the process of weaning themselves from these revenues.

85. The rate caps adopted herein reflect all these considerations. The caps we have selected approximate the downward trend in intercarrier compensation rates reflected in recently negotiated interconnection agreements. In these agreements, carriers have agreed to rates, like those we adopt here, that decline each year of a three-year contract term, and at least one agreement reflects different rates for balanced and unbalanced traffic.[158] For example, the initial

---

[156] *Access Charge Reform Order*, 12 FCC Rcd at 16133-34.

[157] *See, e.g.*, Letter from David J. Hostetter, SBC, to Magalie Roman Salas, Secretary, FCC (Feb. 14, 2001), Attachment (citing September 2000 Morgan Stanley Dean Witter report that discusses utilization of lower cost switch technology); Donny Jackson, "One Giant Leap for Telecom Kind?," *Telephony*, Feb. 12, 2001, at 38 (discussing cost savings associated with replacing circuit switches with packet switches); Letter from Gary L. Phillips, SBC, to Magalie Roman Salas, Secretary, FCC (Feb. 16, 2001) (attaching press release from Focal Communications announcing planned deployment of next-generation switching technology "at a fraction of the cost of traditional equipment"); *see also infra* para. 93.

[158] The Commission takes notice of the following interconnection agreements: (1) Level 3 Communications and SBC Communications (effective through May 2003): This 13-state agreement has two sets of rates. For balanced traffic, the rate is $.0032/mou. For traffic that is out of balance by a ratio exceeding 3:1, the rate starts at $.0018/mou, declining to a weighted average rate of $.0007/mou by June 1, 2002. *See* PR Newswire, WL PRWIRE 07:00:00 (Jan. 17, 2001); Letter from John T. Nakahata, Harris, Wiltshire & Grannis, to Magalie Roman Salas, Secretary, FCC, Attachment (Jan. 19, 2001). (2) ICG Communications and BellSouth (retroactively effective to (continued....)

rate cap of $.0015/mou approximates the rates applicable this year in agreements Level 3 has negotiated with Verizon and SBC.[159] The $.0010/mou rate that applies during most of the three-year interim period reflects a proposal by ALTS, the trade association representing CLECs, for a transition plan pursuant to which intercarrier compensation payments for ISP-bound traffic would decline to $.0010/mou.[160] Similarly, the $.0007/mou rate reflects the average rate applicable in 2002 under Level 3's agreement with SBC.[161] We conclude, therefore, that the rate caps constitute a reasonable transition toward the recovery of costs from end-users.

86. We impose an overall cap on ISP-bound minutes for which compensation is due in order to ensure that growth in dial-up Internet access does not undermine our efforts to limit intercarrier compensation for this traffic and to begin, subject to the conclusion of the *NPRM* proceedings, a smooth transition toward a bill and keep regime. A ten percent growth cap, for the first two years, seems reasonable in light of CLEC projections that the growth of dial-up Internet minutes will fall in the range of seven to ten percent per year.[162] We are unpersuaded by the ILECs' projections that dial-up minutes will grow in the range of forty percent per year,[163] but adoption of a cap on growth largely moots this debate. If CLECs have projected growth in the range of ten percent, then limiting intercarrier compensation at that level should not disrupt their customer relationships or their business planning. Nothing in this Order prevents any carrier from serving or indeed expanding service to ISPs, so long as they recover the costs of additional

(Continued from previous page)
Jan. 1, 2000): This agreement provides for rates to decline over three years, from $0.002/mou to $0.00175/mou to $0.0015/mou. *See* Communications Daily, 2000 WL 4694709 (Mar. 15, 2000). (3) KMC Telecom and BellSouth: This agreement provides for a rate of $0.002/mou in 2000, $0.00175/mou in 2001, $0.0015/mou in 2002. *See* Business Wire, WL 5/18/00 BWIRE 12:50:000 (May 18, 2000). (4) Level 3 Communications and Verizon (formerly Bell Atlantic) (effective Oct. 14, 1999): This agreement governs all of the former Bell Atlantic/NYNEX states. The applicable rate declines over the term of the agreement from $.003/mou in 1999 to rates in 2001 of $.0015/mou for balanced traffic and $.0012/mou where the traffic imbalance exceeds a 10:1 ratio. *See* Letter from Joseph J. Mulieri, Bell Atlantic, to Magalie Roman Salas, Secretary, FCC (Nov. 22, 1999)(attaching agreement); *see also* Letter from John T. Nakahata, Harris, Wiltshire & Grannis, to Magalie Roman Salas, Secretary, FCC, at 2 (Jan. 4, 2001)(reciprocal compensation rate in most recent Level 3 – Verizon agreement is now $.0012/mou in all states except New York, where the rate is $.0015/mou).

[159] In the Level 3 – SBC agreement, the applicable rate is $.0018/mou for traffic that exceeds a 3:1 ratio; in the Level 3 – Verizon agreement, the applicable rate is $.0015/mou for balanced traffic and $.0012/mou for traffic that exceeds a 10:1 ratio. *See supra* note 158.

[160] *See* Letter from Jonathan Askin, ALTS, to Magalie Roman Salas, Secretary, FCC, at 3 (Dec. 19, 2000).

[161] *See supra* note 158.

[162] *See, e.g.*, Letter from Jonathan Askin, ALTS, to Magalie Roman Salas, Secretary, FCC (Dec. 18, 2000) (offering evidence that dial-up traffic per household will grow only 7%/year from 1998 to 2003 and that dial-up household penetration will decline between 2000 and 2003); Letter from Jonathan Askin, ALTS, to Magalie Roman Salas, Secretary, FCC (Jan. 9, 2001)(citing, *inter alia*, Merrill Lynch estimate of 7% annual increased Internet usage per user between 1999 and 2003, and PricewaterhouseCoopers' study suggesting that Internet usage per user declined from 1999 to 2000).

[163] *See, e.g.*, Letter from Robert T. Blau, BellSouth, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC (Dec. 22, 2000) (forecasting 42% annual growth in total Internet access minutes between 2000 and 2003); *but see* Dan Beyers, "Internet Use Slipped Late Last Year," Washingtonpost.com, Feb. 22, 2001, at E10 (noting decline in average time spent online in 2000).

minutes from their ISP customers. The caps merely ensure that growth in minutes above the caps is based on a given carrier's ability to provide efficient and quality service to ISPs, rather than on a carrier's desire to reap an intercarrier compensation windfall.

87. We are not persuaded by arguments proffered by CLECs that requiring them to recover more of their costs from their ISP customers will render it impossible for CLECs profitably to serve ISPs or will lead to higher rates for Internet access.[164] First, as noted above, this compensation mechanism is fully consistent with the manner in which this Commission has directed ILECs to recover the costs of serving ISPs.[165] Moreover, the evidence in the record does not demonstrate that CLECs cannot compete for ISP customers in the growing number of states that have adopted bill and keep for ISP-bound traffic or that the cost of Internet access has increased in those states. Second, next-generation switching and other technological developments appear to be contributing to a decline in the costs of serving ISPs (and other customers).[166] Third, if reciprocal compensation merely enabled CLECs to recover the costs of serving ISPs, CLECs should be indifferent between serving ISPs and other customers. Instead, CLECs have not contradicted ILEC assertions that more than ninety percent of CLEC reciprocal compensation billings are for ISP-bound traffic,[167] suggesting that there may be a considerable margin between current reciprocal compensation rates and the actual costs of transport and termination.[168] Finally, there is reason to believe that our failure to act, rather than the actions we take here, would lead to higher rates for Internet access, as ILECs seek to recover their reciprocal compensation liability, which they incur on a minute-of-use basis, from their customers who call ISPs.[169] Alternatively, ILECs might recover these costs from all of their local customers, including those who do not call ISPs.[170] There is no public policy rationale to support a subsidy running from all users of basic telephone service to those end-users who employ dial-up Internet access.[171]

---

[164] *See, e.g.*, Time Warner Remand Comments at 4-5; Centennial Remand Comments at 2, 6-7.

[165] *Access Charge Reform Order*, 12 FCC Rcd at 16134; *MTS/WATS Market Structure Order*, 97 FCC 2d at 720-721.

[166] *See infra* para. 93.

[167] *See* Letter from Robert T. Blau, BellSouth, *et al.*, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 4 (Nov. 3, 2000); SBC Remand Comments at 42, 51, 57.

[168] We do not suggest that it costs CLECs less to serve ISPs than other types of customers. New switching technologies make it less costly to serve *all* customers. If, however, costs are lower than prevailing reciprocal compensation rates, then CLECs are likely to target customers, such as ISPs, with predominantly incoming traffic, in order to maximize the resulting profit.

[169] *See, e.g.*, Verizon Remand Comments at 16.

[170] *Id.*

[171] Most CLECs assert that they compete with ILECs on service, not price, and that the rates they charge to ISPs are comparable to the ILEC rates for the same services. *See, e.g.*, Time Warner Remand Comments at 5. We acknowledge, however, that any CLECs that use reciprocal compensation payments to offer below cost service to ISPs may be unable to continue that practice under the compensation regime we adopt here. We reiterate that we see no public policy reason to maintain a subsidy running from ILEC end-users to ISPs and their customers.

88. We also are not convinced by the claim of CLECs that limiting intercarrier compensation for ISP-bound traffic will result in a windfall for the incumbent LECs.[172] The CLECs argue that the incumbents' local rates are set to recover the costs of originating and terminating calls and that the ILECs avoid termination costs when their end-users call ISP customers served by CLECs. The record does not establish that ILECs necessarily avoid costs when they deliver calls to CLECs,[173] and CLECs have not demonstrated that ILEC end-user rates are designed to recover from the originating end-user the costs of delivering calls to ISPs. The ILECs point out that, in response to their complaints about the costs associated with delivering traffic to ISPs, the Commission has directed them to seek permission from state regulators to raise the rates they charge *the ISPs*, an implicit acknowledgement that ILECs may not recover all of their costs from the originating end-user.[174]

3. Relationship to Section 251(b)(5)

89. It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payors,[175] while permitting them to exchange traffic at state reciprocal compensation rates, which are much higher than the caps we adopt here, when the traffic imbalance is reversed.[176] Because we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to "pick and choose" intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier. The rate caps for ISP-bound traffic that we adopt here apply, therefore, *only* if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5)[177] at the same rate. Thus, if the applicable rate cap is $.0010/mou, the ILEC must offer to exchange section 251(b)(5) traffic at that same rate. Similarly, if an ILEC wishes to continue to exchange ISP-bound traffic on a bill and keep basis

---

[172] *See, e.g.*, Letter from Robert W. McCausland, Allegiance Telecom; Kelsi Reeves, Time Warner Telecom; Richard J. Metzger, Focal, R. Gerard Salemme, XO Communications; and Heather B. Gold, Intermedia; to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 6 (Oct. 20, 2000).

[173] *See, e.g.*, SBC Remand Reply Comments at 31-32 (explaining how an ILEC may incur additional switching and transport costs when its end-user customer calls an ISP served by a CLEC).

[174] *See Access Charge Reform Order*, 12 FCC Rcd at 16134; *see also MTS/WATS Market Structure Order*, 97 FCC 2d at 721 (the local business line rate paid by ISPs subsumes switching costs). Moreover, most states have adopted price cap regulation of local rates, in which case rates do not necessarily correlate to cost in the manner the CLECs suggest. *See* "Price Caps Standard Form of Telco Regulation in 70% of States," Communications Daily, 1999 WL 7580319 (Sept. 8, 1999).

[175] The four largest incumbent LECs – SBC, BellSouth, Verizon, and Qwest – estimate that they owed over $2 billion in reciprocal compensation for ISP-bound traffic in 2000. *See, e.g.*, Letter from Robert T. Blau, BellSouth, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC (Jan. 16, 2001).

[176] More calls are made from wireless phones to wireline phones than vice-versa. The ILECs, therefore, are net recipients of reciprocal compensation from wireless carriers.

[177] Pursuant to the analysis we adopt above, section 251(b)(5) applies to telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that is not interstate or intrastate access traffic delivered to an IXC or an information service provider, and to telecommunications traffic between a LEC and a CMRS provider that originates and terminates within the same MTA. *See supra* § IV.B.

in a state that has ordered bill and keep, it must offer to exchange all section 251(b)(5) traffic on a bill and keep basis.[178] For those incumbent LECs that choose *not* to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts.[179] This "mirroring" rule ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.

90. This is the correct policy result because we see no reason to impose different rates for ISP-bound and voice traffic. The record developed in response to the *Intercarrier Compensation NPRM* and the *Public Notice* fails to establish any inherent differences between the costs on any one network of delivering a voice call to a local end-user and a data call to an ISP.[180] Assuming the two calls have otherwise identical characteristics (*e.g.*, duration and time of day), a LEC generally will incur the same costs when delivering a call to a local end-user as it does delivering a call to an ISP.[181] We therefore are unwilling to take any action that results in the establishment of separate intercarrier compensation rates, terms, and conditions for local voice and ISP-bound traffic.[182] To the extent that the record indicates that per minute reciprocal

[178] If, however, a state has ordered bill and keep for ISP-bound traffic only with respect to a particular interconnection agreement, as opposed to state-wide, we do not require the incumbent LEC to offer to exchange all section 251(b)(5) traffic on a bill and keep basis. This limitation is necessary so that an incumbent is not required to deliver all section 251(b)(5) in a state on a bill and keep basis even though it continues to pay compensation for most ISP-bound traffic in that state. *See, e.g.*, Letter from John W. Kure, Qwest, to Magalie Roman Salas, Secretary, FCC (April 2, 2001)(citing, for example, Washington state, where 16% of ISP-bound traffic is subject to bill and keep). In those states, the rate caps we adopt here will apply to ISP-bound traffic that is not subject to bill and keep under the particular interconnection agreement if the incumbent LEC offers to exchange all section 251(b)(5) traffic subject to those rate caps.

[179] ILECs may make this election on a state-by-state basis.

[180] Many commenters argue that there is, in fact, no difference between the cost and network functions involved in terminating ISP-bound calls and the cost and functions involved in terminating other calls to users of the public switched telephone network. *See, e.g.*, AOL Comments at 10-12 ("there is absolutely no technical distinction, and therefore no cost differences, between the way an incumbent LEC network handles ISP-destined traffic and the way it handles other traffic within the reciprocal compensation framework."); AT&T Comments at 10-11 ("[T]here is no economic justification for subjecting voice and data traffic to different compensation rules." "ILECs have not demonstrated, and cannot demonstrate, that the costs of transporting and terminating data traffic differ categorically from the costs of transporting and terminating ordinary voice traffic."); Choice One Comments at 8 ("[C]osts do not vary significantly based on whether data or voice traffic is being transmitted."); Corecomm Reply at 2 (network functions are identical whether a carrier is providing service to an ISP or any other end-user); Cox Comments at 7 & Exhibit 2, Statement of Gerald W. Brock at 2 ("None of the distinctions between ISP calls and average calls relate to a cost difference for handling the calls."); MediaOne Comments at 4 (LECs incur the same costs for terminating calls to an ISP as they do for terminating any other local calls); Time Warner Comments at 9 ("[A]ll LECs perform the same functions when transporting and delivering calls to ISP end-users as they do when transporting and delivering calls to other end-users. When LECs perform the same functions, they incur the same costs."); Letter from Donald F. Shepheard, Time Warner Telecom, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC (Feb. 28, 2001)(disputing claim that CLEC switching costs are as low as the ILECs argue).

[181] *See, e.g.*, Cox Comments at Exhibit 2, Statement of Gerald W. Brock at 2.

[182] *See, e.g.*, Intermedia Comments at 3-4 (arguing that the rates for transport and termination of ISP-bound traffic must be identical to the rates established for the transport and termination of local traffic).

compensation rate levels and rate structures produce inefficient results, we conclude that the problems lie with this recovery mechanism in general and are not limited to any particular type of traffic.

91. We are not persuaded by commenters' claims that the rates for delivery of ISP-bound traffic and local voice traffic should differ because delivering a data call to an ISP is inherently less costly than delivering a voice call to a local end-user. In an attached declaration to Verizon's comments, William Taylor argues that reciprocal compensation rates may reflect switching costs associated with both originating and terminating functions, despite the fact that ISP traffic generally flows in only one direction.[183] If correct, however, this observation suggests a need to develop rates or rate structures for the transport and termination of *all* traffic that exclude costs associated solely with originating switching.[184] Mr. Taylor similarly argues that ISP-bound calls generally are longer in duration than voice calls, and that a per-minute rate structure applied to calls of longer duration will spread the fixed costs of these calls over more minutes, resulting in lower per-minute costs, and possible over recovery of the fixed costs incurred.[185] Any possibility of over recovery associated with calls (to ISPs or otherwise) of longer than average duration can be eliminated through adoption of rate structures that provide for recovery of per-call costs on a per-call basis, and minute-of-use costs on a minute-of-use basis.[186] We also are not convinced that ISP-bound calls have a lower load distribution (*i.e.*, number and duration of calls in the busy hour as a percent of total traffic), and that these calls therefore impose lower additional costs on a network.[187] It is not clear from the record that there is any "basis to speculate that the busy hour for calls to ISPs will be different than the CLEC switch busy hour,"[188] especially when the busy hour is determined by the flow of both voice and data traffic.

92. Nor does the record demonstrate that CLECs and ILECs incur different costs in delivering traffic that would justify disparate treatment of ISP-bound traffic and local voice traffic under section 251(b)(5). Ameritech maintains that it costs CLECs less to deliver ISP-bound traffic than it costs incumbent LECs to deliver local traffic because CLECs can reduce transmission costs by locating their switches close to ISPs.[189] The proximity of the ISP or other

---

[183] *See* Verizon Remand Comments, Declaration of William E. Taylor at 14, 17.

[184] *See* Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 14. *See also* Letter from John W. Kure, Qwest, to Magalie Roman Salas, Secretary, FCC, Attachment at 7-8 (Oct. 26, 2000).

[185] *See* Verizon Remand Comments, Declaration of William E. Taylor at 14-15.

[186] *See* Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 10-11. Time Warner also disputes that the "average duration of calls to ISPs has been accurately measured to date." *Id.* at 11.

[187] *See* Verizon Remand Comments, Declaration of William E. Taylor at 17-18.

[188] *See* Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 14-15.

[189] *See* Letter from Gary L. Phillips, Ameritech, to Magalie Roman Salas, Secretary, FCC, Attachment at 5 (Sept. 14, 1999). *See also* SBC Remand Comments at 32-33 (referring to Global NAPS Comments, Exhibit 1, Statement of Fred Goldstein at 6, which describes CLEC reduction of loop costs through collocation); Letter from Melissa Newman, U S West, to Magalie Roman Salas, Secretary, FCC, Attachment at 8 (Dec. 2, 1999).

end-user to the delivering carrier's switch, however, is irrelevant to reciprocal compensation rates.[190] The Commission concluded in the *Local Competition Order* that the non-traffic sensitive cost of the local loop is not an "additional" cost of terminating traffic that a LEC is entitled to recover through reciprocal compensation.[191]

93. SBC argues that CLECs should not be entitled to symmetrical reciprocal compensation rates for the delivery of ISP-bound traffic, because CLECs do not provide end office switching functionality to their ISP customers and therefore do not incur the same costs that ILECs incur when delivering local voice traffic. Specifically, SBC claims that the switching functionality that CLECs provide to ISPs is more like a trunk-to-trunk connection than the switching functionality normally provided at end offices.[192] SBC also claims that CLECs are able to reduce the costs of delivering ISP-bound traffic by using new, less expensive switches that do not perform the functions necessary for both the origination and delivery of two-way voice traffic.[193] Similarly, GTE asserts that new technologies and system architectures make it possible for some CLECs to reduce costs by entirely avoiding circuit-switching on calls "to selected telephone numbers."[194] CLECs respond, however, that they are in fact using the same circuit switching technology used by ILECs to terminate the vast portion of Internet traffic.[195] In any event, it is not evident from any of the comments in the record that the apparent efficiencies associated with new system architectures apply exclusively to data traffic, and not to voice traffic as well. ILECs and CLECs alike are free to deploy new technologies that provide more efficient

[190] *See* Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 25.

[191] *See Local Competition Order*, 11 FCC Rcd at 16025.

[192] SBC Remand Comments at 33.

[193] SBC Remand Comments at 33-34 (referring, *inter alia*, to "managed modem" switches).

[194] GTE Comments at 7-8 (noting the existence of SS7 bypass devices that can avoid circuit switching and arguing that competitive LEC networks are far less complex and utilize fewer switches than incumbent LEC networks); GTE Reply Comments at 16 (compensating competitive LECs based on an incumbent LEC's costs inflates the revenue that competitive LECs receive); Letter from W. Scott Randolph, GTE, to Magalie Roman Salas, Secretary, FCC, Attachment (Dec. 8, 1999 (new generation traffic architectures may use SS7 Gateways instead of more expensive circuit-switched technology).

[195] *See, e.g.*, Letter from John D. Windhausen, Jr., ALTS, and H. Russell Frisby, Jr., CompTel, to Kyle Dixon, Legal Advisor, Chairman Michael Powell, FCC, at 4-5 (March 16, 2001)(Focal is testing two softswitches, but as of now all ISP-bound traffic terminated by Focal uses traditional circuit switches; Allegiance Telecom has a single softswitch in its network; Advanced Telecom Group, Inc. is in the testing phase of softswitch deployment; Pac-West Telecomm, Inc., does not have any softswitches in its network; e.spire uses only circuit switches to terminate ISP-bound traffic);Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 27 (Time Warner is "deploying fully functional end office switches"); Letter from Donald F. Shepheard, Time Warner, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 3 (February 28, 2001)(Time Warner "does not provide managed modem services." Like the ILECs, Time Warner "has an extensive network of circuit switched technology" and has only just begun to deploy softswitches); Letter from Teresa Marrero, AT&T, to Magalie Roman Salas, Secretary, FCC, at 1 (April 11, 2001)("Virtually all of AT&T's ISP-bound traffic is today terminated using full circuit switches.").

solutions to the delivery of certain types of traffic,[196] and these more efficient technologies will, over time, be reflected in cost-based reciprocal compensation rates. The overall record in this proceeding does not lead us to conclude that any system architectures or technologies widely used by LECs result in material differences between the cost of delivering ISP-bound traffic and the cost of delivering local voice traffic, and we see no reason, therefore, to distinguish between voice and ISP traffic with respect to intercarrier compensation.

94. Some CLECs take this argument one step further. Whatever the merits of bill and keep or other reforms to intercarrier compensation, they say, any such reform should be undertaken only in the context of a comprehensive review of *all* intercarrier compensation regimes, including the interstate access charge regime.[197] First, we reject the notion that it is inappropriate to remedy some troubling aspects of intercarrier compensation until we are ready to solve all such problems. In the most recent of our access charge reform orders, we recognized that it is "preferable and more reasonable to take several steps in the right direction, even if incomplete, than to remain frozen" pending "a perfect, ultimate solution."[198] Moreover, it may make sense to begin reform by rationalizing intercarrier compensation between competing providers of telecommunications services, to encourage efficient entry and the development of robust competition, rather than waiting to complete reform of the interstate access charge regime that applies to incumbent LECs, which was created in a monopoly environment for quite different purposes. Second, the interim compensation scheme we adopt here is fully consistent with the course the Commission has pursued with respect to access charge reform. A primary feature of the *CALLS Order* is the phased elimination of the PICC and CCL,[199] two intercarrier payments we found to be inefficient, in favor of greater recovery from end-users through an increased SLC, an end-user charge.[200] Finally, like the *CALLS Order*, the interim regime we adopt here "provides relative certainty in the marketplace" pending further Commission action, thereby allowing carriers to develop business plans, attract capital, and make intelligent investments.[201]

---

[196] *See* Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 28; *see also* Letter from Donald F. Shepheard, Time Warner, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 3 (Feb. 28, 2001)("if softswitch technology will lower carriers' costs, then all carriers, including the ILECs[,] will have incentive to deploy them"); Letter from John D. Windhausen, Jr., ALTS, and H. Russell Frisby, Jr., CompTel, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 4 (February 16, 2001)(same).

[197] *See, e.g.*, Letter from Karen L. Gulick, Harris, Wiltshire & Grannis, to Magalie Roman Salas, Secretary, FCC, at 1 (Dec. 22, 2000).

[198] *See CALLS Order*, 15 FCC Rcd at 12974.

[199] The PICC, or presubscribed interexchange carrier charge, and the CCLC, carrier common line charge, are charges levied by incumbent LECs upon IXCs to recover portions of the interstate-allocated cost of subscriber loops. *See* 47 C.F.R. §§ 69.153, 69.154.

[200] *CALLS Order*, 15 FCC Rcd at 12975 (permitting a greater proportion of the local loop costs of primary residential and single-line business customers to be recovered through the SLC).

[201] *CALLS Order*, 15 FCC Rcd at 12977 (The CALLS proposal is aimed to " bring lower rates and less confusion to consumers; and create a more rational interstate rate structure. This, in turn, will support more efficient competition, more certainty for the industry, and permit more rational investment decisions.").

D. Conclusion

95. In this Order, we strive to balance the need to rationalize an intercarrier compensation scheme that has hindered the development of efficient competition in the local exchange and exchange access markets with the need to provide a fair and reasonable transition for CLECs that have come to depend on intercarrier compensation revenues. We believe that the interim compensation regime we adopt herein responds to both concerns. The regime should reduce carriers' reliance on carrier-to-carrier payments as they recover more of their costs from end-users, while avoiding a "flash cut" to bill and keep which might upset legitimate business expectations. The interim regime also provides certainty to the industry during the time that the Commission considers broader reform of intercarrier compensation mechanisms in the *NPRM* proceeding. Finally, we hope this Order brings an end to the legal confusion resulting from the Commission's historical treatment of ISP-bound traffic, for purposes of jurisdiction and compensation, and the statutory obligations and classifications adopted by Congress in 1996 to promote the development of competition for all telecommunications services. We believe the analysis set forth above amply responds to the court's mandate that we explain how our conclusions regarding ISP-bound traffic fit within the governing statute.[202]

V. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

96. As required by the Regulatory Flexibility Act (RFA),[203] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Declaratory Ruling and NPRM*.[204] The Commission sought and received written comments on the IRFA. The Final Regulatory Flexibility Analysis (FRFA) in this Order on Remand and Report and Order conforms to the RFA, as amended.[205] To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules, or statements made in preceding sections of this Order on Remand and Report and Order, the rules and statements set forth in those preceding sections shall be controlling.

1. Need for, and Objectives of, this Order on Remand and Report and Order

97. In the *Declaratory Ruling*, we found that we did not have an adequate record upon which to adopt a rule regarding intercarrier compensation for ISP-bound traffic, but we indicated that adoption of a rule would serve the public interest.[206] We sought comment on two alternative

[202] *Bell Atlantic*, 206 F.3d at 8.

[203] *See* 5 U.S.C. § 603.

[204] *Declaratory Ruling*, 14 FCC Rcd at 3710-13.

[205] *See* 5 U.S.C. § 604. The Regulatory Flexibility Act, 5 U.S.C. § 601 *et. seq.*, was amended by the "Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), which was enacted as Title II of the Contract With America Advancement Act of 1996, Pub.L. No. 104-121, 110 Stat. 847 (1996) (CWAAA).

[206] *Declaratory Ruling and Intercarrier Compensation NPRM*, 14 FCC Rcd at 3707.

proposals, and stated that we might issue new rules or alter existing rules in light of the comments received.[207] Prior to the release of a decision, the Court of Appeals for the District of Columbia Circuit vacated certain provisions of the *Declaratory Ruling* and remanded the matter to the Commission.[208]

98. This Order on Remand and Report and Order addresses the concerns of various parties to this proceeding and responds to the court's remand. The Commission exercises jurisdiction over ISP-bound traffic pursuant to section 201, and establishes a three-year interim intercarrier compensation mechanism for the exchange of ISP-bound traffic that applies if incumbent LECs offer to exchange section 251(b)(5) traffic at the same rates. During this interim period, intercarrier compensation for ISP-bound traffic is subject to a rate cap that declines over the three-year period, from $.0015/mou to $.0007/mou. The Commission also imposes a cap on the total ISP-bound minutes for which a LEC may receive this compensation under a particular interconnection agreement equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to receive compensation during the first quarter of 2001, increased by ten percent in each of the first two years of the transition. If an incumbent LEC does not offer to exchange all section 251(b)(5) traffic subject to the rate caps set forth herein, the exchange of ISP-bound traffic will be governed by the reciprocal compensation rates approved or arbitrated by state commissions.

2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

99. The Office of Advocacy, U.S. Small Business Administration (Office of Advocacy) submitted two filings in response to the IRFA.[209] In these filings, the Office of Advocacy raises significant issues regarding our description, in the IRFA, of small entities to which our rules will apply, and the discussion of significant alternatives considered and rejected. Specifically, the Office of Advocacy argues that the Commission has failed accurately to identify all small entities affected by the rulemaking by refusing to characterize small incumbent local exchange carriers (LECs), and failing to identify small ISPs, as small entities.[210] We note that, in the IRFA, we stated that we excluded small incumbent LECs from the definitions of "small entity" and "small business concern" because such companies are either dominant in their field of operations or are not independently owned and operated.[211] We also stated, however, that we would nonetheless, out of an abundance of caution, include small incumbent LECs in the

[207] *Declaratory Ruling and Intercarrier Compensation NPRM*, 14 FCC Rcd at 3711.

[208] *See Bell Atlantic*, 206 F.3d 1.

[209] Office of Advocacy, U.S. Small Business Administration *ex parte*, May 27, 1999; Office of Advocacy, U.S. Small Business Administration *ex parte*, June 14, 1999.

[210] Office of Advocacy, U.S. Small Business Administration *ex parte*, May 27, 1999, at 1-3; Office of Advocacy, U.S. Small Business Administration *ex parte*, June 14, 1999, at 2-3.

[211] *Declaratory Ruling and Intercarrier Compensation NPRM*, 14 FCC Rcd at 3711.

IRFA, and did so.[212] Small incumbent LECs and other relevant small entities are included in our present analysis as described below.

100. The Office of Advocacy also states that Internet service providers (ISPs) are directly affected by our actions, and therefore should be included in our regulatory flexibility analysis. We find, however, that rates charged to ISPs are only indirectly affected by our actions. We have, nonetheless, briefly discussed the effect on ISPs in the primary text of this Order.[213]

101. Last, the Office of Advocacy also argues that the Commission has failed to adequately address significant alternatives that accomplish our stated objective and minimize any significant economic impact on small entities.[214] We note that, in the IRFA, we described the nature and effect of our proposed actions, and encouraged small entities to comment (including giving comment on possible alternatives). We also specifically sought comment on the two alternative proposals for implementing intercarrier compensation – one that resolved intercarrier compensation pursuant to the negotiation and arbitration process set forth in Section 252, and another that would have had us adopt a set of federal rules to govern such intercarrier compensation.[215] We believe, therefore, that small entities had a sufficient opportunity to comment on alternative proposals.

102. NTCA also filed comments, not directly in response to the IRFA, urging the Commission to fulfill its obligation to consider small telephone companies.[216] Some commenters also raised the issue of small entity concerns over increasing Internet traffic and the use of Extended Area Service (EAS) arrangements.[217] We are especially sensitive to the needs of rural and small LECs that handle ISP-bound traffic, but we find that the costs that LECs incur in *originating* this traffic extends beyond the scope of the present proceeding and should not dictate the appropriate approach to compensation for *delivery* of ISP-bound traffic.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

103. The rules we are adopting apply to local exchange carriers. To estimate the number of small entities that would be affected by this economic impact, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction."[218] In addition, the term "small business" has the same meaning as the

[212] *Declaratory Ruling and Intercarrier Compensation NPRM*, 14 FCC Rcd at 3711.

[213] *See supra* paras. 87-88.

[214] Office of Advocacy, U.S. Small Business Administration *ex parte*, June 14, 1999, at 3.

[215] *Declaratory Ruling [IRFA]*, 14 FCC Rcd at 3711 (para. 39); *see also Declaratory Ruling*, 14 FCC Rcd at 3707-08 (paras. 30-31).

[216] NTCA Comments at vi, 15.

[217] *See, e.g.*, ICORE Comments at 1-7; IURC Comments at 7; Richmond Telephone Company Comments at 1-8.

[218] 5 U.S.C. § 601(6).

term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[219] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.[220] The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.[221]

104. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Carrier Locator report, derived from filings made in connection with the Telecommunications Relay Service (TRS).[222] According to data in the most recent report, there are 4,144 interstate carriers.[223] These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

105. We have included small incumbent local exchange carriers (LECs) in this regulatory flexibility analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[224] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[225] We have therefore included small incumbent LECs in this regulatory flexibility analysis, although we emphasize that this action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

---

[219] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

[220] 15 U.S.C. § 632.

[221] 13 C.F.R. § 121.201.

[222] FCC, Carrier Locator: Interstate Service Providers, Figure 1 (Jan. 2000) (*Carrier Locator*).

[223] *Carrier Locator* at Fig. 1.

[224] 5 U.S.C. § 601(3).

[225] Office of Advocacy, U.S. Small Business Administration *ex parte*, May 27, 1999, at 1-3; Office of Advocacy, U.S. Small Business Administration *ex parte*, June 14, 1999, at 2-3. The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g.*, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

106. Total Number of Telephone Companies Affected. The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[226] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."[227] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rule changes adopted in this proceeding.

107. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[228] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[229] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rule changes adopted in this proceeding.

108. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition particular to small LECs, interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[230] According to our most recent TRS data, there are 1,348 incumbent LECs and 212 CAPs and competitive LECs.[231] Although it seems certain that some

---

[226] United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (*1992 Census*).

[227] 15 U.S.C. § 632(a)(1).

[228] *1992 Census* at Firm Size 1-123.

[229] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4813.

[230] 13 C.F.R. § 121.201, SIC Code 4813.

[231] *Carrier Locator* at Fig. 1.

of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 1,348 incumbent LECs and fewer than 212 CAPs and competitive LECs that may be affected by the decisions and rule changes adopted in this proceeding.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

109. The rule we are adopting imposes direct compliance requirements on interconnected incumbent and competitive LECs, including small LECs. In order to comply with this rule, these entities will be required to exchange their ISP-bound traffic subject to the rules we are adopting above.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

110. In the *Declaratory Ruling and Intercarrier Compensation NPRM* the Commission proposed various approaches to intercarrier compensation for ISP-bound traffic.[232] During the course of this proceeding the Commission considered and rejected several alternatives.[233] None of the significant alternatives considered would appear to succeed as much as our present rule in balancing our desire to minimize any significant economic impact on relevant small entities, with our desire to deal with the undesirable incentives created under the current reciprocal compensation regime that governs the exchange of ISP-bound traffic in most instances. We also find that for small ILECs and CLECs the administrative burdens and transaction costs of intercarrier compensation will be minimized to the extent that LECs begin a transition toward recovery of costs from end-users, rather than other carriers.

111. Although a longer transition period was considered by the Commission, it was rejected because a three-year period was considered sufficient to accomplish our policy objectives with respect to all LECs.[234] Differing compliance requirements for small LECs or exemption from all or part of this rule is inconsistent with our policy goal of addressing the market distortions attributable to the prevailing intercarrier compensation mechanism for ISP-bound traffic and beginning a smooth transition to bill-and-keep.

Report to Congress: The Commission will send a copy of this Order on Remand and Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[235] In addition, the Commission will send a copy of this Order on Remand and Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business

---

[232] *Declaratory Ruling*, 14 FCC Rcd at 3707-10.

[233] *See supra* paras. 67-76 (rejecting application of a reciprocal compensation mechanism to ISP-bound traffic).

[234] We note, however, that the interim regime we adopt here governs for 36 months or until further action by the Commission, *whichever is longer*.

[235] 5 U.S.C. § 801(a)(1)(A).

Administration. A copy of this Order on Remand and Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.[236]

VI. ORDERING CLAUSES

112. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i) and (j), 201-209, 251, 252, 332, and 403 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-209, 251, 252, 332, and 403, and Section 553 of Title 5, United States Code, 5 U.S.C. § 553, that this Order on Remand and Report and Order and revisions to Part 51 of the Commission's rules, 47 C.F.R. Part 51, ARE ADOPTED. This Order on Remand and Report and Order and the rule revisions adopted herein will be effective 30 days after publication in the Federal Register except that, for good cause shown, as set forth in paragraph 82 of this Order, the provision of this Order prohibiting carriers from invoking section 252(i) of the Act to opt into an existing interconnection agreement as it applies to rates paid for the exchange of ISP-bound traffic will be effective immediately upon publication of this Order in the Federal Register.

113. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Order on Remand and Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

[236] *See* 5 U.S.C. § 604(b).

Appendix A
List of Commenters in CC Docket Nos. 96-98, 99-68

Comments Filed in Response to the June 23, 2000 Public Notice

Advanced TelCom Group, Inc.; e.spire Communications, Inc.; Intermedia Communications, Inc.; KMC Telecom, Inc.; Nextlink Communications, Inc.; The Competitive Telecommunications Association
Alliance for Public Technology
Association of Communications Enterprises
Association for Local Telecommunications Services
AT&T Corp. (AT&T)
BellSouth Corporation
Cablevision Lightpath, Inc.
California State and California Public Utilities Commission
Centennial Communications Corp. (Centennial)
Florida Public Service Commission
Focal Communications Corporation, Allegiance Telecom, Inc., and Adelphia Business Solutions, Inc.
General Services Administration
Global NAPs, Inc.
ICG Telecom Group, Inc.
Keep America Connected; National Association of the Deaf; National Association of Development Organizations; National Black Chamber of Commerce; New York Institute of Technology; Ocean of Know; Telecommunications for the Deaf, Inc.; United States Hispanic Chamber of Commerce
Massachusetts Department of Telecommunications & Energy
Missouri Public Service Commission
National Consumers League
National Exchange Carrier Association, Inc.
New York Department of Public Service
Pac-West Telecomm, Inc.
Pennsylvania Office of Consumer Advocate
Prism Communications Services, Inc.
Qwest Corporation
RCN Telecom Services, Inc. and Connect Communications Corporation
RNK, Inc.
Rural Independent Competitive Alliance
SBC Communications, Inc. (SBC)
Sprint Corporation (Sprint)
Texas Public Utility Commission
Time Warner Telecom Inc. (Time Warner)
United States Telecom Association
Verizon Communications (Verizon)
Western Telephone Integrated Communications, Inc.
WorldCom, Inc.

Reply Comments Filed in Response to the June 23, 2000 Public Notice

Adelphia Business Solutions, Inc.; Allegiance TeleCom, Inc., Focal Communications Corporation, and RCN Telcom Services, Inc.
AT&T Corp.
BellSouth Corporation
Cablevision Lightpath, Inc.
Cincinnati Bell Telephone Company
Commercial Internet Exchange Association
Converscent Communications, LLC
Covad Communication Company
Duckenfield, Pace
e.spire Communications, Inc., Intermedia Communications Inc., KMC Telecom, Inc., NEXTLINK Communications, Inc., The Association for Local Telecommunications Services, and The Competitive Telecommunications Association
General Services Administration
Global NAPs, Inc.
ICG Telecom Group, Inc.
Keep America Connected; National Association of Development Organizations; National Black Chamber of Commerce; New York Institute of Technology; United States Hispanic Chamber of Commerce
Pac-West Telecomm, Inc.
Prism Communications Services, Inc.
Qwest Corporation
Riter, Josephine
SBC Communications, Inc. (SBC)
Sprint Corporation
Time Warner Telecom Inc. (Time Warner)
US Internet Industry Association
United States Telecom Association
Verizon Communications (Verizon)
Western Telephone Integrated Communications, Inc.
WorldCom, Inc.

Comments Filed in Response to the February 26, 1999 Notice of Proposed Rulemaking

Airtouch Paging
America Online, Inc. (AOL)
Ameritech
Association for Local Telecommunications Services
AT&T Corp. (AT&T)
Baldwin, Jesse
Bardsley, June
Bell Atlantic Corporation
BellSouth Corporation
Cablevision Lightpath, Inc.
California Public Utilities Commission
Choice One Communications (Choice One)
Cincinnati Bell Telephone Company
Commercial Internet eXchange Association
Competitive Telecommunications Association)
Corecomm Limited
Cox Communications, Inc. (Cox)
CT Cube, Inc. & Leaco Rural Telephone Cooperative, Inc.
CTSI, Inc.
Florida Public Service Commission
Focal Communications Corporation
Frontier Corporation
General Communication, Inc.
General Services Administration
Global NAPs Inc.
GST Telecom, Inc.
GTE Services Corporation (GTE)
GVNW Consulting, Inc.
Hamilton, Dwight
ICG Communications
ICORE, Inc.
Indiana Utility Regulatory Commission
Information Technology Association of America
Intermedia Communications Inc. (Intermedia)
Keep America Connected; Federation of Hispanic Organizations of the Baltimore Metropolitan Area, Inc; Latin American Women and Supporters; League of United Latin American Citizens; Massachusetts Assistive Technology Partnership; National Association of Commissions for Women; National Association of Development Organizations; National Hispanic Council on Aging; New York Institute of Technology; Resources for Independent Living; Telecommunications Advocacy Project; The Child Health Foundation; The National Trust for the Development of African American Men; United Homeowners Association; United Seniors Health Cooperative
KMC Telecom Inc.
Lewis, Shawn
Lloyd, Kimberly, D.

MCI WorldCom, Inc.
MediaOne Group (Media One)
Miner, George
Missouri Public Service Commission
National Telephone Cooperative Association
New York State Department of Public Service
Pennsylvania Public Utility Commission
Personal Communications Industry Assoc.
Public Utility Commission of Texas
Prism Communications Services, Inc.
RCN Telecom Services, Inc.
Reinking, Jerome C.
Richmond Telephone Company
RNK Inc.
SBC Communications
Schaefer, Karl W.
Sefton, Tim
Shook, Ofelia E.
Sprint Corporation
John Staurulakis, Inc.
Telecommunications Resellers Association
Telephone Association of New England
Thomas, William J.
Time Warner Telecom Inc. (Time Warner)
United States Telephone Association
Verio Inc.
Vermont Public Service Board
Virgin Islands Telephone Corporation
Wisconsin State Telecommunications Association

Reply Comments Filed in Response to the February 26, 1999 Notice of Proposed Rulemaking

Airtouch Paging
Ameritech
Association for Local Telecommunications Services
AT&T Corp.
Bell Atlantic Corporation
BellSouth Corporation and BellSouth Telecommunications, Inc.
Competitive Telecommunications Association
Corecomm Limited (CoreComm)
Cox Communications, Inc. (Cox)
Focal Communications Corporation
General Services Administration
Global NAPs Inc.
GST Telecom Inc.
GTE Services Corporation (GTE)
GVNW Consulting, Inc.

ICG Communications, Inc
Illinois Commerce Commission
Intermedia Communications Inc.
KMC Telecom Inc.
MCI WorldCom, Inc.
National Exchange Carrier Association, Inc.
National Telephone Cooperative Association
Network Plus, Inc.
New York State Department of Public Services
Pac-West Telecomm., Inc.
Pennsylvania Public Utility Commission
Personal Communications Industry Association
Prism Communications Services, Inc.
Public Service Commission of Wisconsin
RCN Telecom Services
RNK Telecom
SBC Communications, Inc.
Sprint Corporation
Supra Telecommunications & Information Systems, Inc.
TDS Telecommunications Corporation
Time Warner Telecom
United States Telephone Association
US West Communications, Inc.
Verio Inc.
Virgin Islands Telephone Corporation
Wyoming Public Service Commission

Appendix B – Final Rules

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

Part 51, Subpart H, of Title 47 of the Code of Federal Regulations (C.F.R.) is amended as follows:

1. The title of part 51, Subpart H, is revised to read as follows:

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

2. Section 51.701(b) is revised to read as follows:

(a) **§ 51.701 Scope of transport and termination pricing rules.**

*****

(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, paras. 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.

3. Sections 51.701(a), 51.701(c) through (e), 51.703, 51.705, 51.707, 51.709, 51.711, 51.713, 51.715, and 51.717 are each amended by striking "local" before "telecommunications traffic" each place such word appears.

SEPARATE STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic (CC Docket Nos. 96-98, 99-68)

In this *Order*, we re-affirm our prior conclusion that telecommunications traffic delivered to Internet service providers (ISPs) is subject to our jurisdiction under section 201 of the Act. Thus, we reject arguments that section 251(b)(5) applies to this traffic. I firmly believe that this *Order* is supported by reasonable interpretations of statutory provisions that read together are ambiguous and, absent a reconciling interpretation, conflicting.

I also support the fact that this *Order*, for the first time, establishes a transition mechanism that will gradually wean competitive carriers from heavy reliance on the excessive reciprocal compensation charges that incumbents have been forced to pay these competitors for carrying traffic from the incumbent to the ISP. This transition mechanism was carefully crafted to balance the competing interests of incumbent and competitive telephone companies and other parties, so as not to undermine the Act's goal of promoting efficient local telephone competition.

I write separately only to emphasize a few points:

As an initial matter, I respectfully disagree with the objections to our conclusion that section 251(g) "carves out" certain categories of services that, in the absence of that provision, would likely be subject to the requirements of section 251(b)(5).[1] Section 251(b)(5)'s language first appears to be far-reaching, in that it would seem to apply, by its express terms, to all "telecommunications."[2] There is apparently no dispute, however, that at least one category of the LEC-provided telecommunications services enumerated in section 251(g) (namely, "exchange access") is not subject to section 251(b)(5), despite the broad language of this provision. Indeed, the *Bell Atlantic* Court appears to have endorsed that conclusion.[3] The question then arises whether the other categories of traffic that are enumerated in section 251(g) (including, "information access") should also be exempted from the application of section 251(b)(5). We answer this question in the affirmative, and no justification (compelling or otherwise) has been offered for why only one service – exchange access – should be afforded disparate treatment in the construction of section 251(g). I would note, moreover, that on the only other occasion in

---

[1] To be more precise, section 251(g) refers to certain categories of service *provided by LECs* to *ISPs and interexchange carriers*. 47 U.S.C. § 251(g). In this statement, I use a short-hand reference to the "categories of services" enumerated in section 251(g).

[2] 47 U.S.C. § 251(b)(5).

[3] *See cf. Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1, 4 (D.C. Cir. 2000) ("Although [section] 251(b)(5) purports to extend reciprocal compensation to all 'telecommunications,' the Commission has construed the reciprocal compensation requirement as limited to local traffic."). The Court then went on to conclude that the Commission had not provided an adequate explanation of why LECs that carry traffic to ISPs are providing "'exchange access,' rather than 'telephone exchange service.'" *Id.* at 9. The Court does not appear to have questioned anywhere in its opinion the notion that the scope of the reciprocal compensation requirement does not extend to certain categories of LEC-provided services, including "exchange access."

which the Commission directly addressed the question whether section 251(g) serves as such a "carve-out," the Commission concluded, as we do here, that it does perform that function.[4]

Nor do I find the position we adopt here irreconcilable with our decision in the *Advanced Services Remand Order*.[5] In discussing the term "information access" in that *Order*, we were not addressing the question whether section 251(g) exempts certain categories of traffic provided by LECs to ISPs and interexchange carriers from the other requirements of section 251. Rather, we addressed only the relationship between "information access" and the categories of "exchange access" and "telephone exchange service." Specifically, we "decline[d] to find that information access services are a separate category of services, distinct from, and mutually exclusive with, telephone exchange and exchange access services."[6] But under the reading of section 251(g) put forth in this *Order*, the question whether information access is distinct from these other services is irrelevant. Because information access is specifically enumerated in section 251(g), it is not subject to the requirements of section 251(b)(5), whether or not that category of service overlaps with, or is distinct from, telephone exchange service or exchange access.

Similarly, I reject the suggestion that section 251(g) *only* preserves the MFJ requirements. The language of section 251(g) specifically refers to "each local exchange carrier," not just to the Bell Operating Companies.[7] Section 251(g) also expressly refers to any "regulation, order, or policy of the Commission."[8] Such clauses support the reading of section 251(g) that we adopt today.[9]

Finally, I disagree that section 251(g) cannot be construed to exempt certain categories of traffic from the requirements of section 251(b)(5), simply because the former provision does not include the words "exclude" or "reciprocal compensation" or "telecommunications."[10] As I have said, our reading that the categories of LEC-provided services enumerated in subsection (g) are exempted from reciprocal compensation arises from our duty to give effect to both section 251(g)

---

[4] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Dkt. Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499 (1996), ¶ 1034.

[5] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dkt. Nos. 98-147 et al., Order on Remand, 15 FCC Rcd 385 (1999) (*Advanced Services Remand Order*); *see also WorldCom, Inc. v. FCC*, No. 00-1002 (D.C. Cir. filed Apr. 20, 2001) (affirming *Advanced Services Remand Order* on one of the alternative grounds proffered by the Commission).

[6] *Advanced Services Remand Order*, 15 FCC Rcd at 406, ¶ 46.

[7] 47 U.S.C. § 251(g).

[8] *Id.*

[9] Had the language of section 251(g) been limited to the Bell Companies or to court orders and consent decrees, for example, perhaps one could construct an argument that Congress meant to limit the scope of section 251(g) to the MFJ requirements.

[10] Section 251(b)(5) states that all LECs must "establish *reciprocal compensation* arrangements for the transport and termination of *telecommunications*." 47 U.S.C. § 251(g) (emphasis added).

and section 251(b)(5). I also would point out that section 251(g) does include a specific reference to "receipt of compensation," just as the services enumerated in that section (e.g., exchange access, information access) undeniably involve telecommunications.[11]

In closing, I would only reiterate that the statutory provisions at issue here are ambiguous and, absent a reconciling interpretation, conflicting. Thus, the Commission has struggled long and hard in an effort to give as full a meaning as possible to each of the provisions in a manner we conclude is consistent with the statutory purpose. It would not be overstating matters to acknowledge that these issues are highly complex, disputed and elusive, and that what we decide here will have enormous impact on the development of new technologies and the economy more broadly. It is for their relentless efforts to wrestle with (and now resolve) these issues that I am deeply grateful to my colleagues and our able staff.

[11] As the *Order* suggests, Section 251(g) enumerates "exchange access," "information access" and "exchange services for such access." 47 U.S.C. § 251(g). For purposes of subsection (g), all of these services are provided by LECs to "interexchange carriers and information service providers." These three categories undeniably involve telecommunications. "Information access" was defined in the MFJ as "the provision of specialized exchange *telecommunications* services" to information service providers. *United States v. AT&T*, 552 F. Supp. 131, 196, 229 (D.D.C. 1982). The term "exchange service" as used in section 251(g) is not defined in the Act or in the MFJ. Rather, the term "exchange service" is used in the MFJ as part of the definition of the term "exchange access," which the MFJ defines as "the provision of exchange services for the purposes of originating or terminating interexchange *telecommunications*." *United States v. AT&T*, F. Supp. at 228. Thus, the term "exchange service" appears to mean, in context, the provision of services in connection with *interexchange* communications. Consistent with that, in section 251(g), the term is used as part of the longer phrase "exchange services for such [exchange] access to interexchange carriers and information service providers." All of this indicates that the term "exchange service" is closely related to the provision of exchange access and information access, and that all three involve telecommunications.

DISSENTING STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re: *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, CC Docket Nos. 96-98, 99-68.

To some observers, the Telecommunications Act of 1996 ("1996 Act"), in general, and sections 251 and 252 (47 U.S.C. §§ 251 and 252), in particular, have become unnecessary inconveniences. The poster child for those who proclaim the 1996 Act's failure is reciprocal compensation. It has led to large billings – some paid, some unpaid – among telecommunications carriers. These billings have not shrunk, in large part because the Commission's interpretation of the pick-and-choose provision of the Act (47 U.S.C. § 252(i)) has led to unstable contracts, with perverse incentives for renegotiation.

Reciprocal compensation is an obscure and tedious topic. It is not, however, a topic that Congress overlooked. To the contrary, in describing reciprocal compensation arrangements in sections 251 and 252, Congress went into greater detail than it did for almost any other commercial relationship between carriers covered in the 1996 Act. Among other things, Congress mandated that reciprocal compensation arrangements would be: (1) made by contract; (2) under State supervision; (3) at rates to be negotiated or arbitrated; and (4) would utilize a bill-and-keep plan only on a case-by-case basis under specific statutory conditions. *See* 47 U.S.C. §§ 251(b)(5), 252(a), 252(b), 252(d)(2).

Faced with these statutory mandates, how should the large billings for reciprocal compensation be addressed? Renegotiating contracts would be the simple market solution, only made precarious by our pick-and-choose rules. Another solution would be to seek review of reciprocal compensation agreements by State commissions. Other solutions would be for this Commission to change its pick-and-choose rules or to issue guidelines for State commission decisions (*see AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 385 (1999)).

Each of these solutions, of course, would reflect at least a modicum of respect for States, their lawmakers, their regulators, federal law, and the Congress that enacted the 1996 Act. Each would also be consistent with, and respectful of, the prior ruling on reciprocal compensation by the Court of Appeals for the D.C. Circuit. *See Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

There is, however, one solution that is not respectful of other governmental institutions. It is a solution that places under exclusive federal jurisdiction broad expanses of telecommunications. It is a solution that does not directly solve the problem at hand. It is a solution that can be reached only through a twisted interpretation of the law and a vitiation of economic reasoning and general common sense. That solution is nationwide price regulation. That is the regrettable solution the Commission has adopted.

The Commission's decision has broad consequences for the future of telecommunications regulation. In holding that essentially all packetized communications fall within federal jurisdiction, the Commission has dramatically diminished the States' role going forward, as such

communications are fast becoming the dominant mode. Whatever the merits of this reallocation of authority, it is a reallocation that properly should be made only by Congress. It certainly should not be made, as here, by a self-serving federal agency acting unilaterally.

There is doubtlessly underway a publicity campaign by the proponents of today's action. It will spin nationwide mandatory price regulation as "deregulation." It will spin the abandonment of States and contracts as "good government."

The media might be spun by this campaign. The public might be spun. But it will be far more difficult to convince the courts that the current action is lawful.

A Flawed Order From Flawed Decisionmaking

Today's order is the product of a flawed decisionmaking process that occurs all too frequently in this agency. It goes like this. First, the Commission settles on a desired outcome, based on what it thinks is good "policy" and without giving a thought to whether that outcome is legally supportable. It then slaps together a statutory analysis. The result is an order like this one, inconsistent with the Commission's precedent and fraught with legal difficulties.

In March 2000, the Court of Appeals for the D.C. Circuit vacated the Commission's conclusion that section 251(b)(5) does not apply to calls made to Internet service providers ("ISPs"). *See Bell Atlantic*, 206 F.3d at 9. The court ruled that, among other things, the Commission had not provided a "satisfactory explanation why LECs that terminate calls to ISPs are not properly seen as 'terminating . . . local telecommunications traffic,' and why such traffic is 'exchange access' rather than 'telephone exchange service.'" *Id.*

The Commission has taken more than a year to respond to the court's remand decision. My colleagues some time ago decided on their general objective – asserting section 201(b) jurisdiction over ISP-bound traffic and permitting incumbent carriers to ramp down the payments that they make to competitive ones. The delay in producing an order is attributable to the difficulty the Commission has had in putting together a legal analysis to support this result, which is at odds with the agency's own precedent as well as the plain language of the statute.

Today, the Commission rules, once again, that section 251(b)(5) does not apply to ISP-bound traffic. In a set of convoluted arguments that sidestep the court's objections to its previous order, the Commission now says that ISP-bound traffic is "information access," which, the Commission asserts, is excluded "from the universe of 'telecommunications' referred to in section 251(b)(5)" (Order ¶¶ 23, 30) – despite the Commission's recent conclusion in another context that "information access" is not a separate category of service exempt from the requirements of section 251. *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Remand, 15 FCC Rcd 385, ¶¶ 46-49 (1999) ("*Advanced Services Remand Order*").

The result will be another round of litigation, and, in all likelihood, this issue will be back at the agency in another couple of years. In the meantime, the uncertainty that has clouded the issue of compensation for ISP-bound traffic for the last five years will continue. The Commission would act far more responsibly if it simply recognized that ISP-bound traffic comes

within section 251(b)(5). To be sure, this conclusion would mean that the Commission could not impose on these communications any rule that it makes up, as the agency believes it is permitted to do under section 201(b). Rather, the Commission would be forced to work within the confines of sections 251(b)(5) and 252(d)(2), which, among other things, grant authority to State commissions to decide on "just and reasonable" rates for reciprocal compensation. 47 U.S.C. § 252(d)(2). But the Commission surely could issue "rules to guide the state-commission judgments" regarding reciprocal compensation (*Iowa Utilities Bd.*, 525 U.S. at 385) and perhaps could even put in place the same compensation scheme it orders here. At the same time, the confusion that this order will add to the agency's already bewildering precedent on Internet-related issues would be avoided.

The Commission's Previous Order and the Court's Remand Decision

To see how far the Commission has come in its attempt to assert section 201(b) jurisdiction over ISP-bound traffic, let us briefly review the court's decision on the Commission's previous order, which receives little attention in the order released today. In its previous order, issued in February 1999, the Commission focused on the jurisdictional nature of ISP-bound traffic. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling, 14 FCC Rcd 3689 (1999) ("*Reciprocal Compensation Declaratory Ruling*"). Applying an "end-to-end" analysis, the agency concluded that calls to ISPs do not terminate at the ISP's local server, but instead continue to the "ultimate destination or destinations, specifically at a[n] Internet website that is often located in another state." *Id.* ¶ 12. Based on this jurisdictional analysis, the Commission ruled that a substantial portion of calls to ISPs are jurisdictionally interstate, and it described ISP-bound traffic as interstate "access service." *Id.* ¶¶ 17, 18. The Commission reasoned that, since reciprocal compensation is required only for the transport and termination of *local* traffic, section 251(b)(5)'s obligations did not apply to ISP-bound calls. *See id.* ¶¶ 7, 26.

1. The Court Asked the Commission Why ISPs Are Not Like Other Local Businesses

The court vacated the Commission's decision. It held that, regardless of the jurisdictional issue, the Commission had not persuasively distinguished ISPs from other businesses that use communications services to provide goods or services to their customers. *See Bell Atlantic*, 206 F.3d at 7. In the court's view, the Commission had failed to explain why "an ISP is not, for purposes of reciprocal compensation, 'simply a communications-intensive business end user selling a product to other consumer and business end-users.'" *Id.* (citation omitted).

2. The Court Asked the Commission Why Calls Do Not Terminate at ISPs

The court also questioned the Commission's conclusion that a call to an ISP did not "terminate" at the ISP. "[T]he mere fact that the ISP originates further telecommunications does not imply that the original telecommunication does not 'terminate' at the ISP." *Id.* The court concluded that, "[h]owever sound the end-to-end analysis may be for jurisdictional purposes," the Commission had failed to explain why treating these "linked telecommunications as

continuous works for purposes of reciprocal compensation." *Id.*

3. The Court Asked the Commission How Its Treatment of ISP-Bound Traffic Is Consistent with Its Treatment of Enhanced Service Providers

The court also wondered whether the Commission's treatment of ISP-bound traffic was consistent with the approach it applies to enhanced service providers ("ESPs"), which include ISPs. *See id.* at 7-8. The Commission has long exempted ESPs from the access charge system, effectively treating them as end-users of local service rather than long-distance carriers. The court observed that this agency, in the Eighth Circuit access charge litigation, had taken the position "that a call to an information service provider is really like a call to a local business that then uses the telephone to order wares to meet the need." *Id.* at 8. The court rejected as "not very compelling" the Commission's argument that the ESP exemption is consistent with the understanding that ESPs use interstate access services. *Id.*

4. The Court Asked the Commission Whether ISP-Bound Traffic is "Exchange Access" or "Telephone Exchange Service"

Finally, the court rejected the Commission's suggestion that ISPs are "users of access service." *Id.* The court noted that the statute creates two statutory categories – "telephone exchange service" and "exchange access" – and observed that on appeal, the Commission had conceded that these categories occupied the field. *Id.* If the Commission had meant to say that ISPs are users of "exchange access," wrote the court, it had "not provided a satisfactory explanation why this is the case." *Id.*

The Commission's Latest Order

Today, the Commission fails to answer any of the court's questions. Recognizing that it could not reach the desired result within the framework it used previously, the Commission offers up a completely new analysis, under which it is irrelevant whether ISP-bound traffic is "local" rather than "long-distance" or "telephone exchange service" rather than "exchange access."

In today's order, the Commission concludes that section 251(b)(5) is not limited to local traffic as it had previously maintained, but instead applies to all "telecommunications" traffic except the categories specifically enumerated in section 251(g). *See* Order ¶¶ 32, 34. The Commission concludes that ISP-bound traffic falls within one of these categories – "information access" – and is therefore exempt from section 251(b)(5). *See id.* ¶ 42. The agency wraps up with a determination that ISP-bound traffic is interstate, and it thus has jurisdiction under section 201(b) to regulate compensation for the exchange of ISP-bound traffic. *See id.* ¶¶ 52-65.

The Commission's latest attempt to solve the reciprocal compensation puzzle is no more successful than were its earlier efforts. As discussed below, its determination that ISP-bound traffic is "information access" and, hence, exempt from section 251(b)(5) is inconsistent with still-warm Commission precedent. Moreover, its interpretation of section 251(g) cannot be reconciled with the statute's plain language.

1. Today's decision is a complete reversal of the Commission's recent decision in the *Advanced Services Remand Order*. In that order, the Commission rejected an argument that xDSL traffic is exempt from the unbundling obligations of section 251(c)(3) as "information access." Among other things, the Commission found meritless the argument that section 251(g) exempts "information access" traffic from other requirements of section 251. *Id.* ¶ 47. Rather, the Commission explained, "this provision is merely a continuation of the equal access and nondiscrimination provisions of the Consent Decree until superseded by subsequent regulations of the Commission." *Id.* According to the Commission, section 251(g) "is a transitional enforcement mechanism that obligates the incumbent LECs to continue to abide by equal access and nondiscriminatory interconnection requirements of the MFJ." *Id.* The Commission thus concluded that section 251(g) was not intended to exempt xDSL traffic from section 251's other provisions. *See id.* ¶¶ 47-49.

In addition, the Commission rejected the contention that "information access" is a statutory category distinct from "telephone exchange service" and "exchange access." *See id.* ¶ 46.[1] It pointed out that "'information access' is not a defined term under the Act, and is cross-referenced in only two transitional provisions." *Id.* ¶ 47. It ultimately concluded that nothing in the Act suggests that "information access" is a category of services mutually exclusive with exchange access or telephone exchange service. *See id.* ¶ 48.

The Commission further determined that ISP-bound traffic is properly classified as "exchange access." *See id.* ¶ 35. It noted that exchange access refers to "access to telephone exchange services or facilities for the purpose of originating or terminating communications that travel outside an exchange." *Id.* ¶ 15. Applying this definition, and citing the *Reciprocal Compensation Declaratory Ruling*, the Commission reasoned that the service provided by the local exchange carrier to an ISP is ordinarily exchange access service, "because it enables the ISP to transport the communication initiated by the end-user subscriber located in one exchange to its ultimate destination in another exchange, using both the services of the local exchange carrier and in the typical case the telephone toll service of the telecommunications carrier responsible for the interexchange transport." *Id.* ¶ 35.

The *Advanced Services Remand Order* was appealed to the D.C. Circuit. *See WorldCom*, 2001 WL 395344. The Commission argued to the court in February that the term "information access" is merely "a holdover term from the MFJ, which the 1996 Act supersedes." *WorldCom, Inc. v. FCC*, Brief for Respondents at 50 (D.C. Cir. No. 00-1002). Its brief also emphasized that section 251(g) was "designed simply to establish a transition from the MFJ's equal access and nondiscrimination provisions . . . to the new obligations set out in the statute." *Id.*

Today, just two months after it made those arguments to the D.C. Circuit, the Commission reverses itself. It now says that section 251(g) exempts certain categories of traffic, including "information access," entirely from the requirements of section 251(b)(5) and that ISP-bound traffic is "information access." *See* Order ¶¶ 32, 34, 42. The Commission provides nary a

[1] This aspect of the *Advanced Services Remand Order* was remanded to the Commission by the D.C. Circuit because of its reliance on the vacated *Reciprocal Compensation Declaratory Ruling*. *See WorldCom, Inc. v. FCC*, No. 00-1062, 2001 WL 395344, *5-*6 (D.C. Cir. Apr 20, 2001).

word to explain this reversal.

Of course, the Commission's conclusions in the *Advanced Services Remand Order* that ISP-bound traffic is "exchange access" and that the term "information access" has no relevance under the 1996 Act were themselves reversals of earlier Commission positions. In the *Non-Accounting Safeguards Order*,[2] the Commission concluded, relying in part on a purported distinction between "exchange access" and "information access," that ISPs "do not use exchange access as it is defined by the Act." *Id.* ¶ 248. In that order, the Commission was faced with determining the scope of section 272(e)(2), which states that a Bell operating company ["BOC"] "shall not provide any facilities, services, or information regarding its provision of exchange access to [a BOC affiliate] unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions." 47 U.S.C. § 272(e)(2). The Commission rejected the argument that BOCs are required to provide exchange access to ISPs, reasoning that ISPs do not use exchange access. *See Non-Accounting Safeguards Order* ¶ 248. In making that decision, the Commission relied on the language of the statute as well as the MFJ's use of the term "information access." *See id.* ¶ 248 & n. 621. As the Commission explained, its "conclusion that ISPs do not use exchange access is consistent with the MFJ, which recognized a difference between 'exchange access' and 'information access.'" *Id.* ¶ 248 n.621.

Thus, in reversing itself yet again, the Commission here follows a time-honored tradition. When it is expedient to say that ISPs use "exchange access" and that there is no such thing as "information access," that is what the Commission says. *See Advanced Service Remand Order* ¶¶ 46-48. When it is convenient to say that ISPs use the local network like local businesses, then the Commission adopts that approach. *See Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, ¶ 345 (1997). And, today, when it helps to write that ISPs use "information access," then that is what the Commission writes. The only conclusion that one can soundly draw from these decisions is that the Commission is willing to make up whatever law it can dream up to suit the situation at hand.

Nevertheless, there is one legal proposition that the Commission has, until now, consistently followed – a fact that is particularly noteworthy given the churn in the Commission's other legal principles. The Commission has consistently held that section 251(g) serves only to "preserve[] the LECs' existing equal access obligations, originally imposed by the MFJ." *Operator Communications, Inc., D/B/A Oncor Communications*, Memorandum Opinion and Order, 14 FCC Rcd 12506, ¶ 2 n.5 (1999).[3] Today's order ignores this precedent and

---

[2] *Implementation of the Non-Accounting Safeguards Of Sections 271 and 272 of the Communications Act of 1934, as Amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) ("*Non-Accounting Safeguards Order*").

[3] *See also, e.g., Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding U S West Petitions To Consolidate Latas in Minnesota and Arizona*, Memorandum Opinion and Order, 14 FCC Rcd 14392, ¶ 17 (1999) ("In section 251(g), Congress delegated to the Commission sole authority to administer the 'equal access and nondiscriminatory interconnection restrictions and obligations' that applied under the AT&T Consent Decree."); *AT&T Corporation, et al., Complainants*, Memorandum Opinion and Order, 13 FCC Rcd 21438, ¶ 5 (1998) ("Separately, section 251(g) requires the BOCs, both pre- and post-entry, to treat all interexchange carriers in accordance with their preexisting equal access and nondiscrimination obligations, and (continued....)

transforms section 251(g) into a categorical exemption for certain traffic from section 251(b)(5). It is this transformation – much more than the shell game played with "information access" and "exchange access" – that is most offensive in today's decision.

2. The Commission's claim that section 251(g) "excludes several enumerated categories of traffic from the universe of 'telecommunications' referred to in section 251(b)(5)" (Order ¶ 23) stretches the meaning of section 251(g) past the breaking point. Among other things, that provision does not even mention "exclud[ing]," "telecommunications," "section 251(b)(5)," or "reciprocal compensation."

Section 251(g), which is entitled, "Continued enforcement of exchange access and interconnection requirements," states in relevant part:

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

47 U.S.C. § 251(g).

As an initial matter, it is plain from reading this language that section 251(g) has absolutely no application to the vast majority of local exchange carriers, including those most affected by today's order. The provision states that "each local exchange carrier . . . shall provide [the enumerated services] . . . in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations . . . *that apply to such carrier on the date immediately preceding February 8, 1996.*" *Id.* (emphasis added). If a carrier was not providing service on February 7, 1996, no restrictions or obligations applied to "such carrier" on that date, and section 251(g) would appear to have no impact on that carrier. The Commission has thus repeatedly stated that section 251(g) applies to "Bell Operating Companies" and is intended to incorporate aspects of the MFJ. *Applications For Consent To The Transfer Of Control Of Licenses And Section 214 Authorizations From Tele-Communications, Inc., Transferor To AT&T Corp., Transferee.*, Memorandum Opinion and Order, 14 FCC Rcd 3160, ¶ 53 (1999); *see also* cases cited *supra* note 3. Accordingly, by its express terms, section 251(g) says nothing about the obligations of most CLECs serving ISPs, which are the primary focus of the Commission's order.

Moreover, it is inconceivable that section 251(g)'s preservation of pre-1996 Act "equal access and nondiscriminatory interconnection restrictions and obligations" is intended to displace

(Continued from previous page)

thereby neutralize the potential anticompetitive impact they could have on the long distance market until such time as the Commission finds it reasonable to revise or eliminate those obligations.").

section 251(b)(5)'s explicit compensation scheme for local carriers transporting and terminating each other's traffic. Prior to passage of the 1996 Act, there were no rules governing compensation for such services, whether or not an ISP was involved. It seems unlikely, at best, that Congress intended the absence of a compensation scheme to preempt a provision explicitly providing for such compensation.[4] At the very least, one would think Congress would use language more explicit than that seized upon by the Commission in section 251(g).

Finally, if, as the Commission maintains, section 251(g) "excludes several enumerated categories of traffic from the universe of 'telecommunications' referred to in section 251(b)(5)" (Order ¶ 23), why does section 251(g) not also exclude this traffic from the "universe of 'telecommunications'" referred to in the rest of section 251, or, indeed, in the entire 1996 Act? As noted, section 251(g) nowhere mentions "reciprocal compensation" or even "section 251." In fact, there appears to be no limiting principle. It would thus seem that, under the Commission's interpretation, the traffic referred to in section 251(g) is exempt from far more than reciprocal compensation – a consequence the Commission is sure to regret. *See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order 11 FCC Rcd 15499, ¶ 356 (1996) (concluding that "exchange access" provided to IXCs is subject to the unbundling requirements of section 251(c)(3)).

* * *

The end result of today's decision is clear. There will be continued litigation over the status of ISP-bound traffic, prolonging the uncertainty that has plagued this issue for years. At the same time, the Commission will be forced to reverse itself yet again, as soon as it dislikes the implication of treating ISP-bound traffic as "information access" or reading section 251(g) as a categorical exemption from other requirements of the 1996 Act. The Commission could, and should, have avoided these consequences by applying its original analysis in the manner sought by the court.

[4] The case of IXC traffic is thus completely different. There was a compensation scheme in effect for such traffic prior to enactment of the 1996 Act – the access charge regime. Because reciprocal compensation and the access charge regime could not both apply to the same traffic, the Commission could reasonably conclude that the access charge regime should trump the reciprocal compensation provision of section 251(b)(5). *See Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068, 1072-73 (8th Cir. 1997). Here, there is no pre-1996 Act compensation scheme to conflict with reciprocal compensation. As the Commission has stated, "the Commission has never applied either the ESP exemption or its rules regarding the joint provision of access to the situation where two carriers collaborate to deliver traffic to an ISP." *Reciprocal Compensation Declaratory Ruling* ¶ 26.

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

In the Matter of	)	
	)	
Joint Application by BellSouth Corporation,	)	
BellSouth Telecommunications, Inc.,	)	CC Docket No. 02-35
And BellSouth Long Distance, Inc for	)	
Provision of In-Region, InterLATA Services	)	
In Georgia and Louisiana	)	
	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: May 15, 2002 **Released: May 15, 2002**

By the Commission: Commissioner Copps issuing a statement.

TABLE OF CONTENTS

Paragraph

I. INTRODUCTION **1**

II. BACKGROUND **4**

III. PRIMARY ISSUES IN DISPUTE **9**

A. COMPLIANCE WITH SECTION 271(C)(1)(A) 11
1. Georgia 12
2. Louisiana 15
B. EVIDENTIARY CASE 16
C. CHECKLIST ITEM 2 – UNBUNDLED NETWORK ELEMENTS 21
1. Pricing of Network Elements 21
2. Access to Operations Support Systems 101
3. UNE Combinations (UNE-P and EELs) 199

IV. OTHER CHECKLIST ITEMS **201**

A. CHECKLIST ITEM 1 – INTERCONNECTION 201
1. Pricing of Interconnection 210
B. CHECKLIST ITEM 4 – UNBUNDLED LOCAL LOOPS 218
C. CHECKLIST ITEM 5 – UNBUNDLED TRANSPORT 245
D. CHECKLIST ITEM 6 –UNBUNDLED LOCAL SWITCHING 248

not in any way impair WorldCom's customers, who are still able to choose WorldCom for their intraLATA toll carrier and have benefited from an expanded local calling area.[1063] Because this dispute has a limited commercial impact and no other competitive LEC raises this issue, we do not find that this problem warrants a finding of noncompliance. Although not decisional to our analysis, we also note that BellSouth plans to remedy its systems to eliminate this problem.[1064] To the extent that WorldCom disputes that this fix was improperly scheduled or is not clearly documented for sufficient understanding, WorldCom should address its concerns through the change management process.[1065] Should this intraLATA routing issue prove to be a systemic problem with BellSouth's OSS, or should the scheduled July fix prove to cause carriers competitive harm, the Commission may take appropriate enforcement action.

270. AT&T contends that BellSouth fails to satisfy checklist item 12 because BellSouth markets and assigns special "oddball" NXX code numbers to retail customers that cannot be dialed by competitive LEC customers.[1066] We address this concern in our discussion of checklist item 11, *supra*.

I. Checklist Item 13 – Reciprocal Compensation

271. Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."[1067] In turn, section 252(d)(2)(A) specifies when a state commission may consider the terms and conditions for reciprocal compensation to be just and reasonable.[1068] Based on the record, we conclude that BellSouth demonstrates that it provides reciprocal compensation as required by checklist item 13.

272. We reject US LEC's assertions regarding reciprocal compensation for ISP-bound traffic.[1069] As a preliminary matter, we note the record shows that US LEC and BellSouth

---

[1063] BellSouth May 7 *Ex Parte* Letter at 1-2 & Attach. at 1-2.

[1064] BellSouth May 7 *Ex Parte* Letter at 1-2 & Attach. at 3-4.

[1065] WorldCom May 10 *Ex Parte* Letter at 3-5.

[1066] AT&T GALA I Comments at 38-39; AT&T GALA II Comments at 1.

[1067] 47 U.S.C. § 271(c)(2)(B)(xiii); *see* Appendix C at para. 66.

[1068] 47 U.S.C. § 252(d)(2)(A).

[1069] *See* US LEC GALA I Comments at 36-40; US LEC and XO GALA II Comments at 41-45; *see also* Letter from Patrick J. Donovan, Counsel to US LEC, to Magalie R. Salas, Federal Communications Commission, CC Docket No. 01-277 (November 29, 2001). In its comments, US LEC cites past disputes with BellSouth regarding reciprocal compensation for ISP-bound traffic and whether the tandem interconnection rate was applicable. US LEC concedes these disputes were resolved by the Georgia Commission. *See* Complaint of US LEC of Georgia, Inc. Against BellSouth Telecommunications, Inc., Georgia Public Service Commission, Docket No. 9577-U, Order (June 15, 2000) and Order to Determine Interconnection Rate (May 21, 2001) and Order on Tandem Interconnection Rate in Georgia Commission Docket No. 9577-U (May 21, 2001). To the extent reciprocal compensation disputes remained following the Georgia Orders, US LEC has now settled all such disputes with BellSouth on October 4, (continued....)

entered into a settlement agreement on October 4, 2001, that "resolves all past disputes over reciprocal compensation."[1070] Regardless, under a prior Commission order, ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5) and 252(d)(2).[1071] This decision was reaffirmed by the Commission on remand.[1072] Although the D.C. Court has remanded this latest Commission decision, the court did not vacate it and our rules remain in effect.[1073] Therefore, we continue to find that whether a carrier pays such compensation is "irrelevant to checklist item 13."[1074] We conclude that BellSouth has met its obligations under checklist item 13.

J. Checklist Item 14 – Resale

273. Section 271(c)(2)(B)(xiv) of the Act requires that a BOC make "telecommunications services . . . available for resale in accordance with the requirements of section 251(c)(4) and section 252(d)(3)."[1075] Based on the record in this proceeding, we conclude, as did the Georgia and Louisiana Commissions,[1076] that BellSouth satisfies the requirements of this checklist item in Georgia and Louisiana.[1077] BellSouth has a specific legal

(Continued from previous page)
2001. *See* BellSouth GALA I Ruscilli/Cox Reply Aff. at para. 32. In addition, commenters state that an identical issue involving XO is presently being arbitrated before the Georgia Commission. *See* US LEC and XO GALA II Comments at 44. As we have previously stated, we do not "preempt the orderly disposition of intercarrier disputes by state commissions." *Verizon Massachusetts Order*, 16 FCC Rcd. at 9102, para. 203. Accordingly, this information is not relevant to our evaluation of BellSouth's current compliance with checklist item 13.

[1070] BellSouth GALA I Reply at 109-110; BellSouth GALA I Ruscilli/Cox Reply Aff. at para. 32.

[1071] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd 3689 at 3706, para. 26 n.87 (1999) (*Reciprocal Compensation Declaratory Ruling*), *rev'd and remanded sub nom. Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

[1072] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9167, 9171-72, paras. 35, 44 (2001).

[1073] *WorldCom v. FCC*, No. 01-1218 (D.C. Cir. May 3, 2002).

[1074] *Verizon Pennsylvania Order*, 16 FCC Rcd at 17484, para. 119; *Bell Atlantic New York Order*, 15 FCC Rcd at 4142, para. 377.

[1075] 47 U.S.C. § 271(c)(2)(B)(xiv).

[1076] Georgia Commission GALA I Comments at 216; Louisiana Commission GALA I Comments at 91.

[1077] In Georgia and Louisiana, BellSouth provisions resale lines in a timely manner, generally meeting the benchmarks for installation timeliness and missed installation appointments for most months from October-February. *See* Georgia/Louisiana A.2.1.1.1.1-A.2.1.6.2.2 (Order Completion Interval, Resale); Georgia/Louisiana A.2.11.1.1.1-A.2.11.6.2.2 (% Missed Installation Appointments, Resale). Competitors also experienced a lower average of percent trouble reports within 30 days after installation of a resale line compared to BellSouth retail from October-February in Georgia and Louisiana. *See* Georgia/Louisiana A.2.12.1.1.1-A.2.12.6.2.2 (% Provisioning Troubles within 30 Days, Resale). We also find that BellSouth demonstrates that it provides maintenance and repair for resale lines that afford competitors with a meaningful opportunity to compete. Both the mean time to repair and (continued....)

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

In the Matter of	)	
	)	
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 No. 00-218
	)	
In the Matter of Petition of Cox Virginia Telcom, 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 Arbitration	)	CC Docket No. 00-249
	)	
In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc.	)	CC Docket No. 00-251

MEMORANDUM OPINION AND ORDER

Adopted: July 17, 2002 **Released: July 17, 2002**

By the Chief, Wireline Competition Bureau:

TABLE OF CONTENTS

PARAGRAPH

MEMORANDUM OPINION AND ORDER 1

I. INTRODUCTION 4

provisions to implement the Commission's order. They argue that, because the order lacks detail, the parties need a roadmap for implementation.[822] Verizon asserts that the order is largely self-executing and would be better implemented through business negotiations outside of this arbitration.[823]

245. We note that, after the parties briefed this issue, the U.S. Court of Appeals for the D.C. Circuit remanded the *ISP Intercarrier Compensation Order* to the Commission, holding that section 251(g) of the Act did not support the Commission's conclusion that ISP-bound traffic fell outside of the section 251(b)(5) reciprocal compensation obligation.[824] The court did not, however, vacate the compensation regime that the order established, nor did it reverse the Commission's conclusion that ISP-bound traffic is not subject to section 251(b)(5).[825] Consistent with the manner in which we have applied other rules affected by judicial remands, we resolve issues relating to compensation for ISP-bound traffic on the basis of existing law, which, in this instance, includes the applicable interim compensation mechanism.[826] To the extent that the Commission's rules change at a later date, the parties may implement those changes through their agreements' change of law procedures.

b. "Mirroring Rule" and Past-Due Payment

246. Under the "mirroring rule" in the *ISP Intercarrier Compensation Order*, incumbent LECs can only take advantage of the rate caps on compensation for ISP-bound traffic if they offer to exchange, at those same capped rates, all traffic subject to the reciprocal compensation provisions of section 251(b)(5).[827] The parties disagree about whether Verizon's existing offers to implement the mirroring rule must be memorialized in their agreements, and whether Verizon must pay reciprocal compensation that allegedly has accrued under existing agreements before it may take advantage of the capped rates. We reject the petitioners' proposed language on both of these points.

(Continued from previous page)
Compensation Order, however, that ISP-bound traffic is not eligible for reciprocal compensation under section 251(b)(5). *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9170-71, para. 42. In the wake of that order, the Bureau directed the parties to submit "agreed statements of the issues that must still be arbitrated" if the parties could not reach agreement on implementation of the order. Letter from Jeffrey H. Dygert to Scott Randolph, Robert Quinn, Lisa B. Smith and Alexandra Wilson (July 11, 2001).

822 AT&T Brief at 79; WorldCom Brief at 79; Cox Brief at 31.

823 Verizon IC Brief at 2; Tr. at 1766-67.

824 *See WorldCom v. FCC*, 288 F.3d at 433-34.

825 *See id.* at 434.

826 *Cf. supra* para. 4.

827 *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9193-94, para. 89.

RECEIVED
MAR 24 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket. No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Service Providers	)	CC Docket No. 96-263

EXHIBIT
4

COMMENTS OF AT&T CORP.

Mark C. Rosenblum
Ava B. Kleinman

Room 3252J1
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8312

Gene C. Schaerr
James P. Young

1722 Eye Street N.W.
Washington, D.C. 20006
(202) 736-8141

March 24, 1997

Moreover, although network congestion is clearly not a problem today, TELRIC-based, traffic-sensitive pricing will send appropriate economic signals and thereby help deter any potential network congestion. And cost-based pricing will protect the universal service contribution base, by stanching the flow of *artificially induced* migration of traffic from the public switched network to the Internet.

Cost-based access charges will not harm the enhanced service industry. Analysis of information provided by CompuServe in the access reform proceeding shows that the transition from state-regulated business lines to TELRIC-based interstate access charges would increase CompuServe's costs by only 56 cents per customer per month. Such an increase will not materially affect overall demand for ESPs' services (assuming the increase is passed on to customers) and, in all events, would not impose significant financial harm upon ESPs operating in competitive environments. Requiring the ESPs to pay cost-based access rates also will not provide a windfall to the incumbent LECs because the Commission can (and should) adjust their price caps to reflect this exogenous increase in revenue.

Finally, there can be little doubt that most ESP services fall squarely within the Commission's jurisdiction. Particularly with respect to the Internet and online services, ESPs and LECs are incapable of dividing the traffic into interstate and intrastate communications, and therefore such services are "inseverably" interstate. Such traffic is therefore fully subject to the Commission's jurisdiction.

be seriously questioned that the vast majority of ESPs' Internet and online services overwhelmingly involve interstate traffic which falls squarely within the Commission's jurisdiction.

For the same reasons, access services provided for the vast majority of enhanced services applications are just as "interstate" in character as access services provided to interexchange carriers. To be sure, under the Commission's current rules, ESPs benefit from their artificial classification as "end-users," and thus are allowed to buy state-tariffed business lines just like true business users. But the ESPs generally use the LEC's local switching and transport as part of a much more extensive transmission path, just as IXCs do. As already noted, calls to an ESP are typically routed over the local network to the ESP's node, or POP, and from there to a distant data center or Internet site. Thus, such calls made to an ESP do not *terminate* at the ESP's POP, as they would if the ESP were truly a business user. Like an IXC's POP, the ESP's node or POP merely collects traffic for interstate transmission. In fact, the ESPs today use business lines in precisely the same manner that MCI used business lines in providing its Execunet service, prior to the establishment of the current access charge regime.[58]

---

[57] (...continued)
(www.spectra.com).

[58] Prior to that time, carriers such as MCI obtained switched access for use in providing long distance service by purchasing line-side service, just as the ESPs do today. *See, e.g., Exchange Network Facilities for Interstate Access*, Memorandum Opinion and Order, 1 FCC Rcd. 618, 619 (1986); 71 F.C.C. 2d 440, 445 (1979). The Commission permitted this arrangement because, at that time, full-feature access services designed for use by competitive interexchange carriers were not available. The Commission mandated the (continued...)

DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
APR 23 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:	)	
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

EXHIBIT
I

REPLY COMMENTS OF GTE

GTE SERVICE CORPORATION,
on behalf of its affiliated companies

Ward W. Wueste
Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, DC 20036

R. Michael Senkowski
Richard T. Pfohl
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, DC 20006

Its Attorneys

April 23, 1997

No. of Copies rec'd 0+2
List A B C D E

GTE also agrees with AT&T that Internet access usage should be presumptively classified as jurisdictionally interstate. Such a presumption comports with the overwhelmingly interstate character of Internet traffic, but would be rebuttable in order to protect legitimate state interests. Most importantly, the interstate classification of Internet traffic will prevent CLECs from "gaming the system" by signing up ISP customers in order to inflate their receipts of mutual compensation revenues.

Finally, the record establishes that ILECs are currently being denied full recovery of the network costs attributable to increased Internet usage. Neither business line rates nor second line revenues are sufficient to recover these costs. Moreover, application of the FCC's TELRIC standard to Internet access pricing would exacerbate current shortfalls by guaranteeing a systematic under-recovery of costs. Noncompensatory pricing of existing analog services is a principal impediment to the deployment of new data-friendly technologies.

II. THE RECORD DEMONSTRATES THAT A DRAMATIC INCREASE IN INTERNET TRAFFIC HAS REQUIRED EXTRAORDINARY EFFORTS TO PREVENT DETERIORATION OF NETWORK PERFORMANCE

Virtually the only record support relied upon by ISPs for their contention that increases in Internet access usage do not pose a serious risk to the PSTN is the Selwyn/Laszlo Study,[3] which was financed by and appended to the Comments of the Internet Access Coalition. As GTE pointed out in its Comments, that study suffers from numerous fatal shortcomings and misconceptions that render its conclusions fundamentally flawed.[4] Contrary to the suggestions

---

[3] Lee L. Selwyn and Joseph W. Laszlo, "The Effect of Internet Use on the Nation's Telephone Network," Comments of the Internet Access Coalition, Append. C.

[4] *See* Comments of GTE at 14-20.

INTERCONNECTION, RESALE AND UNBUNDLING

AGREEMENT

between

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.

and

GTE FLORIDA INC.

The filing of this arbitrated Agreement with the Florida Public Service Commission in accordance with the Arbitration Order No. PSC-97-0064-FOF-TP dated January 17, 1997 (the "Order") of the Commission, with respect to AT&T Communications of the Southern States, Inc.'s Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement between AT&T Communications of the Southern States, Inc. and GTE Florida Inc., does not in any way constitute a waiver by either AT&T Communications of the Southern States, Inc. or GTE Florida Inc. of any right which any such Party may have to appeal to a competent court of law, or to petition the Commission for reconsideration of, any determination contained in the Order, or any provision included in this Agreement pursuant to the Order.

In this document the Parties attempt to comply with the Order which directs the Parties to reduce to contractual language the substantive provisions and directives of the Order. Nothing contained herein shall be construed or is intended to be a concession or admission by either Party that any such provision of the Order or the language herein complies with the duties imposed by the Telecommunications Act of 1996, the decisions of the FCC and the Commission, or other law, and each Party thus expressly reserves its full right to assert and pursue claims that the Order does not comport with applicable law.

PREFACE

AGREEMENT

This Agreement is entered into as of the ____ day of _____, 1997, by and between AT&T Communications of the Southern States, Inc., a New York corporation having an office at 1200 Peachtree Street, N.E., Atlanta, Georgia 30309, in its capacity as a certified provider of local dial-tone service ("AT&T"), and GTE Florida Inc., a Florida corporation, having an office for purposes of this Agreement at 600 Hidden Ridge Drive, Irving, Texas 75038 ("GTE"), in its capacity as an incumbent local exchange carrier. This Agreement covers services only in the state of Florida (the "State").

RECITALS

WHEREAS, The Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, the Act places certain duties and obligations upon, and grants certain rights to, Telecommunications Carriers, with respect to the interconnection of their networks, resale of their telecommunications services, access to their poles, ducts, conduits and rights of way and, in certain cases, the offering of certain unbundled network elements and physical collocation of equipment in Local Exchange Carrier premises, and

WHEREAS, GTE is an Incumbent Local Exchange Carrier; and

WHEREAS, AT&T is a Telecommunications Carrier and has requested that GTE negotiate an agreement with AT&T for the provision of Network Elements, Local Services for resale, collocation and access to poles, ducts, conduits and rights of way and the reciprocal provision of interconnection services pursuant to the Act and in conformance with GTE's and AT&T's duties under the Act; and

WHEREAS, interconnection between competing Local Exchange Carriers (LECs) is necessary and desirable for the mutual exchange and termination of traffic originating on each LEC's network and the Parties desire to exchange such traffic and related signaling in a technically and economically efficient manner at defined and mutually agreed upon points of interconnection.

PART IV: INTERCONNECTION PURSUANT TO SECTION 251(C)(2)

36. **Scope**

Section 37 describes the physical architecture for Interconnection of the Parties' facilities and equipment for the transmission and routing of Local Traffic and Exchange Access traffic between the respective business and residential customers of the Parties pursuant to the Act. Interconnection may not be used solely for the purpose of originating a Party's own interexchange traffic. Sections 38 to 39 prescribe the specific logical trunk groups (and traffic routing parameters) which will be configured over the physical Interconnections described in this Part related to the transmission and routing of Local Traffic and Exchange Access traffic, respectively. Other trunk groups, as described in this Agreement, may be configured using this architecture.

37. **Interconnection Points and Methods.**

37.1 In each LATA identified pursuant to the procedures of Section 37.6, AT&T and GTE shall Interconnect their networks at the GTE and AT&T Wire Centers identified in such notice for the transmission and routing within that LATA of Local Traffic and Exchange Access traffic.

37.2 Interconnection in each LATA shall be accomplished at any technically feasible point within GTE's networks for a given LATA, including through collocation in GTE's Wire Centers as provided in Attachment 3. AT&T shall designate a minimum of one interconnection point within a LATA. If AT&T desires a single interconnection point within a LATA, AT&T shall ensure that GTE maintains the ability to bill for the services provided. AT&T may interconnect at one tandem in the LATA for exchange of local, mandatory EAS and IntraLATA toll traffic by bringing separate trunk groups to that interconnection point for each tandem in that LATA and then by using dedicated special access transport to extend the trunk group from the interconnection point to the designated tandem.

37.2.1 GTE shall be required to lease dark fiber (where available) to AT&T only for interconnection purposes, under the same terms and conditions as those in Section III.C of GTE's agreement with Metropolitan Fiber Systems of Florida, Inc., dated as of February 10, 1996, which has been memorialized in Commission Order No. PSC-

96-1401-FOF-TP. As such, AT&T shall have the right to lease under non-discriminatory tariff and other contract terms.

37.3 **Interconnection using Collocation:**

If the Parties Interconnect their networks using Collocation in GTE's Wire Centers, the following requirements apply:

37.3.1 AT&T will deploy a local service network that places switching and transmission equipment throughout the LATA. The placement of this equipment uses a combination of AT&T owned Wire Centers and collocated space in GTE Wire Centers.

37.3.2 AT&T will request interconnection with GTE at specific points in GTE's network. The following options are available for (i) the termination of traffic to the GTE network, (ii) the termination of traffic to the AT&T network and (iii) the transiting of traffic to/from a third party network.

37.4 **Local Traffic and IntraLATA Toll Traffic - Originating on AT&T, Terminating on GTE.**

AT&T may build trunk groups to GTE using the following representative, but not exclusive, options: (i) from AT&T collocated equipment in a Wire Center to the GTE Tandem; (ii) from AT&T collocated equipment in a GTE Wire Center to the GTE End Office Switch; or (iii) from AT&T 4ESS Switches located at AT&T POPs to the nearest GTE Tandem.

Interfaces for these interconnections may be based upon, but not limited to, the following: (i) DS1: from an AT&T-collocated DDM-2000 to a GTE Central Office Switch; (ii) SONET STS1: from an AT&T-collocated DDM-2000 to an GTE 5ESS®-2000 Central Office Switch and (iii) DS1/DS3: from an AT&T 4ESS Switch at an AT&T POP to a GTE Tandem using new trunk groups on existing facilities.

37.5 **Transit Service Traffic**

37.5.1 GTE agrees that it shall provide Transit Service to AT&T on terms and conditions set forth in this Agreement.

37.5.2 "Transit Service" means the delivery of certain traffic between AT&T and a third party LEC or ILEC by GTE over the Local/IntraLATA Trunks. The following types of traffic will be delivered: (i) Local Traffic and IntraLATA Toll Traffic originated from AT&T to such third party LEC or ILEC and (ii) Local Traffic and IntraLATA Toll Traffic originated from such third party LEC or ILEC and terminated to

AT&T where GTE carries such traffic pursuant to the Commission's primary toll carrier plan or other similar plan.

37.5.3 While the Parties agree that it is the responsibility of each third party LEC or ILEC to enter into arrangements to deliver Local Traffic between them, they acknowledge that such arrangements are not currently in place and an interim arrangement is necessary to ensure traffic completion. Accordingly, until the earlier of (i) the date on which either Party has entered into an arrangement with such third party LEC or ILEC to deliver Local Traffic via direct trunks or (ii) the termination of this Agreement, GTE will transit such traffic.

37.5.4 All networks involved in transit traffic will deliver each call to each involved network with CCIS to the extent available from third party LECs and the appropriate Transaction Capabilities Application Part (TCAP) messages to facilitate full interoperability and billing functions. In all cases, each Party is responsible to follow Exchange Message Record ("EMR") standard and exchange records with both the other Party and the terminating LEC or ILEC to facilitate the billing process to the originating network.

37.5.5 Transiting traffic will be delivered using the physical connection options as described in Section 37.4.

37.6 **Selection of LATAs**

37.6.1 If AT&T determines to offer Telephone Exchange Services in any LATA, AT&T shall provide written notice to GTE of its need to establish Interconnection in such LATA pursuant to this Agreement. This notice shall include (i) the Wire Centers that AT&T has designated in the LATA, and (ii) a non-binding forecast of AT&T's trunking requirements indicating the proposed Interconnection Activation Date. AT&T shall issue an ASR to GTE in accordance with Section 37.6.3 to order the Interconnection facilities and trunks.

37.6.2 Unless otherwise agreed by the Parties, the Parties shall designate the Wire Center AT&T has identified as its initial Routing Point in the LATA as the ATIWC in that LATA and shall designate the GTE Tandem Office within the LATA nearest to the ATIWC (as measured in airline miles utilizing the V&H coordinates method) as the AIWC in that LATA.

37.6.3 Unless otherwise agreed by the Parties, the Interconnection Activation Date in each LATA in which no construction is required shall be fifteen (15) business days after the date on which AT&T delivered notice via an ASR to GTE pursuant to this Section. Where

construction is required, the Interconnection Activation Date shall be as mutually agreed by the Parties.

37.6.4 GTE and AT&T will conduct joint planning sessions to determine the following representative, but not exclusive, information: (i) forecasted number of trunk groups; and (ii) the interconnection activation date.

37.7 **Additional Switches or Interconnection Points**

If AT&T deploys additional switches in a LATA after the date hereof or otherwise wishes to establish Interconnection with additional GTE Wire Centers, AT&T may, upon written notice thereof to GTE, establish such Interconnection and the terms and conditions of this Agreement shall apply to such Interconnection. If GTE deploys additional switches in a LATA after the date hereof or otherwise wishes to establish Interconnection with additional AT&T Wire Centers, GTE may, upon written notice thereof to AT&T, establish such Interconnection and the terms and conditions of this Agreement shall apply to such Interconnection. If either Party establishes an additional Tandem Switch in a given LATA, the Parties shall jointly determine the requirements regarding the establishment and maintenance of separate trunk group connections and the sub-tending arrangements relating to Tandem Switches and End Offices which serve the other Party's customers within the Exchange Areas served by such Tandem Switches.

37.8 [Intentionally Deleted]

37.9 **Technical Specifications**

37.9.1 Each Party shall initially configure a two-way trunk group as a direct transmission path between each AT&T and GTE interconnected Central Offices. AT&T and GTE shall work cooperatively to install and maintain a reliable network. AT&T and GTE shall exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the government and such other information as the Parties shall mutually agree) to achieve this desired reliability.

37.9.2 AT&T and GTE shall work cooperatively to apply sound network management principles by invoking network management controls to alleviate or to prevent congestion.

37.10 **911/E911 Arrangements**

37.10.1 **Description of Service**

AT&T shall have the right to utilize the existing GTE 911/E911 infrastructure (as agreed in Sections 37.10.3 and 37.10.5 below) to provide all 911/E911 capabilities to its end users. AT&T will install a minimum of two dedicated trunks for each NPA to GTE's 911/E911 selective routers (i.e., 911 tandem offices) that serve the areas in which AT&T provides Exchange Services, for the provision of 911/E911 services and for access to all subtending PSAPs. The dedicated trunks shall be, at minimum, DS0 level trunks configured as a 2-wire analog interface or as part of a digital (1.544 Mbps) interface. Either configuration shall use CAMA type signaling with multifrequency (MF) tones that will deliver ANI with the voice portion of the call. At the request of AT&T, GTE will provide AT&T with the appropriate CLLI codes and specifications of the tandem office serving area. If an AT&T Central Office serves end users in an area served by more than one GTE 911/E911 selective router, AT&T will install a minimum of two dedicated trunks in accordance with this section to each of such 911/E911 selective routers.

37.10.2 **Transport**

If AT&T desires to obtain transport from its end office to the GTE 911 selective routers, AT&T may purchase such transport from GTE at the rates set forth in GTE's intrastate switched access tariff or in GTE's intrastate special access tariff.

37.10.3 **Cooperation and Level of Performance**

37.10.3.1 The Parties agree to provide access to 911/E911 in a manner that is transparent to the end user. The Parties will work together to facilitate the prompt, reliable and efficient interconnection of AT&T's systems to the 911/E911 platforms to ensure that 911/E911 service is fully available to AT&T's end users, with a level of performance that will provide the same grade of service as that which GTE provides to its own end users and that meets State requirements. To this end, GTE will provide documentation to AT&T showing the correlation of its rate centers to its E911 tandems.

37.10.3.2 In the event of an GTE or AT&T 911 trunk group failure, the Party that owns the trunk group will notify, on a priority basis, the other Party of such failure, which notification shall occur within two (2) hours of the occurrence or sooner if required under Applicable Law. The Parties will exchange a list containing the names and telephone numbers of the support center personnel responsible for maintaining the 911 Service between the Parties.

37.10.3.3 When AT&T purchases transport, GTE will provide AT&T with the order number and the circuit identification code in advance of the service due date.

37.10.3.4 AT&T or its third party agent will provide CNA data to GTE for use in entering the data into the 911 data base. The initial CNA data will be provided to GTE in a format prescribed by NENA (National Emergency Number Association). AT&T is responsible for providing GTE updates to the CNA data and error corrections which may occur during the entry of CNA data to the GTE 911 Database System. GTE will confirm receipt of such data and corrections by close of business on the next Business Day by providing AT&T with a report of the number of items sent, the number of items entered correctly, and the number of errors.

37.10.3.5 AT&T will monitor the 911 circuits for the purpose of determining originating network traffic volumes. AT&T will notify GTE if the traffic study information indicates that additional circuits are required to meet the current level of 911 call volumes.

37.10.3.6 [Intentionally Deleted]

37.10.3.7 Inter-office trunks provided for 911 shall be engineered to assure minimum P.01 transmission grade of service as measured during the busy day/busy hour. A minimum of two trunks shall be provided by AT&T.

37.10.4 **Updates to MSAG**

It shall be the responsibility of AT&T to ensure that the address of each of its end users is included in the Master Street Address Guide ("MSAG") via information provided on AT&T's Local Service Request ("LSR") or via a separate feed established by AT&T and GTE pursuant to section 37.10.5 of this Article. Any MSAG change that appears to be required by AT&T must be approved by the County. Within thirty (30) days after the Effective Date of this Agreement, GTE shall provide AT&T with an initial electronic copy and a paper copy of the MSAG or its equivalent. Prior to the time that updates are available electronically, GTE will provide updates to AT&T on a monthly basis. Thereafter, GTE will provide updates to AT&T as changes are made.

37.10.5 **Updates to Database**

GTE and AT&T will work together to develop the process by which the 911/E911 database will be updated with AT&T's end user

911/E911 information. AT&T shall have the right to verify the accuracy of the information regarding AT&T's end users in the 911/E911 database.

37.10.6 **Compensation**

In situations in which GTE is responsible for maintenance of the 911/E911 database and can be compensated for maintaining AT&T's information by the municipality, GTE will seek such compensation from the municipality. GTE will seek compensation from AT&T only if and to the extent that GTE is unable to obtain such compensation from the municipality.

38. Transmission and routing of telephone exchange service traffic pursuant to section 251(c)(2)

38.1 Scope of Traffic

This Section prescribes parameters for trunk groups (the "Local/IntraLATA Trunks") to be effected over the Interconnections specified in Part IV for the transmission and routing of Local Traffic and IntraLATA Toll Traffic between the Parties' respective Telephone Exchange Service Customers.

38.2 Limitations

No Party shall terminate Exchange Access traffic or originate untranslated 800/888 traffic over Local/IntraLATA Interconnection Trunks.

38.3 Trunk Group Architecture and Traffic Routing

The Parties shall jointly engineer and configure Local/IntraLATA Trunks over the physical Interconnection arrangements as follows:

38.3.1 Notwithstanding anything to the contrary contained in this Section, if the traffic volumes between any two Central Office Switches at any time exceeds the CCS busy hour equivalent of one DS1, the Parties shall within sixty (60) days after such occurrence establish new direct trunk groups to the applicable End Office(s) consistent with the grades of service and quality parameters set forth in the Grooming Plan.

38.3.2 Only those valid NXX codes served by an End Office may be accessed through a direct connection to that End Office.

38.3.3 Each Party shall ensure that each Tandem connection permits the completion of traffic to all End Offices which sub-tend that Tandem or to End Offices which sub-tend an additional Tandem, provided, that AT&T enters into an appropriate billing arrangement pursuant to Section 38.3.4. Alternatively, each Party shall establish and maintain separate trunk groups connected to each Tandem of the other Party which serves, or is sub-tended by End Offices which serve, such other Party's customers within the Exchange Areas served by such Tandem Switches.

38.3.4 GTE will provide tandem to tandem switching to AT&T. AT&T shall enter into an appropriate billing arrangement with GTE to ensure recovery of inter-tandem switching costs at rates established by the Commission.

38.4 **Signaling**

SS7 Signaling may be used for signaling for IntraLATA and local calls between AT&T switches, between AT&T switches and GTE switches, and between AT&T switches and those third party networks with which GTE's SS7 network is interconnected.

38.4.1 Where available, CCIS signaling shall be used by the Parties to set up calls between the Parties' local networks. Each Party shall supply Calling Party Number (CPN) within the SS7 signaling message, if available. If Common Channel Interoffice Signaling ("CCIS") is unavailable, MF (Multi-Frequency) signaling shall be used by the Parties.

38.4.2 Each Party is responsible for requesting Interconnection to the other Party's CCIS network, where SS7 signaling on the trunk group(s) is desired. Each Party shall connect, either directly or via arrangements with third party providers, to a pair of access STPs where traffic will be exchanged. The Parties shall establish interconnection at the STP.

38.4.3 The Parties will cooperate on the exchange of Transactional Capabilities Application Part (TCAP) messages to facilitate interoperability of CCIS based features between their respective networks, including all CLASS features and functions, to the extent each Party offers such features and functions to its Customers. Each Party shall honor all privacy indicators as required under Applicable Law.

38.4.4 Where available and upon the request of the other Party, each Party shall cooperate to ensure that its trunk groups are configured

utilizing the B8ZS ESF protocol for 64 kbps clear channel transmission to allow for ISDN interoperability between the Parties' respective networks.

38.5 **Grades of Service**

The Parties shall initially engineer and shall jointly monitor and enhance all trunk groups consistent with the Grooming Plan.

38.6 **Measurement and Billing**

38.6.1 Each Party shall pass Calling Party Number (CPN) information on each call that it originates and terminates over the Local/IntraLATA Trunks. Until GTE installs the capability to use actual CPN information, all calls exchanged shall be billed either as Local Traffic or IntraLATA Toll Traffic based upon a percentage of local usage (PLU) factor calculated based on the amount of actual volume (or best estimate) during the preceding three months. The PLU will be reevaluated every three (3) months.

38.6.2 Measurement of Telecommunications traffic billed hereunder shall be (i) in actual conversation time as specified in FCC terminating FGD Switched access tariffs for Local Traffic and (ii) in accordance with applicable tariffs for all other types of Telecommunications traffic.

38.7 **Reciprocal Compensation Arrangements**

Reciprocal Compensation for the exchange of traffic shall be paid as described in Part V and Attachment 15, at the prices specified in Attachment 14.

38.8 **Transiting Traffic**

38.8.1 The exchange of transiting traffic is defined in Section 37.5.2.

38.8.2 Compensation for transiting traffic shall be paid as described in Part V and Attachment 15, at the prices specified in Attachment 14.

39. **Transmission and Routing of Exchange Access Traffic**

39.1 **Scope of Traffic**

This Section prescribes parameters for certain trunk groups ("Access Toll Connecting Trunks") to be established over the Interconnections specified in this Agreement for the transmission and routing of Exchange Access traffic and nontranslated 800 traffic between AT&T

Telephone Exchange Service Customers and Interexchange Carriers.

39.2 **Trunk Group Architecture and Traffic Routing**

39.2.1 The Parties shall jointly establish Access Toll Connecting Trunks by which they will jointly provide Tandem transported Switched Exchange Access Services to Interexchange Carriers to enable such Interexchange Carriers to originate and terminate traffic from and to AT&T's customers.

39.2.2 Access Toll Connecting Trunks shall be used solely for the transmission and routing of Exchange Access and nontranslated 800/888 traffic to allow AT&T's customers to connect to or be connected to the interexchange trunks of any Interexchange Carrier which is connected to a GTE access Tandem.

39.2.3 The Access Toll Connecting Trunks shall be two way trunks connecting an End Office Switch that AT&T utilizes to provide Telephone Exchange Service and Switched Exchange Access Service in a given LATA to an access Tandem Switch GTE utilizes to provide Exchange Access in such LATA.

39.2.4 The Parties shall jointly determine which GTE access Tandem(s) will be sub-tended by each AT&T End Office Switch.

39.2.5 Only those valid NXX codes served by an End Office may be accessed through a direct connection to that End Office.

40. **Transport and Termination of Information Services Traffic**

40.1 Each Party shall route Information Service Traffic which originates on its own network to the appropriate information services platform(s) connected to the other Party's network over the Local/IntraLATA Trunks.

40.2 The Party ("Originating Party") on whose network the Information Services Traffic originated shall provide an electronic file transfer or monthly magnetic tape containing recorded call detail information to the Party ("Terminating Party") to whose information platform the Information Services Traffic terminated.

40.3 The Terminating Party shall provide to the Originating Party via electronic file transfer or magnetic tape all necessary information to rate the Information Services Traffic to the Originating Party's

customers and establish uncollectible reserves pursuant to the Terminating Party's agreements with each information provider.

40.4 The Originating Party shall bill and collect such information provider charges and remit the amounts collected to the Terminating Party less:

40.4.1 The Information Services Billing and Collection fee set forth in Attachment 14; and

40.4.2 An uncollectibles reserve calculated based on the uncollectibles reserve in the Terminating Party's billing and collection agreement with the applicable information provider; and

40.4.3 Customer adjustments provided by the Originating Party.

40.5 The Originating Party shall provide to the Terminating Party sufficient information regarding uncollectibles and customer adjustments. The Terminating Party shall pass through the adjustments to the information provider. Final resolution regarding all disputed adjustments shall be solely between the Originating Party and the information provider.

40.6 Nothing in this Agreement shall restrict either Party from offering to its Telephone Exchange Service Customers the ability to block the completion of Information Service Traffic.

41. Installation, Maintenance, Testing and Repair

41.1 Grooming Plan

Within ninety (90) days after the Effective Date, AT&T and GTE shall jointly begin the development of a plan (the "Grooming Plan") which shall define and detail, inter alia, (i) standards to ensure that Interconnection trunk groups experience a grade of service, availability and quality in accord with all appropriate relevant industry-accepted quality, reliability and availability standards and in accordance with the levels GTE provides to itself, or any subsidiary, Affiliate or other person; (ii) the respective duties and responsibilities of the Parties with respect to the administration and maintenance of the Interconnections (including signaling) specified in Part IV and the trunk groups specified in Part IV, including standards and procedures for notification and discoveries of trunk disconnects; (iii) disaster recovery and escalation provisions; and (iv) such other matters as the Parties may agree.

41.2 **Operation and Maintenance**

Each Party shall be solely responsible for the installation, operation and maintenance of equipment and facilities provided by it for Interconnection, subject to compatibility and cooperative testing and monitoring and the specific operation and maintenance provisions for equipment and facilities used to provide Interconnection. Operation and maintenance of equipment in Virtual Collocation shall be in accordance with the provisions of Attachment 3. Each party shall also be responsible for engineering and maintaining its network on its side of the interconnection point. If and when the Parties choose to interconnect at a mid-span meet, the Parties will jointly provision the fiber optic facilities that connect the two networks and shall share the financial and other responsibilities for those facilities.

PART V: PRICING

42. General Principles

All services currently provided hereunder including resold Local Services , Network Elements and Combinations, Interconnection and any new and additional services or Network Elements to be provided hereunder shall be priced in accordance with all applicable provisions of the Act and the rules and orders of the FCC and any state public utility commission having jurisdiction over this Agreement.

43. Price Schedules

43.1 **Local Service Resale**

The prices to be charged to AT&T for Local Services shall be as specified in Attachment 14.

43.2 **Unbundled Network Elements**

The prices charged to AT&T for Unbundled Network Elements shall be as specified in Attachment 14 and shall be nondiscriminatory.

43.2.1 If implementation of an unbundled loop feeder supports shared used of required unbundling facilities, the cost of such facilities shall be allocated and prorated among all users in a non-discriminatory and competitively neutral manner. If such implementation supports only AT&T's use, then AT&T shall pay to GTE the incremental cost of such implementation.

43.2.2 If implementation of an unbundled loop concentrator /mutiplexer element supports shared used of required unbundling facilities, the cost of such facilities shall be allocated and prorated among all users in a non-discriminatory and competitively neutral manner. If implementation supports only AT&T's use, then AT&T shall pay to GTE the incremental cost of such implementation.

43.2.3 AT&T will be responsible for the costs (if any) required to create an interface at the main distribution frame if such Interface does not already exist, such as in the case of an Integrated Digital Loop Carrier System.

43.3 **Interconnection**

43.3.1 Reciprocal Compensation applies for transport and termination of Local Traffic billable by GTE or AT&T which a Telephone Exchange Service Customer originates on GTE's or AT&T's network for

termination on the other Party's network. Reciprocal Compensation for exchange of traffic shall initially be paid on a "bill and keep" basis subject to the right of either Party to demand that compensation be calculated based upon actual local exchange traffic volumes as further specified in Attachment 14.

43.3.2 The Reciprocal Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service. All Switched Exchange Access Service and all IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state tariffs.

43.3.3 Each Party shall charge the other Party its effective tariffed intraLATA FGD switched access rates for the transport and termination of all IntraLATA Toll Traffic.

43.3.4 Standard meet point billing arrangements, as defined in Attachment 6, shall apply when the completion of a toll call involves both GTE and AT&T facilities, as further described in Attachment 6.

43.3.5 [Intentionally Deleted]

43.3.6 **Transiting Traffic**

The following applies to all scenarios with transiting traffic.

43.3.6.1 AT&T shall pay to GTE a Transiting Service Charge for the use of its Tandem Switching as specified in Attachment 14.

43.3.6.2 Until such time as AT&T and the third party LEC or ILEC agree upon mutual compensation, third party mutual compensation will be exchanged between AT&T and GTE as follows: .

43.3.6.3 [Intentionally Deleted]

43.3.6.4 [Intentionally Deleted]

43.3.6.5 GTE will provide tandem switching at GTE access tandems for traffic between AT&T and GTE end offices subtending the GTE access tandem, as well as for traffic between AT&T and non-GTE end offices subtending GTE access tandems. By transporting traffic to a non-GTE end office(s) via a GTE tandem, AT&T assumes responsibility for compensation to GTE for all tandem switched traffic between AT&T and the non-GTE end office(s). This responsibility may be fulfilled either by payment by AT&T to GTE for all tandem switched traffic between AT&T and the non-GTE end office(s) or by an agreement between AT&T and the non-GTE end office LEC

pursuant to which GTE is expressly made a third party beneficiary and GTE would receive compensation from either AT&T or the non-GTE end office LEC, depending upon which entity originated the traffic. GTE will bill AT&T for each minute of use AT&T generates that is tandem switched.

43.3.6.6 By transporting traffic to non-GTE end offices via a GTE tandem, AT&T assumes responsibility for compensation to the non-GTE end office company. AT&T assumes responsibility for negotiating a compensation arrangement with the non-GTE end office for IntraLATA Toll Traffic terminating to AT&T from such third party LEC or ILEC.

In witness whereof, the Parties have executed this Agreement through their authorized representatives.

GTE FLORIDA INC.	AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.
By:_____	By:_____
Signature	Signature
_____	_____
Name	Name
_____	_____
Title	Title
_____	_____
Date	Date

ATTACHMENT 11

DEFINITIONS

"**AAA**" means the American Arbitration Association.

"**Act**" means the Telecommunications Act of 1996.

"**Advanced Intelligent Network (AIN)**" is a network functionality that permits specific conditions to be programmed into a switch which, when met, directs the switch to suspend call processing and to receive special instructions for further call handling instructions in order to enable carriers to offer advanced features and services.

"**Affiliate**" means, with respect to any Party, a corporation or other entity directly or indirectly controlled by, controlling or under common control with such Party. "Control" means the power to direct the management and policies of the entity whether through the ownership of voting securities by agreement, or otherwise.

"**Agreement**" has the meaning set forth in the preamble.

"**AIN Services**" has the meaning set forth in Section 27.1 of the Agreement.

"**AMA**" means the Automated Message Accounting structure inherent in switch technology that initially records telecommunication message information. AMA format is contained in the Automated Message Accounting document, published by Bellcore as GR-1100-CORE which defines the industry standard for message recording.

"**Applicable Law**" shall mean all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits and approvals of any Governmental Authority, including without limitation those relating to the environment, health and safety, which apply or relate to Work Locations or the subject matter of this Agreement.

"**Arbitrator**" has the meaning set forth in Section 6.1 of Attachment 1 of the Agreement.

"**As Defined in the Act" or "As Described in the Act**" means as specifically defined or as described, respectively, in the Act as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

"**AT&T**" has the meaning set forth in the Preface.

"AT&T Customer" means any business or residential customer for AT&T Telecommunications Service.

"Attachment" is any placement of one Party's equipment or facilities in or on another Party's Poles, Ducts, Conduits, or Rights of Way.

"Attachment Request" is a request for attachment made pursuant to Section 3.4 of Attachment 3 of the Agreement.

"Automatic Location Identification/Data Management System (ALI/DMS)" means the emergency services (E911/911) database containing customer location information (including name, address, telephone number, and sometimes special information from the local service provider) used to determine to which Public Safety Answering Point ("PSAP") to route the call.

"Automatic Route Selection (ARS)" is a service feature that provides for automatic selection of the least expensive or most appropriate transmission facility for each call based on criteria programmed into the system.

"Bill" means bill submitted by one Party to the other Party for Charges.

"Business Day" has the meaning set forth in Section 23.8 of the Agreement.

"BLV/BLI (Busy Line Verify/Busy Line Interrupt) Traffic" or "BLV/BLI Call" means an operator call in which the end user inquires as to the busy status of, or requests an interruption of, a call on an Exchange Service.

"CABS" means the Carrier Access Billing System which is contained in a document prepared under the direction of the Billing Committee of the OBF. The Carrier Access Billing System document is published by Bellcore in Volumes 1, 1A, 2, 3, 3A, 4 and 5 as Special Reports SR-OPT-001868, SR-OPT-001869, SR-OPT-001871, SR-OPT-001872, SR-OPT-001873, SR-OPT-001874, and SR-OPT-001875, respectively, and contains the recommended guidelines for the billing of access and other connectivity services.

"Central Office Switch" means a switch used to provide Telecommunications Services including (I) "End Office Switches" which are Class 5 switches from which end user Exchange Services are directly connected and offered, and (ii) "Tandem Office Switches" which are Class 4 switches which are used to connect and switch trunk circuits between and among central office switches. Central office switches may be employed as combination end office/tandem office switches (combination Class 5/Class 4).

"CENTRANET" means a Telecommunications Service that uses central office switching equipment for call routing to handle direct dialing of calls, and to provide many private branch exchange-like features.

"Charge" means an amount charged by one Party to the other Party for services rendered or products purchased hereunder.

"Claim" has the meaning set forth in Section 10.4 of the Agreement.

"CLASS (Custom Local Area Signaling Service) and LASS (Local Area Signaling Service)" means a grouping of optional enhancements to basic local exchange service that offers special call handling features to residential and single-line business customers (e.g., call waiting, call forwarding and automatic redial).

"CLEC" means competitive local exchange carrier.

"CLLI codes" means Common Language Location Identifier Codes.

"Collocation" has the meaning set forth in Section 2.1 of Attachment 3 of the Agreement.

"Combinations" has the meaning set forth in Section 1 of the Agreement.

"Commission" means the Public Service Commission of the State of Florida.

"Common Transport" has the meaning set forth in Section 7.1 of Attachment 2 of the Agreement.

"Complaint" and "Complaining Party" have the respective meanings set forth in Section 2(b) of Appendix I to Attachment 1 of the Agreement.

"Conduit" means a tube or protected through that may be used to house communication or electrical cables. Conduit may be underground or above ground (for example, inside buildings) and may contain one or more inner ducts.

"Confidential Information" has the meaning set forth in Section 17.1 of the Agreement.

"Contract Year" means a twelve (12) month period during the term of the contract commencing on the Effective Date and each anniversary thereof.

"**Customer Usage Data**" means the local Telecommunications Services usage data of an AT&T Customer, measured in minutes, sub-minute increments, message units, or otherwise, that is recorded by GTE and forwarded to AT&T.

"**DA Listing Information**" has the meaning set forth in Section 20.1 of the Agreement.

"**Damages**" has the meaning set forth in Section 10.4 of the Agreement.

"**Dedicated Transport**" has the meaning set forth in Section 8.1 of Attachment 2 of the Agreement.

"**Directory Listings**" has the meaning set forth in Sections 19.1 and 19.2 of the Agreement.

"**Directory Assistance Service**" has the meaning set forth in Section 6.1 of Attachment 2 of the Agreement.

"**Discloser**" means that Party to this Agreement which has disclosed Confidential Information to the other Party.

"**Disputes**" mean all disputes, claims or disagreements arising under or related to this Agreement or the breach thereof.

"**Duct**" has the meaning set forth in Section 3.1.3 of Attachment 3 of the Agreement.

"**Effective Date**" has the meaning set forth in Section 2 of the Agreement.

"**EMR**" means the Exchange Message Record System used among LECs for exchanging telecommunications message information for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, published by Bellcore which defines the industry standard for exchange message records.

"**Environmental Hazard**" means any substance the presence, use, transport, abandonment or disposal of which (i) requires investigation, remediation, compensation, fine or penalty under any Applicable Law (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendment and Reauthorization Act, Resource Conservation Recovery Act, the Occupational Safety and Health Act and provisions with similar purposes in applicable foreign, state and local jurisdictions) or (ii) poses risks to human health, safety or the environment

(including, without limitation, indoor, outdoor or orbital space environments) and is regulated under any Applicable Law.

"**Enhanced White Pages**" means optional features available for White Pages Directory listings (e.g., bold, all capitals, additional line of text, indented).

"**Enhanced Yellow Pages**" means optional features available for Yellow Pages Directory listings (e.g., red type, bold, all capitals, additional line of text, indented).

"**Exchange Service**" refers to all basic access line services, or any other services offered to end users which provide end users with a telephonic connection to, and a unique telephone number address on, the public switched telecommunications network ("PSTN"), and which enable such end users to place or receive calls to all other stations on the PSTN.

"**Excluded Environmental Liabilities**" has the meaning set forth in Section 8.1 of the Agreement.

"**E911 Service**" is a method of routing 911 calls to a PSAP that uses customer location data in the ALI/DMS to determine the PSAP to which a call should be routed.

"**Facility**" and "**Facilities**" has the meaning set forth in Section 3.1.4 of Attachment 3 of the Agreement.

"**FCC**" means the Federal Communications Commission.

"**Governmental Authority**" means any federal, state, local, foreign or international court, government, department, commission, board, bureau, agency, official, or other regulatory, administrative, legislative or judicial authority with jurisdiction over GTE or AT&T.

"**Grooming Plan**" has the meaning set forth in Section 41.1 of the Agreement.

"**GTE**" has the meaning set forth in the Preface of this Agreement.

"**GTE Customer**" means any business or residential customer for GTE Telecommunications Service.

"**Impairment in Service**", "Impaired Party" and "Impairing Party" shall have the respective meanings set forth in Section 4 of Attachment 9 of the Agreement.

"**Inner Duct**" has the meaning set forth in Section 3.1.5 of Attachment 3 of the

Agreement.

"Intellectual Property" means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.

"Intellectual Property Rights" has the meaning set forth in Section 10.4 of the Agreement.

"Inter-Company Review Board" means an inter-company review board established pursuant to Section 3.1 of Attachment 1 of the Agreement.

"Interconnection" [Definition Deleted].

"Interconnection Services" has the meaning set forth in Section 1 of the Agreement.

"Interim Number Portability (INP)" means the delivery of LNP capabilities, from a customer standpoint in terms of call completion, with as little impairment of functioning, quality, reliability, and convenience as possible and from a carrier standpoint in terms of compensation, through the use of existing and available call routing, forwarding, and addressing capabilities.

"LATA" means local access transport area.

"Line Information Data Base(s) (LIDB)" has the meaning set forth in Section 11.3.1 of Attachment 2 of the Agreement.

"LEC" means local exchange carrier.

"LOA" has the meaning set forth in Section 25.1.1 of the Agreement.

"Local Number Portability (LNP)" means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

"Local Services" has the meaning set forth in Section 24 of the Agreement.

"Local Service Bill" means a Bill for Local Service Charges.

"Local Service Charges" has the meaning set forth in Section 2.1 of Appendix A to Attachment 6 of the Agreement.

"Local Traffic" for purposes of interconnection and mutual compensation under

this Agreement means traffic: (i) that originates and terminates in the same GTE exchange area; or (ii) originates and terminates in different GTE exchange areas that share a common mandatory local calling area such as mandatory Extended Area Service (EAS). Local Traffic does not include optional EAS which are those arrangements where the originating end user has a choice between rate plans, one rate plan which does include the identified route and one rate plan which does not include the identified route within the end user's flat-rate calling area.

"**Loop**" and "**Loop Combination**" have the respective meanings set forth in Section 3 of Attachment 2 of the Agreement.

"**Loop Concentrator/Multiplexer**" has the meaning set forth in Section 3.3.1 of Attachment 2 of the Agreement.

"**Loop Distribution Media**" has the meaning set forth in Section 3.2.1 of Attachment 2 of the Agreement.

"**Loop Feeder**" has the meaning set forth in Section 3.4.1 of Attachment 2 of the Agreement.

"**LSR**" means the Local Services request form and processes for ordering services for an end user customer which are approved by the OBF and may be modified by mutual agreement of the Parties.

"**Manhole**" has the meaning set forth in Section 3.1.7 of Attachment 3 of the Agreement.

"**MECAB**" means the Multiple Exchange Carrier Access Billing (MECAB) document prepared under the direction of the Billing Committee of the OBF which functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions. The MECAB document, published by Bellcore as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of access and other connectivity services provided by two or more LECs (including LECs and CLECs), or by one LEC or CLEC in two or more states within a single LATA.

"**MECOD**" means the Multiple Exchange Carriers Ordering and Design (MECOD) Guidelines for Access Services - Industry Support Interface, a document developed under the auspices of the Billing Committee of the OBF which functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions. The MECOD document, published by Bellcore as Special Report SR STS-002643, establishes recommended guidelines for processing orders for access and other connectivity

services which is to be provided by two or more LECs (including a LEC and a CLEC), or by one LEC or CLEC in two or more states within a single LATA.

"Network Element" or "Element" means a facility or equipment used in the provision of a Telecommunications Service. Network Element includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

"Network Interface Device" or "NID" has the meaning set forth in Section 2.1 of Attachment 2 of the Agreement.

"New Services Request" means a request from AT&T to GTE to obtain facilities, features, capabilities, functionality or services that are not already available under this Agreement.

"North American Numbering Plan" or "NANP" means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico and certain Caribbean Islands. The NANP format is a 10 digit number that consists of a 3 digit NPA code (commonly referred to as the are code), followed by a 3 digit NXX code and a 4 digit line number.

"NXX" means the three digit code which appears as the first three digits of a seven digit telephone number.

"911 Service" means a universal telephone number which gives the public direct access to the PSAP. Basic 911 service collects 911 calls from one or more local exchange switches that serve a geographic area. The calls are then sent to the correct authority designated to receive such calls.

"OBF" means the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS).

"Operator Service" has the meaning set forth in Section 5.1.1 of Attachment 2 of the Agreement.

"OSS" means operations support systems.

"Parties" means AT&T and GTE.

"Permanent Number Portability (PNP)" means the use of the Location Routing Number (LRN) database solution to provide fully transparent LNP for all customers and all providers without limitation.

"Pole Attachment" means the connection of a facility to a utility pole. Some examples of facilities are mechanical hardware, grounding and transmission cable, and equipment boxes.

"Public Safety Answering Point" or "PSAP" means an answering location for 911 calls originating in a given area. A PSAP may be designed as Primary or Secondary, which refers to the order in which calls are directed for answering. Primary PSAPs respond first; Secondary PSAPs receive calls on a transfer basis only, and generally serve as a centralized answering location for a particular type of emergency call. PSAP's are staffed by employees of Service Agencies such as police, fire or emergency medical agencies or by employees of a common bureau serving a group of such entities.

"Quality Standards" are referenced in Section 11.3, Sections 9 and 9.4.1 of Attachment 5, and Attachment 12 of the Agreement

"Real Time" means interactive system-to-system communications and response (of the type described in Section 29.1.2 and Attachment 13) in the actual time in which an event takes place, with the reporting on or recording of the event practically simultaneous (given or assuming network and systems' capabilities) with the occurrence of the event.

"Recipient" means that party to this Agreement to which Confidential Information has been disclosed by the other party.

"Recorded Usage Data" has the meaning set forth in Attachment 7 of the Agreement.

"Remote Call Forwarding" or (**"RCF"**) has the meaning set forth in Section 2.2 of Attachment 8 of the Agreement.

"Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, or migration, including without limitation, the movement of Environmental Hazards through or in the air, soil, surface water or groundwater, or any action or omission that causes Environmental Hazards to spread or become more toxic or more expensive to investigate or remediate.

"Right of Way (ROW)" has the meaning set forth in Section 3.1.9 of Attachment 3 of the Agreement.

"SECAB" means the Small Exchange Carrier Access Billing document prepared by the Billing Committee of the OBF. The Small Exchange Carrier Access Billing document, published by Bellcore as Special Report SR OPT - 001856, contains the recommended guidelines for the billing of access and other connectivity services.

"Served Premises" means collectively, all of the locations selected by AT&T for or to which AT&T orders Network Elements, Ancillary Functions or Combinations.

"Signaling Link Transport" has the meaning set forth in Section 9.1 of Attachment 2 of the Agreement.

"Signaling Transfer Points" has the meaning set forth in Section 10.1 of Attachment 2 of the Agreement.

"State" has the meaning set forth in the preamble.

"Structure" has the meaning set forth in Section 3.1.4.1 of Attachment 3 of the Agreement.

"Tandem Switching" has the meaning set forth in Section 12.1 of Attachment 2 of the Agreement.

"Telecommunications Service" has the meaning set forth in Section 3 of the Act.

"Telephone Relay Service" has the meaning set forth in Section 26.6 of the Agreement.

"TSLRIC" has the meaning set forth in Section 2 of Attachment 14 of the Agreement.

"Thousands Block of Numbers" shall mean 1000 or more consecutive numbers beginning and ending on a digit boundary, e.g., 949-1000 to 949-1999.

"Transit Service" has the meaning set forth in Section 37.5.2 of the Agreement.

"Unbundled Network Element Bill" means a Bill for Unbundled Network Element Charges.

"Unbundled Network Element Charges" has the meaning set forth in Section 2.1 of Appendix B to Attachment 6 of the Agreement.

"Voluntary Federal Customer Financial Assistance Programs" are Telecommunications Services provided to low-income subscribers, pursuant to requirements established by the appropriate state regulatory body.

"Waste" means all hazardous and non-hazardous substances and materials which are intended to be discarded, scrapped, or recycled, associated with activities AT&T or GTE or their respective contractors or agents perform at Work Locations. It shall be presumed that all substances or materials associated with such activities, that are not in use or incorporated into structures (including without limitation damaged components or tools, leftovers, containers, garbage, scrap, residues or byproducts), except for substances and materials that AT&T, GTE or their respective contractors or agents intend to use in their original form in connection with similar activities, are Waste. "Waste" shall not include substances, materials or components incorporated into structures (such as cable routes) even after such components or structure are no longer in current use.

"Wire Center" means a building or space within a building that serves as an aggregation point on a LEC's network, where transmission facilities and circuits are connected or switched.

"Work Locations" means all buildings, equipment, structures and other items located on a single site or contiguous or adjacent sites owned or operated by the same person or persons for the purpose of providing Telecommunications Services in connection with this Agreement.

Attachment 14

AT&T/GTE Pricing Agreement

TABLE OF CONTENTS

1. LOCAL SERVICE RESALE 1

2. UNBUNDLED NETWORK ELEMENTS 2

3. COLLOCATION 2

4. INTERCONNECTION SERVICES 3

5. OTHER 3

Appendix 1 - Local Service Resale
Appendix 1 - Annex 1 - Schedule of Wholesale Discounts
Appendix 1 - Annex 2 - Summary of Wholesale Charges
Appendix 2 - Prices for Unbundled Network Elements
Florida (Per Order)
Appendix 3 - Prices for Collocation
Appendix 3 - Annex 1 - Charges State of Florida
Appendix 4 - Reciprocal Compensation
Appendix 4 - Annex 1 - Prices for Reciprocal Compensation
Appendix 5 - Prices for Local Number Portability
Appendix 6 - Prices for Trunking Interconnection
Appendix 7 - Prices for E911/911 Services
Appendix 8 - Rights-of-Way, Conduits, Ducts and Pole Attachments

Attachment 14

AT&T/GTE Pricing Agreement

1. **Local Service Resale**

The prices charged to AT&T for Local Service shall be calculated using the avoided cost discount applicable in the State determined on the basis of the retail rate 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 GTE, as further specified in Appendix 1 to this Attachment 14.

The prices shall be GTE's retail rates applicable on the Effective Date, less the applicable discount. If GTE reduces or increases its retail rates after AT&T executes this Agreement, the applicable discount shall be applied to the reduced or increased retail rates.

2. **Unbundled Network Elements**

The prices charged to AT&T for Network Elements shall be as further specified in Appendix 2 to this Attachment 14.

3. **Collocation**

Prices and terms for collocation are specified in Appendix 3 to this Attachment 14.

4. Interconnection Services

GTE will make interconnection arrangements available at all tandem switching and end office switching locations. At the discretion of AT&T, local interconnection may be accomplished via one-way local trunks, or two way local trunks, or AT&T may chose to deliver both local and toll traffic over the same trunk group(s). With respect to the latter scenario, AT&T will have to provide an available Percent Local Usage (PLU) to facilitate billing if it desires application of the local interconnection rate.

Prices and terms for Interconnection Services are specified in Appendix 4 to this Attachment 14.

5. Other

Prices and terms for local number portability, trunking interconnection, E911/911 and pole attachments, conduit and rights-of-way services are specified in Appendix 5, Appendix 6, Appendix 7 and Appendix 8 to this Attachment 14, respectively.

6. Numerous provisions in this Agreement and its Attachments refer to prices or pricing principles set forth in Attachment 14. If a provision references prices in Attachment 14 and there are no corresponding prices already set forth in Attachment 14 for such item, such price shall be considered "To Be Determined" ("TBD"). With respect to all TBD prices, prior to AT&T ordering any such TBD item, the Parties shall meet and confer to establish a price. If the Parties are unable to reach agreement on a price for such item, an interim price shall be set for such item that is equal to the price for the nearest analogous item for which a price has been established (for example, if there is not an established price for a non-recurring charge ("NRC") for a specific Network Element, the Parties would use the NRC for the most analogous retail service for which there is an established price); provided, however, that if the Parties are unable to agree on what is the nearest analogous item for purposes of setting an interim price or if there is no such analogous item, they will submit the dispute to arbitration for purposes of establishing an interim price in accordance with the procedures set forth in Attachment 1. Any interim prices so set shall be subject to modification by any subsequent decision of the Commission. If an interim price is different from the rate subsequently established by the Commission, any underpayment shall be paid by AT&T to GTE, or any overpayment refunded by GTE to AT&T, within forty-five (45) days after the establishment of the price by the Commission.

Appendix 1 - Local Service Resale

Beginning with the Effective Date of this Agreement, Resale Services will be priced in accordance with the standards and prices described below.

1. The wholesale rates for Local Service Resale will be calculated based upon the discounts described in Annex 1. Such discounts will be applied against the Retail Rates for each GTE Retail Offering.

1.1 "Retail Rates" are the effective rates a GTE retail customer would have paid GTE under the Retail Offering selected by AT&T, taking into consideration all applicable discounts, including, but not limited to, volume, term and time of day.

1.2 A "Retail Offering" is an individual contract or retail service rate element, or package of rate elements, which GTE offers to its retail customers, including, but not limited, to Grandfathered Services.

2. Nonrecurring "change" or "record" charges, rather than service establishment charges, shall apply for the conversion of existing Customers of GTE services, received either directly from GTE or through another reseller, to AT&T local service.

Appendix 1 - Annex 1 - Schedule of Wholesale Discounts

Florida

Basic Local Service (Residence & Business)	13.04%
Line Charge	13.04%
Usage Charge	13.04%
Features	13.04%
Listing Charges	13.04%
Non-recurring Charges	13.04%
Toll Service	13.04%
Operator Services	13.04%
Directory Assistance	13.04%
Business Trunk and Service Arrangements	13.04%
ISDN Services	13.04%
CENTRANET Services	13.04%
Private Line Services	13.04%
Inbound/Outbound Services	13.04%
Promotional Offerings (90 days or more)	13.04%
Promotional Offerings (less than 90 days)	Not subject to wholesale discount
Services for disabled persons (including free directory assistance)	13.04%
In Contact Services	13.04%
Public and Semi-Public Payphone Services	13.04%
Contract Services	13.04%
Grandfathered Services	13.04%
All other retail Telecommunications Services not excluded from resale by order of the Commission	13.04%

Appendix 1 - Annex 2 - Summary of Wholesale Charges

This Annex refers to contract or retail service charges.

Local Services-Residence and Business.

Line Charges: These services should include but not be limited to the exchange line charges, by rate area within the jurisdiction. The price structure should encompass flat rates, measured rate service, one and/or two-party lines and any other subcategory that pertains to that jurisdiction. Line prices that reflect usage for such services as call-packs, extended area service, community calling would be included in this category.

Usage Charges: Includes all usage not captured in the line charge, such as messages or minutes in excess of any limited calling-plan.

Features: Custom calling features and advanced custom calling features as designed to be compatible with single and multi-line residence and business customer exchange lines. Custom calling features would include month and pay per attempt charges. Associated feature discounts for quantity or other marketing bundles would also be included. (Central office features that support CENTRANET and private line services would be included with each specific service category.).

Listings: All forms of directory listings for both local and toll services. Prices for customer listing options such as bold type, dual name, business name and custom advertising for the white and yellow pages are included.

Non-recurring charges: Charges associated with the installation, addition, changing or moving of service and equipment for local service.

Toll Services: Charges for any service that has been ordered by the Commission to be open to intraLATA presubscription whether charged on a per minute of use or other basis. This includes the non-recurring and listing charges associated with installation or record affecting work for toll service or toll usage plans and for listings, advertising and associated services in the 800 service directory.

Operator Services: Charges associated with, but not limited to, obtaining operator assistance for call placement, busy-line verification and interruption, time and weather and, if priced as such, DA call completion.

Directory Assistance Services: Charges associated with the use of directory assistance operators in obtaining local telephone numbers.

Business Trunks and Service Arrangements: Charges associated with PBX trunk arrangements for single and multi-line customers. Included are line and usage charges, features and service arrangements for direct inward (and/or outward) dialing.

ISDN Services: Charges associated with Integrated Services Digital Network Service for residence and business customers for the transmission of voice, data and packet switched signals.

CENTRANET Services: Charges associated with the provision and use of central office based private branch exchange services using equipment located on the premises owned or leased or controlled by GTE and connected by local loops to the premises of the customer or an authorized user.

Private Line Services: Charges associated with the provision and use of dedicated facilities between two or more customer locations.

Inbound/Outbound Services: Charges associated with the provision and use of WATS 800 (inbound) and Wide Area Telephone service (outbound) and other like services.

End User Access Services: Charges associated with the provision and use of common and dedicated facilities to provide access service to end user customers.

Appendix 2 - Prices for Unbundled Network Elements

Beginning with the Effective Date of this Agreement, Network Elements and Combinations will be priced in accordance with the standards and prices described in this Appendix 2.

Other than the prices identified as interim, the prices listed in this Appendix 2 will remain in effect for three (3) years (Initial Contract Period) unless amended pursuant to pricing orders applicable to Network Elements and Combinations provided by GTE to AT&T in the State. The prices identified as interim are subject to further order of the Commission pending submission of cost studies by GTE. At the end of the Initial Contract Period, the agreement will automatically renew for an additional one year term, unless one party gives 90 days written notice of a wish to terminate. Upon the giving of such written notice by a Party, the Parties agree to renegotiate any or all of the prices, subject to the then applicable pricing standards established by the FCC and/or the state regulatory commission. If the Parties are unable to agree upon revised prices within sixty (60) days of the request to terminate, a Party may invoke the Dispute resolution procedures of Attachment 1. Until such time as the revised prices are agreed to, or established by the decision of the Arbitrator in the dispute resolution procedure, the prices described in this Appendix 2 will continue to remain in effect.

Nonrecurring charges for Dedicated Transport, Database and Signaling Systems, and Channelization System to be provided following review of GTE cost data.

Appendix 2 - Annex 1

FLORIDA

Summary of PSC Modified Monthly Recurring Costs
For GTE Florida, Inc.

	Rates
Unbundled Loops	
2-Wire Analog Loop	$20.00
4-Wire Analog Loop	$25.00
Loop Distribution	$7.50 -interim
Loop Feeder	$3.00 -interim
NID	
Basic NID	$1.45
12x NID	$2.10
Cross Connects	
DS-0	$1.60
DS-1	$4.00
DS-3	$31.00
Local Switching	
Per Originating MOU	$.004
Per Terminating MOU	$.00375
Port Charges per Month:	
2-wire Analog Port	$4.75
4-wire Analog Port	Cost study due
DS-1 Port	$72.25
Tandem Switching	
Per MOU	$.0009512
Common Transport	
Transport Termination	$.0001
Transport Facility / per mile	$.0000017
Dedicated Transport	

Entrance Facility:	
2-wire voice	$29.00
4-wire voice	$35.00
DS-1 system - first	$135.00
DS-1 system - add'l	$125.00
DS-3 protected	$960.00
Voice facility	$2.60
DS-1 facility per mile	$0.50
DS-1 per termination	$30.00
DS-3 facility per mile	$13.00
DS-3 per termination	$285.00
Channelization System	
DS3 to DS1 multiplexing	$305.00
DS1 to DS0 multiplexing	$205.00
Database and Signaling Systems	
Signaling Links and STP	
56 Kbps Links	$80.00
DS-1 Link	$125.00
Signal Transfer Point (STP)	
Port Termination	$350.00
Call Related Databases	
Line Information Database	
ABS	$.04
Toll Free Calling Databases	
DB800 Queries	$.011
Operations Support Systems	Cost study due
Operator Services	
Operator Systems	Cost study due
Directory Assistance	Cost study due
911 Service	Cost study due

Summary of PSC Modified Non-Recurring Costs
For GTE Florida, Inc.

Unbundled Element	Non-Recurring Charge
Loop or Port Service Ordering	
Initial Service Order	$47.25
Transfer of Service	$16.00
Subsequent Service Order	$24.00
Customer Service Record	$ 5.25
Research	
Installation:	
Unbundled loop, per loop	$10.50
Unbundled port, per port	$10.50
Loop Facility Charge	$62.50

Appendix 3 - Prices for Collocation

3. Charges.

Beginning with the Effective Date of this Agreement, Collocation will be priced in accordance with the standards and prices described in Annex 1 of this Appendix 3.

4. Payment.

AT&T will pay the charges for Collocation upon receipt of an itemized invoice from GTE. GTE will provide AT&T with an itemized invoice of all charges on a per LSO basis.

Appendix 3 - Annex 1

FLORIDA

Summary of Commission-Approved Charges for Collocation
For GTEFL

Collocation Element	Recurring Rate
DS-0	$1.60/per month
DS-1	$4.00/per month
DS-3	$31.00/per month
Partitioned space/square foot	$1.85/per month
DC power	$405.00/per month
Cable space	$14.00/per month

Collocation Element	Non-Recurring Rate
Physical Engineering Fee	$6,946.00/per request
Building Modification Costs:	
Simple	$13,484.00/per office
Moderate	$18,448.00/per office
Complex	$23,514.00/per office
DC power	$2,900.00/per 40 amps
Cable Pull	$1,213.00/per 12 fibers
Cage Enclosure	$4,559.00/per cage

Appendix 4 - Reciprocal Compensation

5. **Scope.**

This Appendix prescribes the methods and means for reciprocal compensation of interconnect traffic between GTE's and AT&T's networks as well as transiting traffic between AT&T and third party LECs or ILECs.

6. **Interconnecting Local Traffic.**

On each three (3) month anniversary of the Interconnection Activation Date in a Market Area, the Parties will review the minutes of usage for interconnect traffic for the prior quarter. If the minutes of usage imbalance for interconnect traffic for that period is less than ten (10%) percent, neither Party shall charge the other for services provided under this Appendix. If an imbalance is greater than ten (10%) percent, then the appropriate party may bill the other using the rates discussed in this Appendix. In the event of a disagreement regarding reciprocal compensation billing, either Party may invoke the dispute resolution procedures of Attachment 1.

7. **Transiting Traffic.**

AT&T shall pay to GTE a Transiting Service Charge for the use of its Tandem Switching as described in Annex 1 to this Appendix 4.

8. **BLV/BLVI Traffic.**

Each party shall charge the other for BLV/BLVI Services on a reciprocal basis as provided in Section of this Agreement.

Appendix 4 - Annex 1 - Prices for Reciprocal Compensation

These prices will remain in effect for the first three (3) Contract Years of this Agreement ("Initial Contract Period"), unless amended pursuant to pricing orders applicable to the services provided to each other by AT&T and GTE listed in this Appendix 4. Upon expiration of the Initial Contract Period, upon written notice by a Party, the Parties agree to renegotiate any or all of the prices, subject to the then applicable pricing standards established by the FCC and/or the state regulatory Commission. A Party may deliver only one request to renegotiate during a Contract Year. If the Parties are unable to agree upon revised prices within sixty (60) days of the request to renegotiate, a Party may invoke the Dispute resolution procedures of Attachment 1. Until such time as the revised prices are agreed to, or established by the decision of the Arbitrator in the dispute resolution procedure, the prices described in this Annex will continue to remain in effect.

Dedicated transport - See Appendix 2 - Annex 1 to this Attachment 14

Common transport - See Appendix 2 - Annex 1 to this Attachment 14

End Office Switching - $0.0025 per minute

Tandem Switching - $.00125 per minute

Transiting Service Charge - TBD

Appendix 5 - Prices for Local Number Portability

There will be no charge for number portability provided by one Party for the other. Pending further study and order by the Commission, each party will pay its own costs in the provision of interim number portability solutions. Recovery of the costs of implementing interim number portability will be made in a competitively neutral manner.

Appendix 6 - Prices for Trunking Interconnection

The prices listed in this Appendix are not subject to change for the first three (3) Contract Years of this Agreement ("Initial Contract Period"). Upon expiration of the Initial Contract Period, upon written notice by a Party, the Parties agree to renegotiate any or all of the prices, subject to the then applicable pricing standards established by the FCC and/or the state regulatory commission. A Party may deliver only one request to renegotiate during a Contract Year. If the Parties are unable to agree upon revised prices within sixty (60) days of the request to renegotiate, a Party may invoke the Dispute resolution procedures of Attachment 1. Until such time as the revised prices are agreed to, or established by the decision of the Arbitrator in the dispute resolution procedure, the prices described in this Appendix will continue to remain in effect.

Dedicated Transport Rates

AT&T Dedicated Transport

See Appendix 2 - Annex 1 to this Attachment 14

GTE Dedicated Transport -

See Appendix 2 - Annex 1 to this Attachment 14

Nonrecurring charges to be provided following review of GTE cost data.

Appendix 7 - Prices for E911/911 Services

The prices listed in this Appendix are not subject to change for the first three (3) Contract Years of this Agreement ("Initial Contract Period"). Upon expiration of the Initial Contract Period, upon written notice by a Party, the Parties agree to renegotiate any or all of the prices, subject to the then applicable pricing standards established by the FCC and/or the state regulatory commission. A Party may deliver only one request to renegotiate during a Contract Year. If the Parties are unable to agree upon revised prices within sixty (60) days of the request to renegotiate, a Party may invoke the Dispute resolution procedures in Attachment 1. Until such time as the revised prices are agreed to, or established by the decision of the Arbitrator in the dispute resolution procedure, the prices described in this Appendix will continue to remain in effect.

[To be provided following review of GTE cost data]

Appendix 8 - Rights-of-Way, Conduits, Ducts, and Pole Attachments

Prices. The prices charged to AT&T for supplying facilities will be based on a pro rata share of the TSLRIC. AT&T will pay for work needed to condition capacity for AT&T's use and administrative fees and rental fees associated with AT&T's occupancy of GTE's facilities.

If GTE advises AT&T that a route is available and subsequently it is determined that a portion of the route is not available, then AT&T will not be required to pay for any work performed by GTE with respect to such route and any prepaid amounts will be refunded to AT&T.

GTE and AT&T shall agree on a verifiable mechanism or process to ensure that AT&T is properly charged for such work and that, where necessary, costs are allocated and prorated in a nondiscriminatory and competitively neutral manner in accordance with methodology approved by the FCC or the Commission. When AT&T places a request with GTE for work to be performed for AT&T in connection with Rights of Way, Conduit and Pole Attachments, GTE shall submit to AT&T a detailed estimate for such work as soon as practicable after the receipt of the request. GTE shall not commence work on the request until it receives prior authorization from AT&T. All invoices submitted by GTE shall include a detailed itemization of all work covered thereunder.

ATTACHMENT 15

RECIPROCAL COMPENSATION FOR CALL TERMINATION AGREEMENT

1. This Attachment describes the reciprocal compensation arrangements between AT&T and GTE for Local Traffic, Toll, and Switched Access Services. The Partles shall compensate each other for transport and termination of such traffic at the rates provided in Attachment 14 (Pricing) and/or the appropriate Parties' Switched Access Tariff.

2. Compensation for Call Termination

   A. Reciprocal compensation does not apply in a resale environment.

   B. The following compensation terms, as specified in Unbundled Network Element pricing listed in Attachment 14, shall apply in all cases where AT&T purchases GTE's unbundled Local Switching:

      1. For Local intra-switch calls between lines connected to GTE's switch where AT&T has purchased GTE's unbundled Local Switching, the Parties agree to impose no call termination charges on each other. GTE's Local Switching charge will apply as described below where the call is :

         (a) Originated by AT&T's customer and completed to a GTE customer:

            (1) (For use of the local switch:) Local Switching charge at the originating office will apply to AT&T.

         (b) Originated by AT&T's customer and completed to the customer of a third party LEC (not affiliated with AT&T) using GTE's unbundled Local Switching:

            (1) (For use of the local switch:) Local Switching charge at the originating office will apply to AT&T.

         (c) Originated by AT&T's customer and completed to another of AT&T's customers using GTE's unbundled Local Switching.

            (1) (For use of the local switch:) Local Switching charge at the originating office will apply to AT&T.

         (d) Originated by a GTE customer and terminated to AT&T's customer using GTE's unbundled Local Switching.

(1) No Local Switching charge will apply to AT&T.

(e) Originated by the customer of a third party LEC (not affiliated with AT&T) using GTE's Unbundled Local Switching and terminated to AT&T's customers using GTE's unbundled Local Switching.

(1) No Local Switching charge will apply to AT&T.

2. For Local inter-switch calls where AT&T has purchased GTE's unbundled Local Switching, the Parties agree to call termination charges as applicable and as described in Attachment 14, Appendix 4, Section 2.

GTE's charges will apply to AT&T as described below where the call is:

(a) Originated from AT&T's end-user customer using GTE's unbundled Local Switching and completed to a GTE customer.

(1) (For use of the local switch:) Local Switching charge at the originating office will apply to AT&T.

(2) A mileage-based transport charge will apply when AT&T uses GTE's transport.

(3) (For call termination) Charges for local interconnection/call termination, when applicable, as set forth in Attachment 14, Appendix 4.

(b) Originated from AT&T's customer using GTE's unbundled Local Switching and completed to a third party LEC (not affiliated with AT&T) customer using GTE's unbundled Local Switching.

(1) (For use of the local switch:) Local Switching charge at the originating office will apply to AT&T.

(2) A mileage-based transport charge will apply when AT&T uses GTE's transport.

(c) Originated from AT&T's customer using GTE's unbundled Local Switching and completed to the interconnected network of a third party LEC (not affiliated with AT&T).

(1) (For use of the local switch:) Local Switching charge at the originating office will apply to AT&T.

(2) A mileage-based transport charge will apply when AT&T uses GTE's transport, and mileage shall be measured between the originating office and the POI of the third party's network.

(d) Originated from AT&T's customer using GTE's unbundled Local Switching and completed to AT&T's customer using GTE's unbundled Local Switching.

(1) (For use of the local switch:) Local Switching charge at the originating office will apply to AT&T.

(2) A mileage-based transport charge will apply when AT&T uses GTE's transport.

(3) (For use of the local switch:) Local Switching charge at the terminating office.

(e) Originated by a GTE customer and terminated to AT&T's customer using GTE's unbundled Local Switching.

(1) (For use of the local switch:) Local Switching Charge at the terminating office will apply to AT&T.

(2) (For call termination) AT&T shall charge GTE for local interconnection/call termination, when applicable, as set forth in Attachment 14, Appendix 4.

(f) Originated by a customer of a third-party LEC (not affiliated with AT&T) using GTE's unbundled Local Switching and terminated to AT&T's customer using GTE's unbundled Local Switching.

(1) (For use of the local switch:) Local Switching charge at the terminating office will apply to AT&T.

(g) Originated by a customer on the interconnected network of a third-party LEC (not affiliated with AT&T) and terminated to AT&T's customer using GTE's unbundled Local Switching.

(1) (For use of the local switch:) Local Switching charge at the terminating office will apply to AT&T.

3. For intraLATA toll calls where AT&T has purchased GTE's unbundled Local Switching, charges per Unbundled Network Element pricing listed in Attachment 14 shall apply as follows:

(a) Originated by AT&T's customer and completed to a GTE customer.

(1) (For use of the local switch:) Local Switching charge plus RIC (Residual Interconnection Charge, also called the Transport Interconnection Charge or the Interconnection Charge) and CCLC (Common Carrier Line Charge) at the originating office will apply to AT&T, if such charges are required by the Commission.

(2) Shared transport charge between the two offices will apply when AT&T uses GTE's transport.

(3) (For call termination) End Office Switching charge at the terminating office (Switched Access Rate) will apply to AT&T.

(4) RIC at the terminating office, if such charge is required by the Commission.

(b) Originated by AT&T's customer and completed to the customer of a third-party LEC (not affiliated with AT&T) using GTE's unbundled Local Switching in a distant end office.

(1) (For use of the local switch:) Local Switching charge plus RIC and CCLC at the originating office will apply to AT&T, if such charges are required by the Commission.

(2) Shared transport charge between the two offices will apply when AT&T uses GTE's transport.

(c) Originated by AT&T's customer and completed to the network of third-party LEC (not affiliated with AT&T) interconnected with GTE's network.

(1) (For use of the local switch:) Local Switching charge, plus RIC and CCLC, at the originating office will apply to AT&T, if such charges are required by the Commission.

(2) Common transport charge will apply when AT&T uses GTE's transport, and mileage shall be measured

between the originating office and the POI of the third party's network.

(3) Tandem Switching, where applicable.

(d) Originated by AT&T's customer and completed to another of AT&T's customers being served through GTE's unbundled Local Switching in a distant office.

(1) (For use of the local switch:) Local Switching charge plus RIC and CCLC at the originating office will apply to AT&T, if such charges are required by the Commission.

(2) Shared transport charge between the two offices will apply when AT&T uses GTE's transport.

(3) (For use of the local switch:) Local Switching charge plus RIC and CCLC at the terminating office will apply to AT&T, if such charges are required by the Commission.

(e) Originated by a GTE customer and terminated to AT&T's customer using GTE's unbundled Local Switching.

(1) (For use of the local switch:) Local Switching charge plus RIC and CCLC at the terminating office, if such charges are required by the Commission.

(2) (For call termination:) AT&T will charge GTE Local Switching at the terminating office (Switched Access Rate).

(3) (For call termination:) AT&T will charge GTE RIC at the terminating office, if such charge is required by the Commission.

(f) Originated by the customer of a third-party LEC (not affiliated with AT&T) using GTE's unbundled Local Switching in a distant end office and terminated to AT&T's customer using GTE's unbundled Local Switching.

(1) (For use of the local switch:) Local Switching charge plus RIC and CCLC at the terminating office will apply to AT&T, if such charges are required by the Commission.

(g) Originated by a customer on the network of a third-party LEC (not affiliated with AT&T) interconnected with GTE's network

and terminated to AT&T's customer using GTE's unbundled Local Switching.

(1) (For use of the local switch:) Local Switching charge plus RIC and CCLC at the terminating office will apply to AT&T, if such charges are required by the Commission.

4. For intrastate Switched Access calls where AT&T is using GTE's unbundled Local Switching for calls originated from or terminated to an IXC for completion:

(a) For calls originated from AT&T's customer to AT&T's own IXC switch (or that of an affiliate) for completion.

(1) (For use of the local switch:) Local Switching charge at the originating office.

(2) Originating RIC and CCLC, if such charges are required by the Commission.

(3) GTE will charge AT&T's IXC affiliate the following Switched Access elements on a meet-point basis:

a. Local Transport

b. Tandem Switching

(b) For calls originated from AT&T's customer to an IXC's switch not affiliated with AT&T.

(1) (For use of the local switch:) Local Switching charge at the originating office.

(2) Originating RIC and CCLC, if such charges are required by the Commission.

(3) GTE shall charge the non-affiliated IXC for the following originating Switched Access on a meet-point basis:

a. Local Transport

b. Tandem Switching

(c) For calls terminating to AT&T's end-user customer from AT&T's own IXC switch (or that of an affiliate) for completion.

(1) (For use of the local switch:) Local Switching charge at the terminating office.

(2) Terminating RIC and CCLC, if such charges are required by the Commission.

(3) GTE will charge AT&T's IXC (affiliate) the following Switched Access elements on a meet-point basis:

a. Local Transport

b. Tandem Switching

(d) For calls terminating to AT&T's customer from an IXC switch not affiliated with AT&T.

(1) (For use of the local switch:) Local Switching charge at the terminating office.

(2) Terminating RIC and CCLC, if such charges are required by the Commission.

(3) GTE shall charge the IXC for the following terminating Switched Access on a meet-point basis:

a. Local Transport

b. Tandem Switching

5. For interstate Switched Access calls where AT&T is using GTE's unbundled Local Switching for calls originated from or terminated to an IXC for completion:

(a) For calls originated from AT&T's customer to AT&T's own IXC switch (or that of an affiliate) for completion.

(1) (For use of the local switch:) Local Switching charge at the originating office.

(2) Originating RIC and CCLC, if such charges are required by the Commission.

(3) GTE shall charge AT&T's IXC affiliate for the following originating Switched Access on a meet-point basis:

a. Local Transport

b. Tandem Switching

(b) For calls originated from AT&T's customer to an IXC's switch not affiliated with AT&T.

(1) (For use of the local switch:) Local Switching charge at the originating office.

(2) Originating RIC and CCLC, if such charges are required by the Commission.

(3) GTE shall charge the IXC for the following originating Switched Access on a meet-point basis:

a. Local Transport

b. Tandem Switching

(c) For calls terminating to AT&T's customer from AT&T's own IXC switch (or that of an affiliate) for completion.

(1) (For use of the local switch:) Local Switching charge at the terminating office.

(2) Terminating RIC and CCLC, if such charges are required by the Commission.

(3) GTE will charge AT&T's IXC (affiliate) the following Switched Access elements on a meet-point basis:

a. Local Transport

b. Tandem Switching

(d) For calls terminating to AT&T's customer from an IXC switch not affiliated with AT&T.

(1) (For use of the local switch:) Local Switching charge at the terminating office.

(2) Terminating RIC and CCLC, if such charges are required by the Commission.

(3) GTE shall charge the non-affiliated IXC for the following terminating Switched Access on a meet-point basis:

a. Local Transport

b. Tandem Switching

C. The following terms apply where AT&T and GTE interconnect using their own networks.

1. For Local Traffic and intraLATA Toll traffic originated by AT&T (or CLECs subtending its network) to GTE, AT&T agrees to pay GTE the following:

(a) Local calls: Unless otherwise provided in Attachment 14, Bill and Keep shall apply to Local Traffic. In the event traffic (as defined from the point of interconnection) is out of balance, the rate specified in Attachment 14 shall apply.

(b) Toll calls: The following GTE Intrastate Switched Access rate elements are applicable to intraLATA toll calls, if such charges are required by the Commission.

(1) For common switched transport where GTE's tandem is used:

(a) Fixed - per minute of use.

(b) Variable - per mile per minute of use. Mileage shall be calculated based on the airline miles between the Vertical and Horizontal ("V&H") coordinates of the POI, and the GTE end office or Competitive Local Carrier routing point.

(c) Tandem Switching.

(2) End Office switching.

(3) Information Surcharge

(4) RIC

(5) CCLC

2. For Local Traffic and intraLATA Toll traffic originated from GTE to AT&T, GTE agrees to pay AT&T the following:

(a) Local calls: Unless otherwise provided in Attachment 14, Bill and Keep shall apply to Local Traffic. In the event traffic (as defined from the point of interconnection) is out of balance, the rate specified in Attachment 14, Appendix 4, Annex 1 shall apply.

(b) Toll calls: The following AT&T Intrastate Switched Access rate elements are applicable to intraLATA toll calls, if such charges are required by the Commission.

(1) For common switched transport where AT&T's tandem is used:

(a) Fixed - per minute of use.

(b) Variable - per mile per minute of use. Mileage shall be calculated based on the airline miles between the Vertical and Horizontal ("V&H") coordinates of the POI, and the AT&T end office or Competitive Local Carrier/AT&T routing point.

(c) Tandem Switching.

(2) End Office switching.

(3) Information Surcharge

(4) RIC

(5) CCLC

PUBLIC VERSION – CONFIDENTIAL MATERIAL REDACTED

EXHIBIT K TO EXHIBIT I REDACTED IN ITS ENTIRETY

State of Florida

Public Service Commission

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

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

DATE: November 21, 2001

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

FROM: DIVISION OF COMPETITIVE SERVICES (HINTON, BLOOM)
DIVISION OF LEGAL SERVICES (KEATING, BANKS)

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

AGENDA: 12/05/01 - SPECIAL AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\000075.RCM

TABLE OF CONTENTS

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

XO:

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

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

STAFF ANALYSIS

In this issue the Commission is presented with two matters for determination. First, the Commission is to determine under what conditions carriers may assign telephone numbers to end users physically located outside the rate center in which the telephone number is homed. Second, the Commission is to determine whether intercarrier compensation for calls to these numbers should be based upon the physical location of the calling and called parties or upon a comparison of the NPA/NXXs assigned to them. Staff notes that due to the FCC's recent *ISP Remand Order*,[6] which removes ISP-bound traffic from state jurisdiction, this issue is limited to intercarrier compensation arrangements for traffic that is delivered to non-ISP customers. (Level 3 BR 27) Sprint witness Maples explains that when you take ISP-bound traffic out of the equation, any real voice FX traffic is going to be minor. (TR 571)

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

Nevertheless, no party to this proceeding has suggested that a Commission decision on this issue is no longer needed. Staff merely notes that the volume of traffic that will be subject to the Commission's decision on this issue has potentially decreased considerably since this docket was originally opened.

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

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

Witness Haynes states that "a major public policy goal that has guided regulators and the telecommunications industry for many decades has been the widespread availability of affordable telephone service." (TR 386) He explains that to achieve this objective certain pricing conventions or principles were adopted. The primary principle is that basic exchange access rates typically provide unlimited calls within a confined geographic area at modest or no additional charge. He states that this "confined geographic area consists of the customer's 'home' exchange area and additional surrounding exchanges, together designated as the customer's 'local calling area.'" (TR 386-387) Witness Haynes states that calls outside of this local calling area are subject to an additional "toll" charge. He explains that toll service is generally priced higher on a usage-sensitive basis. In order to ensure that basic local phone service is universally available and affordable, local

exchange companies are permitted to use revenues gained from toll service to hold down the price of basic local service. (TR 387)

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

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

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

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

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

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

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

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

> Had the [ALECs] legitimately provided their ISP customers with a one-way/inward toll-free number service, the customer with the toll-free 800, 877 or 888 number (i.e., the ISP) would pay to receive all incoming calls, the terminating carrier (the [ALEC]) would pay the originating carriers (e.g., Verizon, independent telephone companies) carrier access charges, and the callers would reach the ISP free of charge. However, under the virtual NXX scheme employed by some, [ALECs] receive an 800-like arrangement, with Verizon bearing the costs to transport their traffic without compensation. (TR 394)

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

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

Level 3 witness Gates disagrees that the use of virtual NXXs has a negative impact on numbering resources. He argues that if virtual NXX calls do impact the availability of numbers, then the ILEC's FX service, extended reach, Cyber DS-1, and other systems have impacted the number resources of Florida for decades. (TR 833) Witness Gates also contends that ALECs don't always have to obtain NPA/NXX codes in blocks of 10,000 as stated by Verizon witness Haynes. Witness Gates states that in jeopardy situations, companies can obtain codes broken down into 1,000, 500, even 100 number blocks. (TR 865) He argues that there is no proof that virtual NXXs have impacted the numbering resources of Florida, and it would be wrong to limit the availability of service based on a fact that is not in evidence. (TR 889)

Level 3 witness Gates also disagrees with ILEC contentions that virtual NXX calls are similar to 1-800 service. He explains that 8XX NPAs are not associated with a particular geographic area. In other words, callers from many geographic areas can place a toll-free call by dialing the same 8XX, while toll-free virtual NXX calls can only be placed from the rate center in which the customer's NPA/NXX is homed. (TR 782) In addition, he states that

a 1-800 call has always been a toll call, as portrayed by the dialing pattern of 1-8XX-NXX-XXXX. He explains that when the call is dialed, the local switch recognizes the call as toll by the 1+ toll indicator, and routes the call to the access tandem for additional routing instructions. (TR 782) In contrast, virtual NXX calls are routed by the local switch like any other local call. (TR 783)

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

> Customers want to use these so-called virtual NXX codes because it allows them to take advantage of state-of-the-art, currently available technologies that allow consumers to reach their businesses without the disincentive of a toll call. It also allows businesses and organizations to provide service in other areas before they actually have facilities or offices in those areas. Absent such calling plans, consumers would have to wait for carriers to build out their networks - which could take years and millions of dollars. (TR 779)

Witness Gates contends that carriers use virtual NXXs because they allow them to respond to customer demand for new and innovative services, and a prohibition from using virtual NXXs would constitute an artificial impediment to the natural progression of competitive markets. He states that this will deny Florida residents the benefits associated with competitive development. (TR 780) Witness Gates describes what he contends are three negative impacts of prohibiting the use of virtual NXXs. First, he states that "ILECs would be able to evade the intercarrier compensation arrangements they have negotiated with ALECs." (TR 784) He explains that classifying virtual NXX calls as

toll would make it nearly impossible and much more economically burdensome for ALECs to utilize virtual NXXs in the provision of service to customers. (TR 785) Second, witness Gates states that restrictions on the use of virtual NXXs would have a negative impact on the competitive deployment and use of affordable dial-up internet services in Florida. (TR 784-785) Finally, he argues that restrictions placed on virtual NXXs, and not on the ILEC's FX service, would give ILECs a competitive advantage over ALECs. (TR 785)

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

> Total market dominance is a valuable asset, although it is not necessarily in the public interest. It would make sense for an ILEC to protect and preserve its monopoly by proposing language that would make it uneconomic for Level 3 to chip away at its monopoly market share. (TR 790)

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

Witness Selwyn suggests that ILECs also enable a customer to have a local presence in a different exchange to which they are

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

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

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

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

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

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

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

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

Witness Ruscilli states that "BellSouth's position is that regardless of the numbers an ALEC assigns to its end users, BellSouth should only pay reciprocal compensation on calls that originate and terminate within the same local calling area." (TR 50) He argues that carriers should utilize NPA/NXXs in such a way that other carriers are able to distinguish local traffic from toll traffic. (TR 50) He states:

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

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

Witness Ruscilli explains that local traffic, for which reciprocal compensation is due, is traffic that originates and

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

Witness Ruscilli provides an example of what occurs when an ALEC disassociates the physical location of a customer with a particular phone number from the rate center where that NPA/NXX code is homed. In his example, an ALEC takes a NPA/NXX that is homed in Jacksonville and assigns it to an end user physically located in Lake City. He explains that if a BellSouth end user in Jacksonville dials this NPA/NXX, BellSouth would bill its Jacksonville customer for a local call. BellSouth would hand off the call to the ALEC, and the ALEC would then carry the call from that point to its end user in Lake City. Witness Ruscilli contends that "[t]he end points of that call are in Jacksonville and Lake City, and therefore, the call is a long distance call." (TR 52) Witness Ruscilli also provides a more extreme example in which the ALEC could assign that Jacksonville NPA/NXX to an end user in New York. He states that in the same way, this call from Jacksonville to New York would be billed to BellSouth's customer as a local call even though it is clearly a long distance call. In addition, witness Ruscilli argues that BellSouth would be billed reciprocal compensation for these calls, which are clearly long distance calls and not subject to reciprocal compensation. (TR 53)

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

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

> FX service is exchange service furnished to a subscriber from an exchange other than the one from which the subscriber would normally be served. Here again, it appears to the originating customer that a local call is being made when, in fact, the terminating location is outside the local calling area (i.e., long distance). Further, because the call to the FX number appears local and the calling and called NPA/NXXs are assigned to the same rate center, the originating end user is not billed for a toll call. Despite the fact that the calls appear to be local to the originating caller, FX service is clearly a long distance service. The reason the originating end user is not billed for a toll call is that the receiving end user has already paid for the charges from the real NPA/NXX office to the FX office. There are charges for this function and they are being paid by the customer that is benefitting from the FX service. (TR 54)

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

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

> When a BellSouth end user calls a person located outside of that end user's basic local calling area, BellSouth receives compensation in addition to the basic local

> rates it charges to its customers. When BellSouth carries an intraLATA toll call, for instance, BellSouth collects toll charges from its customer who placed the call. When a BellSouth customer places an interLATA call, BellSouth collects originating access from the IXC. When BellSouth carries an intraLATA call from a BellSouth end user to a BellSouth FX customer, BellSouth receives compensation for the FX service (including the toll component of that service) from its FX customer. Similarly, when BellSouth carries calls to a BellSouth customer with an 800 number, BellSouth receives compensation for the 800 service (including the toll component of that service) from its 800 service customer. (TR 56-57)

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

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

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

Witness Haynes agrees with BellSouth witness Ruscilli that end points determine jurisdiction, stating that "the determining factor for rating a call as local in all instances is the location of the

calling and called parties within the same local calling area." (TR 395) He argues that if the ALEC's virtual NXX customer is located outside of the local calling area of the Verizon caller, the call is not local regardless of whether the ALEC has assigned a number that appears to be within the Verizon customer's local calling area. (TR 392)

Sprint witness Maples supports an ALEC's right to assign NPA/NXXs to end users outside the rate center in which the NPA/NXX is homed. (TR 515) However, he agrees that the end points of a call determine its jurisdiction. He states that the jurisdiction of voice traffic for purposes of establishing intercarrier compensation obligations should be based on the definition of local calling areas and the physical end points of the call. (TR 538) Witness Maples suggests that the physical end points of a call in relation to the definition of local calling area has historically driven intercarrier compensation. (TR 573)

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

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

Witness Gates also asserts that since the physical location of the customer is irrelevant to the costs incurred by the ILEC in

delivering a virtual NXX call, it would not be justified in assessing originating access charges for these calls. (TR 795-796) He explains:

> The so-called virtual NXX calls are locally-dialed calls. They are treated as local at retail by the ILECs. They are routed as local over interconnection facilities, specifically the local interconnection trunks. The ILEC has no more responsibility for originating these calls than it does for any other local call, yet the ILECs want to deny the ALECs reciprocal compensation for these calls, and to add insult to injury, want to charge the ALECs originating access charges, as well. (TR 832)
>
> . . .
>
> Access charges have not and should not apply to locally-dialed calls as they have nothing to do with the costs associated with routing locally-dialed calls. These virtual NXX calls are local, they do not increase the incumbents' costs one iota, and they provide a valuable service to consumers. Incumbents should pay reciprocal compensation on all locally dialed calls. (TR 833)

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

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

> expensive ALEC service (thereby also sustaining some revenue loss). The issue here is entirely one of *pricing and competitive response*, not one of policy. (emphasis in original) (TR 646-647)

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

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

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

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

charge its virtual NXX customers for the service provided to them, similar to how BellSouth charges its FX customers. (TR 91)

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

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

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

Parties to this proceeding have cited several decisions by other state commissions in support of their respective positions

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

In their joint brief, the ALECs cite an additional decision by the California Public Utilities Commission. (BR 25-26) In that decision, the CPUC stated that the rating of a call should be determined based upon the designated NXX prefix. The CPUC found that abandoning the linkage between the NXX prefix and its associated rate center would undermine the ability of customers to know whether they are making a local or toll call, as well as the service expectations of the called party (ISPs).[11] (BR 25)

BellSouth witness Ruscilli cites several state commission decisions as well. (TR 59-65) Witness Ruscilli states that the

---

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

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

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

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

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

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

Witness Ruscilli also cites a July 5, 2000, decision by the Georgia Commission in BellSouth's arbitration with Intermedia (Docket No. 11644-U). In this decision the Georgia Commission ordered that Intermedia be permitted to assign NPA/NXXs in accordance with its local calling areas, provided that it furnish the necessary information for other carriers to properly route and rate calls to those numbers as either toll or local. (TR 61) This is similar to a decision that was reached by the Florida Commission (FPSC) in the BellSouth/Intermedia arbitration (Docket No. 991854-TP, Order No. PSC-00-1519-FOF-TP dated August 22, 2000). In that decision the FPSC decided that Intermedia would not be permitted to assign NPA/NXXs outside the areas to which they are traditionally assigned until such time as it could provide information necessary for the proper routing and rating of calls. (TR 60) Witness Ruscilli states that since this decision, BellSouth has identified a means to handle the rating issue identified by the FPSC. He explains that BellSouth proposes not to charge its customers for long distance calls, even though a long distance call has been made to a virtual NXX. He contends that this is similar to how BellSouth rates calls by its customers to 800 numbers. Witness Ruscilli states that similar to 800 service, the ALEC is incurring the long distance costs, and if it chooses to do so it may recover these costs from the end user that subscribes to the ALEC service. However, he emphasizes that, like 800 service, virtual NXX is a long distance service. (TR 60-61)

In addition, witness Ruscilli refers to decisions made outside of BellSouth's region in Maine, Texas, and Illinois. He asserts that these states found that the virtual NXX call scenario is not local service. He also states that Texas and Illinois further

found that reciprocal compensation should not apply in virtual NXX situations. (TR 62) Witness Ruscilli explains that in the Illinois Commerce Commission (ICC) decision in Docket 00-0332, dated August 30, 2000, the ICC stated that since FX/virtual NXX traffic does not originate and terminate in the same local rate center, as a matter of law it cannot be subject to reciprocal compensation. (TR 63-64) The Public Utilities Commission of Texas reached a similar conclusion in its decision in Docket No. 21982, dated July 13, 2000. (TR 64)

Analysis

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

While staff shares the concern that entire NXX codes could be obtained for the purpose of actually utilizing only a small percentage of the numbers, there is no evidence in the record that this has taken place in Florida. Staff agrees with Level 3 witness Gates that a decision to prohibit the practice of virtual NXXs should not be based upon evidence not in the record. (TR 889) However, if at some time in the future facts are presented that prove this practice is in fact adversely affecting number conservation in Florida, staff believes that the Commission should exercise its authority to reclaim NXX codes that have not been utilized to serve customers, or have only been utilized to serve a select few customers while leaving the remaining numbers from that code to lie dormant. Staff agrees that in those situations, this practice would be a waste of numbering resources.

Level 3 witness Gates argues that ALEC virtual NXX service is a competitive response to ILEC FX service. (TR 843) He states that it is provisioned differently because the networks of ALECs and ILECs are designed differently. He explains that ILECs provision FX service through private lines, made possible by the presence of

end offices in every exchange. Since ALECs do not have end offices in every exchange, witness Gates contends that the only way ALECs can offer this service is through number assignment. (TR 843) Joint ALEC witness Selwyn concurs, stating that the practice of terminating a call in an exchange that is different than the exchange to which the NPA/NXX is assigned is nothing new. He contends that ILECs have been providing this service for decades through their FX service. (TR 662)

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

Several arguments have been made by parties regarding the virtual NXX issue, and staff has considered them all in framing its recommendation. However, staff believes the primary point of controversy is determining the proper jurisdiction of virtual NXX/FX traffic for the purposes of intercarrier compensation. BellSouth witness Ruscilli states that BellSouth is not asking that the Commission limit an ALEC's ability to assign NPA/NXXs in whatever manner it sees fit, but that the Commission should find that calls terminated to NPA/NXXs assigned to customers located outside of the rate center to which the NPA/NXX is homed are not local calls. (TR 67) This argument appears to be the crux of Verizon's contention that virtual NXX should not be permitted. As Verizon witness Haynes suggests, this is a rating issue. (TR 386) He argues that virtual NXX service undermines the rating of a call as local or toll. (TR 422)

Fundamentally staff believes this issue should not hinge upon how carriers provision/route virtual NXX/FX traffic, or upon the retail services purchased by end users. Instead, staff believes the resolution of this issue should be based on the premise of what is a local call for intercarrier compensation purposes. This leads us to the second subpart of this issue, which is whether intercarrier compensation for calls to virtual NXX/FX traffic should be based upon the end points of the call or upon the NPA/NXX assigned to the calling and called parties. Level 3 witness Gates contends that the telecommunications industry has historically

compared NXX codes to determine the appropriate treatment of calls as local or toll. (TR 759) He argues that virtual NXX calls are locally dialed, and treated as local by the incumbents. He explains that because calls are routed based upon NPA/NXX, virtual NXX calls travel over the ILEC's local interconnection trunks. (TR 852) Witness Gates contends that these calls are locally dialed and should be treated as local calls. (TR 852)

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

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

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

Staff acknowledges that this scenario is somewhat unlikely, but it does illustrate the controversy related to this issue. Staff disagrees with the ALEC position that jurisdiction of traffic should be determined based upon the NPA/NXXs assigned to the calling and called parties. Although presently in the industry

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

DECEMBER 5, 2001

RE: Docket No. 000075-TP - Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.

ISSUE 10: Pursuant to the Telecommunications Act of 1996 (Act), the FCC's rules and orders, and Florida Statutes, what is the Commission's jurisdiction to specify the rates, terms, and conditions governing compensation for transport and delivery or termination of traffic subject to Section 251 of the Act?

RECOMMENDATION: Staff believes that the Commission has jurisdiction to specify rates, terms and conditions governing compensation for transport and delivery or termination of traffic pursuant to Section 251 of the Act, the FCC's rules and orders, and Sections 364.161 and 364.162, Florida Statutes, so long as not otherwise inconsistent with the FCC's rules and orders, and the Act. Further, staff believes that Section 120.80(d), Florida Statutes, authorizes the Commission to employ procedures necessary to implement the Act.

APPROVED

COMMISSIONERS ASSIGNED: Full Commission

COMMISSIONERS' SIGNATURES

MAJORITY	DISSENTING

REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER-DATE
15234 DEC-5 0
FPSC-COMMISSION CLERK

VOTE SHEET

DECEMBER 5, 2001

Docket No. 000075-TP - Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.

(Continued from previous page)

ISSUE 12(a): Pursuant to the Act and the FCC's rules and orders, under what condition(s), if any, is an ALEC entitled to be compensated at the ILEC's tandem interconnection rate?

RECOMMENDATION: Staff recommends that an ALEC is entitled to be compensated at the ILEC's tandem interconnection rate when its switch either serves a comparable geographic area to that served by an ILEC tandem switch, or performs functions similar to those performed by an ILEC tandem switch.

APPROVED

ISSUE 12(b): Pursuant to the Act and the FCC's rules and orders, under either a one-prong or two-prong test, what is "similar functionality"?

RECOMMENDATION: Staff recommends that "similar functionality" should be defined as trunk-to-trunk switching when determining if an ALEC is entitled to the tandem interconnection rate pursuant to FCC 96-325, ¶1090.

DENIED *The Commissioners determined that no vote is necessary.*

ISSUE 12(c): Pursuant to the Act and the FCC's rules and orders, under either a one-prong or two-prong test, what is "comparable geographic area"?

RECOMMENDATION: Staff believes that a "comparable geographic area," pursuant to FCC Rule 51.711, is a geographic area that is roughly the same size as that served by an ILEC tandem switch. Staff recommends that an ALEC "serves" a comparable geographic area when it has deployed a switch and has opened NPA/NXXs to serve the exchanges within this area. In

VOTE SHEET
DECEMBER 5, 2001
Docket No. 000075-TP - Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.

(Continued from previous page)

addition, staff recommends that the ALEC must show that it is serving this area either through its own facilities, or a combination of its own facilities and leased facilities connected to its collocation arrangements in ILEC central offices.

APPROVED

ISSUE 13: How should a "local calling area" be defined, for purposes of determining the applicability of reciprocal compensation?
RECOMMENDATION: Staff recommends that parties be permitted to negotiate the definition of local calling area for the purposes of reciprocal compensation to be contained in their interconnection agreements. However, if negotiations fail, staff recommends that "local calling area" for the purposes of reciprocal compensation be defined as "all calls that originate and terminate in the same LATA."

DEFERRED A one day limited scope hearing is to be held.

ISSUE 14: (a) What are the responsibilities of an originating local carrier to transport its traffic to another local carrier?
(b) For each responsibility identified in part (a), what form of compensation, if any, should apply?
RECOMMENDATION: (a) An originating carrier has the responsibility for delivering its traffic to the point(s) of interconnection designated by the alternative local exchange company (ALEC) in each LATA for the mutual exchange of traffic.
(b) An originating carrier is precluded by FCC rules from charging a terminating carrier for the cost of transport, or for the facilities used

VOTE SHEET
DECEMBER 5, 2001
Docket No. 000075-TP - Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.

(Continued from previous page)

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

APPROVED

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

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

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

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

APPROVED

VOTE SHEET
DECEMBER 5, 2001
Docket No. 000075-TP - Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.

(Continued from previous page)

ISSUE 16: (a) What is the definition of Internet Protocol (IP) telephony?
(b) What carrier-to-carrier compensation mechanism, if any, should apply to IP telephony?
RECOMMENDATION: Staff recommends the Commission find that this issue is not ripe for consideration at this time. Staff believes this is a relatively nascent technology, with limited application in the present marketplace. As such, staff recommends that the Commission reserve any generic judgement on this issue until the market for IP telephony develops further.

APPROVED

ISSUE 17: Should the Commission establish compensation mechanisms governing the transport and delivery or termination of traffic subject to Section 251 of the Act to be used in the absence of the parties reaching an agreement or negotiating a compensation mechanism? If so, what should be the mechanism?
RECOMMENDATION: Yes. The Commission should determine that the default rate structure for compensation shall be the mechanisms established in 47 C.F.R., Part 51 Subpart H, Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic. The rate levels shall be those established in Docket No. 990649-TP. Nothing in this recommendation is intended to preclude parties in a negotiation from adopting other, mutually agreed-upon, compensation rates and structures.

DEFERRED to allow evidentiary proceeding as outlined in Commissioner Palecki's motion.

VOTE SHEET
DECEMBER 5, 2001
Docket No. 000075-TP - Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.

(Continued from previous page)

ISSUE 18: How should the policies established in this docket be implemented?
RECOMMENDATION: Staff recommends the Commission adopt the policies and procedures established in this docket on a going forward basis, allowing carriers, at their discretion, to incorporate provisions into new and existing agreements. Nothing in this recommendation is intended to discourage parties from negotiating other, mutually agreed-on terms or conditions.

APPROVED

ISSUE 19: Should this docket be closed?
RECOMMENDATION: No. This docket should remain open pending the outcome of the ~~Phase 1~~ proceedings ~~of~~ in this docket.

MODIFIED Approved as noted.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of Intermedia Communications, Inc. against GTE Florida Incorporated for breach of terms of Florida partial interconnection agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and request for relief.

DOCKET NO. 980986-TP
ORDER NO. PSC-99-1477-FOF-TP
ISSUED: July 30, 1999

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON

ORDER ON ARBITRATION OF INTERCONNECTION AGREEMENT

BY THE COMMISSION:

On August 3, 1998, Intermedia Communications, Inc. (Intermedia) filed a complaint against GTE Florida Incorporated (GTEFL) for breach of the parties' Interconnection Agreement. Based on the initial complaint and GTEFL's response, this matter was set for hearing.

On February 26, 1999, the FCC released Order FCC 99-38 in CC Docket No. 96-98, its Declaratory Ruling on Inter-Carrier Compensation for ISP-bound Traffic and Notice of Proposed Rulemaking in CC Docket No. 99-68. In light of this FCC Order, the parties to this proceeding informed the Commission of certain procedural stipulations by letter dated March 2, 1999. The parties agreed to stipulate all of the prefiled testimony into the record, waive their right to cross-examination on that testimony, file supplemental, prefiled testimony by March 12, 1999, cancel the hearing set for March 9, 1999, and file briefs as originally scheduled. This request was granted by Order No. PSC-99-0458-PCO-TP, issued on March

4, 1999. In accordance with the parties' stipulation, supplemental testimony was filed on March 9, 1999, addressing the effect of the FCC's Declaratory Ruling on reciprocal compensation.

The issue before us is whether, under the parties' Interconnection Agreement, GTEFL and Intermedia are required to compensate each other for transport and termination of traffic to Internet Service Providers (ISPs). It is Intermedia's position that the term "local traffic", as used in the parties' Interconnection Agreement and as construed consistently by numerous regulatory bodies, contemplates calls from end users to ISPs both originating and terminating within GTEFL's local service area. Intermedia believes that GTEFL has breached the parties' Interconnection Agreement and should be required to pay Intermedia for terminating local traffic under the reciprocal compensation provisions of the Agreement.

It is GTEFL's position that the FCC has ruled that ISP traffic is jurisdictionally interstate and that GTEFL never agreed to include ISP traffic within the Agreement's local traffic definition. Further, GTEFL argues, there is no basis for subjecting this non-local traffic to reciprocal compensation obligations that the Agreement applies only to local traffic.

As stated above, the issue before us is to determine whether, according to the terms of their Interconnection Agreement, Intermedia and GTEFL are required to compensate each other for transport and termination of traffic to ISPs. In order for such reciprocal compensation to apply, traffic to ISPs must be considered "local traffic" as that term is defined in the parties' Agreement. We have addressed this issue previously in other similar cases. (See Docket Nos. 971478-TP, 980184-TP, 980495-TP, 980499-TP and 981008-TP) In making our decision in these earlier cases, we did not make a determination on the generic question of the jurisdictional nature of ISP traffic. In the first complaint (Dockets 971478-TP, et al), we stated:

> ...[I]n this decision we only address the issue of whether ISP traffic should be treated as local or interstate for purposes of reciprocal compensation as necessary to show what the parties might reasonably have intended at the time they entered into their contracts. Our decision does not address any generic questions about the ultimate nature of ISP traffic for reciprocal compensation purposes, or for any other purposes. (PSC-98-1216-FOF-TP, p.5)

As previously stated, the FCC has recently issued a Declaratory Ruling regarding the jurisdictional nature of ISP traffic in Order No. FCC 99-38 in CC Docket No. 96-98 released on February 26, 1999. In that Order the FCC concluded that "ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate." (FCC 99-38, ¶1) However, the FCC made no determination as to whether reciprocal compensation is due for ISP-bound traffic. Rather, the FCC stated:

> Currently, the Commission has no rule governing inter-carrier compensation for ISP-bound traffic. In the

> absence of such a rule, parties may voluntarily include this traffic within the scope of their interconnection agreements under sections 251 and 252 of the Act, even if these statutory provisions do not apply as a matter of law. Where parties have agreed to include this traffic within their section 251 and 252 interconnection agreements, they are bound by those agreements, as interpreted by state commissions. (FCC 99-38, ¶22)

As part of their Order, the FCC issued a Notice of Proposed Rulemaking in CC Docket No. 99-68 seeking comment on inter-carrier compensation for ISP-bound traffic. In the interim the FCC stated that "[u]ntil adoption of a final rule, state commissions will continue to determine whether reciprocal compensation is due for this traffic." (FCC 99-38, ¶28)

Further, in Order FCC 99-38, the FCC recognized that there was no rule in place governing ISP traffic and that some parties to Interconnection Agreements may have agreed, for the purposes of reciprocal compensation, to include ISP-bound traffic as local traffic. As cited above, the FCC left it to state commissions to ascertain the parties' intentions by interpreting existing Agreements. Also, the FCC provided a noninclusive list of factors that a state commission may use in ascertaining the parties intentions as it pertains to this traffic. (FCC 99-38, ¶24) Among the factors were: 1) whether incumbent LECs serving ESPs (including ISPs) have done so out of intrastate or interstate tariffs; 2) whether revenues associated with those services were counted as intrastate or interstate revenues; 3) whether there is evidence that incumbent LECs or CLECs made any effort to meter this traffic or otherwise segregate it from local traffic; 4) whether, in jurisdictions where incumbent LECs bill their end users by message units, incumbent LECs have included calls to ISPs in local telephone charges; and 5) whether if ISP traffic is not treated as local and subject to reciprocal compensation, incumbent LECs and CLECs would be compensated for this traffic. FCC 99-38, ¶24. We considered many of these factors in deciding previous ISP cases.

We note that in reaching our decision herein, we are considering whether reciprocal competition is due in an existing Agreement and what the parties may have reasonably intended at the time they entered their Agreement. We approved the Interconnection Agreement between Intermedia and GTEFL by Order No. PSC-97-0719-FOF-TP, issued June 19, 1997, and an amendment to this Agreement by Order No. PSC-97-0788-FOF-TP, issued July 2, 1997, almost two years prior to the FCC issuing its Declaratory Ruling on the jurisdictional nature of ISP traffic.

Section 1.20 of the parties' Interconnection Agreement defines "local traffic" as traffic:

> originated by an end user of one Party and terminates to the end user of the other Party within GTE's then current local serving area, including mandatory local calling scope arrangements. A mandatory local calling scope arrangement is an arrangement that requires end users to subscribe to a local calling scope beyond their basic

> exchange serving area. Local Traffic does not include optional local calling scopes (i.e., optional rate packages that permit the end user to choose a local calling scope beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS."

Section 3.1 of the Agreement regarding transport and termination of traffic states in part:

> The Parties shall reciprocally terminate Local Traffic originating on each other's networks utilizing either direct or indirect network interconnections as provided in this Article.

Regarding reciprocal compensation, Section 3.3.1 of the Agreement states:

> The Parties shall compensate each other for the exchange of Local Traffic in accordance with Appendix C attached to this Agreement and made a part hereof. Charges for the transport and termination of intraLATA toll, optional EAS arrangements and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate.

In her direct testimony, Intermedia witness Strow argues that traffic to ISPs fits the definition of "local traffic" as that term is defined in their Agreement, in that it is originated by a GTEFL end-user, delivered to Intermedia, and terminated on Intermedia's network. Witness Strow argues in rebuttal testimony that an Internet communication consists of two segments: (1) a local telephone call from an end-user to an ISP; and (2) an enhanced transmission from the ISP over the Internet. Witness Strow states that for purposes of reciprocal compensation, the call ends when it is delivered to the ISP. This is generally referred to as the "two-call" theory. Intermedia argues that in the Access Charge Reform Order, 12FCC RCD 15982, the FCC declined to allow LECs to assess interstate access charges on ISPs. GTEFL witness Pitterle counters "[t]hat the Commission exempted Enhanced Service Providers (ESPs) from access charges indicates its understanding that they in fact use interstate access service; otherwise, the exemption would not be necessary."

GTEFL witness Jones explains in his direct testimony how the Internet works and contends that traffic to ISPs is jurisdictionally interstate. Witness Pitterle states that the FCC's ruling in the GTE Asymmetric Digital Subscriber Line (ADSL) Order, FCC 98-292, to tariff GTE's ADSL service at the federal level, proved that ISP traffic was jurisdictionally interstate. However, we note that in that Order the FCC specifically states that "[t]his Order does not consider or address issues regarding whether local exchange carriers are entitled to receive reciprocal compensation when they deliver to information service providers, including

Internet service providers, circuit-switched dial-up traffic originated by interconnecting LECs." FCC 98-292, ¶2.

Both parties argue the jurisdictional nature of ISP traffic. The recent ruling by the FCC now asserts that ISP-bound traffic is jurisdictionally mixed but appears to be largely interstate. However, the FCC recognized that its record regarding the treatment of this traffic may not have always been clear, as it stated:

> Until now, however, it has been unclear whether or how the access charge regime or reciprocal compensation applies when two interconnecting carriers deliver traffic to an ISP. . . . Moreover, the Commission has directed states to treat ISP traffic as if it were local, by permitting ISPs to purchase their PSTN links through local business tariffs. As a result, and because the Commission had not addressed inter-carrier compensation under these circumstances, parties negotiating interconnection agreements and the state commissions charged with interpreting them were left to determine as a matter of first impression how interconnecting carriers should be compensated for delivering traffic to ISPs, leading to the present dispute. (FCC 99-38, ¶9)

In order to determine whether the parties considered ISP traffic to be local for purposes of reciprocal compensation, we must look to the plain language of the contract, the intent of the parties at the time their Agreement was executed and the subsequent actions of the parties. We have also reviewed our determinations on the jurisdictional nature of ISP traffic at the time the parties entered into their Agreement. Our first ISP derternination involved WorldCom Technologies, Inc., Teleport Communications Group, Inc., Intermedia Communications, Inc., and MCI Metro Access Transmission Services, Inc. against BellSouth (Docket No. 971478-TP et. al). In that case, we determined that: "while there is some room for interpretation, we believe that current law weighs in favor of treating the traffic as local, regardless of jurisdiction, for purposes of the Interconnection Agreement." PSC-98-1216-FOF-TP, p.20. We note that BellSouth has appealed this decision to federal district court. Case No. 4:98CV352-RH BellSouth Telecommunications, Inc. vs. WorldCom Technologies, Inc. etc, et al. The FCC's recent Order is consistent with our previous ruling. In its recent Order it stated:

> [T]he Commission has maintained the ESP exemption, pursuant to which it treats ESPs as end users under the access charge regime and permits them to purchase their links to the PSTN through intrastate local business tariffs rather than through interstate access tariffs. As such, the Commission discharged its interstate regulatory obligations through the application of local business

> tariffs. Thus, although recognizing that it was interstate access, the Commission has treated ISP-bound traffic as though it were local. (FCC 99-38, ¶23)

In evaluating the actions of the parties, we find that neither party discussed ISP traffic during negotiations. Intermedia witness Strow argues that nothing in the Agreement creates a distinction pertaining to calls placed to telephone exchange end-users that happen to be ISPs. GTEFL argues in its brief that it has always correctly understood that ISP traffic is jurisdictionally interstate and thus outside the scope of local interconnection obligations. GTEFL further argues that its longstanding corporate position with regard to the jurisdictional nature of ISP traffic is a prominent matter of public record. GTEFL, however, did not provide any evidence to substantiate this latter claim. GTEFL also argues in its brief that during negotiations, Intermedia showed no signs of differing with GTEFL's well-known position on the jurisdictional nature of ISP traffic.

The most significant evidence in determining the parties' intent is that neither party had a means of measuring ISP traffic. Intermedia witness Strow argues that had GTEFL intended to exclude ISP traffic, a system to identify and measure ISP traffic would have had to been discussed by the parties. Witness Strow further states that neither company can currently distinguish these types of calls. The evidence of record supports these statements. GTEFL did not provide its first proposal to measure this traffic until February 5, 1998, which was some time after their Agreement had been approved by the Commission. Moreover, the method proposed by GTEFL to measure this traffic was to "estimate" based on call holding-times. GTEFL provided no evidence that it could measure actual usage of calls to ISPs. We conclude that had GTEFL intended to exclude calls to ISPs from "local traffic," knowing that ISP-bound calls would go across local trunks, they would have had a method in place to measure this traffic, or during contract negotiations they would have discussed a means to "estimate" this traffic with Intermedia. We note that GTEFL offered this proposed method to measure ISP traffic only after it received bills for reciprocal compensation.

Both parties point to the recent FCC Order in an attempt to help their case. Intermedia's primary argument is that a call to an ISP consists of two parts: (1) a local telephone call from an end-user to an ISP; and (2) an enhanced transmission from the ISP over the Internet. The FCC specifically repudiated this "two call" theory and stated:

> We disagree with those commenters that argue that, for jurisdictional purposes, ISP-bound traffic must be separated into two components: an intrastate telecommunications service, provided in this instance by one or more LECs, and an interstate information service, provided by the ISP. As discussed above, the Commission analyzes the totality of the communication when determining the jurisdictional nature of a communication. (FCC 99-38, ¶13)

GTEFL's primary argument is that ISP-bound traffic is jurisdictionally interstate, not local, and is not subject to reciprocal compensation.

We do not believe that the FCC's Declaratory Ruling is dispositive of the issue before the Commission. While the FCC did rule that ISP-bound traffic was jurisdictionally mixed and appeared to be largely interstate, it did not rule that reciprocal compensation was not due for this traffic. (FCC 99-38, ¶1) In making its determination the FCC recognized that its policy on ISP traffic may have been unclear because of its own treatment of ISP traffic. The FCC stated:

> While to date the Commission has not adopted a specific rule governing the matter, we note that our policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation, suggest that such compensation is due for that traffic. (FCC 99-38, ¶25)

The Order provided for state commissions to interpret existing Agreements, such as this one, and, until a final rule is adopted, to determine whether reciprocal compensation should apply for this traffic.

In conclusion, based on the record before us, we conclude that GTEFL has failed to establish that the parties intended to exclude ISP-bound traffic from "local traffic" as that term is defined in their Interconnection Agreement. We have considered what the parties may have reasonably intended at the time they entered into their contract by evaluating the plain language of the contract and the subsequent actions of the parties, as evidenced in the record.

The subsequent actions of the parties also do not show that either party intended to exclude ISP traffic from "local traffic." While GTEFL argues that it had a longstanding corporate position on the jurisdictional nature of ISP traffic, it did not provide any evidence to substantiate this claim. Rather, the record shows that GTEFL never considered ISP traffic as anything other than local until it received bills for reciprocal compensation from Intermedia. Further, GTEFL had no means of tracking ISP traffic. In addition, we cannot reconcile how GTEFL could have had a longstanding corporate policy on ISP traffic, knowing the "local" characteristics of this traffic (i.e., it appears as "local traffic" on their network), and not have had a means in place to measure this traffic in order to calculate reciprocal compensation obligations. Based on the foregoing, we conclude that the agreement contemplated ISP traffic to be local, and that GTEFL should compensate Intermedia according to the parties' Interconnection Agreement for the entire period the balance owed is outstanding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Interconnection Agreement between Intermedia Communications, Inc., and GTE Florida Incorporated, approved by this Commission Order No. PSC-97-0719-FOF-TP, issued June 19, 1997, and as amended, contemplated Internet Service Provider traffic to be local. It is further

ORDERED that GTE Florida Incorporated should compensate Intermedia Communications, Inc., according to their Interconnection Agreement for the entire period the balance owed is outstanding. It is further

ORDERED that this docket may be closed.

By ORDER of the Florida Public Service Commission this 30th day of July, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
APR 23 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Service Providers	)	CC Docket No. 96-263

EXHIBIT
tabbies
K

REPLY COMMENTS OF AT&T CORP.

Mark C. Rosenblum
Ava B. Kleinman

Room 3252J1
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8312

April 23, 1997

TABLE OF CONTENTS

Page

SUMMARY ii

INTRODUCTION 2

I. THE COMMENTS UNDERSCORE THE IMPORTANCE OF RATIONAL, COST-BASED ACCESS CHARGES TO ACHIEVE THE COMMISSION'S GOALS OF FACILITATING THE DEVELOPMENT OF HIGH BANDWIDTH NETWORKS AND PRESERVING INCENTIVES TO INVEST IN THE EXISTING VOICE NETWORK 8

II. THE COMMENTS CONFIRM THAT THE COMMISSION HAS AMPLE AUTHORITY TO CLASSIFY TRAFFIC GENERATED BY ESPs AS INTERSTATE TRAFFIC SUBJECT TO THE COMMISSION'S JURISDICTION 17

CONCLUSION 19

APPENDIX A

SUMMARY

AT&T demonstrated in its Comments that removal of the existing enhanced service provider ("ESP") exemption is fundamental to the Commission's statutory mandates to reform interstate access charges and implement competition in the local exchange and exchange access markets. In order to achieve meaningful access reform and establish an economically rational predicate for the entry of competitive local exchange carriers ("LECs"), monopoly LECs must set their access charges at actual (TELRIC) cost and assess such cost-based charges on all users of access. AT&T's (and others') Comments also confirm that the ESP industry has achieved enviable growth in the years during which the access charge exemption has been in effect, and it is now capable of sustaining the modest increases in cost that elimination of the exemption would entail.

Although the incumbent LECs apparently support imposition of "cost-based" access charges on ESPs, they do not support TELRIC prices, and thus in effect urge the Commission to impose "market-based" access charges on ESPs. This proposal -- premised on extension of above-cost access charges to all access customers -- is entirely unacceptable for the reasons explained by AT&T (and others) in detail in the access reform proceeding. On the other hand, the ESPs oppose imposition of any access charges on them, and urge the Commission instead to ensure competitive local entry as the means to spur the deployment of new, packet-based services that would more efficiently meet their needs. However, while their support of vigorous enforcement of the local entry rules is most welcome, the ESPs ignore the fact that opening the doors to competition does not

guarantee that competitors will enter, as long as the competitive market is inhabited by incumbent carriers that provide access services at below-cost rates.

The Comments thus confirm that maintaining the status quo will stifle, rather than advance, the Commission's statutory goals. Although discussed from different perspectives, the marketplace distortions described by each of the commenting parties illustrate the economic harms that irrational pricing of a monopoly input has created. In particular, under the existing access charge regime the incumbent LECs have failed to deploy the new high-bandwidth services that the ESPs demand; the public switched local network is being used inefficiently and has the potential of becoming significantly congested; traffic is being migrated to Internet and other services that do not contribute to legitimate access cost recovery or universal service fund support; and all market participants are receiving inappropriate pricing signals that will discourage rational business decisions for years to come.

These diverse Comments underscore that the only way for the Commission to further its goals of "facilitat[ing] the development of the high-bandwidth data networks of the future, while preserving efficient incentives for investment and innovation in the underlying network" is to assess cost-based access charges on all access customers. At bottom, the ESPs' long-term interest in reasonably priced packet-switched local access services, and the interests of the incumbent LECs and their potential competitors in fair pricing of existing access services are convergent, and can be achieved by adoption of a rational, fair pricing scheme for monopoly access services. The record in this NOI thus compels the institution of a Notice of Proposed Rulemaking to assess TELRIC-based access charges on ESPs.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Service Providers	)	CC Docket No. 96-263

REPLY COMMENTS OF AT&T CORP.

Pursuant to the Commission's December 24, 1996 Notice of Inquiry ("NOI")[1] and its subsequent January 24, 1997 Order,[2] AT&T Corp. ("AT&T") hereby submits these Reply Comments concerning usage of the public switched network by information service and Internet service providers.[3]

---

1 Usage of the Public Switched Network by Information Service and Internet Service Providers, CC Docket No. 96-263, Notice of Proposed Rulemaking, Third Report and Order and Notice of Inquiry (released December 24, 1996).

2 Usage of the Public Switched Network by Information Service and Internet Service Providers, CC Docket No. 96-263, Order (released January 24, 1997).

3 A list of commenters, along with the abbreviations of their names used in these Reply Comments, appears in Appendix A.

INTRODUCTION

The Comments filed in this proceeding present the Commission with what has now become a false choice between two important goals -- facilitating the development of a robust information services industry and establishing cost-based and nondiscriminatory pricing of monopoly exchange access services. The Commission has grappled in the past with this question by creating and maintaining an exemption, for one class of users of the public switched local network -- enhanced services providers ("ESPs") -- from payment of access charges, which were initially set well above cost and laden with subsidies.[4] Today, however, as AT&T showed in its Comments, any tension between these two goals can be resolved by requiring all users of interstate access services to pay cost-based access charges.

Indeed, the favored regulatory treatment of ESPs has contributed to the growth and development of an active information services industry, with over 1,500 ESPs in the U.S. market today, many of which are well-established, well-funded companies. As AT&T's Comments showed in detail, this is an industry that can well afford to pay cost-based access charges.[5] However, especially in recent years, the existing uneven access

---

[4] MTS and WATS Market Structure, Memorandum Report and Order, 97 F.C.C. 2d 682, 715 (1983) ("MTS Market Structure Order"); MTS and WATS-Related and Other Amendments of Part 69 of the Commission's Rules, CC Docket No. 86-1, Second Report and Order, 60 Rad. Reg. 2d 1542 (rel. Aug. 26, 1986); Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture and Policy and Rules Concerning Rates for Dominant Carriers, CC Docket Nos. 89-79 and 87-313, Report and Order and Order on Further Reconsideration and Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524 (1991) ("ONA Order").

[5] AT&T at 10-12. See also Bell Atlantic at 4; GTE at 29.

charge treatment has created severe economic distortions, in the form of inefficient utilization of the circuit-switched local network and inappropriate investment decisions. In addition, as the technology has developed to provide "traditional" telephony services, such as voice and fax, over the Internet, the service offerings of interexchange carriers ("IXCs") and ESPs have converged, and the significant pricing disparity occasioned by the payment of vastly overpriced access charges by IXCs, on the one hand, and the ESPs' relief from payment of local network charges, on the other hand, has fueled a large -- and growing -- migration of traffic from the IXCs' services (which contribute to local network cost recovery and universal service fund ("USF") support) to the services of the ESPs (which contribute to neither).

The instant NOI reflects the Commission's attention to these critical issues; indeed, as an outgrowth of the access charge reform docket the Commission is clearly mindful that the underpinning of this proceeding is adoption of TELRIC-based local network charges for all users of access. As to the specific focus of this proceeding, however, which is not only to preserve the viability of the public switched network but also to encourage the development of needed new packet-switched technologies, unfortunately, the majority of the Comments are strikingly similar to those filed with the Commission in similar contexts over the past fourteen years. The incumbent local exchange carriers ("ILECs") recommend the imposition of "reformed" access charges on ESPs, even as they argue that such reform should be limited to setting "market-based"

charges, which do not translate to cost-based (TELRIC) rates.[6] The ESP community, on the other hand, presses for continuation of the exemption, to ensure the continued viability of the enhanced services industry.[7] Avoiding any discussion of the declining health of the public switched network -- and dismissing any notion of network congestion as BOC "rhetoric" to increase revenues[8] -- the ESPs insist that the costs of their usage of the existing networks that exceed the prices that they currently pay continue to be borne by IXCs,[9] through end user revenues from second phone lines,[10] or by requiring the ILECs themselves to absorb those costs[11] -- in effect recommending that all other industry participants pay for their use of the local network.

Two critical changes have occurred since the last time that the Commission examined the implications of the ESP exemption which render these two static positions obsolete -- passage of the 1996 Telecom Act with its statutory mandate of competition in the local exchange and exchange access markets; and initiation of the access charge and USF reform proceedings. The Commission has recognized that the statutory imperative to open the monopoly local markets to competitive providers requires nondiscriminatory and

---

6 See, e.g., Bell Atlantic at 2, 13; GTE at 27-28; PacTel at 6; SWBT at 3; US West at 28-29.

7 See, e.g., IAC at 57; IUC at 10-12; Juno at 6-8.

8 IAC at 3.

9 See, e.g., id. at 57; IUC at 15; USIPA at 15.

10 IAC at 7-8 (citing ETI Study appended to IAC at 24-25).

11 See IUC at 15.

cost-based pricing of access by the incumbent monopoly providers. Otherwise, the appropriate economic foundation will not be established to provide incentives for competitive providers to develop networks that compete with the existing networks of the ILECs and that offer desired new services.[12] In order to accomplish this goal, the Commission has likewise acknowledged the critical importance of achieving its long-standing objective of reforming the current subsidy-laden access charge structure, and has committed to complying with what is now its statutory obligation to remove implicit subsidies from access charges and create a new environment of explicit subsidies to support the Commission's and Congress' goal of maintaining universal service (and doing so in a focused and competitively-neutral manner).[13]

Achievement of these objectives is simply not possible when implicit subsidies to one class of user are maintained. As AT&T demonstrated in its Comments, continuation of such subsidies -- and the concomitant pricing of non-cost-based charges to ESPs -- provides disincentives to ILECs to maintain their existing networks to meet the needs of these users, discourages the development of alternative technologies by incumbent carriers (because they are unable to implement competitive prices for their existing services, and thus ESPs have no financial incentive to utilize the new

---

[12] Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket Nos. 96-262, 94-1, 91-213, 96-263, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, FCC 96-488 (rel. Dec. 24, 1966), ¶¶5-13.

[13] Id. at ¶36-40; 47 U.S.C. § 254.

technologies), and dissuades competitive access providers from investing in these new networks, because they are understandably reluctant to risk such investments when existing ILEC services are offered on a subsidized basis to their targeted customers.

The unwanted behaviors described above -- logical reactions to the existing access charge pricing structure -- are reflected in the Comments of the ILECs and their potential competitors.[14] On the other hand, the ESPs argue that it is the imposition of today's subsidy-laden access charges on ESPs that will discourage ILECs from deploying new data services (because, according to these ESPs, the ILECs will then realize adequate compensation for ESP usage of the existing circuit-switched network).[15] The ESPs support instead vigorous implementation of the competitive local entry rules, pursuant to which competitive local exchange carriers ("CLECs") will have nondiscriminatory access to unbundled access elements at cost-based rates, meaningful collocation opportunities and equal access and interconnection.[16]

AT&T agrees with the ESPs that strenuous enforcement of the local entry rules is a necessary and critical predicate to competitive provision of local exchange and exchange access services by CLECs, and welcomes the ESPs' strong support for zealous enforcement of ILEC compliance with the Local Competition Order. However, this is only half of the solution. The remaining prerequisite to meaningful competitive entry into

---

[14] See, e.g., AT&T at 8; Bell Atlantic at 12-13; MCI at 3-6; PacTel at 35.

[15] See, e.g., AOL at 8.

[16] See, e.g., IAC at 2-4; CompuServe at 9-10; USIPA at 18-21. See also WorldCom at 21 n. 35.

the local markets for both circuit-switched and new packet-switched local services is the cost-based pricing of the existing services offered by the ILECs to all users of the ILECs' local networks. Without rational pricing of, and nondiscriminatory assessment of charges for, those services, regardless of the fair application of the local entry rules, the CLECs will lack the incentive to introduce competitive offerings.

The Commission has before it ample evidence that the status quo is affirmatively preventing achievement of its policy and statutory goals. First, under the current scheme, there is little actual deployment of new high-bandwidth services such as ISDN, even though the technology has been available for years. Second, network congestion is becoming a concern, and may cause significant problems for users of the public switched network in the future if incentives continue to be lacking for redirection of packet traffic off of that network. Third, ESPs are continuing to invest heavily in infrastructure (such as modems) to be utilized with the existing local network, further entrenching them as ILEC customers, and creating economic disincentives for them to migrate to new packet networks as they become available.

AT&T has proposed a realistic, practical alternative which will send the appropriate signals to all players in the market, and thus mitigate each of the harms that are being encouraged under the current regime. The single most important step that the Commission can take for the advancement of its goals is to mandate the pricing of ILECs' monopoly services -- the last bastion of non-market-based pricing in the industry -- at cost, and to ensure that all users of those services pay their fair share of those costs. But even if the Commission does not immediately require, in the access charge reform docket,

TELRIC pricing for IXCs, it can and should require the assessment of TELRIC-based charges on ESPs during the transition to cost-based charges to all users. During this historic period of transformation in the telecommunications industry, the Commission must not turn its back on this most fundamental element of achieving competitive goals -- one that was embraced by the Commission over fourteen years ago[17] and is now a matter of statutory mandate.

I. THE COMMENTS UNDERSCORE THE IMPORTANCE OF RATIONAL, COST-BASED ACCESS CHARGES TO ACHIEVE THE COMMISSION'S GOALS OF FACILITATING THE DEVELOPMENT OF HIGH BANDWIDTH NETWORKS AND PRESERVING INCENTIVES TO INVEST IN THE EXISTING VOICE NETWORK.

The Comments confirm that rational access pricing will not only encourage the ILECs to maintain their networks and build new services,[18] but will also offer the additional benefit of providing the proper incentive to prospective CLECs to develop and deploy their own competitive services, because they will then be competing against services that are priced fairly at their actual cost.[19] However, the ILECs undercut their sound economic arguments by raising overstated claims of "network congestion" and resulting "unanticipated" expenses,[20] while at the same time failing to use their billions of

---

17 See MTS Market Structure Order, 97 F.C.C. 2d 682 (1983).

18 See PacTel at 16; US West at 26.

19 See AT&T at 8; MCI at 4.

20 See, e.g., Bell Atlantic at 4-9; GTE at 20-22; PacTel at 27-33; SNET at 12-19.

dollars in existing monopoly profits to alleviate these self-proclaimed network problems.[21] It is therefore not surprising that the ESPs view with great skepticism the ILECs' claims that they need additional revenues from ESPs to perform the maintenance and upgrades occasioned by high packet-based usage of their networks.[22]

The first and most important step that the Commission can take to address this concern is to reduce access charges to TELRIC and to assess such truly "reformed" charges on all users of the network, including ESPs. The benefits of such action are numerous. First, it will eliminate the disincentives of the ILECs to perform the necessary upgrades to accommodate the increased ESP traffic on their local networks. Second, it will encourage more efficient usage of the local network by ESPs and their customers, and thus deter any future, more serious threat of "network congestion."[23] Third, it will send the proper pricing signals to CLECs to make rational business decisions to enter the local

---

[21] See MCI at 6 ("The lack of competition in the local market has enabled monopoly LECs to avoid optimal design of their networks").

[22] See, e.g., IAC at 8; Pa.ISP at 11-14. Indeed, the Commission has before it ample evidence that the ILECs have undertaken significant planned investment to position themselves strategically in the market for advanced and broadband digital services. See Comments of AT&T Corp., CC Docket No. 96-262, filed January 29, 1997, Appendix B (Kravtin/Selwyn study); Reply Comments of AT&T Corp., CC Docket No. 96-262, filed February 14, 1997, Appendix B). See also MCI at 18 ("the amount of overbuilt plant and excess capacity belies BOC claims of congestion problems"); WorldCom at 19 n. 34 (citing a presentation of the CEO of Bell Atlantic in which he remarked that even though sales of second lines surged by more than 50 percent, Bell Atlantic generated substantial profit from those lines because "we were able to provision new lines and services from idle capacity in an existing plant").

[23] See, e.g., Bell Atlantic at 12; PacTel at 16; US West at 6-7.

market with competing services.[24] Fourth, it will create a sound cost basis for the pricing of IXC and ESP services, and thus stem any artificially induced migration of voice and fax traffic to the Internet, retaining traffic on the public switched network for USF contribution.[25]

Moreover, the Commission has the authority to ensure that such access reform be achieved without increasing access revenues to the ILECs, which is a major concern not only of the ESPs, but also of the ILECs' potential competitors.[26] To the extent that access charges remain above TELRIC levels for the IXCs, a revenue-neutral restructure can be accomplished by reinitializing the ILECs' price caps, which would have the effect of lowering access charges to the IXCs to make up for the additional revenue collected by the LECs from the ESPs.[27]

---

[24] See AT&T at 8; PacTel at 14-15.

[25] The ESPs have been relatively silent in their claims that they are "end users" and thus should not be subject to "carrier" access charges -- a mantra that has been prevalent in prior pleadings on this issue. But see IUC at 27-28; Juno at 8-10; WorldCom at 12-13. This argument, of course, is not only factually inaccurate -- AT&T and others have convincingly demonstrated that ESPs behave more like IXCs than like business customers, see, e.g., ACTA at 4-5; AT&T at 28-30; Bell Atlantic at 14-15; CompTel at 3; SWBT at 6; US West at 5, 16-17 -- it is also irrelevant, because the Commission's policy goal and objective is not to assess access charges on "carriers," but on all "users of access." ONA Order, 6 FCC Rcd 4524, 4534 (1991); see also Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Notice of Proposed Rulemaking, CC Docket No. 87-215, 2 FCC Rcd 4305 (1987) ("ESP NPRM"); MTS Market Structure Order, 97 F.C.C. 2d 682, 711, 715 (1983).

[26] AT&T at 25-26; MCI at 3.

[27] As MCI (at 6) confirms, however, if the ILECs charge all users TELRIC-based prices, there would be no double-recovery of costs by the ILECs.

The Comments also universally confirm that there is no need for the Commission to pick and choose among new technologies. The ILECs described in detail in their Comments a vast array of new services that they are preparing to bring to market,[28] and the ESPs have also described the many new packet services and facilities that may provide more efficient and cost-effective services for their particular needs.[29] Equipment manufacturers have also specified in their Comments new solutions to carry high-bandwidth data traffic more efficiently.[30] There is simply no basis -- nor does the Commission have the prescience or the expertise -- to select specific technologies, facilities, or services for preferences in their development and deployment. Any such selection would be entirely arbitrary. Rather, the potential customers of those new services -- the ESPs -- overwhelmingly urge the Commission to enforce the local competition rules to enable CLECs to provide new services.[31] Such action, along with cost-based pricing of the existing local services, will assure the development of new, desired services without the need for pervasive regulatory controls.

Although many of the LEC commenters extol the new technologies that they are bringing to market, their track record in deploying new data-friendly technologies

---

[28] See, e.g., Bell Atlantic at Attachment E; BellSouth at 4-6; PacTel at 36-38; SNET at 19-23.

[29] See, e.g., AOL at 17-23; CompuServe at 14; IAC at 17-22. See also AT&T at 19-21; MCI at 22.

[30] See, e.g., DSC at 3-7; Motorola at 5-9; Nortel at 10-11.

[31] See, e.g., IAC at 2-4; IUC at 8-9; CompuServe at 9-10; Pa.ISP at 14-15. See also MCI at 10.

has been dismal.[32] And the ESPs are understandably reluctant to subscribe to these new services if doing so would require them to turn their customer lists over to their ILEC competitors,[33] or abandon their own modems and rely instead on ILEC network-based modem pools.[34] For these reasons, encouragement of competitive providers is the best market-based incentive to ensure that ESPs have a choice of providers for new services, and that such services are brought to market more quickly and at competitive prices.

The Commission should not, however, heed the requests of some ILECs that propose increased pricing flexibility for new services.[35] The Commission already has in place a framework for the provision of new services by monopoly local carriers that guards against cross-subsidization from the carrier's other services. As long as the ILECs maintain monopoly control over the local exchange, there is no basis whatsoever to retreat

---

[32] For example, IAC (at 23-25) describes the 20-year delay in implementation of ISDN for residential customers, which is still not available on a ubiquitous basis. Moreover, it is subject to cumbersome ordering processes and is expensive. Thus, IAC concludes (at 38) that "in the absence of meaningful competition in the data services market, the ILECs have either ignored, sporadically deployed, or overpriced these technologies despite years of steadily increasing consumer demand for faster, more efficient data services." See also USIPA at 12.

[33] See Pa.ISP at 5 (Bell Atlantic's Internet Protocol Routing Service "requires an independent ISP to turn over its customer lists and customer passwords to the LEC, at the same time that the LEC has an affiliate that is competing with the independent ISPs").

[34] See AOL at 41 ("by deploying modem concentrators and packet-based trunk connectors in each central office, the ILECs' packet network links may indeed promote faster and more efficient delivery of broadband services, but they could also cement the ILECs as data transmission gatekeepers") (citation omitted); see also CIX at 14.

[35] See, e.g., PacTel at 7; SWBT at 3.

from the rules that ensure reasonable and nondiscriminatory rates for access services, not only for the benefit of their access customers, but also to maintain a pro-competitive market for emerging CLECs. Moreover, the ILECs are readily capable of successfully introducing new services and technologies under the existing rules. In December 1995, AT&T calculated that the LECs had introduced over 400 new services in the three years in which the price cap rules had been in effect as of that date.[36] In the intervening period, the LECs have continued to introduce new services under the existing price cap rules, including new SONET and frame relay services. Clearly there is no basis for the Commission to depart from those rules in the context of the instant NOI, and the Commission should not include such a proposal in its NPRM in this proceeding.[37]

The economic harms occasioned by the existence of the access charge exemption have become more acute for yet another reason: the convergence of services using both circuit-switched and packet-switched technologies has enabled customers to migrate their traditional telephony services to packet-based services offered at prices significantly lower than IXCs' offerings, which must be priced to recover today's exorbitant access charges. This circumstance is leading to increasing migration of traffic not off of the local public switched network, but off of the IXCs' networks. Thus, even as

---

[36] Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Comments of AT&T Corp., filed December 11, 1995, pp. 22-26.

[37] BellSouth (at 6-7) proposes that the Commission amend its Computer Inquiry rules to enable it to provide a new data service as a "basic" service, despite the existence of protocol conversion in the service. This request should be examined in the context of a petition for waiver, and has no place in the instant proceeding.

traffic increases over the local ILEC networks, compensation for the costs of such traffic is declining, reducing revenues not only for legitimate cost recovery, but also for universal service fund support. The Comments reflect the concern that artificially induced migration of traffic from the public switched local network to the Internet will create even more upward pressure on access (and toll) charges and will shrink the contribution base for universal service support.[38] Bell Atlantic (at 9) predicts that "at their present growth rates, Internet minutes could overtake IXC minutes in just a few years." PacTel (at 10) forecasts that by the year 2001, Internet traffic will overtake residential voice traffic.[39] Unless these minutes are eligible for access charge payments, the establishment of "have-not" users of high-priced PSN services and "have" users of lower priced Internet offerings will be inevitable.[40] It will also force the issue of the proper scope of USF contribution.[41]

In this regard, the Comments confirm that, as ESP traffic volumes have increased, the ESP industry itself is now mature, with large companies that are

---

[38] See ACTA at 5-7; AT&T at 23-24; TRA at 14-18.

[39] See also USTA at 15-20.

[40] See CompTel at 4 ("[i]n the NOI (at ¶ 285), the Commission noted that some ILECs have predicted that Internet traffic could represent 25-30% of all local exchange traffic within three years. The Commission cannot keep such a huge traffic stream out of the access charge system without completely undermining the economic efficiency of that system").

[41] Although they did not address the implications to customers of the decline in the contribution base for USF support, GTE (at 2) and PacTel (at 20-21) incredibly suggest that the ILECs receive USF support for the "shortfalls in LEC cost recovery" resulting from the ESP exemption. Of course, such a maneuver would only exacerbate the inefficiencies of the current system that encourages ESPs to use facilities without bearing their fair share of the cost.

well-positioned economically to pay cost-based prices for the access services that they use.[42] Moreover, while the Internet Service Provider ("ISP") industry is still in a high growth and more volatile stage, the establishment of large players such as AOL, CompuServe and Prodigy, and the entry of IXCs and RBOCs into the market, belie claims that the industry is too fragile to sustain the modest average increases in price that imposition of cost-based access charges may create.[43] Consequently, when faced with the possibility of a modest average increase in monthly Internet charges resulting from TELRIC- based access charges[44] or a massive artificially induced migration of telephony/fax minutes from the public switched network that would otherwise contribute to USF support, the Commission's choice should be clear.[45]

---

[42] AT&T at 10-12; Bell Atlantic at 4; GTE at 29.

[43] AT&T (at 26-27) calculated a 56 cent average increase in consumers' monthly Internet access prices if the increased costs to ESPs were reflected in consumer rates, based on data provided by CompuServe. PacTel (at 6) estimated that 80 percent of end users would be impacted by less than $5.00 per month, assuming that a charge of one cent per minute were assessed on ESPs (which is more than twice the TELRIC rate used in AT&T's analysis). PacTel provides no basis for its calculation. Even applying PacTel's one cent per minute rate to the actual data provided by CompuServe, that would increase AT&T's estimate to approximately $1.20 per month for an average customer. Such small increases, moreover, would affect only heavier Internet users.

[44] It is far from clear that the ISPs would realize an overall cost increase as a result of the imposition of cost-based access charges. The ISP industry has responded to the current skewed pricing regime by building inefficient networks, consisting of multiple "local" points of presence ("POPs") around the country, instead of more efficient regional POPs. The deployment of such regional POPs would lower their network costs.

[45] There is much discussion about whether second phone lines to the home generate additional revenue for the ILECs to cover the increased costs to the network of ESP traffic. The ILECs claim that they do not receive excess revenues from subscription

(footnote continued on following page)

The Commission has the tools to redirect this course now, with imposition of TELRIC charges on ESPs.[46] Indeed, with the massive investment currently being made by ESPs to support their service over the existing ILEC networks,[47] such action must be taken as quickly as possible, so that ESPs do not continue to tether themselves to the circuit-switched network via these large financial commitments, and thus make their migration to packet networks less economically feasible.

(footnote continued from previous page)

to these second lines, because those lines do not generate the toll traffic and demand for vertical services that contribute to their cost recovery. See, e.g., GTE at 24-25; PacTel at 30-33; SWBT at 11. ESPs, on the other hand, argue that the sale of second phone lines generates revenues well in excess of their cost. See, e.g., IAC at 8 (citing to its ETI Study at 25-26); WorldCom at 19 n. 34. Adding to the confusion, it is far from clear that second phone lines are being used exclusively for Internet access, and no data have been provided to support that conclusion. Second (and third) lines have become increasingly common in recent years, for use by children in the home, telecommuters and other home businesses. There is no reason to believe that even if subscription to additional lines is increasing for Internet applications, those lines are not also being used for these more traditional purposes, and thus generating revenues for vertical and toll services. In any event, as with all other network components, the price for second phone lines should be set to recover their cost and should be charged to the end user, who is the cost causer. Second phone revenues should not be used to subsidize ESP usage of the local public switched network to access the Internet.

[46] AT&T suggested (at 24-25) that even if the Commission declines to adopt TELRIC charges for IXCs in the access reform docket, it can and should assess TELRIC charges on ESPs as an interim step until all access charges are brought down to cost. PacTel (at 7, 17) endorses this proposal, by recommending that ESPs may be exempt from the subsidy elements of access charges; i.e., the CCLC and TIC.

[47] See, e.g., AOL at 9, n. 11; CIX at 14.

II. THE COMMENTS CONFIRM THAT THE COMMISSION HAS AMPLE AUTHORITY TO CLASSIFY TRAFFIC GENERATED BY ESPs AS INTERSTATE TRAFFIC SUBJECT TO THE COMMISSION'S JURISDICTION.

In its Comments (at 28-33), AT&T demonstrated not only that the services provided by ESPs are overwhelmingly interstate in nature, but also that to the extent that there is intrastate communication, it is for the most part inseverable and indistinguishable from the interstate traffic that is generated by the customer. On this basis, such service is properly considered interstate. AT&T further showed that sound policy considerations justify the exercise of federal jurisdiction over all ESP traffic, in order to achieve the important policy and statutory goals discussed above.[48] No commenter disputes that the vast majority of enhanced communications provided by ESPs is interstate, the most prevalent use being Internet communications.[49] IAC confirms that during a single "session," a transmission can travel to multiple and, in most cases, interstate, destinations.[50] Indeed, the Commission itself recognized the predominantly interstate

---

[48] AT&T also noted (at 33) that to the extent that a particular enhanced service is completely (or almost completely) intrastate in character (such as certain voice mail services), the ESP could properly purchase intrastate or local access services upon such a showing.

[49] See, e.g., GTE at 31-32; US West at 7-8.

[50] IAC at 7 n. 10 ("During the course of a single on-line session, a subscriber may obtain data from servers in multiple locations within the ESP's network or the Internet. For example, on the Internet, hypertext navigation is used to provide users with links to related information contained in other servers. By clicking on a hypertext link, a user can jump from one server to another server in a different location").

nature of ESP traffic as early as 1983, when it adopted the current access charge regime -- well before the advent of the worldwide Internet as a commercial network.[51]

Finally, any concerns on the part of the Commission that charging users for access to their Internet offerings amounts to forbidden "regulation of the Internet" should be alleviated upon review of the Comments. Although members of the public, in isolated comments, assert that any charges imposed on Internet providers is contrary to public policy, none of the ESPs has seriously suggested that requiring them to pay for the local services that they use constitutes "regulation" of the rates, terms and conditions of their end user offerings. Indeed, no commenter has advocated that ESPs not pay for the switches, buildings, power, employees, or other infrastructure that they utilize in providing their Internet access services; to continue to exempt them from paying for use of the local network is no different than excusing them from paying for these other inputs.[52]

---

[51] MTS Market Structure Order, 97 F.C.C. 2d 682, 715 (1983) ("[o]ther users who employ exchange service for jurisdictionally interstate communications, including . . . enhanced service providers, . . ."); see also ESP NPRM, 2 FCC Rcd 4305, 4306 (1987) ("Enhanced service providers, like facilities-based interexchange carriers and resellers, use the local network to provide interstate services. To the extent that they are exempt from access charges, the other users of exchange access pay a disproportionate share of the costs of the local exchange that access charges are designed to recover"); ONA Order, 6 FCC Rcd 4524, 4534 (1991).

[52] Moreover, assessment of cost-based access charges on ESPs for their use of the local network would avoid the pitfalls of attempting to differentiate among different categories of enhanced services -- a problem on which the ESPs rely as a basis to exempt their services entirely from access charges. See, e.g., IAC at 57-59.

CONCLUSION

The Commission has before it ample and compelling evidence that the most rational and efficient means to ensure the viability of the existing public switched network while encouraging the development of new competitive packet-switched services is to implement the cost-based pricing of the local network and to assess those cost-based prices on all users of the network, including the fastest-growing segment of that user group -- the ESPs. This long overdue access reform -- coupled with zealous enforcement of the Commission's local entry rules -- will set the correct economic and regulatory framework for continued investment in both the incumbent LEC networks and in the networks of the future. The Commission can no longer extend the status quo under the guise of protecting an infant industry; rather, for the long-term benefit of that industry, the preservation of the public switched network for those that rely on it, and the achievement of universal service, the Commission must act now to remove the ESP exemption.

WHEREFORE, for the reasons stated above and in AT&T's Comments, AT&T respectfully urges the Commission to institute a Notice of Proposed Rulemaking to eliminate the exemption from Part 69 access charges for enhanced service providers, establish TELRIC pricing for those providers, and adopt a presumption that all enhanced services are interstate in nature.

Respectfully submitted,

AT&T CORP.

By /s/ Ava B. Kleinman
Mark C. Rosenblum
Ava B. Kleinman

Room 3252J1
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8312

April 23, 1997

List of Commenters

Alliance for Public Technology
America Online ("AOL")
America's Carriers Telecommunications Association ("ACTA")
Association of Online Professionals
AT&T Corp.
Bell Atlantic & NYNEX ("Bell Atlantic")
Bellsouth Corp. & Bellsouth Telecommunications, Inc. ("BellSouth")
CAIS, Inc.
Caves, Douglas, et al.
Cincinnati Bell Telephone Company
Clark Development Company, Inc.
Commercial Internet Exchange Association ("CIX")
Competitive Telecommunications Association ("CompTel")
CompuServe Incorporated and Prodigy Services Corporation ("CompuServe")
DSC Communications Corporation
Edgewood Sr. High School Student Council
General Communication, Inc.
General Services Administration ("GSA")
GTE Service Corporation ("GTE")
Hayes Microcomputer Products, Inc.
Hardy & Ellison, P.C.
Information Industry Association
Internet Access Coalition ("IAC")
Internet User Coalition ("IUC")
Juno Online Services, L.P. ("Juno")
Lee, Sheila Jackson
MCI Communications Corp. ("MCI")
Moss, Gloria
Motorola, Inc. ("Motorola")
National Cable Television Association
NetAction, Utility Consumers Action Network, CPSR and CTCNet
Northern Telecom ("Nortel")
NYSERNet Inc.
Pacific Telesis Group ("PacTel")
Pennsylvania Internet Service Providers ("Pa.ISP")
Rural Telephone Coalition ("RTC")
Southern New England Telephone Company ("SNET")
Southwestern Bell Telephone Company ("SWBT")
Special Libraries Association
Sprint Corporation

TCA, Inc.
Telecommunications Resellers Association ("TRA")
Teleport Communications Group ("TCG")
Topp, Linda A. Legier
United States Internet Providers Association ("USIPA")
University of California, Berkeley
U. S. Telephone Association ("USTA")
U S West, Inc. ("US West")
UTC
Worldcom, Inc. ("WorldCom")

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 23rd day of April, 1997, a copy of the foregoing "Reply Comments of AT&T Corp." was mailed by U.S. first class mail, postage prepaid, to the parties on the attached Service List.

/s/ Rena Martens
Rena Martens

SERVICE LIST

Mary E. Newmeyer
Federal Affairs Advisor
Alabama Public Service Commission
P.O. Box 991
Montgomery, AL 36101

James Rowe
Executive Director
Alaska Telephone Association
4341 B St. - Suite 304
Anchorage, AK 99503

Gerald Depo, President
Alliance for Public Technology
901 15th St., NW - Suite 230
Washington, DC 20005

Carolyn C. Hill
ALLTEL Telephone Services Corporation
655 Fifteenth Street, NW - Suite 220
Washington, DC 20005

Donna Lampert
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo
701 Pennsylvania Ave., NW - Suite 900
Washington, DC 20004

John Rother, Esq.
Director, Legislation & Public Policy
American Association of Retired Persons
601 E. St., NW
Washington, DC 20049

Carol C. Henderson, Executive Director
American Library Association
1301 Pennsylvania Ave., NW - Suite 403
Washington, DC 20004

America's Carriers Telecommunication Association
c/o Charles H. Helein, General Counsel
Helein & Associates, P.C.
8180 Greensboro Drive - Suite 700
McLean, VA 22102

Michael S. Pabian
Ameritech
Rm. 4H82
2000 W. Ameritech Center Dr.
Hoffman Estates, IL 60196-1025

Edward Shakin
1320 North Court House Road - 8th Floor
Arlington, VA 22201
Attorney for Bell Atlantic Telephone Companies

Joseph Di Bella
1300 I Street, NW - Suite 400 West
Washington, DC 20005
Attorney for NYNEX Telephone Companies

Richard M. Sbaratta
BellSouth Corporation
BellSouth Telecommunications, Inc.
1155 Peachtree St., NE - Suite 1700
Atlanta, GA 30309-3610

Christopher J. Wilson
Frost & Jacobs
2500 PNC Center
201 E. Fifth St.
Cincinnati, OH 45202
Attorney for Cincinnati Bell Telephone Co.

Richard M. Tettelbaum
Associate General Counsel
Citizens Utilities Company
1400 16th St., NW - Suite 500
Washington, DC 20036

Diane Smith
ALLTEL Corporate Services, Inc.
655 15th Street, NW - Suite 220
Washington, DC 20005-5701
Attorney for Independent Telephone & Telecommunications Alliance

Thomas K. Crowe, P.C.
2300 M St., NW - Suite 800
Washington, DC 20037
Attorney for Commonwealth of the Northern Marianas Islands

Ronald J. Binz, President
Competition Policy Institute
1156 15th Street, NW - Suite 310
Washington, DC 20005

Randolph J. May
Sutherland, Asbill & Brennan
1275 Pennsylvania Ave., NW
Washington, DC 20004-2404
Attorney for CompuServe Incorporated

Kent Larsen
Cathey, Hutton & Associates
2711 LBJ Freeway, Suite 560
Dallas, TX 75234

Mary Mack Adu
People of the State of California and Public Utilities Commission of the State of California
505 Van Ness Ave.
San Francisco, CA 94102

Henry D. Levine
Levine, Blaszak, Block & Boothby
1300 Connecticut Ave., NW - Suite 500
Washington, DC 20036
Attorney for Bankers Clearinghouse, Mastercard, and Visa

Ronald L. Plesser
Piper & Marbury L.L.P.
1200 19th St., NW, 7th Floor
Washington, DC 20036
Attorney for Commercial Internet Exchange Association

Morton Bahr, President
Communications Workers of America
501 Third St., NW
Washington, DC 20001-2797

Genevieve Morelli
Executive V.P. and General Counsel
Competitive Telecommunications Association
1900 M Street, NW - Suite 800
Washington, DC 20036

Danny E. Adams
Kelley Drye & Warren, LLP
1200 19th Street, NW - Suite 500
Washington, DC 20036-2423
Attorney for Competition Policy Institute

Wayne V. Black
Keller and Heckman, LLP
1001 G Street, NW - Suite 500 West
Washington, DC 20001
Attorney for American Petroleum Institute

Christopher W. Savage
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Ave., NW - Suite 200
Washington, DC 20006
Attorney for Centennial Cellular Corporation

James Love
Director
Consumer Project On Technology
P.O. Box 19367
Washington, DC 20036

Dana Frix
Swidler & Berlin
3000 K Street, NW - Suite 300
Washington, DC 20007
Attorney for ACC Long Distance, Excel Telecomm., and Telco Telecomm.

Robert A. Mazer
Vinson & Elkins
1455 Pennsylvania Ave., NW
Washington, DC 20004-1008
Attorney for Aliant Communications Co.

Cynthia B. Miller
Florida Public Service Commission
Gerald Gunter Bldg.
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Clint Frederick
Frederick & Warriner, LLC
10901 West 84th Terrace - Suite 101
Lenexa, Kansas 66214-1631

Michael J. Shortley, III
Frontier Corporation
180 South Clinton Ave.
Rochester, NY 14646

Kathy L. Shobert
Director, Federal Affairs
General Communication, Inc.
901 15th St., NW - Suite 900
Washington, DC 20005

Charles A. Acquard
Executive Director
National Ass'n of State Utility Consumer Advocates
1133 15th Street, NW - Suite 550
Washington, DC 20005

Gail L. Polivy 5214
GTE Service Corporation
1850 M St., NW - Suite 1200
Washington, DC 20036

Ronald Dunn, President
Information Industry Association
1625 Massachusetts Ave., NW - Suite 700
Washington, DC 20036

ITCs, Inc.
c/o David A. Irwin
Irwin, Campbell & Tannewald, P.C.
1730 Rhode Island Ave., NW
Washington, DC 20036

Gary L. Mann, Director, Regulatory Affairs
IXC Long Distance, Inc.
98 San Jacinto - Suite 700
Austin, TX 78701

Michael S. Fox
Director, Regulatory Affairs
John Staurulakis, Inc.
6315 Seabrook Rd.
Seabrook, MD 20706

Gregory Casey
LCI International Telecom Corp.
8180 Greenboro Drive - Suite 800
McLean, VA 22102

Mary Sisak
Senior Regulatory Analyst
MCI Telecommunications Corporation
1801 Pennsylvania Ave., NW
Washington, DC 20006

Joseph S. Paykel
Media Access Project
2000 M St., NW
Washington, DC 20036

Richard J. Johnson
Moss & Barnett
4800 Norwest Center
90 S. Seventh St.
Minneapolis, MN 55402-4129
Attorney for MN Independent Coalition

James Bradford Ramsay
National Assn. of Regulatory Utility Commissioners
1201 Constitution Ave. - Suite 1102
P.O. Box 684
Washington, DC 20044

Joanne Salvatore Bochis
National Exchange Carrier Association, Inc.
100 South Jefferson Rd.
Whippany, NJ 07981

Mary E. Burgess
Assistant Counsel
Office of General Counsel
New York State Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Robert S. Tongren
Ohio Consumers' Counsel
77 S. High St. - 15th Floor
Columbus, OH 43266-0550

Edwin N. Lavergne
Ginsburg, Feldman & Bress, Chartered
1250 Connecticut Ave., NW
Washington, DC 20036
Attorney for Interactive Services Association

Dr. Norman K. Myers
Ozarks Technical Community College
P.O. Box 5958
Springfield, MO 65801

Stephen G. Kraskin
Kraskin & Lesse
2120 L Street, NW - Suite 520
Washington, DC 20037

Martha S. Hogerty
Public Counsel for the State of Missouri
P.O. Box 7800
Jefferson City, MO 65102
Attorney for the Group of State Consumer Advocates

Richard Johnson
4800 Northwest Center
90 South Seventh Street
Minneapolis, MN 55402-4129
Attorney for Minnesota Independent Coalition

Brian Moir
Moir & Hardman
2000 L Street, NW - Suite 512
Washington, DC 20036-4907
Attorney for International Communications Association

Stanley M. Gorinson
Preston, Gates, Ellis & Rouvelas Meeds
1735 New York Ave., NW
Washington, DC 20006
Attorney for Microsoft Corp.

Albert H. Kramer
Dickstein, Shapiro, Morin & Oshinsky, LLP
2101 L Street, NW
Washington, DC 20037-1526
Attorney for ICG Telecom Group, Inc.

Daniel L. Brenner
1724 Massachusetts Ave., NW
Washington, DC 20036
Attorney for the National Cable Television Association

Michael J. Ettner
General Services Administration
18th & F Streets, NW - Room 4002
Washington, DC 20405

Office of the Judge Advocate General
U.S. Army Litigation Center
c/o Robert N. Kittel
901 N. Stuart Street - Suite 713
Arlington, VA 22202-1837

David J. Newburger
Newburger & Vossmeyer
One Metropolitan Square - Suite 2400
St. Louis, MO 63102
Attorneys for American Association for Adult and Continuing Education; Association for Gerontology and Human Development at Historically Black Colleges and Universities; ConnectMissouri; Missouri Center on Minority Health and Aging; National Association of Commissions for Women; National Association of Development Organizations; National Farmers Union, National Hispanic Council on Aging; The National Trust; National Latino Telecommunications Task Force; Barbara O'Conner, CoConvenor of the Consumer Summit and Professor of Communications, California State University, Sacramento; President's Club for Telecommunications Justice; United Seniors Health Cooperative; United Homeowners Association; Virginia Public Interest Coalition; and the Universal Service Alliance

Margaret E. Garber
1275 Pennsylvania Ave., NW
Washington, DC 20004
Attorney for Pacific Telesis Group

Mark J. Golden
Vice President - Industry Affairs
Personal Communications Industry Association
500 Montgomery St. - Suite 700
Alexandria, VA 22314-1561

Pat Wood, III, Chairman
Public Utility Commission of Texas
7800 Shoal Creek Blvd.
Austin, TX 78757

Roger Hamilton, Chairman
Oregon Public Utility Commission
550 Capitol St., NE
Salem, OR 97310-1380

Lawrence D. Crocker, III
Public Service Commission of the District of Columbia
717 14th Street, NW
Washington, DC 20005

Steven T. Nourse
Assistant Attorney General
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

Joe D. Edge
Drinker Biddle & Reath
901 Fifteenth St., NW
Washington, DC 20005
Attorney for Puerto Rico Telephone Company

John J. List
Senior Vice President, Member Services
Rural Telephone Finance Cooperative
2201 Cooperative Way
Herndon, VA 20171

George Petrutsas
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street - Suite 1100
Rosslyn, VA 22209
Attorney for Roseville Telephone Company

Lisa M. Zaina
21 Dupont Circle, NW - Suite 700
Washington, DC 20036
Attorney for Rural Telephone Coalition (OPASTCO)

David Cosson
2626 Pennsylvania Ave., NW
Washington, DC 20037
Attorney for Rural Telephone Coalition (NTCA)

Margot Smiley Humphrey
Koteen & Naftalin, LLP
1150 Connecticut Ave., NW - Suite 1000
Washington, DC 20036
Attorney for Rural Telephone Coalition (NRTA) and TDS Telecomm. Corp.

Wally Beyer, Administrator
United States Department of Agriculture
14th and Independence Streets
Washington, DC 20250

Pam Nelson
South Dakota Public Utilities Commission
State Capitol, 500 E. Capitol St.
Pierre, SD 57501-5070

Anne U. MacClintock
Vice President - Regulatory Affairs & Public Policy
Southern New England Telephone Company
227 Church St.
New Haven, CT 06510

Robert M. Lynch
One Bell Center - Suite 3520
St. Louis, MO 63101
Attorney for Southwestern Bell Telephone

Jay C. Keithley
Sprint Corporation
1850 M St., NW - Suite 1110
Washington, DC 20036

Randy Zach
TCA, Inc.
3617 Betty Dr. - Suite I
Colorado Springs, CO 80917

Margot Smiley Humphrey
Koteen & Naftalin, L.L.P
1150 Connecticut Ave., NW - Suite 1000
Washington, DC 20036
Attorney for TDS Telecommunications Corporation

Randall B. Lowe
Piper & Marbury, LLP
1200 19th Street, NW
Washington, DC 20036
Attorney for Tele-Communications, Inc.

J. Manning Lee
Vice President, Regulatory Affairs
Teleport Communications Group, Inc.
Two Teleport Dr. - Suite 300
Staten Island, NY 10311

Laurie Pappas
Deputy Public Counsel
Texas Office of Public Utility Counsel
1701 N. Congress Ave., 9-180
P.O. Box 12397
Austin, TX 78711-2397

Brian Conboy
Wilkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036
Attorney for Time Warner

Charles C. Hunter
Hunter & Mow, P.C.
1620 I St., NW - Suite 701
Washington, DC 20006
Attorney for
Telecommunications Resellers Association

Robert B. McKenna
1020 19th St., NW
Washington, DC 20036
Attorney for U S West, Inc.

Richard A. Finnegan
2405 Evergreen Park Drive, SW - Suite B-1
Olympia, WA 98502
Attorney for Oregon Independent Telephone Association and Washington Independent

Benjamin H. Dickens, Jr.
Blooston, Modkofsky, Jackson & Dickens
2120 L Street, NW - Suite 300
Washington, DC 20037
Attorney for the Western Alliance

Robert M. Berger
Winstar Communications, Inc.
1146 19th St., NW
Washington, DC 20036

Richard S. Whitt
Worldcom, Inc.
1120 Connecticut Ave., NW - Suite 400
Washington, DC 20036

Kathleen Q. Abernathy
Airtouch Communications, Inc.
1818 N St., NW
Washington, DC 20036

Jeffrey F. Beck
Beck & Ackerman
Four Embarcadero Center - Suite 760
San Francisco, CA 94111
Attorney for Small Western LECs

Glenn B. Manishin
Blumenfeld & Cohen - Technology Law Group
1615 M Street, NW - Suite 700
Washington, DC 20036
Attorney for Spectranet International, Inc.

Colleen Boothby
Levine Blaszak Block & Boothby
1300 Connecticut Ave., NW - Suite 500
Washington, DC 20036-1703
Attorney for Internet Access Coalition and Ad Hoc Telecomm. Users Committee

Bradley Stillman
MCI Communications Corporation
1801 Pennsylvania Ave., NW
Washington, DC 20006

Mary McDermott
1401 H Street, NW - Suite 600
Washington, DC 20005
Attorney for the United States Telephone Association

Scott J. Rubin, Esq.
3 Lost Creek Drive
Selinsgrove, PA 17870-9357
Attorney for Pennsylvania Internet Service Providers

W. Fred Seigneur, President
SONETECH, Inc.
109 Kale Ave.
Sterling, VA 20164

Kenneth T. Burchett, Vice President
GVNW Inc.
P.O. Box 230399
Portland, Oregon 97281-0399

Reginald R. Bernard, President
SDN Users Association, Inc.
P.O. Box 4014
Bridgewater, NJ 08807

Steven G. Sanders, President
Northern Arkansas Telephone Company, Inc.
301 East Main Street
Flippin, AR 72634

Gerald Depo, President
Alliance for Public Technology
901 15th Street, NW
Washington, DC 20005

Wayne Leighton, PhD
Senior Economist
Citizens for a Sound Economy Foundation
1250 H Street, NW - Suite 700
Washington, DC 20005

Lyman C. Welch
190 S. LaSalle St. - #3100
Chicago, IL 60603

Penny Baker
Deputy General Counsel
Missouri Public Service Commission
P.O. Box 360
J efferson City, Missouri 65102

Christopher Klein, Chief
Utility Rate Division
Tennessee Regulatory Staff
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Jon Radoff
1630 Worcester Road #421
Framingham., MA 01701

Myra L. Karegianes
General Counsel
Illinois Commerce Commission
160 N. LaSalle St. - Suite C-800
Chicago, IL 60601

Curtis T. White
Managing Partner
Allied Associated Partners, LP
4201 Connecticut Ave., NW - Suite 402
Washington, DC 20008-1158

Eva Powers
Assistant Attorney General
Kansas Corporation Commission
1500 Southwest Arrowhead Rd.
Topeka, Kansas 66604

Ramsey L. Woodworth
Robert M. Gurss
Rudolph J. Geist
Wilkes, Artis, Hedrick & Lane, Chartered
1666 K Street, N.W., #1100
Washington, D.C.
Attorneys for United States Internet Providers Association

Linda A. Legier Topp
13806 Farmstead Way
Chester, VA 23831

James P. Brennan
Assistant Director Government Services
NYSERNet Inc.
385 Jordan Road
Troy, NY 12180

William W. Burrington
Jill A. Lesser
America Online, Inc.
1101 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

Donna N. Lampert
Christopher J. Harvie
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Attorneys for America Online, Inc.

David P. McClure
Association of Online Professionals
6096 Franconia Road, Suite D
Alexandria, VA 22310

Dennis C. Hayes
Hayes Microcomputer Products, Inc.
5953 Peachtree Industrial Blvd.
Norcross, GA 30092

Steven P. Klingler
Clark Development Company, Inc.
3950 South 700 East, Suite 303
Murray, UT 84107

Glenn B. Manishin
Michael D. Specht
Blumenfeld & Cohen - Technology Law Group
1615 M Street, N.W., Suite 700
Washington, D.C. 20036
Counsel for CAIS, Inc.

Hal R. Varian, Dean
University of California, Berkeley
School of Information Management and Systems
102 South Hall #4600
Berkeley, CA 94720-4600

Thomas E. Taylor
Sr. Vice President-General Counsel
Cincinnati Bell Telephone Company
201 East Fourth Street, 6th Floor
Cincinnati, OH 45202

Robert J. Aamoth
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
Attorneys for Competitive Telecommunications Association

Randall B. Lowe
John E. Benedict
Piper & Marbury, L.L.P.
1200 19th Street, N.W.
Washington, D.C. 20036
Attorneys for DSC Communications Corporation

Daniel J. Weitzner
Center for Democracy and Technology
1634 Eye Street, N. W.
Suite 1100
Washington, D.C. 20036
Counsel for Internet User Coalition

Leslie A. Harris
Leslie Harris & Associates
1146 19th Street, N.W.
Seventh Floor
Washington, D.C. 20036
Counsel for Internet User Coalition

Joseph S. Paykel
Andrew Jay Schwartzman
Gigi B. Sohn
Media Access Project
1707 L Street, N.W.
Suite 400
Washington, D.C. 20036
Counsel for Internet User Coalition

Diane Iglesias
Regulatory Affairs and Public Policy
Southern New England
Telephone Company
227 Church Street
New Haven, CT 06510

Durward D. Dupre
Mary W. Marks
Thomas A. Pajda
Southwestern Bell Telephone Company
One Bell Center, Room 3536
St. Louis, MO 63101

Robert E. Jones, III
G. Todd Hardy
Nathaniel J. Hardy
Hardy & Ellison, P.C.
9306 Old Keene Mill Road, Suite 100
Burke, VA 22015

Glenn B. Manishin
Michael D. Specht
Blumenfeld & Cohen
Technology Law Group
1615 M Street, N.W., Suite 700
Washington, D.C. 20036
Counsel for Juno Online Services, L.P.

Sheila Jackson Lee
410 Cannon House Office Building
Washington, D.C. 20515

Gloria Moss
1620 Palmae Way
Las Vegas, NV 89128

Mary E. Brooner
Motorola, Inc.
1350 I Street, N.W., Suite 400
Washington, D.C. 20005

Glenn B. Manishin
Christine A. Mailloux
Blumenfeld & Cohen
Technology Law Group
1615 M Street, N.W., Suite 700
Washington, D.C. 20036
Counsel for NetAction, UCAN, CPSR
and CTCNet

John G. Lamb, Jr.
Northern Telecom Inc.
2100 Lakeside Boulevard
Richardson, TX 75081-1599

Stephen L. Goodman
David E. Colton
Halprin, Temple, Goodman & Sugrue
1100 New York Avenue, N.W.
Suite 650, East Tower
Washington, D.C. 20005
Counsel for Northern Telecom Inc.

David Cosson
L. Marie Guillory
National Telephone Cooperative
Association
2626 Pennsylvania Ave., N.W.
Washington, D.C. 20037

David R. Bender, Ph.D.
John H. Crosby IV
Special Libraries Association
1700 18th Street, N.W.
Washington, D.C. 20009-2514

Randall R. Zach
TCA, Inc. -
Telecommunications Consultants
3617 Betty Drive, Suite I
Colorado Springs, CO 80917

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W., Suite 701
Washington, D.C. 20006
Attorneys for Telecommunications
Resellers Association

Jeffrey L. Sheldon
Thomas E. Goode
UTC
1140 Connecticut Ave., N.W., Suite 1140
Washington, D.C. 20036

Edgewood Sr. High School Student Council
Student Council Internet Committee
2428 Blake Rd.
Ashtabula, OH 44004

R. Michael Senkowski
R. Paul Margie
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Attorneys for GTE Service Corporation

Lawrence W. Katz
Edward D. Young, III
Betsy L. Anderson
Bell Atlantic Telephone Companies
1320 North Court House Road
8th Floor
Arlington, VA 22201

Marlin D. Ard
Jeffrey B. Thomas
Pacific Telesis Group
140 New Montgomery Street, Rm. 1529
San Francisco, CA 94105

David N. Porter
Catherine R. Sloan
Richard L. Fruchterman
Richard S. Whitt
Worldcom, Inc.
1120 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

Robert B. McKenna
Dan L. Poole
U S WEST, INC.
1020 19th Street, N.W., Suite 700
Washington, D.C. 20036

Jonathan Jacob Nadler
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W.
Box 407
Washington, D.C. 20044
Attorney for Internet Access Coalition

John G. Williams, Ph.D.
Telecommunications Consulting Group, Inc.
1201 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20044
Consultant for Internet Access Coalition

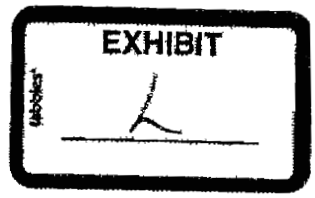
Carl Wayne Smith
Defense Information Systems Agency
701 Court House Road
Arlington, VA 22204

Snavely King Majoros O'Connor & Lee, Inc.
1220 L Street, N.W.
Washington, D.C. 20005
Economic Consultant to the GSA and the U.S. Dept. of Defense

Douglas W. Caves
Laurits R. Christensen
Mark E. Meitzen
Rajesh Rajaraman
Thomas J. Rutkowski
Christensen Associates
[Unable to serve - no address provided]

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and/or petition for arbitration by Global NAPS, Inc. for enforcement of Section VI(B) of its interconnection agreement with BellSouth Telecommunications, Inc., and request for relief.	DOCKET NO. 991267-TP ORDER NO. PSC-00-1511-FOF-TP ISSUED: August 21, 2000



The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.

FINAL ORDER GRANTING EXTENSION OF TIME AND DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

On August 31, 1999, Global NAPs, Inc. (Global NAPs or GNAPs) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) for alleged breach of the parties' interconnection agreement. The subject agreement was initially executed by ITC^DeltaCom, Inc., (DeltaCom or ITC^DeltaCom) on July 1, 1997, and was previously approved by the Commission in Docket No. 970804-TP, by Order No. PSC-97-1265-FOF-TP, issued October 14, 1997. DeltaCom's agreement was effective in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. On January 18, 1999, GNAPs adopted the DeltaCom agreement in its entirety.

In its complaint, GNAPs asserted that BellSouth had failed to properly compensate GNAPs for delivery of traffic to Internet Service Providers that are GNAPs' customers. GNAPs also alleged that the terms of the agreement provide for reciprocal compensation for the delivery of local traffic, including ISP traffic. GNAPs stated that BellSouth has failed to comply with specific provisions of the agreement concerning the payment of reciprocal compensation to GNAPs. GNAPs asked for relief, including payment of reciprocal compensation and attorney's fees, plus interest.

On September 27, 1999, BellSouth filed its Answer to GNAPs' complaint. Based on the complaint, and BellSouth's response, this matter was set for hearing.

On November 15, 1999, DeltaCom filed a petition to intervene in this proceeding. By Order No. PSC-99-2526-PCO-TP, DeltaCom's petition was denied. Thereafter, a hearing on GNAPs' complaint was held on January 25, 2000.

By Order No. PSC-00-0802-FOF-TP, issued April 24, 2000, we rendered our post-hearing decision. Therein, we determined that:

> we believe that the plain language of the Agreement shows that the parties intended the payment of reciprocal compensation for all local traffic, including traffic bound for ISPs. Therefore, it is not necessary to look beyond the written agreement to the actions of the parties at the time the agreement was executed or to the subsequent actions of the parties to determine their intent.

Order at p. 7.

Subsequently, on May 9, 2000, BellSouth filed a Motion for Reconsideration of our decision. On May 19, 2000, GNAPs filed a Motion for Extension of Time to Respond to the Motion for Reconsideration. Thereafter, GNAPs filed its response to BellSouth's motion on May 24, 2000. BellSouth did not respond to GNAPs' request for additional time to respond to the Motion for Reconsideration.

This is our decision on these motions.

I. Motion for Extension of Time

GNAPs asserts that neither Commission staff counsel nor counsel for BellSouth oppose its request for a two-day extension to respond to the Motion for Reconsideration. GNAPs contends that the extension will not affect any other time frames in this case.

As noted above, BellSouth did not file a response to the Motion.

The extension is hereby granted. The two-day extension will neither cause any undue burden to any party nor will it give any undue advantage to either party.

II. Motion for Reconsideration

A. BellSouth

The proper standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which we failed to consider in rendering our Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

BellSouth contends that we should reconsider our decision because we have failed to consider or overlooked points of fact and law. BellSouth argues that this is the result of our rendering a decision based on facts outside the record, contrary to the law of the case as set forth by the prehearing officer in this case, and contrary to federal law.

First, BellSouth argues that we based our decision on facts outside the record. BellSouth references statements in the our Order wherein we indicate that the relevant intent in interpreting an adopted agreement is the intent of the original parties and that the original and adopted agreement should receive the same interpretation.[1] BellSouth contends that these statements result in an inconsistent decision.

Based on the referenced statements in our Order, BellSouth argues that the GNAPs/BellSouth agreement must receive the same interpretation as the DeltaCom agreement. BellSouth emphasizes

---

[1]Order at p. 7-8.

that the Commission has, however, not yet interpreted the DeltaCom/BellSouth agreement. Thus, BellSouth argues that the Commission has either prejudged the outcome of the DeltaCom complaint, which is currently being addressed in a separate docket, or it has made a decision contrary to its own interpretation of Section 252(i) of the Act by requiring BellSouth to pay reciprocal compensation under an adopted agreement, when BellSouth may not be required to do so under the terms of the underlying agreement. Regardless, BellSouth contends that we have strayed from the law of the case as set forth by the prehearing officer when DeltaCom was excluded from this proceeding.

BellSouth further argues that the prehearing officer specifically stated in his order denying DeltaCom intervention in this proceeding:

> . . . our decision in this case will consider only the GNAPs/BellSouth agreement and evidence relevant to that agreement. Our final decision will apply only to GNAPs and BellSouth. Therefore, any decision in this case will be based on evidence presented by the parties to this case and as such, will have no precedential value for any other case involving the same terms and conditions of an agreement between different parties. . .

Order No. PSC-99-2526-PCO-TP at pp. 5-6.

BellSouth contends that our final determination that the GNAPs/BellSouth agreement and DeltaCom/BellSouth agreement must be interpreted the same is inconsistent with the holding of the prehearing officer. BellSouth argues that we changed the process and evidentiary standard established by the prehearing officer, i.e. the "law of the case," in rendering our final decision. Therefore, BellSouth argues that it was denied due process to address the intent of the parties in negotiating the DeltaCom/BellSouth agreement.

BellSouth also argues that our decision departs from prior Commission decisions on compensation for ISP traffic. BellSouth notes that in this case, we stated that evidence of intent was not necessary, while in previous Commission decisions, the Commission analyzed evidence regarding the intent of the negotiating parties. BellSouth adds that even though we stated that we did not believe

evidence of intent was necessary in this case, we still included an analysis of facts reflecting the parties' intent, including a criticism of BellSouth for failing to seek modification of the agreement before allowing GNAPs to adopt it. BellSouth contends that this analysis is not only based upon an erroneous understanding of the facts, but also upon a misunderstanding of BellSouth's obligations under Section 252(i) of the Act.

BellSouth further contends that had we applied the same analysis in this case that we used in prior decisions in cases regarding reciprocal compensation, then BellSouth would have prevailed. BellSouth emphasizes that here, there was evidence that BellSouth did not intend to treat ISP traffic as if it were local, and GNAPs even admitted that it knew BellSouth did not believe it should be treated as local. BellSouth adds that this Commission seems to improperly "infer" negative intent on behalf of BellSouth because BellSouth did not clarify the language in the agreement before executing the adoption by GNAPs. BellSouth argues that this inference is inconsistent with the testimony of BellSouth's witness Shiroishi, who explained that GNAPs adopted the DeltaCom/BellSouth agreement to circumvent the negotiation process and to obtain reciprocal compensation language different from the standard language proposed by BellSouth.

BellSouth also argues that our decision violates federal law. BellSouth states that we found the language in the agreement is clear and only calls for reciprocal compensation for local traffic. Order at p. 6. Thus, based on this statement, BellSouth believes that it should have prevailed because the FCC has stated that traffic to ISPs is interexchange traffic, not local traffic. BellSouth contends that we deviated from our own prior orders and rendered a legal determination that traffic to ISPs is "local traffic," and as such, is subject to reciprocal compensation. BellSouth argues that this decision is clearly erroneous and should, therefore, be reconsidered.

In addition, BellSouth argues that our decision will have extensive negative consequences because every adopted agreement will have to be interpreted consistent with the original agreement. BellSouth emphasizes that the prehearing officer in this case denied intervention by the original party to the agreement, consistent with Commission policy on the handling of complaints under the Act. Thus, BellSouth contends that we will have to determine the rights of the parties to original agreements, before addressing complaints regarding adopted agreements, and will have

to do so without the benefit of evidence regarding the actions and intent of the original parties. BellSouth argues that this will either violate the ALEC's due process rights, or we will have to reconsider its policy against intervention in complaint proceedings, unless it decides to refrain from rendering decisions on complaints regarding adopted agreements until the underlying agreement has been interpreted.

BellSouth also maintains that this Commission's policy is discriminatory to BellSouth, because BellSouth will never be able to amend any mistakes it may have made in the original agreements, and those mistakes will be carried over to the adopted agreements. ALECs, however, will be able to opt into another agreement if they determine that they have made a bad deal with BellSouth.

Finally, BellSouth argues that we should not feel reassured that "mistakes" will only be perpetuated as long as the original agreement is in effect. BellSouth notes that while we acknowledged, in this case, that the underlying agreement in this case expired last year, in other reciprocal compensation cases, we have, essentially, perpetuated reciprocal compensation provisions beyond the life of the agreement by requiring the parties in arbitrations to "handle the [reciprocal compensation] issue consistent with the prior agreement."[2] Even though the provisions may not be specifically perpetuated in adopted agreements beyond the life of the original agreement, BellSouth argues that we are consistently perpetuating them through the arbitration process.

For all these reasons, BellSouth asks that we reconsider our decision in this case.

B. GNAPs

In its response, GNAPs argues that BellSouth has not met the standard for reconsideration in that it has not identified any mistake of fact or law made by this Commission in rendering its decision in this case. Thus, GNAPs contends that the Motion should be denied.

Specifically, GNAPs argues that our decision was based exclusively on facts in the record of this case. GNAPs contends that BellSouth has not identified any extra-record facts relied

---

[2]Citing Dockets Nos. 990149-TP, 990691-TP and 990750-TP.

upon by the Commission. GNAPs further emphasizes that we clearly identified all of the facts upon which our decision is based and that all such facts are in the record.

GNAPs argues that we concluded that the Agreement does not differentiate between traffic bound for ISPs and "local traffic" and does not contain a mechanism to compensate for traffic to ISPs apart from reciprocal compensation. Therefore, we determined that the language in the agreement was clear in that it provides for reciprocal compensation for all local traffic, including traffic bound for ISPs. GNAPs adds that because we looked only at the plain language of the agreement, there was no need to further examine the subjective intent of the parties.

GNAPs further contends that BellSouth's argument that we relied upon the intent of the parties to the DeltaCom/BellSouth agreement, and therefore, upon extra-record facts, is inaccurate. GNAPs explains that this Commission very clearly stated that it did not need to look to substantive intent in this case. We merely added, as dicta, an explanation that if we did have to look to additional evidence of intent in a case addressing a less clearly worded agreement, then the relevant intent would be the intent of the original parties to the agreement. GNAPs emphasizes that we applied "hornbook law" to conclude that evidence of subjective intent is necessary only when a contract is ambiguous. In this case, however, this Commission found that the contract was not ambiguous, and therefore, we did not look beyond the language in the contract.

GNAPs also maintains that even if we did look to evidence of the intent of the original parties to the DeltaCom/BellSouth agreement, there was some evidence in the record regarding that intent. GNAPs explains that its witness Rooney provided an exhibit at hearing that was the testimony of a relevant DeltaCom employee presented in a dispute regarding this same contract before the Alabama Commission. GNAPs contends that this is direct evidence in this record as to the intent of the original parties to the agreement. GNAPs also notes that BellSouth also presented evidence that BellSouth had developed language to clarify its agreement, but never incorporated the clarification into the DeltaCom/BellSouth agreement. GNAPs believes, therefore, that it is reasonable to infer that BellSouth intended the plain meaning of the original contract language to prevail.

GNAPs also disputes BellSouth's conclusion that we have prejudiced BellSouth in its ongoing dispute with DeltaCom by rendering a decision in this case. GNAPs contends that BellSouth has not been precluded by this decision from making any argument it may see fit to make in the DeltaCom case. Therefore, BellSouth has not demonstrated any error made by this Commission.

GNAPs adds that there is also no basis for us delay ruling until the DeltaCom case has been concluded, because we have already determined that the agreement is clear. Therefore, we should resist any attempts by BellSouth to delay implementation of the agreement terms.

As for BellSouth's reliance upon the prehearing officer's Order Denying Intervention, GNAPs argues that BellSouth has failed to note that the prehearing officer's order was issued three days after the parties had already filed rebuttal testimony in this case. GNAPs contends that regardless of the prehearing officer's decision, BellSouth had already decided not to present detailed evidence of the subjective intent of the parties to the underlying agreement. Therefore, GNAPs argues that BellSouth's contention that we somehow changed the evidentiary standard of this case is without merit. BellSouth simply chose to stick with one strategy for presenting its case, while GNAPs took a "cover the bases" approach. GNAPs maintains that just because BellSouth has now realized that it may have "dropped the ball," does not mean that this Commission made a mistake in rendering its decision, or that BellSouth was somehow denied due process.

GNAPs notes that BellSouth has even attached the affidavit of Jerry Hendrix to its Motion for Reconsideration in an attempt to get us to consider additional testimony in this case. GNAPs contends that this testimony could have been presented at hearing, includes no new facts, and is simply BellSouth's attempt to rectify its own strategic mistakes. GNAPs further argues that in order to reopen the record of a case, there must be a significant change of circumstances not present at the time of the proceedings, or a demonstration that a great public interest will be served.[3] GNAPs argues that BellSouth has failed to demonstrate any basis for reopening the record to admit evidence that could and should have

---

[3]Citing Austin Tupler Trucking, Inc. v. Hawkins, 377 So. 2d 679 (Fla. 1979), and Peoples Gas System v. Mason, 187 So. 2d 335 (Fla. 1966).

been a part of the original proceeding. GNAPs adds that if BellSouth were allowed to admit the evidence, then GNAPs would have to have an opportunity to cross-examine and rebut the testimony, which would lead to a perpetuation of this case, which the doctrine of administrative finality was designed to prevent except in the most extreme circumstances.

GNAPs also disagrees with BellSouth's contention that the prehearing officer's ruling somehow placed a substantive constraint on how this Commission could rule on the merits of this dispute. GNAPs argues that the doctrine of "law of the case" simply holds that the highest jurisdictional decision controls, as opposed to the prehearing officer's decision controlling the decision of this Commission.[4] GNAPs argues that under the "law of the case" doctrine, we could conclude, as a matter of law, that the DeltaCom/BellSouth agreement is unambiguous, based on the decision in this case. GNAPs explains that BellSouth would not be prejudiced in any way, because it has already had an opportunity in this case to contest the clarity of the language in the contract. However, under BellSouth's theory of the "law of the case," GNAPs emphasizes that the prehearing officer's denial of DeltaCom's petition to intervene would be a substantive determination that this Commission could not find that the contract is unambiguous. GNAPs contends that this is clearly not the intent of the prehearing officer's ruling.

In addition, GNAPs argues that we based our decision on the clear language in the agreement and upon fundamental principles of contract interpretation. GNAPs emphasizes that although the Commission took a slightly different approach than that taken by the Commission in previous cases addressing reciprocal compensation provisions, the contract at issue here is a different contract.

GNAPs explains that this Commission's decision is also consistent with federal law. GNAPs contends that every federal court that has considered a state decision finding that reciprocal compensation is due for traffic to ISPs has determined that the

---

[4]Citing Brunner Enterprises v. Department of Revenue, 452 So. 2d 550 (Fla. 1984), and Greene v. Massey, 384 So. 2d 24 (Fla. 1980).

state decision is consistent with federal law.[5] GNAPs further notes that BellSouth lost on this same issue in federal court in Atlanta five days before filing its Motion for Reconsideration with this Commission. GNAPs states that the federal court acknowledged the DC Circuit's recent reversal of the FCC's Reciprocal Compensation Order, and explained that the DC Circuit had vacated the FCC's Order because the FCC had failed to explain why the FCC's end-to-end analysis for determining whether a call to an ISP is local

> . . . is relevant to discerning whether a call to an ISP should fit within the local call model of two collaborating LECs or the long-distance model of a long-distance carrier collaborating with two LECs.

BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Services, Inc., 2000 U.S. Dist. LEXIS 6743 at **10-11 (N.D. Ga. 2000). Thus, GNAPs contends that the DC Circuit determined that the portions of the FCC's Reciprocal Compensation Order upon which BellSouth relies do not really make much sense. As such, GNAPs believes that this Commission's decision is consistent with federal law.

Finally, GNAPs argues that our decision is not discriminatory to BellSouth and will not place BellSouth in a situation in which it can never correct a mistake until the agreement expires. GNAPs emphasizes that BellSouth will only be held to these contracts for as long as the contracts last. GNAPs states that this is no different than any other business that wishes it had made a better deal for itself. GNAPs contends that BellSouth was allowed to freely negotiate the underlying contract in accordance with the provisions of the Act. While Section 252(i) may amplify any mistake BellSouth may have made in those negotiations, that is a part of the process contemplated by Congress and considered by the FCC in its rulemaking to implement the Act. GNAPs points out that the FCC developed Rule 47 C.F.R. §51.809 specifically to address situations in which the LEC has made a deal so detrimental to

---

[5]Citing Southwestern Bell Telephone v. Texas PUC, 208 F.3d 475, 483 (5th Cir. 2000); Illinois BellTel. v. WorldCom, 179 F.3d 566, 572 (7th Cir. 1999); and US West Communications v. MFS Intelenet, 196 F. 3d 1112, 1122-1123 (9th Cir. 1999).

itself that successive CLECs should be prevented from obtaining the same deal through Section 252(i) adoptions.

As for the issue of whether we have erred in other dockets by requiring the parties to continue to operate under the terms of their prior agreements until the FCC renders a final decision on compensation for traffic to ISPs, GNAPs argues that this appears to be an appropriate policy. Nevertheless, GNAPs argues that BellSouth should raise that issue in ongoing arbitration dockets, instead of in this case, because the argument is not a basis for reconsideration in this matter.

For all of these reasons, GNAPs asks that BellSouth's Motion for Reconsideration be denied.

III. DETERMINATION

BellSouth argues that we erred by: 1)considering facts outside the record; 2)straying from the "law of the case," as established by the prehearing officer; 3) departing from prior Commission decisions on this issue; 4) deciding the issue contrary to federal law; and 5) rendering a decision which is discriminatory in its consequences to BellSouth.

1. Consideration of Facts in Evidence

BellSouth contends that simply by indicating which parties' intent is the relevant intent when interpreting an agreement, we somehow considered facts outside the record of this case. BellSouth adds that in doing so, we not only strayed from the record of this case, but rendered a potentially inconsistent decision in that the agreement between ITC^DeltaCom and BellSouth has not yet been interpreted. We disagree. While we did indicate that the intent of the original parties to an agreement is the relevant intent in interpreting an agreement, we also stated that in this particular case, the language is clear as to what that intent was. Therefore, there was no need for us to look to further evidence, such as the actions of the original parties, in order to determine the underlying intent. Instead, we found that the evidence that is in the record of this proceeding, the agreement language, is clear and provides a sufficient basis upon which we determined that the parties intended for the payment of reciprocal compensation to include traffic bound for ISPs. BellSouth has not demonstrated that our decision is inconsistent, much less in error.

As such, BellSouth has failed to identify a basis for reconsideration of our decision.

2. Impact of Prehearing Officer's Decision on Petition to Intervene

BellSouth also contends that when the prehearing officer in this case denied ITC^DeltaCom intervention in this proceeding, that decision precluded us from considering the intent of the underlying parties to the agreement in rendering our final decision. BellSouth argues that it based its presentation of its own case upon the prehearing officer's decision; thus, BellSouth believes it has been denied due process to address the intent of the underlying parties. On this point, we agree with GNAPs. While we did explain at pages 7 and 8 of the Order that we believe that the relevant intent in interpreting an Agreement is the intent of the original parties, not the adopting party, those statements are not the basis for the decision in the case, nor are they responsive to any issues presented for consideration by this Commission. Furthermore, although our statements in our final order are somewhat contrary to the prehearing officer's determination in denying ITC^DeltaCom intervention, the decision to deny intervention did not abrogate BellSouth's right to due process in this case. In fact, the specific issue we were asked to address was:

> Under their Florida Partial Interconnection Agreement, are Global NAPs, Inc. and BellSouth Telecommunications, Inc. required to compensate each other for delivery of traffic to Internet Service Providers (ISPs)? If so, what action, if any, should be taken?

In order to answer this question, we did not find it necessary to analyze evidence as to the subjective intent of the parties, beyond its finding that the plain language of the agreement itself provides the best evidence of what the agreement requires. That is the only finding rendered in our Final Order. Discussion in the Order of the relevant intent when interpreting an adopted agreement is clearly dicta intended to provide all parties with guidance in the future as to how this Commission intends to approach the interpretation of adopted agreements, particularly when the language at issue is not as clear as it is in this case. The prehearing officer's decision did not prevent BellSouth from making any argument that the language is not clear, nor did it

prevent BellSouth from putting on any evidence of the intent of the parties to the underlying agreement.

In denying ITC^DeltaCom intervention, the prehearing officer simply stated that only evidence presented by BellSouth and GNAPs would be considered in this proceeding. The Order Denying Intervention did not, however, preclude either of the parties from presenting evidence of the intent of the original parties, nor did it restrict our ability to resolve the substantive issue in this case. In addition, we emphasize, as has GNAPs, that the Order Denying Intervention to ITC^DeltaCom was issued after BellSouth had already filed its rebuttal testimony. Thus, that decision could not have had any impact on the preparation of BellSouth's case. For these reasons, we do not believe that BellSouth has identified a mistake of fact or law made by this Commission in rendering our decision in this case.

3. Departure from Prior Commission Decisions on this Issue

BellSouth further argues that our decision in this case departs from our prior analysis and decisions regarding reciprocal compensation provisions in interconnection agreements. BellSouth emphasizes that in previous cases, we looked to evidence regarding the actions of the parties at the time they entered into agreements in order to determine the underlying intent. In this case, however, we only looked to the language in the agreement. BellSouth adds that even though we stated that we did not need to look to additional evidence of intent, we still analyzed and commented on matters that went beyond the language in the agreement.

Again, we do not believe that BellSouth's arguments on this point identify anything that this Commission did in this case that was in error. BellSouth has merely pointed out that our decision takes a somewhat different approach than that taken in past Commission decisions on similar issues. We did, however, acknowledge in our Final Order that we were taking a different approach than that taken in past decisions, and explained our basis for doing so. We are not required to follow prior decisions in arbitrating complaints under the Act, particularly when the contract at issue is a different contract than those previously interpreted.

As for the comments in the Order that BellSouth believes demonstrate an analysis of intent, we note that we clearly stated

in our Final Order that the extraneous analysis was not the basis of our decision. As for noting that BellSouth never amended the agreement, even though amendatory language had apparently been developed, this merely indicates that we acknowledged that the language at issue was the language from the original ITC^DeltaCom/BellSouth Agreement. There is no indication in the Order that we drew any inferences regarding intent based upon BellSouth's failure to amend the agreement, negative or otherwise. Even if we did draw some "negative inference," it would not constitute a mistake of fact or law in our decision. Although we had already clearly stated in the Order that our decision was based on the clear language of the Agreement, we were not precluded from "covering all the bases" and further addressing all the arguments presented. As such, BellSouth has not identified any mistake of fact or law made by this Commission in rendering our decision.

4. Decision Not Contrary to Federal Law

BellSouth also contends that our decision is contrary to the FCC's decision that traffic to ISPs is not local traffic. BellSouth contends that our decision clearly determines that traffic to ISPs is local traffic; therefore, it is in error. Staff, however, disagrees. As the FCC specifically acknowledged in its Reciprocal Compensation Order, Order 99-38 at ¶ 26,

> A state commission's decision to impose reciprocal compensation obligations in an arbitration proceeding -- or a subsequent state commission decision that those obligations encompass ISP-bound traffic -- does not conflict with any Commission (FCC) rule regarding ISP-bound traffic.

While the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit or Court) recently vacated the FCC's decision in Order 99-38, the Court specifically stated that it did not reach a decision on the arguments raised by the ILECs regarding the state commissions' jurisdiction to compel payments for traffic to ISPs. Thus, there is still no indication at any level that state commissions are prevented from making their own determinations regarding the appropriate compensation for this traffic. Instead, the DC Circuit stated that it was vacating the FCC's ruling because the FCC had not satisfactorily explained why LECs that terminate calls to ISPs are not viewed

> . . . as 'terminating . . . local telecommunications traffic,' and why such traffic is 'exchange access' rather than 'telephone exchange service'. . . .

Bell Atlantic Telephone Companies v. FCC, 206 F.3d 1, 9 (D.C. Cir. 2000). As GNAPs points out, these same statements taken from the FCC's Order 99-38 and this rationale are the primary basis that BellSouth has relied upon for its arguments that the traffic sent to ISPs should not be considered "terminated" for purposes of reciprocal compensation.

In this case, we determined that the language in the agreement was clear and that the parties intended to include traffic to ISPs within the definition of "local traffic." In reaching this conclusion, we emphasized that there is nothing in the Agreement to indicate that traffic to ISPs should be treated otherwise. Without some indication in the agreement that traffic to ISPs was intended to be treated differently or somehow segregated from "local traffic," although dialed by the customer as a local call, we can find no basis for BellSouth's contention that the definition of "local traffic" is not clear. Certainly, the DC Circuit's ruling impairs, at a minimum, any basis for BellSouth's argument to the contrary. Regardless, BellSouth has not demonstrated that this Commission's decision conflicts with federal law, and as such, it has failed to identify an error of fact or law in our decision. Furthermore, as BellSouth points out in its own motion at page 8, fn. 6, much of this same argument was already presented to and considered by us in our Final Order.

5. Decision Not Discriminatory to BellSouth

As for BellSouth's contentions that our decision is discriminatory and will "amplify the effect on BellSouth of errors in business judgment," we note much of BellSouth's argument goes to procedural difficulties that may arise in future cases. Such argument does not identify an error in this Commission's decision in this case. In fact, in discussions at the Agenda Conference when we considered our staff's post-hearing recommendation in this case, it was pointed out that in future cases, it may be necessary to allow intervention by the original party to the agreement--particularly if the agreement is not clear--if the party that has adopted an agreement files a complaint before an interpretation of that agreement has been rendered for the original parties.

BellSouth also contends that any perceived error in the agreements will be passed on to other ALECs that adopt the agreement. While this is true, it does not identify an error in our decision, although it may be a cautionary point for BellSouth to consider in its future negotiations.

Finally, BellSouth argues that we have been perpetuating these reciprocal compensation terms beyond the life of the agreements in some arbitration cases by telling the companies to continue operating under the terms of their prior agreements until the FCC reaches a decision regarding traffic to ISPs. In referencing our decisions in other cases, BellSouth has not identified an error in the decision in this case. We also note that we have not yet rendered a decision on the pending arbitration case (Docket No. 991220-TP) between these two companies. Thus, the terms of this agreement have not been extended through arbitration. In addition, the decisions referenced by BellSouth were based upon the evidence presented in those particular arbitration cases and upon the state of the law at the time of this Commission's decisions in those cases. Thus, BellSouth has not identified a basis for reconsideration of the decision in this case.

IV. CONCLUSION

Based on the foregoing, BellSouth's Motion for Reconsideration be denied. BellSouth has failed to identify any mistake of fact or law made by this Commission in rendering our decision in this case.

It is therefore

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s Motion for Reconsideration is hereby denied. It is further

ORDERED that Global NAPs, Inc.'s Motion for Extension of Time to Respond to Motion for Reconsideration is granted. It is further

ORDERED that this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st day of August, 2000.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

BK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).

PUBLIC VERSION – CONFIDENTIAL MATERIAL REDACTED

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	
Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida, for review of a decision by The American Arbitration Association in accordance with Attachment 1 Section 11.2(a) of the Interconnection Agreement between GTE Florida Inc. and TCG South Florida	)	Docket No. 030643-TP Filed: September 5, 2003

EXHIBIT M TO

PETITION OF VERIZON FLORIDA, INC.

EXHIBIT NUMBER 1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: An investigation into the state-wide offering of access to the local network for the purpose of providing information services	DOCKET NO. 880423-TP ORDER NO. 21815 ISSUED: 9/5/89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

APPEARANCES: NORMAN H. HORTON, JR., Esquire, Mason, Erwin & Horton, 1020 E. Lafayette St., Suite 202, Tallahassee, Fl. 32301, on behalf of ALLTEL Florida, Inc., Florala Telephone Company, Inc., Gulf Telephone Company, Indiantown Telephone System, Inc., Northeast Florida Telephone Company, Inc., Quincy Telephone Company, St. Joseph Telephone and Telegraph Company, Southland Telephone Company and Vista-United Telecommunications.

LEE L. WILLIS, Esquire, Ausley, McMullen, McGehee, Carothers and Proctor, P. O. Box 391, Tallahassee, Fl. 32302, on behalf of Central Telephone Company of Florida.

THOMAS R. PARKER, Esquire, GTE Florida Incorporated, P. O. Box 110 MC 7, Tampa, FL. 33601-0110, on behalf of GTE Florida, Inc.

J. LLOYD NAULT, Esquire, and LAWRENCE GILL, Esquire, Southern Bell Telephone and Telegraph Company, c/o Frank Meiners, 150 S. Monroe St., Suite 400, Tallahassee, Fl. 32301, on behalf of Southern Bell Telephone and Telegraph Company.

ALAN BERG, Esquire, United Telephone Company of Florida, Box 5000, Altamonte Springs, Fl. 32716-5000, on behalf of United Telephone Company of Florida.

MICHAEL W. TYE, Esquire, 315 S. Calhoun St., Suite 505, Tallahassee, Fl. 32301, on behalf of AT&T Communications of the Southern States, Inc.

RICHARD D. MELSON, Esquire, Hopping, Boyd, Green and Sams, 123 S. Calhoun St., P. O. Box 6526, Tallahassee, Fl. 32314; and, KENRIC E. PORT, Esquire, MCI Telecommunications Corporations, 400 Perimeter Center, N.E., Suite 400, Atlanta, Ga. 30345, on behalf of MCI Telecommunications Corporation.

STEPHEN R. BELL, Esquire, Squire, Sanders & Dempsey, 1201 Pennsylvania Avenue, N.W., P. O. Box 407, Washington, D.C., on behalf of Information Services Providers Alliance.

STUART Z. CHIRON, Telenet Communications Corporation, 12490 Sunrise Valley Dr., Reston, Va. 22096, and JOHN L. WHARTON, Esquire, 100 West Lucerne Circle, Suite 300, Orlando, Fl. 32801, on behalf of Information Service Providers Alliance.

KATHLEEN VILLACORTA, Esquire, and PATRICK WIGGINS, Esquire, Ranson & Wiggins, P. O. Drawer 1657, Tallahassee, Fl. 32302, on behalf of Microtel, Inc.

BRUCE W. RENARD, Esquire and FLOYD R. SELF, Esquire, Messer, Vickers, Caparello, French and Madsen, P. O. Box 1876, Tallahassee, Fl. 32302, on behalf of Telus Communications, Inc. and US Sprint Communications Company.

TODD M. HOEPKER, Esquire, Dempsey & Goldsmith, 605 E. Robinson, Orlando, Fl. 32803, and DOUGLAS METCALF, Communication Consultants, Inc., 1600 E. Amelia St., Orlando, Fl. 32803, on behalf of Florida Ad Hoc Telecommunication Users Committee.

JOSEPH A. MCGLOTHLIN, Esquire, Lawson, McWhirter, Grandoff & Reeves, 522 E. Park Avenue, Suite 200, Tallahassee, Fl. 32301, on behalf of Florida Interexchange Carriers' Association and Florida Cable Television Association

CHARLES BECK, Esquire, Office of the Public Counsel, c/o Florida House of Representatives, The Capitol, Tallahassee, Fl. 32399-1300, on behalf of the Citizens of the State of Florida.

ENNIS L. JACOBS, JR., Esquire, and TRACY HATCH, Esquire, Florida Public Service Commission, 101 E. Gaines St., Tallahassee, Fl. 32399-0863 on behalf of the Commission Staff.

PRENTICE PRUITT, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Fl. 32399-0862, on behalf of the Commissioners.

PARTIES

LOCAL EXCHANGE COMPANIES (LECs)

ALLTEL Florida, Inc. (ALLTEL)
Central Telephone Company of Florida (Centel)
Florala Telephone Company, Inc. (Florala)
Gulf Telephone Company (Gulf)
GTE Florida, Inc. (GTEFL)
Indiantown Telephone System, Inc. (Indiantown)
Northeast Florida Telephone Company, Inc. (Northeast)
Quincy Telephone Company (Quincy)
St. Joseph Telephone and Telegraph Company (St. Joseph)
Southern Bell Telephone and Telegraph Company (Southern Bell)
Southland Telephone Company (Southland)
United Telephone Company of Florida (United)
Vista-United Telecommunications (Vista)

INTEREXCHANGE CARRIERS (IXCs)

AT&T Communications of the Southern States, Inc. (ATT-C)
MCI Telecommunications Corporation (MCI)
Microtel, Inc. (Microtel)
Telus Communications, Inc. (Telus)
US Sprint Communications Company (Sprint)

OTHERS

Information Services Providers Alliance (ISPA)
Florida Ad Hoc Telecommunication Users Committee (Ad Hoc)
Florida Interexchange Carriers' Association (FIXCA)
Florida Cable Television Association (FCTA)
Office of Public Counsel (Public Counsel)

TABLE OF CONTENTS

I. Background..... 6

II. Introduction and Summary of Decisions 8

III. Stipulations 9

IV. Lack of Definition of Information Services 9

V. Jurisdiction Over Information Services 12

A. Federal versus State Jurisdiction over Information Services 12

B. Jurisdiction Over LEC Provided Information Services 15

C. Access to Local Network 16

D. Jurisdiction of NonLEC Information Service Providers 17

VI. LEC Provided Access Arrangements 18
A. Initiation of New Services 19
B. Unbundling of Access Connections, Features and Services 20
C. Jurisdictional Nature of Intrastate Access . 23
D. Guidelines For Rate Level and Rate Structure 27
1. No Discrimination Between LEC and NonLEC ISPs 31
2. No Cross-Subsidization by LEC Regulated Operations of Nonregulated Operations .. 32
3. Minimize Impact to Existing ISPs Who Subscribe to LEC Services 33
VII. Use and User Restrictions 34
VIII. Customer Proprietary Network Information 37
A. Definition of CPNI 37
B. CPNI Restrictions 38
IX. Collocation 40
A. Physical Collocation 41
B. Virtual Collocation 44
C. Virtual Central Office 45
X. Regulation of LEC Provided Information Services . 45

ORDER

BY THE COMMISSION:

I. BACKGROUND

This proceeding is a generic investigation by the Florida Public Service Commission into a vast array of services that use the telecommunications system to transmit information or, that enhance, modify, or redirect transmissions in ways not directly related to telephonic transmission. These services take various forms including telephone answering services, data base retrieval, value-added networks and other services oriented towards the storage manipulation and transmittal of information - either voice or data. These services, generally referred to as "information services", are valuable to consumers because of the content of the transmission or because of the manner in which transmissions are modified. Our investigation also encompasses the policies and practices of the local exchange companies (LECs) in allowing both affiliated and nonaffiliated business entities access to the local network for the delivery of information services to the consuming public.

Our investigation must be viewed against a broader background of federal actions affecting information services. Foremost are the Computer Industry (CI) proceedings at the Federal Communications Commission (FCC). In the Second Computer Inquiry, 77 FCC 2d 384 (1979) (CI II), aff'd. sub nom, Computers and Communications Industry Associated v. F.C.C., 693 F.2d 198 (D.C. Cir. 1982), cert. den., Louisiana P.S.C. vs. United States, 461 U.S. 938 (1983), the FCC found that "enhanced services", as they could be identified by its definition in 47 C.F.R. Section 64.702(a), were not included within the rubric of "common carriage" regulated under the Communications Act of 1934, and, therefore, should not be regulated by the FCC. In order to avoid frustration of this federal policy, the FCC deemed it necessary to preempt state regulation of such services. A crucial element of this decision was the absence of any guidelines by which this definition would be applied to existing and new services. When combined with the extremely fast pace of technological advancements in both hardware and hardwaie intelligence, and the ambiguity of the existing definition, this decision allowed

the FCC to assert virtually open-ended jurisdiction to restrict state authority over improvements to existing information services and over all new information services.

The FCC initially chose to allow the Bell Operating Companies (BOCs) to offer these enhanced services only through separate subsidiaries, commonly referred to as the structural separation requirement. This scheme of regulation of enhanced services drastically changed with the FCC's decision in the Third Computer Inquiry, 104 FCC 2d 958 (1986) (CI III). In this proceeding, the BOCs were allowed to offer enhanced services on an integrated basis with the imposition of certain nonstructural safeguards. These nonstructural safeguards consist of the network disclosure mandates of the Open Network Architecture (ONA)/Comparably Efficient Interconnection (CEI) process, and the accounting separations process in the federal "Part X" procedures.

It is important to note that CI III is currently on appeal in the U.S. Ninth Circuit Court of Appeals. See People of the State of California, et. al., v. FCC, Cases Nos. 87-7230 and 88-7138. The most crucial issue on appeal is the FCC's continued preemption of all state regulation of "enhanced services." An affirmance of the FCC's preemption would drastically narrow the scope of this Commission's involvement in the development and spread of information services.

The participation of Southern Bell, the largest LEC in Florida, in the information services market is controlled by federal antitrust litigation. Federal District Judge Harold Greene has approved the Modified Final Judgment (MFJ) in U.S. v. AT&T, 552 F.Supp 131 (D.D.C. 1982), aff'd sub nom. Maryland v. U.S., 460 U.S. 1001, 75 L.Ed.2d 472 (1983), that prohibits BOC provision of "information services", as defined in those proceedings. Subsequent orders have conditionally allowed the BOCs to provide specific information services. The District Court's authorization is required for all information services offered by Southern Bell in Florida.

Several services proposed by Southern Bell may be affected by the decision in this proceeding. In Docket No. 870766-TL, Southern Bell proposed to offer a packet switching service that included a protocol conversion component. By Order No. 20828, the Commission determined that packet switching and certain aspects of protocol conversion should be offered on a regulated

basis. By Order No. 21447, our decision in the Packet Switching docket has been stayed pending resolution of the jurisdictional question in CI III appeal. In Docket No. 881323-TL, Southern Bell filed a proposal to offer a two-way measured access line for information services providers only, and to offer a package of special call features that are crucial to the provisioning of information services. The two-way measured service is a specialized form of access for information service providers. This two-way measured service tariff is now available on an experimental basis in Southern Bell's West Palm Beach exchange.

Industry workshops were held on April 13, 1988, and on May 23, 1988, to gather input on the existing market and legal environments. This input indicated that a full evidentiary hearing was necessary to deal with the complex issues surrounding this subject. A formal workshop was held on July 25, 1988, to identify the issues to be litigated.

A hearing was held on February 16 and 17, 1989. Our decision is set forth below.

II. INTRODUCTION

We must state from the outset that our desire is to bring information services to the people of Florida in a rapid and efficient manner. We hope to facilitate this by encouraging more entities to provide information services, particularly the LECs, and by having more technologically advanced LEC central office and network features available to those providing information services. Accordingly, as discussed in greater detail below, we have reached certain basic conclusions that we hope will guide the orderly and efficient introduction and evolution of the provision of information services.

We believe that our decisions will place the information services industry in the best position to offer the most services to the most people in Florida. We see this as an evolving process, and envision further proceedings to refine the decisions made in this proceeding. We do not believe that a phase II proceeding should be scheduled at this time, but rather prefer an ongoing series of workshops, with hearings as needed, much as we approached the evolution of our access charge docket.

III. STI

Att
stipulatio
uniform te
Arrangemer

Pu
methodolo
prices fo
service t
any custo
is availa
offered i
to the
impractic
offer the
be requi
reply to,
for not o

Th
for intr
Commissi
discrimi
determin
under wh
addition
the ter
elements
by the I
LECs to
allow th
companie
we find

IV. I

the la
"inform
fact t
service
We noti
stages.

III. STIPULATION

Attached to this Order, as Appendix I, is a signed stipulation of the parties to this proceeding providing for uniform terms, conditions and rate structures for Basic Service Arrangements (BSAs) and Basic Service Elements (BSEs).

Pursuant to the stipulation, similar costing methodologies are to be used by the companies when setting prices for services. The stipulation also provides for each service to be offered under the same terms and conditions to any customer throughout the state, providing that the service is available in the customer's area. When a BSE or BSA is offered in Florida, it should be offered on a statewide basis to the extent feasible. Some companies will find it impractical because of market/demand or cost constraints to offer the service. In these instances the company should not be required to offer the element. The company must, however, reply to all applicants for that service citing the reasoning for not offering the particular BSA or BSE.

The stipulation appears to provide a workable framework for introducing new BSAs and BSEs. Parties may come to the Commission if they feel that they are the subject of discrimination. The Commission retains the final authority in determining whether a particular service should be offered and under what circumstances it should be made available. In addition, a statewide method for determining rates as well as the terms and conditions under which information service elements will be offered may alleviate potential discrimination by the LECs when introducing new BSAs and BSEs. Allowing the LECs to use their own costs when pricing these services will allow them to achieve contribution levels similar to the other companies in the state offering the same service. Accordingly, we find it appropriate to approve the stipulation.

IV. LACK OF DEFINITION OF INFORMATION SERVICES

The most troublesome facet of this proceeding has been the lack of a precise definition of the phenomenon labeled "information services." This is understandable in view of the fact that the few services being labeled as "information services" have only recently come into widespread existence. We note that this phenomenon is in its initial evolutionary stages.

The "information service" label was engendered by us deliberately to foster a fresh examination of the nature of the types of services being provided and to avoid the debate that currently rages over the FCC's enhanced service versus basic services dichotomy. It is difficult to conduct fruitful discussion about alternative ways to treat intrastate enhanced type services when several of the parties maintained that enhanced services were beyond our jurisdiction and, hence, beyond any Commission consideration. Our desire to avoid the enhanced services debate stems from our desire to free our investigation from the historical and legal baggage that follows in the wake of the "enhanced service" label. We must also point out that we disagree with the purpose for which the FCC perpetuates the enhanced versus basic dichotomy: the preemption of any state regulation of the enhanced services. Our analysis of the jurisdictional debate is set forth in Section V. below.

Most of the parties took the position that the FCC's definition of enhanced services was suitable as a definition of information services. The FCC defines enhanced services as follows:

> Those services offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information; or provide the subscriber additional, different or restructured information; or involve subscriber interaction with stored information.

Southern Bell's Witness Lombardo testified that this is the appropriate definition. Southern Bell's Witness Boltz added that this definition was appropriate because the FCC's definition of enhanced services has been used in the industry for almost nine years. He argued that, since the industry has been working with this definition for the past 25 years, consistency with this definition will aid an evolving understanding of what enhanced service entails.

Ad Hoc's Witness Mayne provided some enlightenment by breaking the FCC's definition into two parts, enhanced transport and information services. He argues that enhanced

transport refers
facilities used in
act on format, con
the subscriber's
following items i
protocol conversi
routing, and the
of the Internal
Interconnection R
defined by the
reference model o
commonly used by
indicates that t
additional, diff
interaction with

Witness
simplification o
narrow in scope
packet switchin
services. He
provides these
Glassburn testif
are intended o
should be consi
Griffin was ask
and testified
conversion, he

Sprint's
details of a
questions for c

1. Coul
func
com

2. Is
res
non

3. Is
re
si

transport refers to services offered over common carrier facilities used in interstate or intrastate communications that act on format, content, code or protocol or similar aspects of the subscriber's transmitted information. He includes the following items in his interpretation of enhanced transport: protocol conversion, packet switching, selective alternative routing, and the ability to implement layers one through four of the International Standards Organization/Open Systems Interconnection Reference Layer (ISO/OSI) standards model as defined by the National Bureau of Standards. This is a reference model of the layers of the telecommunications network commonly used by the industry. For information service, he indicates that these services refer to actions that provide additional, different or derived information or involve user interaction with stored information.

Witness Boltz disagreed with Witness Mayne's simplification of the F.C.C. definition. He believes it is too narrow in scope and inappropriately includes two services, packet switching and alternative routing, as information services. He also testified that Southern Bell currently provides these services under tariff. GTEFL's Witness Glassburn testified that the type of computer applications that are intended only for completing calls through the network should be considered noninformation services. United's Witness Griffin was asked for his interpretation of enhanced transport and testified that as to the various levels of protocol conversion, he was unsure as to how they should be classified.

Sprint's Witness Seivers did not testify as to the details of a definition, however, he raised the following questions for consideration in conjunction with an ONA offering:

1. Could the proposed unbundling of network functionalities retard the development of or competition in enhanced service markets?

2. Is there any danger that the offering will result in discrimination between BOC and non-BOC enhanced service providers?

3. Is there any danger that the offering will result in discrimination between users of similar services?

A review of the record in this proceeding fails to provide an adequate regulatory definition of "information services." We do not believe that the FCC enhanced services definition provides any enlightenment. It was created to describe a situation that is different from what we now see before us. Despite the lack of a definition in this proceeding we will examine each of the services that are being offered and new services that are introduced. We anticipate that this continuing review will, over time, generate an operational definition that will aid us in setting the proper course for the introduction and dissemination of information services to the public.

V. JURISDICTION OVER INFORMATION SERVICES

A. Federal versus State Jurisdiction over Information Services

No discussion of our treatment of information services would be complete without also considering the current federal law on the subject. Many parties argue that Commission jurisdiction in this area, where it contradicts the mandates of the FCC's Computer Inquiry proceedings, has been preempted by the FCC. This question will be addressed by the pending decision of the U.S. Court of Appeals, Ninth Circuit in People of the State of California, et. al., v. FCC, Case Nos. 87-7230, et. al., and 88-7183. However, it is important to note that the preemption issue here does not involve an express conflict of state and federal law, in which instance federal law would likely prevail. The Communications Act of 1934, Title 47 § 151, et. seq. (the Act), clearly allows concurrent state and federal authority in this area. Where Congress has created concurrent power, it is well settled that a valid exercise of state law is superseded by federal action only if there is a conflict so direct and positive that the state and federal provisions cannot be reconciled or consistently stand together, Kelly v. Washington, 58 S.Ct. 87, 82 L.Ed.3 (1937), Askew v. American Waterways Operators, 93 S.Ct. 1590, 36 L.Ed.2d 280, reh. den. 93 S.Ct. 2746 (1973). With regard to information/enhanced services, the issue is whether the Act's grant of federal power may be read so broadly as to create a conflict between existing and previously consistent state and federal provisions.

The rele
47 U.S.C.S. S
and definitivel
authority to
and rates. See
106 S.Ct. 189
depreciation
communications
traffic would
California, et
The Supreme Co
the Computer
authority for
Court is bou
Louisiana. Ar
view of its au

Souther
suggested by t
and Order in
Communication
958 (1986) (
Recon.), 2 FC
its determi
"non-common c
Section 2(b),
same, CI III
by broad int
National Assn
(D.C. Cir. 1
Commissioners
II). CI III
support the F
of non-commo
states. Clos
in NARUC I
carrier's, i
carrier serv
since the pa
647. In its
clearly appl

The relevant statute is Section 2(b) of the Act, Title 47 U.S.C.S. § 152(b), which the U.S. Supreme Court has clearly and definitively construed as denying the FCC jurisdiction or authority to regulate intrastate telecommunications services and rates. See Louisiana Public Service Commission v. F.C.C., 106 S.Ct. 1890, 90 L.Ed.2d 369 (1986) (FCC preemption of depreciation guidelines for facilities used in intrastate communications is expressly prohibited, even though mixed traffic would be carried). See also People of the State of California, et. al., v. FCC, 798 F.2d 1515 (D.C. Cir. 1986). The Supreme Court's legal precedent, which was decided after the Computer Inquiries, and the federal statute are clear authority for this Commission. Moreover, the Ninth Circuit Court is bound by the U.S. Supreme Court's holding in Louisiana. Any interpretation upholding the FCC's expansive view of its authority must provide sound legal distinctions.

Southern Bell proposes two such distinctions that were suggested by the FCC in its reconsideration of the Final Report and Order in Amendment of Section 64.702 of the [Federal Communication] Commission's Rules and Regulations, 104 FCC.2d 958 (1986) (CI III), recon., 2 FCC Rcd 3035 (1987) (CI III Recon.), 2 FCC Rcd 3072 (1987). First, the FCC contended that its determination of information/enhanced services as "non-common carrier" services places those services outside of Section 2(b), thereby nullifying Louisiana's authority as to same, CI III Recon., ¶ 177-180. This conclusion is supported by broad interpretations of the so-called NARUC decisions, National Assn. of Regulatory Commissioners v. FCC, 525 F.2d 630 (D.C. Cir. 1975) (NARUC I), and National Assn. of Regulatory Commissioners v. FCC, 533 F.2d 601 (D.C. Cir. 1976) (NARUC II). CI III Recon., ¶ 178. Those decisions, however, cannot support the FCC's proposed authority to extend its deregulation of non-common carrier (i.e. information) services to the states. Close reading of the decisions reveals that the Court in NARUC I did not reach the issue of whether a common carrier's, i.e. telephone company's, provision of non-common carrier services may be preemptively deregulated by the FCC, since the parties there were not common carriers, 525 F.2d at 647. In its NARUC II opinion, where it held that Section 2(b) clearly applies to intrastate common carrier services provided

by a common carrier, the Court responded to a similarly broad interpretation by the FCC of its authority by stating:

> ...we hasten to add that [the FCC's preemption authority] is not a license to construe statutory language in any manner whatever, to conjure up powers with no clear antecedents in statute or judicial construction, nor to ignore explicit statutory limitations on [FCC] authority.
>
> 533 F.2d at 618.

For purposes of these proceedings, the Supreme Court's ruling in Louisiana clearly states that Section 2(b) denied the FCC jurisdiction to affect the intrastate communications at issue there. The FCC's removal of information/enhanced services from its jurisdiction through declaration that such services are not "common carrier" services cannot carry ancillary authority to circumvent the Congressional intent found in Section 2(b), and preemptively deregulate information services. There is little logic to the premise that the FCC has more control over things outside of its jurisdiction than it has over things within its jurisdiction.

The FCC's second distinction springs from the U.S. Supreme Court's recognition in Louisiana of an exception to Section 2(b). The Court held it inapplicable where the separation of components of services between interstate and intrastate is a practical impossibility, 90 L.Ed.2d at 386, FN 4. This is a valid distinction. However, it is not authority to preemptively deregulate all information/enhanced services. Many of these services have clear demarcations as to interstate and intrastate components. Thus, this Commission could define and regulate the intrastate components. Moreover, as the Court in Louisiana pointed out, the separations procedures set out in the Act serve as the prescribed method for allocating jurisdictional responsibilities where joint regulation is warranted. See 90 L.Ed.2d at 386.

Thus, even assuming an opinion favorable to the FCC from the Ninth Circuit, in the face of Louisiana, the preemption allowed could apply only to information services and facilities for which the interstate and intrastate components are inextricably bound. All other services must be separated by jurisdiction.

Absent conclusive legal precedent that FCC authority as to non-common carrier services is broader and inconsistent with its authority over common carrier services and, following binding authority that a LEC's provisioning of intrastate common carrier services is most clearly subject to Section 2(b), we find that this Commission's regulation of LEC-provided intrastate information services, regardless of whether such services are declared to be non-common carrier under the Act, is not prohibited by federal law.

We again reiterate the caveat that the final determination of the state/federal jurisdiction question currently resides in the federal appellate process. We recognize that our decisions herein are subject to modification based on the results of the Ninth Circuit Appeal.

B. Jurisdiction Over LEC-Provided Information Services

Ownership or management of "telephone line[s]... affording telephonic communication service for hire" are at the core of a telephone company's existence, especially considering the broad definition of "telephone line" in Section 364.02(5). Section 364.01, Florida Statutes, leaves little question that the Legislature intended this Commission to have full and exclusive jurisdiction over the LEC's operations within the State of Florida.

The issue then is whether the Commission holds jurisdiction over competitive or non-monopoly services, such as information services, when provided by LECs. Section 364.02(3) conveys the Legislature's intent that the Commission's jurisdiction extend to all services associated with a telephone company-provided telephone line. Section 364.03(1) covers "all rates, tolls, contracts, and charges of...telephone companies for messages, conversations, services rendered, and equipment and facilities supplied", without exclusion. The Commission, in the exercise of its discretion, has generally focused on such elements as they relate to switching and transport because

this most squarely meets the definition of "telephonic communication". Reading the statutes above in pari materia, we find that any telephone company information service provided as a direct derivative of telephonic switching and transport is subject to Commission jurisdiction. This appears to cover gateways, enhanced transport type services and, since LEC voice messaging services are generally collocated in the central office processor, all elements of voice messaging. We note here that the lack of an adequate definition of information services hinders a more detailed description of the scope of our information service jurisdiction. We have stated our basic jurisdiction above in the broadest terms to facilitate our further examination of specific LEC provided information services. As we examine such services, we will be able to further refine the scope of our jurisdiction.

Since it appears that the Commission's broad grant of authority under Sections 364.01 and 364.02 includes the provisioning of information services by the LECs, it does not appear that statutory changes are needed regarding the scope of the Commission's jurisdiction. However, it should be noted that the LECs' information service offerings would be subject to the same regulatory standards and conditions as other regulated services.

C. Access to Local Network

In the context of these proceedings "access" entails the lines and accompanying facilities and features that deliver information services, to the local network. Most of the parties agree that access is subject to the regulatory control of the Commission in similar fashion as access for interexchange companies is regulated.

Pursuant to our statutory authority discussed in Section V. B above, there does not appear to be any question that these services and facilities are subject to this Commission's jurisdiction. See also In the Matter of Filing and Review of Open Network Architecture Plans, Memorandum Opinion and Order, FCC Docket No. 88-2 (December 22, 1988), ¶ 309. However, there appears to be a question raised by the FCC as to whether it may concurrently regulate local basic services for the provisioning of interstate information/enhanced services, ONA Order ¶ 276-277. The analysis above regarding preemption is adopted here as to the Commission's authority to regulate the level of

basic local
Providers. U
elements neces
within this Co

D. Jur

Having
must also co
nonLECs may b
is clear in i
or managing a
in the cond
communication
telephone com

Inform
services that
discussed abo
which would f
there appears
the first ca
providers tha
deliver to t
transport. T
the data is
this data for
enhanced tra
value-added
and intraLA
switching fa
them for e
variety of n
information
group are
utilize the
to provide
voice trans
messaging ar

From
the telephon
lines, switc
used to aff
State of Fl

basic local service provided to Information Services Providers. Upon consideration, we find that local service elements necessary to the provision of information services are within this Commission's jurisdiction.

D. Jurisdiction of NonLEC Information Service Providers

Having examined LEC-provided information service, we must also consider whether information services provided by nonLECs may be subject to our jurisdiction. Section 364.02(4) is clear in its terms. If an entity is "...owning, operating, or managing any telephone line or part of a telephone line used in the conduct of the business of affording telephonic communication service for hire within this state", then it is a telephone company subject to our jurisdiction.

Information service providers span a wide spectrum of services that are provisioned in an equally diverse manner. As discussed above, we have not developed an adequate definition which would fully describe all members of the market. However, there appears to be three general categories of services. In the first category are the data base owners or pure content providers that simply own a store of facts which they then deliver to the general public via some form of information transport. These ISPs typically own only a computer on which the data is stored and perhaps facilities to telecommunicate this data for their own internal uses. The second group is the enhanced transport provider. These companies, also called value-added networks (VANs), establish networks of interLATA and intraLATA lines, data communication facilities and switching facilities. VANs collect communications, transition them for electronic transmission, transport them using a variety of networks but primarily their own, and deliver the information to other nonaffiliated recipients. In the third group are specialty services providers. These companies utilize the special processing features of telephone facilities to provide services different from and supplemental to basic voice transmission. Security alarm monitoring and voice messaging are two examples of this category.

From our preliminary review, VANs appear to fall within the telephone company definition. They own, operate and manage lines, switching facilities, and data communication facilities used to afford telephonic communications for hire within the State of Florida. Pure content providers, such as the vast

list of data base owners under contract to the VANs, do not appear to own, operate or manage facilities meeting this same criteria. The specialty services providers own facilities that operate tangentially to the network.

In each case, there appears at least the possibility that the information service provider may be a telephone company subject to our jurisdiction. To the extent any of these entities meet the test of Section 364.02, then it is subject to our jurisdiction. The final decision in each case must await a detailed examination of the specific services and functions performed by a particular ISP. As with the jurisdictional decision, the certification requirements, whether switched access charges will apply and the level of regulatory oversight is also left to a case-by-case determination.

The parties raised the same preemption arguments with respect to Commission regulation of non-LEC ISPs as to LEC-provision of information services. We again note that in our analysis this Commission is not prohibited from regulating intrastate information services by federal law.

VI. LEC-Provided Access Arrangements

In the course of this proceeding, we examined the manner in which ISPs currently receive access to the LEC's network. In addition, we also examined how additional LEC services and features should be provided by the LECs as technology advances and the demand for such services and features increases.

The record reveals no unique forms of access currently utilized by ISPs. Typically, ISPs use basic 2- or 4-wire local loops in the form of single flat rate business lines (1FBs), single measured rate business lines (1MBs), PBX trunks and feature group access. In addition, ISPs may also obtain access in the form of 900 service, special access, voice grade and digital private lines and FX service. All of these services are available from current LEC tariffs.

ISPs may also require any one or a combination of various central office software features in order to provide service to their customers. These features, referred to as Basic Service Elements (BSEs), include touch-tone, various

types of call
features associa
switching, and ne
In addition, some
such as diagn
information (CPN
ISP's requiremen
complexity of i
required or des
implemented.

A. Initia

The parti
principal initiat
form these new s
Ad Hoc stated th
of access, BSEs
argues that the
ensure that LECs
Most of the part
access configura
ISPA voiced a
additional servi
LATA-wide acces
offerings, deliv
ISDN, and impr
Also, some ISPs
collection servi

For new s
ONA plan, which
BSEs that Bell i
requested by IS
criteria set f
advanced by Sou
a requested BSE

Upon cons
an ISP request
tariffs to pro
technically and
out of a reque
resolution. Th
service absent

types of call forwarding, call waiting, as well as many features associated with the transport of data, packet switching, and network interfacing (e.g. protocol conversion). In addition, some ISPs desire access to internal LEC systems such as diagnostics and customer proprietary network information (CPNI) to facilitate their own operations. An ISP's requirements will depend on the type, scope and complexity of information provided. New features will be required or desired as the technology is developed and implemented.

A. Initiation of New Services

The parties took diverse approaches as to whom the principal initiator of new services should be and as to the form these new services should take. United, MCI, Microtel and Ad Hoc stated that the marketplace should determine the types of access, BSEs and other services required. MCI further argues that the Commission should set forth guidelines to ensure that LECs will be responsive to the requests of ISPs. Most of the parties were satisfied that the current technical access configurations were suitable and need not be altered. ISPA voiced a desire on behalf of ISPs to have several additional services including calling number identification, LATA-wide access numbers, access to derive data channel offerings, delivery of "D" channel data on the "B" channels of ISDN, and improved maintenance and diagnostic capability. Also, some ISPs apparently desire LEC-provided billing and collection services.

For new services, Southern Bell referred to its federal ONA plan, which sets forth the types of access, services and BSEs that Bell is willing to offer. Additional service options requested by ISPs would be provided subject to the screening criteria set forth in its ONA plan. One such criterion advanced by Southern Bell is an evaluation of the "utility" of a requested BSE to the ISP.

Upon consideration, we find that, as a general policy if an ISP requests a particular service, the LEC should file tariffs to provide the requested service if the service is technically and economically feasible. Any disputes arising out of a request for a service shall be brought to us for resolution. This does not preclude a LEC from introducing a service absent an ISP request if it desires.

B. Unbundling of Access Connections, Features and Services

Unbundling in the context of these proceedings describes the degree to which access connections, features, and other services should be offered and specifically to what extent should offerings be provided on a stand-alone basis. The issue before us is the extent to which services should be unbundled and who should make that decision.

Centel argues that the unbundling decision should be made on a case-by-case basis. Southern Bell and United allow that ISPs should have input but that the decision should ultimately be made by the LECs. Microtel, MCI, Telus and Sprint argue that the ISPs should determine the degree of unbundling. However, the latter two temper their positions with consideration of market demand and technical feasibility. Prodigy in particular stated that the ONA model adopted by the FCC does not incorporate sufficient unbundling. MCI also stated that existing tariffs such as Southern Bell's ESSX, which offers a large number of central office-based features and functions, should be unbundled, and the services features offered currently only to ESSX subscribers should be made generally available.

All parties, LECs included, advocated policies of nondiscrimination. The nonLEC parties expressed a deep concern that the LECs, particularly Southern Bell, have the incentive to utilize their position as the providers of monopoly services such as basic access and the network functions associated with that access to manipulate the market to the advantage of their own ISPs. As an example, MCI argues that, if a LEC has the ability to provide a certain feature or function but withholds making it available until its own ISP can utilize it, the LEC can prevent other ISPs from gaining a competitive advantage which they otherwise might be able to achieve were they not dependant upon the LEC to obtain the network functionality. Another example cited is the pricing and cross-subsidization of basic access. A LEC may be able to price other ISPs "out of the market" by setting usage rates at such a level that ISPs cannot absorb or pass through those costs to their clients. The LEC ISP may then be able to undercut the prices of ISPs if the parent corporation can make up the losses from its regulated operations. If this occurs, it would aid the LEC ISP to gain market share as other ISPs dropped out.

ISPs
through sel
provide acce
office than
apparent tha
most do not
security co
lower costs
sort of pri
Bell is the
opposed to

As
appear ne
interconnec
exchange a
made availa
telephone
operations
Network Ar
radical ch
providers
informatio
present, w
access tar

In
on unbund
respect to
any justif
local loop
wire.

Wit
requested
willing t
Services
made such
encourage
we find i
to offer
later tha
order or
disposing
are file

ISPs also argue that the LEC can manipulate the market through selective collocation since it is less costly to provide access to an ISP that is located within the LEC central office than to one located outside the central office. It is apparent that the LECs will collocate their own ISPs. However, most do not want to allow any other ISPs to collocate, citing security considerations. The ISPs argue that this results in lower costs to the LEC ISP relative to nonLEC ISPs unless some sort of pricing parity is established for access. Southern Bell is the only LEC participating in these proceedings who is opposed to any form of collocation or virtual collocation.

As will be discussed more fully below, it does not appear necessary to make major changes to current interconnection arrangements. Therefore, current local exchange and access tariffed offerings should continue to be made available to ISPs for interconnection. Many ISPs, such as telephone answering services, are small, very localized operations that have been in service since long before Open Network Architecture came to exist. We are concerned that radical changes to the costs of doing business for these providers may reduce rather than expand the availability of information services to Florida consumers. Therefore, for the present, we find it appropriate that current local exchange and access tariffed offerings continue to be offered to ISPs.

In these proceedings, the focus of the parties centered on unbundling BSEs from access arrangements or BSAs. With respect to the basic access line, there does not appear to be any justification for further unbundling the components of the local loop, such as the central office functions and the hard wire.

With respect to features and network functions and other requested ONA offerings, Southern Bell has indicated that it is willing to offer approximately 40 BSEs, Complementary Network Services (CNS), and/or ancillary services. No other LEC has made such a proposal. In accordance with our desire to encourage the introduction and spread of information services, we find it appropriate to require Southern Bell to file tariffs to offer these ONA offerings. These tariffs should be filed no later than sixty (60) days after the issuance of this final order or thirty (30) days after the issuance of an order disposing of motions for reconsideration of this order, if any are filed. Southern Bell's features should be offered

individually, with no restrictions on which persons may subscribe to them, nor should they be tied to, or contingent on taking service under any other tariffs in order to obtain these features or functions unless technically necessary. If they are already offered under tariff elsewhere, they may be cross-referenced. However, rates should not be different from any that have already been approved in other filings. The Miscellaneous Service Arrangements section of the tariff may be the most appropriate location; however, we find that LECs should be allowed to use their discretion as to tariff location. In addition, we also find that the unbundling conditions we have discussed above shall apply to all LEC ONA-like services when offered. With respect to ISP requests for new offerings, every affected LEC should respond to such requests as soon as practicable by filing appropriate tariffs, but in any event no later than when similar responses are provided at the interstate level.

In order to monitor the effects of our actions, we find it appropriate to require all LECs to file quarterly reports, no later than thirty (30) days following the end of each quarter, containing the following information:

1. Identification of all requests for a particular service by ISPs and the dates of such requests;

2. The number of ISPs or others requesting each item;

3. LEC's planned response date for each request;

4. LEC's planned tariff filing and implementation dates for each request;

5. Explanation/description of the item requested; and,

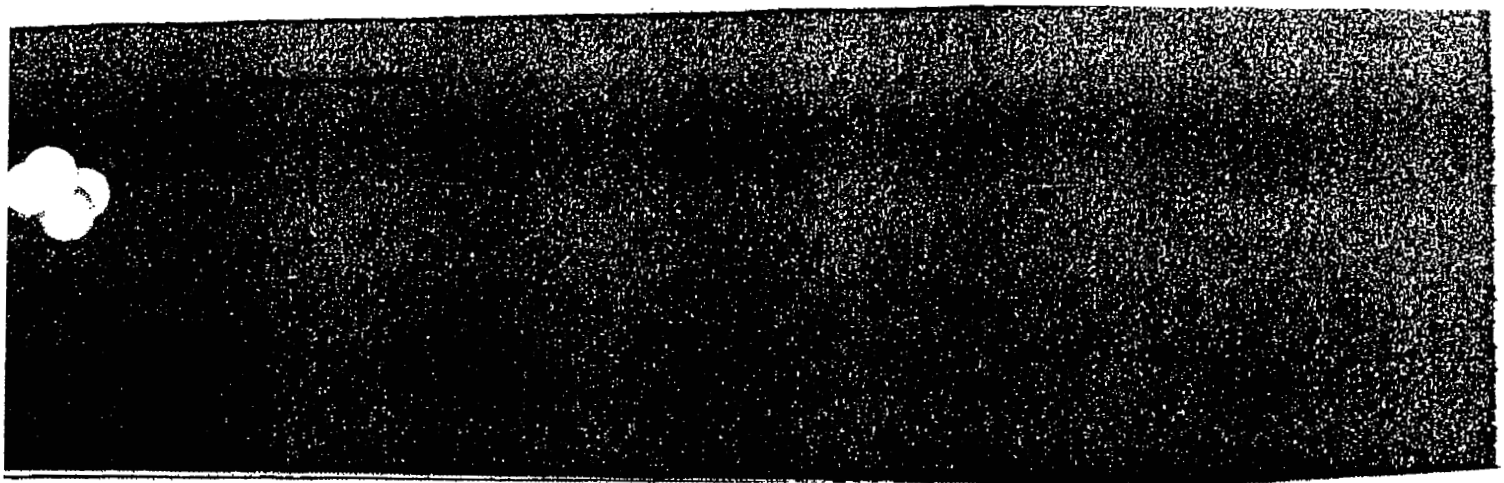
6. If unable or unwilling to provide an item, a full explanation of the reason.

These reports will help us monitor the geographic and technical development of the ISP market in Florida and the competitive behavior of the LECs and ISPs. The reports will also be useful tools that will aid our analysis of future LEC CEI filings.

C. Jurisdictional Nature of Intrastate Access

Historically, the nature of access of a service, intrastate or interstate, determines the jurisdiction in which a service is offered and, hence from which jurisdictional tariff a service may be purchased. Each jurisdiction in turn determines the terms and conditions under which a particular service should be provided and, where appropriate, approves the appropriate rates and rate structure for that service. In the context of this proceeding, any jurisdictional limitations will also limit the scope of this Commission's authority to regulate BSAs and BSEs provided by the LECs for the provision of information services. There are still many unanswered questions and some dubious answers concerning information services. For example, the FCC in its December 22, 1988 ONA Memorandum Opinion and Order required that the BOCs file BSAs and BSEs in both state and federal tariffs. This dual jurisdictional tariffing requirement raised a number of questions as to how the jurisdiction of a BSA or BSE will be determined. In part, some confusion over jurisdiction stems from the fact the Computer III decisions are still pending at the Ninth Circuit Court of Appeals and at the FCC. Despite the confusion, we attempt herein to provide a working solution to the jurisdictional questions.

Traditionally, intrastate access is defined as access provided by the LEC in association with a call which originates and terminates within the same state. In general, most parties subscribe to this definition. However, there were a few parties who deviated from this conventional definition. For example, Southern Bell's Witness Payne defined intrastate access as a situation in which a call originates within the State of Florida by an information service provider's customer and terminates at an ISP's location within the State of Florida. The implication of this definition is that the location of an ISP's data base is not relevant to a jurisdictional determination of that ISP's access connection. The application of this definition does appear to provide some advantages. This definition ensures that it is technically feasible to identify the jurisdictional nature of access and it becomes less complicated to identify those BSAs and BSEs over which this Commission has jurisdiction. Further, if a call accesses a data base in another state, this will not result in jurisdictional contamination of the local exchange facilities.



"There are also technical constraints with the traditional definition of jurisdictional access which also makes it unsuitable for information services. According to Southern Bell's Witness Payne, the major concern of the LECs is that it is difficult to identify the jurisdiction of the traffic because the ultimate end points of the call are not known. Payne continues that, in the voice world, the digits dialed provide a highly accurate method for determining jurisdiction due to the ubiquitous use of the North American Numbering Plan. With most enhanced services, however, the LEC has no way of knowing the destination of a call once it is handed to an ISP. Witness Payne cites the example that "all calls to a VAN which use local exchange lines for access are considered local, even though communication may take place with databases or terminals in other states." Witness Payne concludes that such "calls should continue to be viewed as local exchange traffic terminating at the ESP's location. Connectivity to a point out of state through an ESP should not contaminate the local exchange connection." We agree.

ISPA espouses a similar line of reasoning. ISPA states that its members and other ISPs have "traditionally utilized local exchange services available under tariffs of general applicability to carry both its intrastate and interstate communications." ISPA continues that "there would not appear to be any reason to deny ISPs the option of continuing to use local exchange service." ISPA concludes that "maintaining the current access arrangements would tend to maximize intrastate revenues and encourage the full development of information service in Florida." Witness Payne agrees that "this is consistent with the treatment of such facilities today where an ESP such as Telenet, for example, utilizes local exchange service business lines to accumulate traffic, then routes the traffic through their packet network to a destination in another state."

To the extent Southern Bell's view of intrastate access for ISPs prevails, this will limit the authority of the FCC over BSAs and BSEs since most BSAs and BSEs would become intrastate in nature and would be subject to this Commission's authority. United made a similar observation. United states that this definition "leaves no calls which fall within the definition of interstate access." United also argues that this definition of intrastate access is "inconsistent with Florida

Statutes outside
United cites Sect
defines "interstat
The
telecommun
this state
terminatin
this state

We do not
still be classif
user originates a
presence (POP) i
nature. We also
our jurisdiction
taxing statute
jurisdiction pu
information serv
and terminates
interface betwee
with that call
interstate acces

As Southe

[C]onnect
purpose
be treat
The faci
provided
exchange
private
transpor
provided
the app
rates.
the ESP
and int
treatmer
as Tele
service
route t
destina

Statutes outside the utility area." In support of this view, United cites Section 203.12(8) of Florida Statutes (1987) which defines "interstate" as follows:

> The term "interstate," as applied to telecommunications services, means originating in this state, but not terminating in this state, or terminating in this state but not originating in this state.

We do not totally agree with United; some calls would still be classified as interstate. For example, if an ISP end user originates a call in one state to access an ISP's point of presence (POP) in another state, such a call is interstate in nature. We also disagree with United's statutory analysis of our jurisdiction. The description in Section 203.12(8) is a taxing statute and does not affect our construction of our jurisdiction pursuant to Chapter 364. In the context of information services, access originates from the ISP end-user and terminates at the ISP's POP. The ISP's POP is the interface between the two jurisdictions. Whatever the ISP does with that call should not be considered in the definition of interstate access.

As Southern Bell's Witness Payne stated,

> [C]onnections to the local exchange network for the purpose of providing an information service should be treated like any other local exchange service. The facilities and features themselves should be provided to the ESP location from the local exchange tariffs, along with intraLATA toll and private line transport within the LATA. InterLATA transport, either switched or dedicated, will be provided to the ESP location by an IXC who will pay the appropriate intrastate or interstate access rates. The local exchange facilities provided to the ESP would be used to carry local, intrastate and interstate calls. This is consistent with the treatment of such facilities today, where ESPs such as Telenet, for example, utilize local exchange service business lines to accumulate traffic, then route the traffic through their packet network to a destination in another state.

However, if the lines used to carry both interstate and intrastate traffic are classified as interstate in nature under the contamination doctrine, that same line would be classified as interstate in nature. If the latter classification is used, all revenues from and costs of that line will be allocated to the interstate jurisdiction. In the alternative, such access lines could also be classified as both intrastate and interstate in nature. This classification will present problems to the Commission, as well as to the LECs and ISPs.

There is a high probability that the rates and rate structure we establish may not mirror those in the interstate jurisdiction. If this happens, mixed jurisdictional traffic will present problems with respect to the proper application of rates and rate structure in assessing the ISPs' bills. Southern Bell's Witness Payne did not know how bills would be calculated for BSAs which carry mixed jurisdictional traffic where rates between jurisdictions are different. MCI argues that the Commission should continue to handle mixed jurisdictional traffic as it does today through direct measurement, a Percentage Interstate Use (PIU) factor or a functional surrogate. According to Bell's Witness Payne, since the LEC has no real knowledge of what happens to a call beyond the ISP's POP, the determination of a PIU factor is dependent on the ISP's telling the LEC whether a call is inter- or intrastate in nature. In addition, it appears that most ISPs lack the ability to measure and thus generate a PIU. Consequently, ISPA concludes that, a "PIU approach could not be implemented." The success of a PIU under these circumstances will depend on the reliability and credibility of the ISPs.

There is also the problem with cost allocation between jurisdictions as a result of mixed jurisdictional traffic. At this point, however, its seems that no one knows how these costs will be allocated between jurisdictions. Witness Payne stated that he did not know the rules that will be followed in the interstate arena and that it will depend on how Part 69 rules and everything comes out.

Another concern with mixed jurisdictional traffic is that it gives the ISP the ability to tariff shop between jurisdictions. Since the FCC requires BSAs and BSEs to be filed in both state and FCC tariffs, if an ESP is interstate in nature, that ISP could buy those services out of the interstate tariff. At this point there is no clear rule which delineates

either the servic
the interstate
determining facto
service meets the

Upon con
specifically for
be defined as fo

Intrastat
connecti
state to
presence

Whether s
base in or out
not relevant t
nature. The
mixed jurisdic
with the ma
Further, it
contamination

However
to define ir
action, the
relevant. If
jurisdiction
conditions b
measured dir
so, or the u

D. G

In o
availabilit
Florida, i
develop.
responsibi
"protect"
users. To
should pr
However,
monopoly

either the services or the times that an ISP can purchase from the interstate tariff. It seems reasonable that the determining factor will be the price of a service or whatever service meets the need of an ISP.

Upon consideration of the foregoing, we find that, specifically for information services, intrastate access shall be defined as follows:

> Intrastate access is switched or dedicated connectivity which originates from within the state to an information service provider's point of presence (ISP's POP) within the same state.

Whether such a call is subsequently transmitted to a data base in or out of the state after it accesses the ISP's POP is not relevant to whether access is interstate or intrastate in nature. The application of this definition would result in no mixed jurisdictional traffic. This definition is consistent with the manner in which ISPs currently obtain access. Further, it avoids most of the potential jurisdictional contamination problems discussed above.

However, if it is not within this Commission's authority to define intrastate access in this manner because of FCC action, the issue of mixed jurisdictional traffic becomes relevant. If there is a need to address the handling of mixed jurisdictional traffic due to differing rates, terms or conditions between the jurisdictions, such traffic should be measured directly if and whenever technically feasible to do so, or the use of a PIU factor should be applied.

D. Guidelines For Rate Level and Rate Structure

In order to facilitate the flow of benefits from the availability of information services to the citizens of Florida, it is important to let the ISP market continue to develop. This is not to say, however, that it is our responsibility to "protect" that market in the sense that we "protect" certain classes of service such as residential users. To the contrary, we do not believe that this Commission should protect ISPs, nor even that they need protection. However, we are faced with a situation in which the provider of monopoly services necessary to provide information services is

also an active competitor with its customers who are ISPs. Despite the conflicts inherent in this situation, it is our desire to establish an environment that will allow the market participants the flexibility to expand and develop this industry, while simultaneously allowing the LECs to recover their costs for provision of services to the ISP industry.

All LECs participating in this docket advocated usage sensitive pricing. In addition, each LEC suggested additional approaches to ratemaking for ISP interconnection. Centel advocates mirroring FCC rates and structures for the sake of administrative efficiency. GTE Florida proposes the use of ONA-type tariffs to ensure parity between LEC and nonLEC ISPs. Southern Bell originally submitted a list of 206 BSEs that were requested by ISPs. Of these, Southern Bell stated that it was able and willing to actually provide about 40 at the present time. All BSEs offered by Southern Bell were proposed to be provided only in conjunction with its two-way measured service tariff.

We do not categorically oppose the concept of usage sensitive pricing on resold access to the local network. Historically, we have established usage based rates for access to the local network by providers such as shared tenant providers, private pay phone providers, cellular carriers and radio common carriers. In fact, Southern Bell has had usage based tariffs in place for several years for two types of services that may fall within the ambit of Information Services. These are public announcement services (PAS) such as Time and Temperature, and Dial-It/976 Service. PAS rates are per hour and 976 rates are per minute.

However, we have several concerns with Southern Bell's proposed use of its experimental two-way measured service tariff approved in Docket No. 881323-TL. Under Southern Bell's proposal, existing ISPs such as telephone answering service (TAS) providers who would like to make use of the "call forward/busy line" or "call forward/don't answer" features, must also subscribe to the two-way measured service tariff. This could result in as much as a 150 percent increase in their rates, according to Southern Bell's calculations. The ISPs argue, and we agree, that this type of increase may deter at least the small ISPs from subscribing to these features. The result will be that Florida ISP patrons will not have the use of these features except at very high prices.

The ra
tariff provid
usage. The
impose a lo
benefit from
usage does n
of this phas
effect of thi
several conce

First,
entirely of
nationally.
these VANs
functions ou
Small ISPs,
to "tariff
service, wer
have existed
and structur
effect of a
significantl
small servi
larger provi

Moreov
need to pro
users. Yet
usage rates
rates to sm
provides th
grant perm
contained i
subscribe
However,
information
usage sensi
pricing ma
enough is
information
traffic ch
and potent
neither er
usage tari
Bell be al

The rate structure in Bell's two-way measured service tariff provides for deep discounts with increasing amounts of usage. The effect of this "declining" rate structure is to impose a lower average rate per minute on large users who benefit from the discounts relative to the smaller users whose usage does not qualify for discounts. It is beyond the scope of this phase of these proceedings to analyze in detail the effect of this type of rate structure. Nevertheless, it raises several concerns.

First, the intervenors in this docket are made up almost entirely of large ISPs who compete or intend to compete nationally. To the extent that federal tariffs are available, these VANs and other ISPs may subscribe to features and functions out of those tariffs as well as intrastate tariffs. Small ISPs, such as TAS providers, who will not have the option to "tariff shop" because of their localized provision of service, were not well represented in this docket. Yet they have existed for years subscribing to regular business access and structuring their own charges based on those rates. The effect of a usage based declining rate structure would not only significantly increase their costs but also probably put those small services at a competitive disadvantage relative to the larger providers.

Moreover, Southern Bell has forcefully pointed out the need to protect the general body of ratepayers from the heavy users. Yet its proposed rate structure would result in lower usage rates to ISPs with the heaviest usage, and higher usage rates to small ISPs. Until the LECs or at least Southern Bell provides the data to allay these concerns, we are unwilling to grant permanent approval of the type of rate structure contained in the two-way measured tariff or the requirement to subscribe to it in order to obtain certain ONA offerings. However, we recognize that we do not have sufficient information available to us to make a final determination on usage sensitive pricing. Although some form of usage sensitive pricing may ultimately be determined to be appropriate, not enough is known to make a specific decision at this time. More information needs to be gathered concerning the level of demand traffic characteristics and the nature and types of existing and potential providers. Accordingly, at this juncture we neither endorse nor reject Southern Bell's two-way measured usage tariff. Therefore, we find it appropriate that Southern Bell be allowed to continue this as an experimental tariff.

On that basis, we also find that ISPs should be allowed to continue to take access as they currently do. We emphasize that the ISPs are on notice that this is a preliminary finding until more experience is gained by all concerned.

Discrimination was a major concern to the ISPs in these proceedings; they strongly advocate that this Commission establish policies and guidelines so as to minimize the potential for any discrimination. They offered several suggestions to this end. First, they suggest that the rate elements should be unbundled. If the LECs are required to offer each feature or function separately, and in addition are required to offer access separate and apart from any feature, this will allow ISPs maximum flexibility to develop their own approaches to providing services to their patrons. In addition, unbundling minimizes a LEC's ability to control the market by grouping or bundling several features together or by tying one or more features to an access arrangement. ISPA specifically argues that retaining current tariffs will help minimize discrimination and market distortion.

Second, the ISPs suggest ancillary services such as diagnostics and CPNI should be regulated. Ad Hoc favors this position as long as the LECs retain market power. ISPA advocates that the Commission should at least require that these services be offered to all ISPs under the same terms, conditions and rates, even if they are not in a tariff. The concern here is that if there is no regulatory oversight of ancillary services, that the LEC may offer them at more favorable terms to its own ISP.

Third, they suggest a standard cost methodology should be adopted. MCI voiced the strongest opinion in favor of a Commission-approved cost methodology, based on a building block approach of individual elements. MCI Witness Cornell argued that having a standard methodology is the only way in which the Commission can truly be in a position to prevent unfair discriminatory pricing and cross-subsidization. Sprint also endorsed the idea of a standard cost methodology as being more fair and objective.

Fourth, they suggest if collocation is not required or allowed, then price parity with respect to access for nonLEC ISPs should be established. This is the virtual collocation concept. This would require the LEC to charge its own ISP the

same rate for
access lines.
collocation wi
unless some for

Finally,
guard against
sudden large i
they must subsc

We note
discriminate ir
that incentive
few of them
information s
problems of di
have developed
offerings to I

1. No d

Features
announced and
and condition
LECs should r
Each service
any other se
technically
This require
the market.
services to
all offering
ancillary. O
a descriptio
be inserted

These
nondiscrimin
Commission
the LECs ar
also rely o
services by
that arise.

same rate for its short jumper as it does nonLEC ISPs for access lines. ISPs argue that the LECs' positions against collocation will give the LEC ISP a competitive advantage unless some form of price parity is required.

Finally, Prodigy and ISPA both urge the Commission to guard against rate shock that would occur if ISPs received sudden large increases in the costs of LEC services to which they must subscribe.

We note that there is an apparent incentive for a LEC to discriminate in favor of its ISP. Whether all LECs will act on that incentive remains to be seen since, at this point, only a few of them are as yet actively participating in the information services market. In order to alleviate any problems of disparate treatment by LECs against nonLEC ISPs, we have developed the following guidelines for evaluation of LEC offerings to ISPs.

1. No discrimination between LEC and nonLEC ISPs.

Features and network function offerings should be announced and offered at the same time and under the same terms and conditions to LEC and nonLEC ISPs. As discussed above, LECs should respond quickly to ISP requests for new services. Each service offering should be made available independent of any other service offering unless the LEC can prove that it is technically necessary to condition one service upon another. This requirement will minimize a LEC's ability to manipulate the market, and maximize ISPs' flexibility to design their own services to meet their customers' demands. As a general rule, all offerings to ISPs should be tariffed whether they are ancillary, optional, access, BSEs, or otherwise. At a minimum, a description of any and all services offered to any ISP should be inserted in the relevant tariffs.

These guidelines should assist in preventing nondiscrimination on items that the LECs file with this Commission for approval. However, they will not ensure that the LECs are meeting the ISPs demand for services. We will also rely on the ISPs to help us monitor the LEC provision of services by keeping this Commission informed of any problems that arise.

2. No cross-subsidization by LEC regulated operations of nonregulated operations.

LECs, when participating in a competitive market, have a natural incentive to cross-subsidize competitive offerings. They may even price their offerings below costs if they can recover the deficiency from other sources. LEC monopoly services are a logical source from which to recover any deficiency. In this case, the incentive to Southern Bell is all the greater because the company proposes to not charge its own ISP for the access line, or loop, but does propose to charge all other ISPs for these items.

There are several solutions to the cross-subsidy problem. One way is to prevent underpricing of the LEC ISP services by regulating LEC ISP services. Another way is for the Commission to adopt a standard cost methodology with appropriate allocation procedures for use in determining the cost of various features and services that the LECs propose to offer. In that way, the Commission can determine the merit of the subsequent LEC pricing proposals. If the Commission's own cost criteria are met, the Commission can be more sure that cross-subsidization does not occur. This approach was advocated in particular by MCI's Witness Cornell.

The record in this proceeding is inadequate to make a reasonable determination on an appropriate uniform cost methodology. Southern Bell, for example, uses an embedded cost methodology to show that basic local exchange loops such as 1MB, 1FB, PBX are not recovering their costs. However, Southern Bell uses a different cost methodology, the Long Run Incremental Unit Cost (LIUC), to prove that local loops for its competitive offerings such as ESSX and its two-way measured service tariff are recovering their costs. Each different cost methodology yields a different answer to the cross-subsidy question. In addition, even when the same cost methodology is used, the LEC can use different parameters from one study to the next. This results in two different costs for essentially the same thing. For example, Southern Bell provided a loop cost study showing loop costs up to five miles in length that had been previously developed for ESSX service. Subsequently, Southern Bell provided a loop cost study showing loop costs for a CEI filing. Comparison of the two studies revealed substantial differences in the stated costs. We have no workpapers concerning assumptions and methodology or

calculations,
company conc
ESSX and CE
Southern Bel
appears to b
ESSX loop c
distance bar
compete agai
other hand,
rates to be

We mus
the hearing
subjected t
Southern B
proceeding
of an appro

3. N

In
expand and
that exis
available
except wh
potential
of the
tariff on
that dat
local exc
to $166,
532%. S
"only inc
flat rate

Wi
believe
As stat
ultimate
proposal
of the

calculations, and have had no opportunity to question the company concerning the nature of the differences between the ESSX and CEI loop costs. It is interesting to note that Southern Bell derived different costs for what technically appears to be the same loop. It is more interesting that the ESSX loop costs were lower than the CEI loop costs at each distance band. Southern Bell provides its ESSX service to compete against PBX vendors. The higher CEI loop costs, on the other hand, will presumably be used to support the access line rates to be charged to nonLEC ISPs.

We must emphasize that the cost data was not the focus of the hearings. Therefore, the cost study data has not been subjected to adequate scrutiny. We are currently investigating Southern Bell's cost allocation procedures in a separate proceeding which will aid our further review and consideration of an appropriate cost of service methodology.

3. Minimize impact to existing ISPs who subscribe to LEC services.

In order to allow the ISP market the opportunity to expand and develop with minimal disruption, we again reiterate that existing tariffed offerings shall continue to be made available to these ISPs, with no use or user restrictions except where technically necessary. With respect to the potential for market disruption, Ad Hoc submitted an estimate of the impact of Southern Bell's two-way measured service tariff on telephone answering services (TAS). According to that data, TAS providers currently pay $26,379 under basic local exchange tariffs. This amount would increase by $140,529 to $166,765 under the two-way measured service tariff, or by 532%. Southern Bell estimated that ISP access rates would "only increase to roughly 2-1/2 times their current subsidized, flat rates."

Without more justification than we have here, we do not believe that such large access rate increases are appropriate. As stated earlier, some form of usage based pricing may ultimately be appropriate. However, we must see better pricing proposals than those submitted by Southern Bell in this phase of the proceedings.

Contribution towards joint and common costs is more appropriately derived at this time from feature offerings. Accordingly, we find that Southern Bell's and other LECs' future filings should incorporate contribution in the BSEs and optional or ancillary offerings, not in the access rates. This will minimize any significant upheavals in the ISP market.

VII. Use and User Restrictions

Use and user restrictions are generally thought to be mechanisms that allow differing prices for essentially the same service. These restrictions have existed in telephone regulation for many years. Use restrictions exist when a customer is restricted from purchasing a particular service when he uses the service in a particular manner. For example, the differential in price between a plain business line and a residential line is able to exist because business customers are restricted from subscribing to the lower priced residential line at their business premises.

User restrictions exist when a class of customers must subscribe to certain lines regardless of the way the group uses the line. For example, shared tenant services (STS) providers must subscribe to higher priced usage-sensitive lines for all lines entering his switch regardless of the use of the lines.

Southern Bell initially proposed to institute two separate use and user restrictions. First, the company proposed that any customer who provided information services as defined by the Commission would be required to order out of an ISP section of Southern Bell's tariff and would be required to subscribe to a higher priced, two-way usage sensitive line. Second, no one would be allowed to take service out of the ISP tariff except those classified as information service providers. The ISP tariff would be the repository for all BSEs.

Southern Bell modified this proposal at hearing to allow any customer to subscribe to BSEs but also requiring such customers to subscribe to the two-way measured line.

According to Southern Bell's Witness Lombardo, the modifications stemmed from FCC criticism of the Company's bundled ONA tariff proposals without adequate justification for the restrictions. In support of its modified use/user restrictions, Southern Bell argued that its elimination of the

ISP-only restri
to use those
service element
tie the use of
line.

Another
involved Sout
elements. Wi
originally con
considered to
explained thes
line such as c
only apparent
tied to the tw

The mod
additional res
testified th
carriers, res
charges they
that IXCs an
measured ser
intrastate s
shared this
necessary to
the services
has decided
should be a
interexchang
tariff rath
that withou
potentially
the access t

ISPA
restriction
would use O
exchange ta
not be used

Witne
restrictior
ensure tha
sensitive

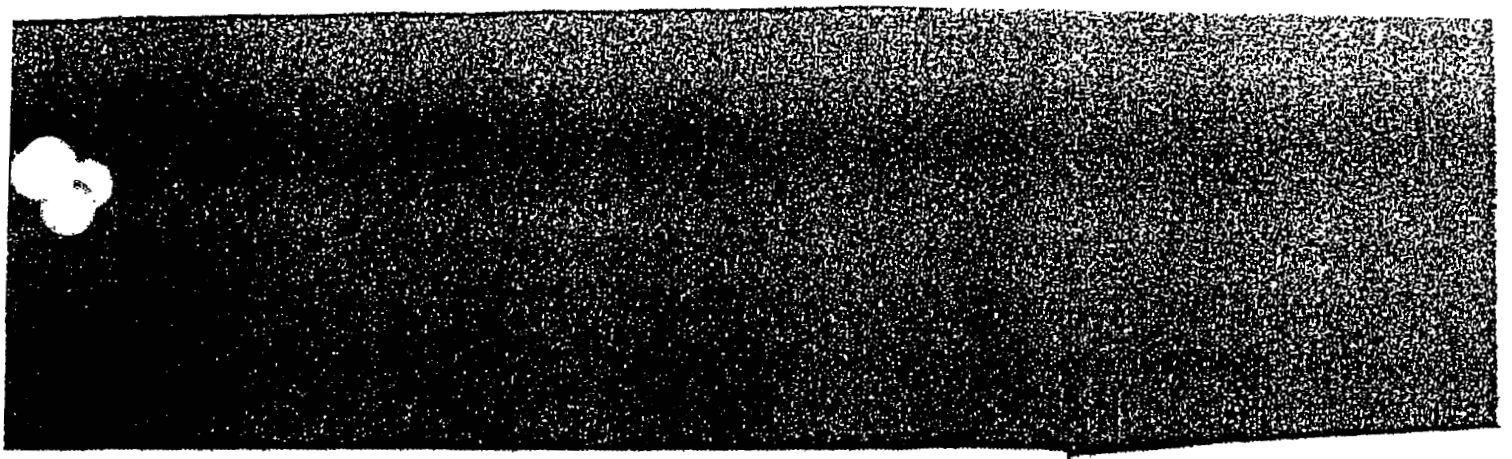
ISP-only restriction opened up access to all end users who want to use those particular basic service arrangements and basic service elements. We note that Southern Bell still desires to tie the use of a BSE to its two-way measured service access line.

Another significant modification to its earlier proposal involved Southern Bell's redefinition of basic service elements. Witness Lombardo testified that some items originally considered to be basic service elements, are now considered to be complimentary network services (CNS). He explained these as services that are provided on the end user's line such as call forwarding or call forwarding busy line. The only apparent significance of this change is that only BSEs are tied to the two-way measured tariff.

The modified Southern Bell proposal also calls for an additional restriction on IXCs and resellers. Witness Lombardo testified that under the modified proposal interexchange carriers, resellers, etc. must continue paying the same access charges they now pay. This concern apparently stems from fear that IXCs and resellers will migrate to the proposed 2-way measured serviced tariff since it is priced lower than intrastate switched access rates. Centel's Witness Becker shared this concern and testified that some restrictions are necessary to ensure that the proper charges are associated with the services being provided. He explained that, since the FCC has decided that interstate information services elements should be available to everyone, there is the potential for interexchange carriers to obtain access service through the ISP tariff rather than through the access tariff. He concluded that without user restrictions, interexchange carriers could potentially obtain service from ISP tariffs to avoid prices in the access tariffs.

ISPA responded in opposition to Southern Bell's IXC restrictions arguing that the fear that interexchange carriers would use ONA to migrate from carrier access tariffs to local exchange tariffs is unfounded and that such migration should not be used as justification for use/user restrictions.

Witness Lombardo argued in support of user/use restrictions explaining that they prevent tariff shopping and ensure that information service providers utilize the usage sensitive tariffs designed for information services. Centel's



Witness Becker generally agreed with Mr. Lombardo. GTEFL's Witness Glassburn supported use restrictions only as an interim step. He argued that ultimately service must be provided on the basis of the cost causer, and the only way to do that is through local measured service.

All of the nonLEC parties opposed use and user restrictions. MCI's Witness Cornell opposed use/user restrictions because it will give the LECs the power to engage in price discrimination and that such action will allow the LECs to control or eliminate competition. She also explained that, if the Commission determined the cost of the basic building blocks of the network and then nondiscriminatorily required every service to pay the same amount for a basic building block, the Commission could prevent cross subsidization and discrimination.

ATT-C witness Guedel argued that unrestricted local and long distance access tariffs will allow the benefits of ONA to be realized by the largest number of consumers and will provide perhaps the best safeguard against monopoly pricing and price discrimination.

MCI's Witness Ozburn argued that the modified Bell proposal meant that different users would be treated different way and that inequality will create problems until such times as the services are totally unbundled and prices are the same for all.

Use and user restrictions are useful and important tools for furthering public policy. However, the restrictions proposed by Southern Bell may have an adverse impact on a newly developing information industry. Accordingly, we find that, as a general policy, use and user restrictions of the kind proposed by Southern Bell should not be placed in the LEC information service interconnection tariffs. However, we will consider exceptions on a case-by-case basis. We note with some concern the possibility that some of the features associated with feature groups may be tariffed as BSEs and it is possible that, in the long run, an IXC may be able to use and receive the same utility from these services in lieu of intrastate switched access service. Therefore, while we do not believe that it is necessary to implement blanket use and user restrictions, we do recognize the potential for migration. Therefore, we find it appropriate that interexchange carriers

must continue
service for the
we also find
place, an IXC
other customer.

VIII. C

In a co
of one's comp
services indus
networks. As
information at
information ha
network inform
of informatic
requirements.
use and dispo
this informat
information
affiliated IS

A. De

Witnes
types, locat
customer sub
and the cus
this definit
Most parties
definition
specific in
Harcharik d
name, billi
service, ty
calling pat
defined agg
traffic pat
area." Sp
definition.

The
as possibl
CPNI rules
the nonLEC

must continue to subscribe to intrastate switched access service for the provision of long distance service. However, we also find that, as long as the access restriction is in place, an IXC should be able to subscribe to BSEs like any other customer.

VIII. Customer Proprietary Network Information

In a competitive industry, knowledge of the operations of one's competitors is of great value. In the information services industry, ISPs must interconnect with the LECs' local networks. As a result, the LECs can acquire much valuable information about the operation of each ISP. This type of information has been generally labelled as customer proprietary network information (CPNI). The issue arises as to what types of information should be considered proprietary and the requirements, if any, that should govern the LECs' acquisition, use and disposal of such information. The issue of access to this information is especially important in the context of the information services industry where the LECs also have affiliated ISPs that compete with unaffiliated ISPs.

A. Definition of CPNI

Witness Boltz of Southern Bell defined CPNI as "the types, location(s) and quantity of all services to which a customer subscribes, how much the customer uses the services, and the customer's billing record." Southern Bell modified this definition to include "usage data and calling patterns." Most parties agree with this definition. ISPA separates the definition of CPNI into two categories, namely "customer specific information" and "aggregate data." ISPA's Witness Harcharik defined customer specific information as "customer name, billing address, billed telephone number, class of service, type of customer premises communication equipment, calling patterns, directory advertising, and toll usage." He defined aggregate CPNI as "aggregate data on usage levels and traffic patterns for network services in a particular service area." Sprint included customers' credit information in the definition.

The definition of CPNI should be as clear and inclusive as possible in order to prevent the LECs from manipulating the CPNI rules to their own advantage and to the disadvantage of the nonLEC information service competitors. Nevertheless, the

CPNI definition should only include network information such as will enhance the telecommunication services of the ISPs and their customers. It does not appear to us that customer credit information is relevant to the development of the information service market. Consequently, we find that the inclusion of customer credit information in the definition of CPNI, as suggested by Sprint, is inappropriate. Such information should not be disclosed to any party, including the LEC affiliate. ISPA's categorization of CPNI into customer-specific and aggregate data is appropriate and useful. In addition, we also agree with Centel and Prodigy that CPNI should include all information developed from the LEC provision of network services to a customer.

Upon consideration, we find that CPNI should be defined as information or data accumulated by the local exchange company as a result of its providing basic network services to its customers. CPNI should be classified in the following two categories: (1) Customer specific CPNI, and (2) Aggregate CPNI.

Customer specific CPNI should include, but not be limited to, customer name, billing address, billed telephone number, class of service, the quantities of all services used by the customer, how much the customer uses the service, type of customer premises communication equipment, access arrangements, calling patterns, usage data and customer billing records.

Aggregate CPNI should be defined as aggregate data on usage levels and traffic patterns for network services in a particular service area. Aggregate CPNI should include total number of business, residence and touch tone equipped access lines, classified by wire center.

B. CPNI Restrictions

Most of the parties basically agreed that to the extent any CPNI is made available, it should be available to all on equal terms and conditions. Most parties also agreed that access to CPNI by a LEC affiliated ISP should be on the same terms as for a nonLEC ISP. Southern Bell takes a different tack, arguing that its affiliated ISP should have access to the CPNI of its customers without their written consent, while also maintaining that before its ISP competitors may have access to

CPNI they must
customers permitt
that its custome
development of
telecommunicatio
from developing
the customer's
in its data bas
It is important
Bell's position
equal access t
United further
LEC-affiliated
market advanteg

All the
proposal. Eac
no LEC should
authorization

It is
ISPs. Aggrega
design of an
its network
marketing and
customer's se
group to ef
customers, to
characteristi
can become
with less po
"targeted" s
be potential

Histo
customer-spe
Nothing in
CPNI differ
affiliated

CPNI they must first receive a written authorization from customers permitting such access. Southern Bell further argues that its customers expect it to use this information in its development of integrated solutions to customers' telecommunications needs and that to preclude Southern Bell from developing proposals for its customers until it secures the customer's written approval to access information already in its data bases, unnecessary costs and delays will result. It is important to note that not all LECs agree with Southern Bell's position. GTEFL and United state all ISPs should have equal access to CPNI under the same terms and conditions. United further states that "disclosure of CPNI only to LEC-affiliated ESPs could provide the affiliate with an unfair market advantage."

All the nonLEC parties opposed Southern Bell's CPNI proposal. Each of these parties supports the proposition that no LEC should release CPNI to any person without written authorization by the specific LEC customer involved.

It is clear to us that CPNI is very valuable to all ISPs. Aggregate CPNI is also useful in technical and economic design of an ISP's services, such as in location and "sizing" its network access nodes. Customer specific CPNI gives marketing and sales personnel important information about a customer's service requirements. First, it permits a sales group to efficiently screen a large number of prospective customers, to identify those with high traffic volume or other characteristics of interest to a particular ISP. Those which can become large accounts are separated from those accounts with less potential. Second, it permits a substantially more "targeted" sales approach to those customers who are deemed to be potentially large accounts.

Historically, we have, as a matter of policy, protected customer-specific information from unauthorized disclosure. Nothing in this record convinces us to treat customer-specific CPNI differently. Therefore, all ISPs, including the LEC's affiliated ISP, should first have written authorization before

being allowed access to customer specific CPNI. With respect to aggregate CPNI, in the interest of a "level playing field," we believe that there should be equity in the application of CPNI requirements. The information service industry presently has been classified as competitive by most of the parties to this docket. In the interest of competition, Southern Bell's affiliated ISP should not be given a competitive advantage with respect to access of CPNI. LEC affiliated ISPs should be required to access this data under the same terms and conditions as the other ISPs.

Upon consideration, we find it appropriate to impose the following CPNI requirements:

1) All information service providers, including a LEC's affiliated ISP, should be required to obtain written authorization from a customer before they can access that customer's CPNI.

2) With respect to aggregate CPNI, a LEC affiliated ISP should obtain access to such information under the same terms and conditions as other nonLEC ISPs.

3) In addition, personnel of a LEC affiliated ISP should not be allowed to access CPNI possessed by the LEC, unless authorized in the manner described above.

The LEC should include specific language in its tariff as to what constitutes aggregate CPNI as approved by this Commission. Further, the LEC should state the terms and conditions under which such data can be accessed. The terms and conditions should be reasonable and the same for all ISPs including the LEC affiliate.

IX. Collocation

The issue of collocation addresses the physical location of an ISP's point of connection with a LEC's network. Three

forms of collocati
are defined as foll

Physical Col
facilities
by nonLEC IS

Virtual Col
ISP's acces
nonLEC ISP'
the LEC's p

Virtual Ce
central of
from a LEC
virtual ce

Any discus
of the nature o
network. These

Short Jum
network
which req
is associ

Long jum
to a loc
equipmen
virtual

A. Phys

The IXC
collocation.
collocation s
administrative
Witness Corne
allowed to pr
as a bottlene
general posit
LEC affiliate
equal terms a

forms of collocation were addressed in the proceeding. They are defined as follows:

Physical Collocation is the utilization of regulated LEC facilities and floor space by the LEC affiliated ISPs or by nonLEC ISPs or both.

Virtual Collocation refers to the equal pricing of a LEC ISP's access located within the LEC's premises and a nonLEC ISP's access (business lines) located outside of the LEC's premises as defined by tariff.

Virtual Central Office is a location apart from a LEC central office, equipped with high capacity facilities from a LEC, where ISPs can locate their operations. A virtual central office may be LEC or privately owned.

Any discussion of collocation must also include mention of the nature of the actual connection of an ISP to a LEC's network. These are:

Short Jumper or Short Wire is the connection between the network and the LEC's information service equipment which requires only an intrabuilding connection. This is associated with physical collocation.

Long jumper or long wire requires a network connection to a location outside of the LEC central office to the equipment of other ISPs. This is associated with virtual collocation.

A. Physical Collocation

The IXCs advocated diverse positions regarding physical collocation. ATT-C's Witness Guedel testified that physical collocation should not be required because security and administrative problems overrule any potential benefits. MCI's Witness Cornell testified that Southern Bell should not be allowed to preclude collocation and engage in a price squeeze as a bottleneck monopoly. Microtel, Sprint and Telus took the general position that if physical collocation is allowed for LEC affiliated ISPs, it should be allowed for all providers on equal terms and conditions.

Centel, GTEFL, and Southern Bell opposed mandatory physical collocation. Witness Glassburn testified that 20 to 30 companies currently providing 976 would be eligible for collocation should it become mandatory and that keeping nonTelco equipment and personnel out of its central offices is a long standing policy. Southern Bell's Witness Lombardo opposed collocation because "it brings with it burdens, onerous burdens, in the areas of safety, security and administration and we just simply don't believe it is in the public interest to impose collocation on the local exchange companies." In addition, Witness Lombardo also argued that Southern Bell should be allowed to use the short jumper as a slight advantage to offset disadvantages such as not being able to enter the market place, being a limited service provider and having regulatory restrictions.

Southern Bell's Witness Boltz identified nine significant administrative and security concerns related to collocation of nonLEC equipment in a LEC central office. These concerns were directed towards priority for and allocation of central office space as well as the potential problems attendant with access to a LEC central office by nonLEC personnel.

Alone among the LECs, United's Witness Griffin did not oppose physical collocation. He argued it should not be mandatory, but, where space is available, United desires to maximize its revenue opportunities from collocation as long as proper steps are taken to deal with issues such as security and liability. Witness Griffin further argued that the offering of collocation to information service providers on LEC premises should be at the LEC's option.

Ad Hoc's Witness Mayne testified that collocation by ISPs is desirable and should be allowed at the LEC's option. Seemingly concurring with the Ad Hoc Committee, ISPA's Witness Dewey testified that physical collocation should be offered by the LECs to ISPs who desire to collocate their equipment in a LEC central office and assuming that available space exists in a suitable central office, this space should be made available, under reasonable terms, to all ISPs on a first-come, first-served basis. In support of physical collocation, Witness Dewey cited several advantages including the short jumper, the potential for additional LEC revenues from renting space, appropriate hearing, air conditioning and ventilation in

the LEC's central o
physical collocati
needed to negotia
uniform rates for
space and the ines
when central offic

Witness De
security and ad
concerns were n
collocation. Witn
had trivialized
collocation.

Prodigy fa
that could be ga
that if operation
ISP, then all oth
Counsel supported
terms and condit
implemented.

Upon cons
shall not be req
actual quantifie
physical colloc
central office
telecommunicatio
of experience
However, we rec
provide some en
LEC the optic
exchange-by-exc
provide physic
affiliated ISP
collocation sh
approved by t
within 60 days
of the issuanc
reconsideratio
for use such
ratepayer.

the LEC's central office. With respect to the disadvantages of physical collocation, Mr. Dewey noted the following: time needed to negotiate each individual contract, establishing uniform rates for such things as leased space, allocation of space and the inequities of first-come, first-served priority when central office space becomes limited.

Witness Dewey responded directly to Witness Boltz's security and administrative concerns concluding that his concerns were not a significant impediment to physical collocation. Witness Boltz responded, arguing that Mr. Dewey had trivialized the problems associated with physical collocation.

Prodigy favored physical collocation as cost savings that could be passed on to the consumer. Prodigy also noted that if operational cost savings are available only to the LEC ISP, then all other competitors will be disadvantaged. Public Counsel supported physical collocation if sufficient protective terms and conditions to protect the local exchange can be implemented.

Upon consideration, we find that physical collocation shall not be required. Our decision is premised on the lack of actual quantified experience by any of the parties with physical collocation. The present practice of security in central offices and similar establishments in the telecommunications industry has been developed over many years of experience and is to some degree born of necessity. However, we recognize that collocation in a central office can provide some enhancement to ISPs. Accordingly, we grant each LEC the option to provide physical collocation on an exchange-by-exchange basis. If a LEC exercises its option to provide physical collocation, it may charge its collocated affiliated ISP the short jumper rate. In addition, physical collocation shall be provided pursuant to tariffs filed and approved by this Commission. Such tariffs shall be filed within 60 days of the issuance of this Order or within 30 days of the issuance of an order, if any, disposing of motions for reconsideration of this Order. Space should be made available for use such that it is not detrimental to the regulated ratepayer.

B. Virtual Collocation

Virtual collocation refers to the equal pricing of a LEC ISP's access located within the LEC's premises and a nonLEC ISP's access located outside of the LECs premises. Reference to virtual collocation by the parties is sometimes expressed in terms of equal pricing or price parity between a LEC and the ISP.

The IXCs generally took the position that if physical collocation was unavailable, the price parity inherent in the concept of virtual collocation is appropriate. This would ensure that the LEC and nonLEC ISPs receive service on equal terms and conditions.

Southern Bell's Witness Boltz opposed virtual collocation claiming that, "Virtual collocation would eliminate legitimate transmission cost efficiencies Southern Bell otherwise would realize through the integration of its regulated and nonregulated services." None of the other LECs took a position on this specific issue.

Ad Hoc, Prodigy and Public Counsel generally took the position that if physical collocation is impossible or the commission should decide against physical collocation, virtual collocation should be required through tariffs. Witness Dewey testified that price equalization [virtual collocation] does not make up for all of the advantages of physical collocation. He further argued that he could not imagine any advantages of virtual collocation over physical collocation.

With the exception of Southern Bell, the participating IXCs, LECs and associations basically favored the virtual collocation concept. Southern Bell's major concern appears to be the loss of the short jumper's slight advantages.

Upon consideration, we find that in those exchanges where a LEC has not elected to provide physical collocation, the LEC shall provide virtual collocation pursuant to tariffs filed and approved by this Commission. Such tariffs shall be filed within 60 days of the issuance of this Order or within 30 days of the issuance of an order, if any, disposing of motions for reconsideration of this Order.

C. Virtu

Virtual
central office,
LEC, where ISPs
office may be L

Of the
Southern Bell
central office
physical collo
virtual centr
Southern Bell
collocation st
as another fo
if not all o
BOC-affiliated
BellSouth con
ISPA's Witnes
positive feat
that there is
the exchange

Until
maturity in t
we find that
If any party
shall be offe
Commission.

X. R

In v
LEC-provide
whether an
oversight o
Architectur
ISPs to "u
ways so t
present se
serve the
Companies
on a non
informatio

C. Virtual Central Office

Virtual central office is a location apart from a LEC central office, equipped with high capacity facilities from a LEC, where ISPs can locate their operations. A virtual central office may be LEC or nonLEC owned.

Of the intervening parties in this docket, only Telus, Southern Bell and ISPA made any reference to the virtual central office concept. Telus took the position that, if physical collocation is unavailable, virtual collocation or virtual central office provisioning may be appropriate. Southern Bell's Witness Boltz referenced a BellSouth collocation study in which virtual central office was mentioned as another form of virtual collocation that would negate most if not all of the transport efficiencies to be gained by a BOC-affiliated collocated ISP. This study recommended that BellSouth continue its present policy against collocation. ISPA's Witness Dewey testified that there are some very positive features to a point of presence type offering, but that there is a potential for a negative side which depends on the exchange area and an ISP's particular needs.

Until we have more experience and there is greater maturity in the LEC telecommunications competitive environment, we find that a virtual central office shall not be mandatory. If any party elects to implement a virtual central office, it shall be offered pursuant to tariffs filed and approved by this Commission.

X. REGULATION OF LEC PROVIDED INFORMATION SERVICES

In view of our decision that we have jurisdiction over LEC-provided information services, the question remains as to whether and to what extent we should exercise regulatory oversight of these services. The primary goals of Open Network Architecture (ONA) are to increase the opportunities of the ISPs to "use the BOCs regulated networks in highly efficient ways so that they can both expand their markets for their present services and develop new offerings that can better serve the American public" and to allow the Bell Operating Companies (BOCs) to compete in the information service market on a nonstructural separation basis. The FCC classifies information services as competitive and has ordered that the

the BOCs' provision of such services should not be regulated. Further, the FCC proposed nonstructural safeguards to protect competition if the BOCs enter the information service market. Despite these nonstructural safeguards, some parties are skeptical of the sufficiency of these measures to protect. Southern Bell's competitors and the local ratepayers. There is the fear that, if the LECs enter the market, the LECs may engage in anti-competitive cross subsidization by forcing the local ratepayers to absorb the costs of the unregulated business. Further, the LEC ISP affiliate's and the LEC's access to monopoly profits would allow them to engage in predation by undercutting their competitors' prices and driving them out of business.

Most parties believe that the LEC provision of information services should not be regulated. Southern Bell's witness Lombardo, while advocating that the provision of most of the LEC's network capabilities and rate elements that support information services be regulated under state tariffs, argues that information services should be provided on an unregulated basis. Witness Lombardo also argues that there is no need for regulation since the information service market is a "highly competitive market." He further argues that "the nonstructural safeguards outlined in the FCC's Computer III proceeding, including the cost allocation manual, customer proprietary network information (CPNI) requirements, and nondiscriminatory service rules, provide protection for all parties." Witness Lombardo continues that "these safeguards were designed to establish and maintain a level playing field for all ESPs by satisfying concerns regarding cross-subsidization and discriminatory treatment while enabling the elimination of the significant costs and inefficiencies imposed by structural separation." He concluded that nonstructural safeguards, instead of regulation, "is the most appropriate and efficient method for LEC provisioning of information service."

GTEFL and United concur with Southern Bell. GTEFL's Witness Glassburn testified that the provision of information services by the LECs should be deregulated without the requirement for a separate subsidiary. However, witness Glassburn cautioned that, "if the Commission regulates LEC-provided information services, the rate for such service should be afforded maximum pricing flexibility in order to permit the regulated TELCO to compete effectively in this

highly competit
requiring that
priced above in
cross-subsidizat
pricing does not

ISPA also
of information
conditionally s
testified that
regulation. He
that the LEC ho
to make sure
MCI's Witness
jurisdiction ov
should not be
condition that
other LECs to
competitive in
Witness Cornel
should achieve
services marke
should not be
their tariffs
around and ch
than their no
bottleneck mo
charge discri
when part of
pay for the
cross subsidi

A few
services by
Counsel and
LEC provisio
concern is
discriminati
providers.
in cross-sub
out of the
Ad Hoc's Wi
information
service."

highly competitive market place." He continues that "by requiring that flexibly priced LEC information services are priced above incremental costs, the Commission can ensure that cross-subsidization is avoided and that anti-competitive pricing does not occur."

ISPA also supports the position that the LECs' provision of information services should not be regulated. MCI conditionally supports this position. ISPA's Witness Harcharik testified that the business is competitive and that it needs no regulation. However, Witness Harcharik's primary concern is that the LEC holds a very critical resource and that he wants to make sure that ISPs are not subject to discrimination. MCI's Witness Ozburn argues that, while the Commission has jurisdiction over LECs' provision of information services, they should not be regulated. MCI's position is based on the condition that the Commission "require Southern Bell and the other LECs to take the necessary steps to make possible a truly competitive information and enhanced service market." MCI's Witness Cornell has outlined a number of requirements that should achieve a "truly competitive information and enhanced services market." She proposes that at a minimum the LECs should not be allowed to "(1) put use or user restrictions into their tariffs, (2) both prevent collocation and then turn around and charge themselves, when collocated, less for access than their noncollocated competitors, (3) bundle parts of the bottleneck monopoly together with any enhanced offerings and charge discriminatory prices for any of the bottleneck pieces when part of a bundle compared to the prices that others must pay for the same pieces when not part of the bundle and (4) cross subsidize their enhanced services."

A few parties opposed the provision of information services by the LEC's ISP on a deregulated basis. Both Public Counsel and Microtel advocate that the Commission regulate the LEC provisioning of information services. Public Counsel's concern is that the LEC could abuse its monopoly position by discriminating against competing information service providers. Public Counsel also fears that the LECs can engage in cross-subsidization and predation, drive their competitors out of the market and control the information service market. Ad Hoc's Witness Mayne advocated that the LEC's provision of information service should be regulated "as a cost-based service."

The record establishes that the information service market is competitive. However, if the LEC ISP affiliate enters the information service market, especially on a deregulated basis, the ISP market structure may change substantially. The LEC ISP has certain inherent advantages as a result of its being affiliated to the LEC which controls the bottleneck monopoly. The LEC is the sole provider of all BSAs and BSEs which will be used by the ISPs in their provisioning of information services. Further, the LEC receives monopoly profits. As a result of the LEC ISP affiliate's access to monopoly profits, there is the potential for it and the LEC to engage in anti-competitive practices such as predation and anti-competitive cross subsidization. The LEC ISP can undercut its competitors by offering its services at artificially low prices to attract customers, eventually driving its competitors out of business. The LEC ISP has the ability to engage in such practices because of its affiliation with the LEC which can force the local ratepayers to absorb some of the costs of the unregulated ISP.

MCI's Witness Cornell argues that "Southern Bell, in the name of competition, will be in a position to 'manage' that competition right out of existence." She suggests that "the Commission should require Southern Bell and the other LECs to take the necessary step to make possible a truly competitive information and enhanced service market." Implicit in the arguments of witness Cornell and witness Ozburn is the concern that the nonstructural safeguards as suggested by the FCC are not sufficient to protect Southern Bell's competitors. For example, witness Cornell cites certain flaws with collocation and the cost allocation methodology as proposed by the FCC and used by the LECs. Because of these flaws, she claims that the LECs can engage in cross-subsidization. Witness Cornell suggests that if the LEC ISP affiliate enters the information service market, it should do so by a separate subsidiary. Further, there may be a problem with effectively enforcing the nonstructural safeguard requirements. If the nonstructural safeguards are not properly implemented, they would not be effective in regulating the anti-competitive behavior of the LEC ISP affiliate. This is a valid reason for regulating the LEC ISPs, especially in the initial stages in the development of the information service market.

The sole
should not be
Southern Bell'
Gunter's questi
by regulating
Gunter, in my
we believe it'
able to partic
without any bu
that market pl
identify any
regulated. F
services todey

Present
Southern Bell
Custom Calling
which is avai
has demonstrat
on this, Sou
should not be
is in the
ratepayers f
provided info
service marke
abusing its l
positive revi
cross-subsidi

In acc
information
services be
be filed 60
decision or

Based

ORDER
each and al
every respec

ORDE
subject to
body of thi

The sole reason given by the LECs as to why the LEC ISP should not be regulated is that it is a competitive market. Southern Bell's Witness Payne, in response to Commissioner Gunter's question as to what harm will Southern Bell experiance by regulating its ISP, stated that "the basic rationale, Mr. Gunter, in my opinion and this certainly is my opinion, is that we believe it's a competitive market place and we should be able to participate in that market place on a competitive basis without any burdens of regulation as all the other players in that market place participate today." Witness Payne did not identify any specific harm to Southern Bell if its ISP was regulated. Further, he noted that there are competitive services today that are currently regulated.

Presently, this Commission regulates services which Southern Bell contends are competitive such as Ring Master and Custom Calling Services, which are flexibly priced, and ESSX, which is available pursuant to contract rates. Southern Bell has demonstrated no harm as a result of such regulation. Based on this, Southern Bell's argument that information services should not be regulated is unpersuasive. In this instance, it is in the best interest of competition and the Florida ratepayers for this Commission to initially regulate LEC provided information services, especially since the information service market is in its infancy. This will prevent a LEC from abusing its bottleneck monopoly and help ensure that there is a positive revenue contribution as well as a lesser chance of cross-subsidization.

In accordance with our decision to regulate LEC provided information services, we also find it appropriate that such services be offered pursuant to tariffs. Such tariffs should be filed 60 days after the order containing the Commission's decision or 30 days after the reconsideration order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each and all of the specific findings herin are approved in every respect. It is further

ORDERED that the provision of information services is subject to this Commission's jurisdiction as set forth in the body of this Order. It is further

ORDERED that the provision of local exchange access to information service providers is subject to the jurisdiction of this Commission as set forth in the body of this Order. It is further

ORDERED that nonlocal exchange company information service providers are subject to this Commission's jurisdiction as set forth in the body of this Order. It is further

ORDERED that LEC provided access arrangements and other information services shall be provided subject to the terms and conditions as set forth in the body of this Order. It is further

ORDERED that customer proprietary network information shall be handled as set forth in the body of this Order. It is further

ORDERED that the provision of information services by local exchange companies shall be regulated as set forth in the body of this Order.

By ORDER of the Florida Public Service Commission, this 5th day of September, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

TH

Commissioner Thomas M. Beard dissented from the Commission's decision that information service providers are telephone companies subject to Commission jurisdiction.

Chairman Michael McK. Wilson and Commissioner Beard dissented from the Commission's decision that LEC-provided information services should be regulated by the Commission.

BEFORE THE FL

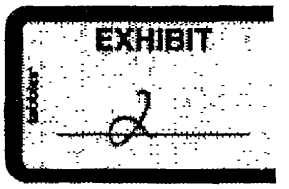
In re: Investigation i
ated cost-plus fuel su
ships of Florida Power

ORDER GRANT
THE MOTION TO S

On August 15, 1
Occidental Chemical
Power Users Group (F
strike the June 23, 1
July 7, 1989 letter
Parties leave to fi
filing. On August 2
of the Parties urgin
the parties. Essent
that FPC improperly
of this proceeding
reviewed the pleadi
Commission in this
record in this pr
appropriate to grant
1989 letter to staff
1989 Market Pricing
an opportunity to fi

In 1986, this
adjustment spin-of
affiliated cost-plu
TECO and their
Commission also o
costs to transpor
exceeded its costs
Subsequently, the
in Docket No. 8600
placed in Docket N

In February,
and Scheduling Co
"clarifying" the
potentially seriou
to stay all pendi



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of WorldCom Technologies, Inc. against BellSouth Telecommunications, Inc. for breach of terms of Florida Partial Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and request for relief.	DOCKET NO. 971478-TP ORDER NO. PSC-98-1216-FOF-TP ISSUED: September 15, 1998
Complaint of Teleport Communications Group Inc./TCG South Florida against BellSouth Telecommunications, Inc. for breach of terms of interconnection agreement under Section 252 of the Telecommunications Act of 1996, and request for relief.	DOCKET NO. 980184-TP
Complaint of Intermedia Communications, Inc. against BellSouth Telecommunications, Inc. for breach of terms of Florida Partial Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 and request for relief.	DOCKET NO. 980495-TP
Complaint by MCI Metro Access Transmission Services, Inc. against BellSouth Telecommunications, Inc. for breach of approved interconnection agreement by failure to pay compensation for certain local traffic.	DOCKET NO. 980499-TP

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

FINAL ORDER RESOLVING COMPLAINTS

APPEARANCES:

Floyd R. Self, Messer, Caparello & Self, P.A., 215 South Monroe Street, Post Office Box 1876, Tallahassee, FL 32302-1876.
On behalf of Worldcom Technologies, Inc.

Kenneth A. Hoffman and John R. Ellis, Rutledge, Ecenia, Underwood, Purnell and Hoffman, P.A., Post Office Box 551, Tallahassee, FL 32302-0551.
On behalf of Teleport Communications Group, Inc./TCG South Florida.

Donna Canzano and Patrick Knight Wiggins, Wiggins & Villacorta, P.A., 2145 Delta Boulevard, Suite 200, Tallahassee, FL 32303.
On behalf of Intermedia Communications, Inc.

Thomas K. Bond, 780 Johnson Ferry Road, Suite 700, Atlanta, GA 30342.
On behalf of MCI Telecommunications Corporation

Ed Rankin, 675 West Peachtree Street, Suite 4300, Atlanta, Georgia 30375-0001.
On behalf of BellSouth Telecommunications, Inc.

Charles J. Pellegrini, Florida Public Service Commission, Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850.

On behalf of the Commission Staff.

CASE BACKGROUND

MFS Communications Company, Inc. (MFS), and BellSouth Telecommunications, Inc. (BellSouth), entered into a Partial Florida Interconnection Agreement pursuant to the Telecommunications Act of 1996 (Act) on August 26, 1996. The Commission approved the Agreement in Order No. PSC-96-1508-FOF-TP, issued December 12, 1996, in Docket No. 961053-TP. The Commission approved an amendment to the Agreement in Order No. PSC-97-0772-FOF-TP, issued July 1, 1997, in Docket No. 970315-TP. On November 12, 1997, WorldCom Technologies, Inc. (WorldCom), filed a Complaint Against BellSouth and Request for Relief, alleging that BellSouth has failed to pay reciprocal compensation for local telephone exchange service traffic transported and terminated by WorldCom's affiliate, MFS, to Internet Service Providers (ISPs). The complaint was assigned Docket No. 971478-TP. BellSouth filed its Answer and Response on December 22, 1997. In Order No. PSC-98-0454-PCO-TP, issued March 31, 1998, the Commission directed that the matter be set for hearing.

Teleport Communications Group, Inc./TCG South Florida (TCG), and BellSouth entered into an Interconnection Agreement pursuant to the Act on July 15, 1996. The Commission approved the Agreement in Order No. PSC-96-1313-FOF-TP, issued October 29, 1996, in Docket No. 960862-TP. On February 4, 1998, TCG filed a Complaint for Enforcement of Section IV.C of its Interconnection Agreement with BellSouth, also alleging that BellSouth has failed to pay reciprocal compensation for local telephone exchange service traffic transported and terminated by TCG to ISPs. The complaint was assigned Docket No. 980184-TP. BellSouth filed its Answer and Response on February 25, 1998.

MCImetro Access Transmission Services, Inc. (MCIm), and BellSouth entered into an Interconnection Agreement pursuant to the Act on April 4, 1997. The Commission approved the Agreement in Order Nos. PSC-97-0723-FOF-TP, issued June 19, 1997, and PSC-97-0723A-FOF-TP, issued June 26, 1997, in Docket No. 960846-TP. On February 23, 1998, MCIm filed a Complaint against BellSouth, which was assigned Docket No. 980281-TP. Among other things, MCIm also alleged in Count 13 that BellSouth has failed to pay reciprocal compensation for local telephone exchange service traffic transported and terminated by MCIm to ISPs. On

April 6, 1998, MCIm filed a separate Complaint embodying the complaint set forth in Count 13 of the first Complaint. The separate complaint was assigned Docket No. 980499-TP.

Intermedia Communications, Inc. (Intermedia), and BellSouth entered into an interconnection Agreement pursuant to the Act on July 1, 1996. The Commission approved the Agreement in Order No. PSC-96-1236-FOF-TP, issued October 7, 1996, in Docket No. 960769-TP. The Commission approved an amended Agreement in Order No. PSC-97-1617-FOF-TP, issued December 30, 1997, in Docket No. 971230-TP. On April 6, 1998, Intermedia filed a Complaint against BellSouth alleging that BellSouth has failed to pay reciprocal compensation for local telephone exchange service traffic transported and terminated by Intermedia to ISPs. That complaint was assigned Docket No. 980495-TP.

On March 9, 1998, GTE Florida Incorporated (GTEFL) filed a petition to intervene in this proceeding. By Order No. PSC-98-0476-PCO-TP, we denied GTEFL's petition. Subsequently, on May 6, 1998, GTEFL filed a petition to be permitted to file a brief. We denied that petition at the commencement of the hearing in these complaint dockets.

By Order No. PSC-98-0561-PCO-TP, issued April 21, 1998, the four complaints were consolidated for hearing purposes. The hearing was held on June 11, 1998.

DECISION

This case is about BellSouth's refusal to pay reciprocal compensation for the transport and termination of ISP traffic under the terms of its interconnection agreements with WorldCom, Teleport, Intermedia, and MCIm. In a letter dated August 12, 1997, BellSouth notified the complainants that it would not pay compensation for the termination of ISP traffic, because "ISP traffic is jurisdictionally interstate" and "enjoys a unique status, especially [as to] call termination." The case is primarily a contract dispute between the parties, and that is the foundation of our decision below. As TCG stated in its brief, "This is a contract dispute in which the Commission must decide whose meaning is to be given to the term 'Local Traffic' in the Agreement."

Accordingly, in this decision we only address the issue of whether ISP traffic should be treated as local or interstate for

purposes of reciprocal compensation as necessary to show what the parties might reasonably have intended at the time they entered into their contracts. Our decision does not address any generic questions about the ultimate nature of ISP traffic for reciprocal compensation purposes, or for any other purposes.

While there are four complainants in the consolidated case, their arguments contain many common threads. Also, BellSouth's position on each issue is the same, and its brief addresses all four together. For the sake of efficiency, we will address the main themes in our discussion of the WorldCom-BellSouth agreement. We will address the particular language of the other agreements separately.

The WorldCom-BellSouth Agreement

On August 26, 1996, MFS (now WorldCom) and BellSouth entered into a Partial Interconnection Agreement, which we approved in Order No. PSC-96-1508-FOF-TP. WorldCom witness Ball testified on the pertinent provisions of that Agreement. Section 1.40 of the Agreement defines local traffic as:

> [C]alls between two or more Telephone Exchange service users where both Telephone Exchange Services bear NPA-NXX designations associated with the same local calling area of the incumbent LEC or other authorized area [such as EAS]. Local traffic includes traffic types that have been traditionally referred to as "local calling" and as "extended area service (EAS)." All other traffic that originates and terminates between end users within the LATA is toll traffic. In no event shall the Local Traffic area for purposes of local call termination billing between the parties be decreased.

Section 5.8.1 provides that:

> Reciprocal Compensation applies for transport and termination of Local Traffic (including EAS and EAS-like traffic) billable by BellSouth or MFS which a Telephone Exchange Service Customer originates on BellSouth's or MFS's network for termination on the other Party's network.

The question presented for decision is, as it is in the other complaints, whether, under the WorldCom - BellSouth Florida Partial Interconnection Agreement, the parties are required to compensate each other for transport and termination of traffic to Internet Service Providers; and if they are, what relief should the Commission grant? The issue is whether the traffic in question, ISP traffic, is local for purposes of the agreements in question.

According to witness Ball, the language of the WorldCom-BellSouth Agreement itself makes it clear that the parties owe each other reciprocal compensation for the traffic in question. He stated that "if a BellSouth customer utilizes a BellSouth telephone exchange service that has a local NPA-NXX and they call a WorldCom customer that buys a WorldCom telephone exchange service that has a WorldCom NPA-NXX, that's local traffic." Witness Ball explained that this is what happens when a BellSouth local customer calls a WorldCom customer that happens to be an ISP. He pointed out that there is no exclusion for any type of customer based on what business the customer happens to be in. Witness Ball noted that where exceptions were needed for certain types of traffic, they were expressly included in the Agreement. He argued that WorldCom understood ISP traffic to be local, and if BellSouth wanted to exclude ISP calls, it was BellSouth's obligation to raise the issue at the time the Agreement was negotiated.

Witness Ball stated that "the Agreement is entirely clear and unambiguous" on the treatment of ISP traffic as local; but if we determine that the Agreement is ambiguous on this point, the ambiguities should be resolved by considering:

(1) the express language of the Telecommunications Act of 1996;

(2) relevant rulings, decisions and orders of this Commission;

(3) relevant rulings, decisions and orders of the FCC interpreting the Act;

(4) rulings, decisions and orders from other, similarly situated state regulatory agencies; and

(5) the custom and usage in the industry.

BellSouth witness Hendrix agreed that the contract did not specify whether ISP traffic was included in the definition of local traffic. Witness Hendrix argued, however, that it was WorldCom's obligation to raise the issue in the negotiations. In fact, the record shows that while BellSouth and the complainants all reached a specific agreement on the definition of local traffic to be included in the contracts, none of them raised the particular question of what to do with ISP traffic.

According to BellSouth, all the complainants assumed that BellSouth agreed to include ISP traffic as local. BellSouth asserts that it cannot be forced to pay reciprocal compensation just because it did not "affirmatively except ISP traffic from the definition of 'local traffic'" in negotiating the Agreement. BellSouth argues that the existing law at the time the contracts were negotiated "reflects that it was unreasonable for the Complainants to blithely assume that BellSouth agreed with their proposed treatment of ISP traffic."

It appears to us from our review of the record, however, that BellSouth equally assumed, and implied in its brief and testimony at the hearing, that the complainants in fact knew ISP traffic was interstate in nature. In its brief, BellSouth states that "parties to a contract are presumed to enter into their Agreement with full knowledge of the state of the existing law, which in turn is incorporated into and sheds light on the meaning of the parties' Agreement." BellSouth witness Hendrix asserted that the FCC had explicitly found that ISPs provide interstate services. Therefore, witness Hendrix argued, there was no need for BellSouth to believe ISP traffic would be subject to reciprocal compensation. The result of this misunderstanding, BellSouth asserts, was that the parties never had an express meeting of the minds on the scope of the definition of local traffic.

Discussion

Upon review of the language of the agreement, and the evidence and testimony presented at the hearing, we find that the Agreement defines local traffic in such a way that ISP traffic clearly fits the definition. Since ISP traffic is local under the terms of the Agreement, then, a priori, reciprocal compensation for termination is required under Section 5.8 of the Agreement. There is no ambiguity, and there are no specific exceptions for ISP traffic. Since there is no ambiguity in the

language of the agreement, we need not consider any other evidence to determine the parties' obligations under the agreement. Even if there were an ambiguity in the language of the agreement, however, the other evidence and argument presented at the hearing leads to the same result: the parties intended to include ISP traffic as local traffic for purposes of reciprocal compensation under their agreement.

Local vs. Interstate Traffic

The first area to explore is the parties' basis for considering ISP traffic to be jurisdictionally local or interstate. BellSouth witness Hendrix contended that for reciprocal compensation to apply, "traffic must be jurisdictionally local." He argued that ISP traffic is not jurisdictionally local, because the FCC "has concluded that enhanced service providers, of which ISPs are a subset, use the local network to provide interstate services." He added that they do so just as facilities-based interexchange carriers and resellers use the local network to provide interstate services. He stated that "[t]he FCC stated in Paragraph 12 in an order dated February 14, 1992, in Docket Number 92-18, that:

> Our jurisdiction does not end at the local switch, but continues to the ultimate termination of the call. The key to jurisdiction is the nature of the communication itself, rather than the physical location of the technology.

Further, according to Witness Hendrix, in its April 10, 1998, Report to Congress (CC Docket No. 96-45), "the FCC indicated that it does have jurisdiction to address whether ALECs that serve ISPs are entitled to reciprocal compensation." We will discuss that report in more detail below.

BellSouth does acknowledge in its brief that the "FCC has not held that ISP traffic is local traffic for purposes of the instant dispute before the Commission." Nor has the FCC "held that ISPs are end users for all regulatory purposes." We agree with this assessment. The FCC has not yet decided whether ISP traffic is subject to reciprocal compensation. While the FCC has determined that ISPs provide interstate services, it appears that the FCC may consider these services severable from telecommunications services, as we explain below. No FCC order delineates exactly for what purposes the FCC intends ISP traffic

to be considered local. By the same token, the FCC has not said that ISP traffic cannot be considered local for all regulatory purposes. It appears that the FCC has largely been silent on the issue. This leads us to believe the FCC intended for the states to exercise jurisdiction over the local service aspects of ISP traffic, unless and until the FCC decided otherwise. Even Witness Hendrix agreed that the FCC intended ISP traffic to be treated as though local. He did not expound on what exactly that meant.

BellSouth contends in its brief that there is no dispute that an Internet transmission may simultaneously be interstate, international and intrastate. BellSouth also contends that the issue should be resolved in pending proceedings before the FCC. Those proceedings include one the FCC initiated in response to a June 29, 1997, letter from the Association for Local Telecommunications Services (ALTS). ALTS requested clarification from the FCC that ISP traffic is within the FCC's exclusive jurisdiction. ALTS has also asked the FCC for a ruling on the treatment of ISP traffic as local.

Regardless of what the FCC ultimately decides, it has not decided anything yet, and we are concerned here with an existing interconnection agreement, executed by the parties in 1996. Our finding that ISP traffic should be treated as local for purposes of the subject interconnection agreement is consistent with the FCC's treatment of ISP traffic at the time the agreement was executed, all pending jurisdictional issues aside.

Termination

In its brief, BellSouth places considerable emphasis on the point of termination for a call. The basic question is whether or not ISP traffic terminates at the ALEC premises. Witness Hendrix testified that "call termination does not occur when an ALEC, serving as a conduit, places itself between BellSouth and an ISP." "[I]f an ALEC puts itself in between BellSouth's end office and the Internet service provider, it is acting like an intermediate transport carrier or conduit, not a local exchange provider entitled to reciprocal compensation." "Thus, the call from an end user to the ISP only transits through the ISP's local point of presence; it does not terminate there. There is no interruption of the continuous transmission of signals between the end user and the host computers." BellSouth states in its brief that "the jurisdictional boundaries of a communication are determined by its beginning and ending points, and the ending

point of a call to an ISP is not the ISP switch, but rather is the database or information source to which the ISP provides access."

MCIm contends in its brief that BellSouth witness Hendrix' testimony that a call to an ISP terminates not at the local telephone number, but rather at a distant Internet host misunderstands the nature of an Internet call. MCIm witness Martinez contended that the ability of Internet users to visit multiple websites at any number of destinations on a single call is a clear indication that the service provided by an ISP is enhanced service, not telecommunications service. According to MCIm, this does not alter the nature of the local call. While BellSouth would have one believe that the call involved is not a local call, MCIm points out that in the case of a rural customer using an IXC to connect with an ISP, the call "is suddenly two parts again: a long distance call, for which BellSouth can charge access, followed by an enhanced service."

BellSouth argues in its brief that "in interpreting the language of a contract, words referring to a particular trade will be interpreted by the courts according to their widely accepted trade meaning." We agree, but it appears to us that BellSouth then chooses to ignore the industry standard definition of the word "termination." The other parties provided several examples of industry definitions on this point.

WorldCom witness Ball stated that "[s]tandard industry practice is that a call is terminated essentially when it's answered; when the customer that is buying the telephone exchange service that has the NPA-NXX answers the call by--whether it's a voice grade phone, if it's a fax machine, an answering machine or, in the case of an ISP, a modem."

TCG witness Kouroupas testified that the standard industry definition of "service termination point" is:

> Proceeding from a network toward a user terminal, the last point of service rendered by a commercial carrier under applicable tariffs.... In a switched communications system, the point at which common carrier service ends and user-provided service begins, i.e. the interface point between the communications systems equipment and the user terminal equipment, under applicable tariffs.

Witness Kouroupas further explained that "A call placed over the public switched telecommunications network is considered 'terminated' when it is delivered to the telephone exchange bearing the called telephone number." Call termination occurs when a connection is established between the caller and the telephone exchange service to which the dialed telephone number is assigned, answer supervision is returned, and a call record is generated. This is the case whether the call is received by a voice grade phone, a fax machine, an answering machine, or in the case of an ISP, a modem. Witness Kouroupas contended that this is a widely accepted industry definition.

MCIm argues in its brief that:

> a "telephone call" placed over the public switched telephone network is "terminated" when it is delivered to the telephone exchange service premise bearing the called telephone number... specifically, in its Local Competition Order (Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996), ¶1040), the FCC defined terminations "for purposes of section 251(b)(5), as the switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises." MCIm terminates telephone calls to Internet Service Providers on its network. As a communications service, a call is completed at that point, regardless of the identity or status of the called party.

Witness Martinez testified that "[w]hen a BellSouth customer originates a telephone call by dialing that number, the telephone call terminates at the ISP premises, just as any other telephone call terminates when it reaches the premises with the phone number that the end user dialed."

Severability

Recent FCC documents have described Internet traffic as

calls with two severable parts: a telecommunications service part, and an enhanced service part. In the May 1997 Universal Service Order at ¶789, the FCC stated:

> When a subscriber obtains a connection to an Internet service provider via voice grade access to the public switched network, that connection is a telecommunications service and is distinguishable from the Internet service provider's offering.

In that Report, the FCC also stated that ISPs "generally do not provide telecommunications." (¶¶ 15, 55) WorldCom argues in its brief that:

> The FCC's determination that ISPs do not provide telecommunications was mandated by the 1996 Act's express distinction between telecommunications and information services. "Telecommunications" is "The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. Section 153(48). By contrast, "information services" is "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." 47 U.S.C. Sec. 153(20)

WorldCom adds that:

> [t]he FCC recognized that the 1996 Act's distinction between telecommunications and information services is crucial. The FCC noted that "Congress intended 'telecommunications service' and 'information service' to refer to separate categories of services" despite the appearance from the end user's perspective that it is a single

> service because it may involve telecommunications components. (Report to Congress, ¶¶56, 58) [Emphasis supplied by WorldCom]

BellSouth argues that the complainants misinterpret the FCC's decision. BellSouth points out that this passage is only discussing whether or not ISPs should make universal service contributions. That is true; but the passage is nevertheless as significant an indication of how the FCC may view ISP traffic as the passages BellSouth has cited.

In its brief, BellSouth claims that the FCC "specifically repudiated" the two-part theory. BellSouth cites the FCC's Report to Congress, CC Docket No., 96-45, April 10, 1998, ¶220. There the FCC stated:

> We make no determination here on the question of whether competitive LECs that serve Internet service providers (or Internet service providers that have voluntarily become competitive LECs) are entitled to reciprocal compensation for terminating Internet traffic. That issue, which is now before the [FCC], does not turn on the status of the Internet service provider as a telecommunications carrier or information service provider. [emphasis supplied by BellSouth]

BellSouth claims that this means the FCC believes the distinction is "meaningless in the context of the FCC's pending reciprocal compensation decision." The other parties point out, however, that it is not at all clear what the FCC means in this passage. It appears to us that the FCC is talking here about the status of the provider, not about the severability of the telecommunications service from the information service. Indeed, in the same report, the FCC brought up the severability notion, as discussed above.

BellSouth also argues that the severability theory is contradicted by the FCC's description of Internet service in its Non-Accounting Safeguards Order (Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149

(released Dec. 24, 1996), note 291), where the FCC states:

> The Internet is an interconnected global network of thousands of interoperable packet-switched networks that use a standard protocol...to enable information exchange. An end user may obtain access to the Internet from an Internet service provider, by using dial-up or dedicated access to connect to the Internet service provider's processor. The Internet service provider, in turn, connects the end user to an Internet backbone provider that carries traffic to and from other Internet host sites.

BellSouth claims that the significance of this is that calls to ISPs only transit through the ISP's local point of presence. Thus, the call does not terminate there. In support of this conclusion, BellSouth mentions several other services, such as Asynchronous Transfer Mode (ATM) technology, that use packet switching. BellSouth makes the point that the jurisdictional nature of a call is not changed through the conversion from circuit switching to packet switching.

BellSouth also discussed an example where an end user made a long-distance call to access voice mail. In that case the call was an interstate call, and the FCC found that it did not lose that interstate character upon being forwarded to voice mail. Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation, 7 FCC Rcd 1619 (1992), aff'd, Georgia Public Service Commission v. FCC, 5 F.3d 1499 (11th Cir. 1993). We do not comprehend BellSouth's point. By that logic, if a local call is used to access an information service, it follows that the entire transmission would be local. In yet another case cited by BellSouth, the FCC found that interstate foreign exchange service was interstate service, and thus came under the FCC's jurisdiction. New York Telephone Co.--Exchange System Access Line Terminal Charge for FX and CCSA Service, Memorandum Opinion and Order, 76 FCC 2d 349 (1980). Once again, it is difficult to discern BellSouth's point. We do not find this line of argument at all persuasive.

BellSouth further argues that "[t]he FCC has long held that the jurisdiction of a call is determined not by the physical location of the communications facilities or the type of facilities used, but by the nature of the traffic that flows over

those facilities." This, too, is a perplexing argument in light of BellSouth's claims that the distant location of the host accessed over the Internet makes ISP traffic interstate, and that the nature of ISP traffic as either telecommunications or information service is irrelevant.

As mentioned above, witness Hendrix did admit that "the FCC intended for ISP traffic to be 'treated' as local, regardless of jurisdiction." He emphasized the word treated, and explained that the FCC "did not say that the traffic was local but that the traffic would be treated as local."

FPSC Treatment

BellSouth dismisses Commission Order No. 21815, issued September 5, 1989, in Docket No. 880423-TP, Investigation into the Statewide Offering of Access to the Local Network for the Purpose of Providing Information Services, as an interim order. In that order, the Commission found that end user access to information service providers, which include Internet service providers, is by local service. In the proceeding, BellSouth's own witness testified that:

> [C]onnections to the local exchange network for the purpose of providing an information service should be treated like any other local exchange service. (Order 21815, p. 25)

The Commission agreed with BellSouth's witness. The Commission also found that calls to ISPs should be viewed as jurisdictionally intrastate local exchange calls terminating at an ISP's location in Florida. BellSouth's position, as stated in the Order, was that:

> calls should continue to be viewed as local exchange traffic terminating at the ESP's [Enhanced Service Provider's] location. Connectivity to a point out of state through an ESP should not contaminate the local exchange. (Order, p. 24) (ISPs are a subset of ESPs.)

In this case, Witness Hendrix claimed that Order 21815 was only an interim order that has now been overruled. He could not identify any Commission order establishing a different policy; nor could he specify the FCC order that supposedly overrules the

Florida Commission order. Further, and most importantly, BellSouth admitted that this definition had not been changed at the time it entered into its Agreements.

It is clear that the treatment of ISP traffic was an issue long before the parties' Agreement was executed. We found, in Order No. 21815, as discussed above, that such traffic should be treated as local. Both WorldCom and BellSouth clearly were aware of this decision, and we presume that they considered it when they entered into their Agreement.

Intent of Parties

In determining what was the parties' intent when they executed their contract, we may consider circumstances that existed at the time the contract was entered into, and the subsequent actions of the parties. As WorldCom argues in its brief, "the intent of the parties is revealed not just by what is said, but by an analysis of all the facts and circumstances surrounding the disputed issue." In James v. Gulf Life Insur. Co., 66 So.2d 62, 63 (Fla. 1953) the Florida Supreme Court cited with favor Contracts, 12 Am.Jur. § 250, pages 791-93, as a general proposition concerning contract construction in pertinent part as follows:

> Agreements must receive a reasonable interpretation, according to the intention of the parties at the time of executing them, if that intention can be ascertained from their language ... Where the language of an agreement is contradictory, obscure, or ambiguous, or where its meaning is doubtful, so that it is susceptible of two constructions, one of which makes it fair, customary, and such as prudent men would naturally execute, while the other makes it inequitable, unusual, or such as reasonable men would not be likely to enter into, the interpretation which makes a rational and probable agreement must be preferred ... An interpretation which is just to both parties will be preferred to one which is unjust.

In the construction of a contract, the circumstances in existence at the time the contract was made should be considered in ascertaining the parties' intention. Triple E Development Co. v.

Floridagold Citrus Corp., 51 So.2d 435, 438, rhg. den. (Fla. 1951). What a party did or omitted to do after the contract was made may be properly considered. Vans Agnew v. Fort Myers Drainage Dist., 69 F.2d 244, 246, rhg. den., (5th Cir.). Courts may look to the subsequent action of the parties to determine the interpretation that they themselves place on the contractual language. Brown v. Financial Service Corp., Intl., 489 F.2d 144, 151 (5th Cir.) citing LaLow v. Codomo, 101 So.2d 390 (Fla. 1958).

As noted above, Section 1.40 of the Agreement defines local traffic. The definition appears to be carefully drawn. Local traffic is said to be calls between two or more service users bearing NPA-NXX designations within the local calling area of the incumbent LEC. It is explained that local traffic includes traffic traditionally referred to as "local calling" and as "EAS." No mention is made of ISP traffic. Therefore, nothing in Section 1.40 sets ISP traffic apart from local traffic. It is further explained that all other traffic that originates and terminates between end users within the LATA is toll traffic.

As evidence of its intent, BellSouth argues that the interpretation of a contract must be one consistent with reason, probability, and the practical aspect of the transaction between the parties. BellSouth contends that it was "economically irrational for it to have agreed to subject ISP traffic to payment of reciprocal compensation." BellSouth claims it "had no rational economic reason to have agreed to pay reciprocal compensation for the ISP traffic, because...such assent would have likely guaranteed that BellSouth would lose money on every customer it serves who subscribed to an ISP served by a complainant."

In an example provided by BellSouth, a BellSouth residential customer subscribes to an ISP that is served by an ALEC. The customer uses the Internet for two hours per day. This usage would generate a reciprocal compensation payment to the ALEC of $36.00 per month, assuming a 1 cent per minute reciprocal compensation rate. A Miami BellSouth customer pays $10.65 per month for residential service. Thus, BellSouth would pay $25.35 per month more to the ALEC than it receives from its customer. BellSouth claims that this unreasonable result is proof that it never intended to include ISP traffic as local for reciprocal compensation purposes.

Not all parties receive reciprocal compensation of 1 cent per minute. The MCIm Agreement specifies a rate of $0.002 per minute, not $0.01. In this case, using BellSouth's example, the

total reciprocal compensation would be $7.20. MCIm points out in its brief that the contract containing the $0.01 rate is one to which BellSouth agreed. They argue that "[w]hether BellSouth agreed to this rate because they mistakenly thought that a rate five times higher than cost would give it some competitive advantage, or whether BellSouth agreed to it without thinking at all, it is not the Commission's role to protect BellSouth from itself."

In support of its position that ISP traffic was intended to be treated as local in the Agreement, WorldCom points out that BellSouth charges its own ISP customers local business line rates for local telephone exchange service that enables the ISP's customers within the local calling area to connect with the ISP by means of a local call. Such calls are rated and billed as local, not toll.

MCIm also points out that BellSouth treats calls to ISPs that are its customers as local calls. BellSouth also offers its own ISP customers service out of its local exchange tariffs. MCIm asserts that while it treats its own customers one way, BellSouth would have ISP customers of the ALECs treated differently.

Besides BellSouth's treatment of its own ISP customers' traffic, there is nothing in the parties' agreements that addresses the practical aspect of how to measure the traffic. As TCG points out in its brief, BellSouth failed to take any steps to develop a tracking system to separately account for ISP traffic. The TCG contract was entered into in July 1996, but BellSouth did not attempt to identify ISP traffic until May or June of 1997. If the agreement did in fact exclude ISP traffic from the definition of local traffic, and thus the reciprocal compensation provisions of the agreement, it would be necessary to develop a tracking system. The evidence indicates that the tracking system currently used by BellSouth is based on identifying the seven-digit number associated with an ISP. Absent that, as BellSouth witness Hendrix conceded, BellSouth must rely on estimates.

Intermedia also points out in its brief that:

> If ISP traffic is not local as BellSouth contends, it would have been imperative for the parties to develop a system to identify and measure ISP traffic, because there is no

> ready mechanism in place for tracking local calls to ISPs. The calls at issue are commingled with all other local traffic and are indistinguishable from other local calls. If BellSouth intended to exclude traffic terminated to ISPs from other local traffic, it would have needed to develop a way to measure traffic that distinguishes such calls from all other types of local calls with long holding times, such as calls to airlines and hotel reservations, and banks. In fact, there is no such agreed-upon system in place today.

This is perhaps the most telling aspect of the case. BellSouth made no effort to separate out ISP traffic from its own bills until the May-June 1997 time frame. WorldCom argues in its brief that BellSouth's "lack of action is especially glaring given Mr. Hendrix's acknowledgment that there are transport and termination costs associated with calls terminating at an ISP." Prior to that time, BellSouth may have paid some reciprocal compensation for ISP traffic. Witness Hendrix admitted, "We may have paid some, I will not sit here and say that we did not pay any." The other parties made no effort to separate out ISP traffic, and based on their position that the traffic should be treated as local, this is as one would expect. In some cases the contracts were entered into more than a year before this time period.

It appears from the record that there was little, if any, billing of reciprocal compensation by the ALECs until just before BellSouth began to investigate the matter. It was the receipt of the bills for considerable amounts of reciprocal compensation that triggered BellSouth's investigation of the matter, and its decision to begin removing ISP traffic from its own bills. If these large bills were never received, would BellSouth have continued to bill the ALECs for reciprocal compensation on ISP traffic? There would have been no reason for BellSouth to investigate, and therefore no reason for them to start separating their own traffic. Under the circumstances, we have difficulty concluding that the parties all knew that ISP traffic was interstate, and should be separated out before billing for reciprocal compensation on local traffic, as BellSouth contends.

Impact on Competition

The potential impact of BellSouth's actions on local competition is perhaps the most egregious aspect of the case. As witness Hendrix testified, The Telecommunications Act of 1996 "established a reciprocal compensation mechanism to encourage local competition." He argued that "The payment of reciprocal compensation for ISP traffic would impede local competition." We are more concerned with the adverse effect that BellSouth's refusal to pay reciprocal compensation could have on competition. We agree with this assessment by TCG witness Kouroupas:

> As competition grows, the smaller, leaner ALECs may well win other market segments from ILECs. If each time this occurs the ILEC, with its greater resources overall, is able to fabricate a dispute with ALECs out of whole cloth and thus invoke costly regulatory processes, local competition could be stymied for many years.

Conclusion

We think the question of whether ISP traffic is local or interstate can be argued both ways. While it appears that the FCC may believe Internet usage is an interstate service, it also appears that it believes that it is not a telecommunications service. The FCC itself seems to be leaning toward the notion of severability of the information service portion of an Internet call from the telecommunications portion, which is often a local call. Further, the FCC has allowed ISPs to purchase local service for provision of Internet services, without ever ruling on the extent to which the "local" characterization should apply. Indeed, as recently as April, 1998, the FCC itself indicated that a decision has not been made as to whether or not reciprocal compensation should apply. Thus, while there is some room for interpretation, we believe the current law weighs in favor of treating the traffic as local, regardless of jurisdiction, for purposes of the Interconnection Agreement. We also believe that the language of the Agreement itself supports this view. We therefore conclude on the basis of the plain language of the Agreement and of the effective law at the the time the Agreement was executed, that the parties intended that calls originated by an end user of one and terminated to an ISP of the other would be rated and billed as local calls; else one would expect the definition of local calls in the Agreement to set out an explicit exception.

Even if we assume for the sake of discussion that the parties' agreements concerning reciprocal compensation can be said to be ambiguous or susceptible of different meanings, the parties' conduct at the time of, and subsequent to, the execution of the Agreement indicates that they intended to treat ISP traffic as local traffic. None of the parties singled ISP traffic out for special treatment during their negotiations. BellSouth concedes that it rates the traffic of its own ISP customers as local traffic. It would hardly be just for BellSouth to conduct itself in this way while treating WorldCom differently. Moreover, BellSouth made no attempt to separate out ISP traffic from its bills to the ALECs until it decided it did not want to pay reciprocal compensation for ISP traffic to the ALECS. BellSouth's conduct subsequent to the Agreement was for a long time consistent with the interpretation of Section 1.40 urged by WorldCom. A party to a contract cannot be permitted to impose unilaterally a different meaning than the one shared by the parties at the time of execution when it later becomes enlightened or discovers an unintended consequence.

BellSouth states in its brief that "the Commission must consider the extant FCC orders, case law, and trade usage at the time the parties negotiated and executed the Agreements." We have. By its own standards, BellSouth is found wanting. The preponderance of the evidence shows that BellSouth is required to pay WorldCom reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to WorldCom for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the WorldCom and BellSouth Florida Partial Interconnection Agreement. Traffic that is terminated on a local dialed basis to Internet Service Providers or Enhanced Service Providers should not be treated differently from other local dialed traffic. We find that BellSouth must compensate WorldCom according to the parties' interconnection agreement, including interest, for the entire period the balance owed is outstanding.

The Teleport/TCG South Florida-BellSouth Agreement

Local traffic is defined in Section 1.D. of the Agreement between BellSouth and TCG as:

> any telephone call that originates and terminates in the same LATA and is billed by the originating party as a local call,

> including any call terminating in an exchange outside of BellSouth's service area with respect to which BellSouth has a local interconnection arrangement with an independent LEC, with which TCG is not directly interconnected.

This Agreement was entered into by the parties on July 15, 1996, and was subsequently approved by the Commission in Docket No. 960862-TP. Under TCG's prior Agreement with BellSouth, ISP traffic was treated as local.

The TCG Agreement states in Section IV.B and part of I.C:

> The delivery of local traffic between parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement.
>
> Each party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, incorporated herein by this reference.

No exceptions have been made to the definition of local traffic to exclude ISP traffic. The facts surrounding this Agreement, and the arguments made by the parties, are essentially the same as the WorldCom Agreement, and we will not reiterate them here. Our decision is the same. The preponderance of the evidence shows that BellSouth is required to pay TCG reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to TCP for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the TCG and BellSouth Florida Partial Interconnection Agreement. Traffic that is terminated on a local dialed basis to Internet Service Providers or Enhanced Service Providers should not be treated differently from other local dialed traffic. We find that BellSouth must compensate TCG according to the parties' interconnection agreement, including interest, for the entire period the balance owed is outstanding.

The MCI-BellSouth Agreement

The Agreement between MCI and BellSouth defines local traffic in Attachment IV, Subsection 2.2.1. That subsection reads

as follows:

> The parties shall bill each other reciprocal compensation at the rates set forth for Local Interconnection in this Agreement and the Order of the FPSC. Local Traffic is defined as any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area (EAS) exchange. The terms Exchange and EAS exchanges are defined and specified in Section A3 of BellSouth's General Subscriber Service Tariff.

MCI witness Martinez testified that no exception to the definition of local traffic was suggested by BellSouth. MCI argues in its brief that "[i]f BellSouth wanted a particular exception to the general definition of local traffic, it had an obligation to raise it."

The facts surrounding this Agreement, and the arguments made by the parties, are essentially the same as the WorldCom Agreement, and we will not reiterate them here. Our decision is the same. The preponderance of the evidence shows that BellSouth is required to pay MCI reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to MCI for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the MCI and BellSouth Florida Partial Interconnection Agreement. Traffic that is terminated on a local dialed basis to Internet Service Providers or Enhanced Service Providers should not be treated differently from other local dialed traffic. We find that BellSouth must compensate MCI according to the parties' interconnection agreement, including interest, for the entire period the balance owed is outstanding.

The Intermedia-BellSouth Agreement

The Agreement with Intermedia defines Local Traffic in Section 1(D) as:

> any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area Service (EAS) exchange. The terms Exchange,

> and EAS exchanges are defined and specified in Section A3 of BellSouth's General Subscriber Service Tariff. (TR 142-143)

The portion regarding reciprocal compensation, Section IV(A) states:

> The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement. (TR 143)

Section IV(B) states:

> Each party will pay the other party for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, by this reference incorporated herein.

The evidence shows that no exceptions were made to the definition of local traffic to exclude ISP traffic in the Intermedia-BellSouth Agreement. The facts surrounding this Agreement, and the arguments made by the parties, are essentially the same as the WorldCom Agreement, and we will not reiterate them here. Our decision is the same. The preponderance of the evidence shows that BellSouth is required to pay Intermedia reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to Intermedia for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the Intermedia and BellSouth Florida Partial Interconnection Agreement. Traffic that is terminated on a local dialed basis to Internet Service Providers or Enhanced Service Providers should not be treated differently from other local dialed traffic. We find that BellSouth must compensate Intermdia according to the parties' interconnection agreement, including interest, for the entire period the balance owed is outstanding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that under the terms of the parties' Interconnection Agreements, BellSouth Telecommunications, Inc. is required to pay Worldcom Technologies, Inc., Teleport Communications Group Inc./TCG South

Florida, Intermedia Communications, Inc., and MCI Metro Access Transmission Services, Inc., reciprocal compensation for the transport and termination of telephone exchange service that is terminated with end users that are Internet Service Providers or Enhanced Service Providers. BellSouth Telecommunications, Inc. must compensate the complainants according to the interconnection agreements, including interest, for the entire period the balance owed is outstanding. It is further

ORDERED that these dockets shall be closed.

By ORDER of the Florida Public Service Commission this 15th Day of September, 1998.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)
MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

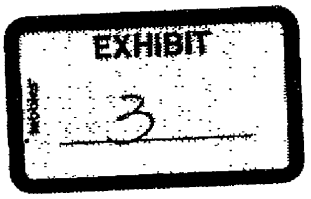
Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule

25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. against BellSouth Telecommunications, Inc. regarding reciprocal compensation for traffic terminated to internet service providers.

DOCKET NO. 981008-TP
ORDER NO. PSC-99-0658-FOF-TP
ISSUED: April 6, 1999



The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON
E. LEON JACOBS, JR.

APPEARANCES:

Norman H. Horton, Jr., Esquire, and Floyd R. Self, Esquire, Messer, Caparello, & Self, 215 South Monroe Street, Post Office Box 1876, Tallahassee, Florida 32302-1876.
On behalf of American Communication Services of Jacksonvile, Inc. d/b/a e.spire Communications, Inc. and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc.

Mary Keyer, Esquire, 675 West Peachtree Street, Northeast, Suite 4300, Atlanta, Georgia 30375.
On behalf of BellSouth Telecommunications, Inc.

Nancy B. White, Esquire, c/o Nancy Sims, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301.
On behalf of BellSouth Telecommunications, Inc.

Beth Keating, Esquire, and Clintina Watts, Esquire, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.
On behalf of Commission staff.

ORDER RESOLVING COMPLAINT
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING DETERMINATION OF
TERMINATED TRAFFIC DIFFERENTIAL

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action ssed in this Order, wherein we have required the parties to determine the number of minutes originated by e.spire and terminated on BellSouth's system and have required the parties to then use this information to derive the differential between what e.spire terminated on BellSouth's system and what BellSouth terminated on e.spire's system, is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

TABLE OF CONTENTS

I. CASE BACKGROUND 174

II. DEFINITION OF "LOCAL TRAFFIC" 174

III. TWO MILLION MINUTE DIFFERENTIAL 180

IV. RECIPROCAL COMPENSATION RATE 182

V. ATTORNEY'S FEES 184

VI. CALCULATION OF FULL TERMINATED TRAFFIC DIFFERENTIAL . . 184

VII. CONCLUSION 185

I. CASE BACKGROUND

On August 6, 1998, American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. (e.spire) filed a complaint with us against BellSouth Telecommunications, Inc. (BellSouth). By its Petition, e.spire asked us to enforce its Interconnection Agreement with BellSouth regarding reciprocal compensation for traffic terminated to Internet Service Providers. On August 31, 1998, BellSouth filed its Answer and Response to e.spire's Petition. We conducted an administrative hearing in this matter on January 20, 1999.

II. DEFINITION OF "LOCAL TRAFFIC"

The parties' dispute focused on the definition of the term "local traffic" in their agreement. e.spire believed that this term included traffic to ISPs, while BellSouth argued that it did not. In the parties' Interconnection Agreement, local traffic is defined as:

> telephone calls that originate in one exchange and terminate in either the same exchange, or a corresponding Extended Area Service ("EAS") exchange. The terms Exchange, and EAS exchanges are defined and specified in Section A3. of BellSouth's General Subscriber Service Tariff.

It is important for us to determine whether or not the parties intended to cover traffic to ISPs within the definition of "local traffic" in their agreement, because the application of Section VI(B) of the parties' agreement is dependent upon "local traffic." Section VI(B) reads as follows:

> Compensation
>
> The Parties agree that BellSouth will track the usage for both companies for the period of the Agreement. BellSouth will provide copies of such usage reports to [e.spire] on a monthly basis. For purposes of this Agreement, the Parties agree that there will be no cash compensation exchanged by the parties during the term of this Agreement unless the difference in minutes of use for terminating local traffic exceeds 2 million minutes per state on a monthly basis. In such an event, the Parties will thereafter negotiate the specifics of a traffic exchange agreement which will apply on a going-forward basis.

According to the terms of this provision, if calls made to ISPs are included in the term "local traffic," these calls will be included in determining whether the difference in minutes of use for terminating local traffic has exceeded two million minutes per state on a monthly basis. Pursuant to Section VI(B), once the two million minute threshold was met, the parties were to enter into negotiations to establish a traffic exchange agreement.

Both parties offered arguments on whether ISP traffic should be treated as local or interstate. e.spire witness Falvey argued that the FCC believes that dial-up calls to ISPs consist of two components: 1) telecommunications and 2) information. Witness Falvey also argued that a call placed over the public switched network normally is considered terminated when it is delivered to the exchange bearing the called telephone number. Witness Falvey maintained that the customers originating the calls to the ISPs over BellSouth's local network order service from BellSouth pursuant to local exchange tariffs, and that BellSouth bills the calls placed by its customers to ISPs as local calls.

BellSouth witness Hendrix explained that a call to an ISP does not terminate at the Internet local Point of Presence (POP). Witness Hendrix stated that this traffic is jurisdictionally interstate. Witness Hendrix further cited the FCC 1987 Notice of Proposed Rulemaking in CC Docket No. 87-215, in which the FCC proposed to lift the ISP access charge exemption. The witness maintained that if calls to ISPs were local, there would be no need to lift an access charge exemption.

BellSouth witness Hendrix further argued that BellSouth would have had no reason to consider ISP traffic to be anything other than jurisdictionally interstate traffic when it negotiated these agreements. Witness Hendrix added:

> Further, had BellSouth understood that e.spire considered ISP traffic to be local traffic subject to reciprocal compensation, the issue would have been discussed at length. During the negotiations of the agreement with e.spire, as well as with any ALEC, no party questioned the local traffic definitions referenced in the GSST and utilized in the agreements or whether ISP traffic should be considered local traffic.

In response, e.spire witness Falvey argued that:

> It was not incumbent upon e.spire to list all types of traffic that would be considered local. The purpose of a general definition, like the definition of local traffic in e.spire's Interconnection Agreement, is to obviate the necessity to provide an exhaustive list of services. Indeed, e.spire did not list ISP traffic as local traffic. Nor did it list as included in the definition of local traffic other types of high volume call recipients, such as calls to airline reservation desks, call-in centers, radio stations, or ticket companies, as local calls. There was no need to

> provide an exhaustive list of types of local calls because a general definition of local calls was included in the Agreement..

BellSouth witness Hendrix maintained, however, that e.spire should have known BellSouth's position on ISP traffic, because witness Hendrix negotiated the agreement with Mr. Richard Robertson of e.spire. Witness Hendrix noted that Mr. Robertson was an employee of BellSouth just a few months prior to negotiating the agreement for e.spire, and that he was well aware of BellSouth's policies. We note, however, that Mr. Robertson was not called by either party to testify in this matter. Thus, no direct evidence regarding Mr. Robertson's knowledge or intentions was presented in this case.

Witness Hendrix also stated that BellSouth advised the ALEC industry by letter ated August 12, 1997, that pursuant to current FCC rules regarding enhanced service roviders (ESPs), of which ISPs are a subset, ISP traffic is jurisdictionally interstate, not local. The letter also stated that due to this fact, BellSouth would neither pay nor bill reciprocal compensation for this traffic. BellSouth did not, however, have a method to track ISP traffic at the time the August 12, 1997, letter was sent.

In addition, BellSouth witness Hendrix stated that e.spire was not just using strictly local trunks, but also trunks that carry interlata traffic and other types of traffic. Witness Hendrix also referred to a letter dated January 8, 1998, from BellSouth to e.spire, which stated in part:

> . . .during our meeting in November, you indicated that ACSI used combined trunks for its traffic. In order to ensure that the 2 million minute threshold has been reached, BellSouth would like to audit the process used by ACSI to jurisdictionalize its traffic between local and interexchange on these combined trunks.

e.spire witness Talmage disagreed and explained that e.spire and BellSouth have established multiple trunk groups that carry exclusively local traffic, and that these trunk groups have been designated as local trunk groups pursuant to Section V.D.1.A of the Interconnection Agreement. Witness Talmage did agree that the minutes of use billed to BellSouth for reciprocal compensation included ISP traffic to the extent that this traffic was carried over the local trunks. e.spire witness Talmage emphasized, however, that the usage reports generated by e.spire to bill BellSouth for reciprocal compensation were based on calls terminated to trunk groups designated to carry exclusively local traffic.

Determination

With regard to the arguments presented on the jurisdictional nature of traffic to ISPs, we addressed many of these same arguments in Order No. PSC-98-1216-FOF-TP. We note that the issue of the jurisdictional nature of traffic to ISPs is a matter that has recently been considered by the FCC. Nevertheless, it is not necessary for us to determine the jurisdictional

nature of this traffic in order to resolve this complaint. We only need to determine the intent of the parties regarding ISP traffic during the negotiation of their Agreement. Therefore, we have considered these arguments only to the extent that they relate to the parties' intent at the time they entered into the agreement. As we emphasized in Order No. PSC-98-1216-FOF-TP, circumstances that existed at the time the contract was entered into by BellSouth and e.spire, and the subsequent actions of the parties should be considered in determining what the parties intended.

In James v. Gulf Life Insur. Co., 66 So.2d 62, 63 (Fla. 1953), the Florida Supreme Court referred to Contracts, 12 Am.Jur. § 250, pages 791-93, for the general proposition concerning contract construction:

> Agreements must receive a reasonable interpretation, according to the intention of the parties at the time of executing them, if that intention can be ascertained from their language . . . Where the language of an agreement is contradictory, obscure, or ambiguous, or where its meaning is doubtful, so that it is susceptible of two constructions, one of which makes it fair, customary, and such as prudent men would naturally execute, while the other makes it inequitable, unusual, or such as reasonable men would not be likely to enter into, the interpretation which makes a rational and probable agreement must be preferred . . . An interpretation which is just to both parties will be preferred to one which is unjust.

In Order No. PSC-98-1216-FOF-TP, we also agreed that, in the construction of a contract, the circumstances in existence at the time the contract was made are evidence of the parties' intent. Triple E Development Co. v. FloridaGold Citrus Corp., 51 So.2d 435, 438, rhg. den. (Fla. 1951). What a party did or omitted to do after the contract was made may be properly considered. Vans Agnew v. Fort Myers Drainage Dist., 69 F.2d 244, 246, rhg. den., (5th Cir.). Courts may look to the subsequent action of the parties to determine the interpretation that they themselves place on the contractual language. Brown v. Financial Service Corp., Intl., 489 F.2d 144, 151 (5th Cir.) citing LaLow v. Codomo, 101 So.2d 390 (Fla. 1958). See Order No. PSC-98-1216-FOF-TP at p. 16.

Upon consideration, the evidence in this case does not indicate that the parties intended to exclude ISP traffic from the definition of "local traffic" in their Interconnection Agreement. In determining the parties' intent, we examined the parties' actions subsequent to entering into the agreement. While BellSouth witness Hendrix argued that BellSouth did not intend for ISP traffic to be subject to reciprocal compensation, the evidence does not support his assertions for several reasons. First, BellSouth's witness Hendrix conceded that BellSouth did not have the capability of tracking traffic to ISPs. In fact, BellSouth currently can only track minutes of use to ISPs if it has the ten-digit terminating numbers for the ISPs. Otherwise, BellSouth can only develop an estimate based on call holding times. Further, witness Hendrix asserted that e.spire cannot distinguish on a call-by-call basis whether the

call is an ISP call. He indicated, however, that e.spire should be able to do so by using the NXX associated with the ISP. On these points, we find it difficult to reconcile how either party intended to exclude ISP traffic from local traffic when neither party had a means to track such traffic. In addition, BellSouth witness Hendrix acknowledged that ISP traffic was not discussed during negotiations. It seems reasonable to us that if the parties had intended to exclude traffic to ISPs from the definition of the term "local traffic," there would have been some discussion on the subject, particularly in view of the agreement's provisions on the tracking of traffic and the parties' decision to include a two-million-minute threshold in their agreement.

We also find it revealing that BellSouth notified the ALEC industry that it would neither pay nor bill reciprocal compensation for calls to ISPs by letter dated August 12, 1997. BellSouth sent this notification more than a year after BellSouth entered into the Interconnection Agreement with e.spire. Furthermore, BellSouth did not have a means of tracking this traffic; therefore, BellSouth could not have known whether it was paying or billing for this traffic. We note that this situation is identical to the situation we addressed in Order No. PSC-98-1216-FOF-TP, where we stated:

> This is perhaps the most telling aspect of the case. BellSouth made no effort to separate out ISP traffic from its own bills until the May-June 1997 time frame. . . . Prior to that time, BellSouth may have paid some reciprocal compensation for ISP traffic, and based on their position that the traffic should be treated as local, this is as one would expect. In some cases the contracts were entered into more than a year before this time period.

Order No. PSC-98-1216-FOF-TP at p. 19.

Also, BellSouth treats its own ISP traffic as local traffic. e.spire witness Falvey explained that:

> BellSouth consistently has: (1) charged all such calls under its local tariffs; (2) treated such calls as local in separations reports and state rate cases; (3) treated such calls as local when they are exchanged among adjacent ILECs; and (4) routed such calls to e.spire over interconnection trunks reserved for local calling.

e.spire further argued in its brief that Attachment B of the parties' Interconnection Agreement defines local traffic as:

> telephone calls that originate in one exchange and terminate in either the same exchange, or a corresponding Extended Area Service ("EAS") exchange. The terms

> Exchange, and EAS exchanges are defined and specified in Section A3. of BellSouth's General Subscriber Service Tariff.

e.spire emphasized that this definition is the identical definition found in the Intermedia-BellSouth Agreement that we addressed in Order No. PSC-98-1216-FOF-TP. In that Order, we found that the parties did not intend to exclude traffic to ISPs. Order at p. 24. After reviewing similar arguments and actions of the parties in this proceeding, we believe that BellSouth and e.spire did not intend to exclude ISP traffic from the definition of local traffic in their Interconnection Agreement.

Finally, in Order No. PSC-98-1216-FOF-TP, we found that:

> . . .[W]hile there is some room for interpretation, we believe that the current law weighs in favor of treating the traffic as local, regardless of jurisdiction, for purposes of the Interconnection Agreement. We also believe that the language of the Agreement itself supports this view. We therefore conclude on the basis of the plain language of the Agreement and of the effective law at the time the Agreement was executed, that the parties intended that calls originated by an end user of one and terminated to an ISP of the other would be rated and billed as local calls; else one would expect the definition of local calls in the Agreement to set out an explicit exception.

Order No. PSC-98-1216-FOF-TP at p.20.

BellSouth noted in its brief that we acknowledged that the FCC had not yet ruled on the jurisdictional nature of ISP traffic. BellSouth stated that the FCC has now stated its position on this issue. BellSouth explained that by allowing GTE to file its ADSL tariff at the federal level and treating it as part of an end-to-end interstate communication, the FCC determined that ISP Internet traffic has always been interstate traffic. We note, however, that the FCC also stated that:

> We emphasize that we decide here only the issue designated in our investigation of GTE's federal tariff for ADSL service, which provides specifically for a dedicated connection, rather than a circuit-switched, dial-up connection, to ISPs and potentially other locations. . . . This Order does not consider or address issues regarding whether local exchange carriers are entitled to receive reciprocal compensation when they deliver to information service providers, including Internet service providers, circuit-switched dial-up traffic originated by interconnecting LECs.

FCC Order 98-292 at ¶ 2.

The FCC further explained that

> . . . [W]e find that this Order does not, and cannot, determine whether reciprocal compensation is owed, on either a retrospective or a prospective basis, pursuant to existing interconnection agreements, state arbitration decisions, and federal court decisions. We therefore intend in the next week to issue a separate order specifically addressing reciprocal compensation issues.

FCC Order 98-292 at ¶ 2.

On February 26, 1999, the FCC released its Declaratory Ruling and Notice of Proposed Rulemaking in FCC Docket 99-38 on the issue of ISP-bound traffic. Therein, the FCC determined that this traffic ". . . is jurisdictionally mixed and appears to be largely interstate." Order at p. 2. Nevertheless, the current state of the law has no impact on our resolution of this complaint. Based on the plain language of the agreement, the effective law at the time the agreement was executed, and the actions of the parties in effectuating the agreement, it is clear to us that the parties intended that calls originated by an end user of one and terminated to an ISP of the other would be rated and billed as local calls. If the parties intended otherwise, we believe that they would have set out an explicit exception in the definition of local calls in their Agreement.

III. TWO MILLION MINUTE DIFFERENTIAL

Again, we refer to Section VI(B) of the Interconnection Agreement between e.spire and BellSouth. This portion of the parties' agreement is set forth in full in the preceding section of this Order. Therein, the parties' agreed that they would not exchange cash compensation for traffic, "unless the difference in minutes of use for terminating local traffic exceeds 2 million minutes per state on a monthly basis." The parties did not agree that the two million minute differential had been met; therefore, we must make that determination. There are two main aspects of this dispute relating to local usage reports and the local traffic differentials that were to be derived from these reports.

BellSouth argued that e.spire included ISP traffic in its calculation of the minutes of use for terminating local traffic in Florida. BellSouth contended that ISP traffic is not local traffic and should not be included. e.spire did not contest the fact that they included traffic to ISPs in determining the minutes of use for terminating local traffic in Florida. In fact, e.spire witness Talmage stated that to the extent ISP traffic is carried over local trunks, it was included.

A. Local Usage Reports

In accordance with Section VI(B) of the agreement, BellSouth was responsible for tracking the usage for both companies and providing copies of usage reports to e.spire on a

monthly basis. BellSouth failed to meet this requirement. BellSouth witness Hendrix explained that once BellSouth agreed to track local usage for e.spire, BellSouth initiated plans to develop this equipment and the processes to produce the tracking reports. Due to the complexity of BellSouth's network and the fact that it was attempting to track originating and terminating local minutes of use, the witness asserted that developing the means to produce these reports took longer than expected. Witness Hendrix stated that representatives of BellSouth and e.spire met on November 3, 1997. In that meeting, BellSouth informed e.spire that BellSouth was not yet technically capable of providing local traffic usage reports.

e.spire witness Talmage further explained that once it became apparent that BellSouth would not provide usage reports, e.spire was forced to develop its own usage reports. The witness stated that e.spire implemented the TrafficMASTER software product in November 1997 for its usage reporting. BellSouth witness Hendrix added that BellSouth informed e.spire by letter dated January 8, 1998, that BellSouth would agree to use e.spire's usage reports for determining the local traffic differentials. Witness Hendrix further stated that BellSouth expressed its desire to audit the process used by e.spire's TrafficMASTER. Witness Hendrix asserted that BellSouth wanted to have such audit capabilities, because BellSouth wanted to be able to determine the extent to which e.spire was including ISP traffic in calculating the two million minute threshold.

B. Local Traffic Differentials

Section VI(B) of the Interconnection Agreement between e.spire and BellSouth refers to the difference in local traffic exchanged by the parties. In accordance with Section VI(B), the difference between the minutes of local traffic originating on e.spire's network and terminating on BellSouth's network minus the minutes of local traffic originating on BellSouth's network and terminating on e.spire's network, or vice versa, must exceed two million minutes per month in Florida before the parties will negotiate a traffic exchange agreement.

BellSouth argued in its brief that e.spire has not proven that this difference in minutes of use has been met. Witness Hendrix testified that the report he viewed only showed traffic terminating from BellSouth to e.spire.

e.spire witness Talmage asserted, however, that the differential occurred in March, 1998, and has continued to occur each month thereafter. e.spire has provided reports that show traffic terminated to e.spire's Jacksonville, Florida, switch for the months of May, 1998, through September, 1998, which is the only switch at issue in this proceeding. e.spire also provided summary reports of local traffic, both originating and terminating, at its Jacksonville switch for March and April, 1998. These summary reports show that the differential threshold in minutes of use for terminating local traffic was exceeded in both of these months.

Determination

Upon consideration, we find that the evidence demonstrates that the two million minute differential for terminating local traffic in Florida did occur in March, 1998. We

agree with BellSouth that the evidence also shows that e.spire included traffic to ISPs in determining that this threshold had been met. e.spire's inclusion of the ISP traffic in its calculation of the differential was, however, appropriate in view of our determination that the parties did not intend to exclude traffic to ISPs from the definition of "local traffic" within their agreement. Although BellSouth argued that the two million minute differential threshold had not been met, it has not presented any evidence to show that e.spire's usage reports are incorrect.

IV. RECIPROCAL COMPENSATION RATE

Pursuant to Section VI(B) of the Interconnection Agreement between e.spire and BellSouth, the parties were required to negotiate the specifics of a traffic exchange agreement once the two million minute threshold was met. BellSouth argued that we should require the parties to negotiate a rate on a going-forward basis if we determine that the two-million-minute threshold has been met. e.spire's witness Falvey responded by explaining that e.spire and BellSouth had attempted to negotiate a rate, but that the negotiations quickly failed. Therefore, e.spire believed it should be allowed to obtain a rate from another party's Interconnection Agreement with BellSouth in accordance with Section XXII of the e.spire/BellSouth agreement, also known as the Most Favored Nations clause (MFN). Pursuant to Section XXII, e.spire argued that we should set the reciprocal compensation rate at $.009, the rate provided to MFS/WorldCom in its agreement with BellSouth.

Specifically, e.spire witness Falvey argued that Section XXII of the parties' agreement allows e.spire to adopt rates, terms, or conditions of another CLEC's agreement. Witness Falvey also stated that when e.spire determined that the two-million-minute differential threshold had been reached, e.spire sent BellSouth a Most Favored Nations request for a rate of .9 cents per minute. Witness Falvey contended that e.spire had the ability to rely upon its Most Favored Nations clause instead of negotiating the rate to be applied to the traffic.

BellSouth's witness Hendrix argued that e.spire had not negotiated with BellSouth, but had, instead, simply identified rates to which e.spire was willing to agree. Witness Hendrix further asserted that Section XXII was not intended to supersede the negotiation provisions of Section VI(B). He added that the parties had never intended to pay each other during the term of the agreement.

Section XXII(A) of the Interconnection Agreement specifies that:

> If as a result of any proceeding before any Court, Commission, or the FCC, any voluntary agreement or arbitration proceeding pursuant to the Act, or pursuant to any applicable federal or state law, BellSouth becomes obligated to provide interconnection, number portability, unbundled access to network elements or any other services related to interconnection whether or not covered by this Agreement to another telecommunications carrier operating within a state within the BellSouth territory at

> rates or on terms and conditions more favorable to such carrier than the comparable provisions of this Agreement, then [e.spire] shall be entitled to add such network elements and services, or substitute such more favorable rates, terms or conditions for the relevant provisions of this Agreement, which shall apply to the same states as such carrier and such substituted rates, terms or conditions shall be deemed to have been effective under this Agreement as of the effective date thereof to such other carrier.

Under common principles of contract interpretation, the more specific language of Section VI(B) would control in this agreement. South Florida Beverage Corporation V. Efrain Figueredo, 409 So.2d 490, 495 (Fla. 3rd DCA 1982), citing Hollerbach v. U. S., 233 U.S. 165, 34 S.Ct. 553, 58 L.Ed. 898 (1914); Bystra v. Federal Land Bank of Columbia, 82 Fla. 472, 90 So. 478 (1921); and 4 Williston on Contracts § 618 (3rd ed. 1961). Nevertheless, it is clear from the evidence presented that the parties did attempt to negotiate a rate, but that the negotiations between the parties quickly failed. As stated by e.spire's witness Falvey,

> There was a negotiation that took place, but it was initiated by this provision. . . . I wouldn't expect to get anything less than I am entitled to, .9 cents a minute under my MFN clause. So take that as a stating point. Their counter to that was .2 cents a minute, which is, I believe, lower than any carrier that I know of gets in this state.

The witness also indicated that he agreed that negotiation was required under Section VI(B) of the Agreement, but that the negotiations "foundered, because we couldn't agree on some very basic things." Once the negotiations required under the specific provisions of Section VI(B) broke down, we believe that the more general provisions of Section XXII of the agreement were properly invoked by e.spire. e.spire opened negotiations with BellSouth pursuant to Section VI(B) of the agreement. BellSouth responded by offering a rate of .2 cents a minute. No agreement was reached. There is nothing in the agreement that suggests that anything more was required. Therefore, we shall resolve the dispute by enforcing the MFN provisions of the agreement. The reciprocal compensation rate shall be effective from the date that we have determined that e.spire met the two-million-minute differential threshold, March, 1998, and after the effective date of the agreement from which e.spire elected to take the rate, as set forth in Section XXII of the e.spire/BellSouth Agreement. The evidence demonstrates that e.spire elected the rate in the MFS/WorldCom agreement with BellSouth. Thus, the reciprocal compensation rate shall be set at $.009.

V. ATTORNEY'S FEES

We note that e.spire also asked that we award e.spire attorney's fees and costs associated with this case. e.spire reiterated its request in its brief. In its brief, e.spire indicated that it sought attorney's fees pursuant to the parties' agreement. e.spire did not, however, refer to a specific portion of the agreement in support of its request.

Having reviewed the agreement, we believe that the pertinent section of the agreement is Section XXV (A), Arbitration, which states, in part:

> Any controversy or claim arising out of, or relating to, this Contract or the breach thereof shall be settled by arbitration. . . . Provided, however, that nothing contained herein shall preclude either Party from filing any complaint or other request for action or relief with the FCC or the appropriate state commission, including any appeals thereof. The Party which does not prevail shall pay all reasonable attorney's fees and other legal expenses of the prevailing Party.

Based upon Section XXV (A) of the parties' agreement, it appears that e.spire is entitled to reasonable attorney's fees relating to this case in view of our determination that e.spire should prevail in this matter. Therefore, BellSouth shall be required to pay e.spire all of e.spire's reasonable attorney's fees and legal expenses associated with this case, in accordance with the provisions of Section XXV(A) of the parties' Agreement.

VI. PROPOSED AGENCY ACTION
CALCULATION OF FULL TERMINATED TRAFFIC DIFFERENTIAL

As explained herein, e.spire provided reports that show traffic terminated to e.spire's Jacksonville, Florida, switch for the months of May, 1998, through September, 1998. e.spire also provided summary reports of originating and terminating local traffic at its Jacksonville switch for March and April, 1998. These reports clearly demonstrate that the two-million minute differential was exceeded in these months. There is not, however, sufficient evidence in the record of this proceeding to determine how many minutes of traffic originated from e.spire and terminated on BellSouth's system for all of the months at issue in this proceeding, due in part to BellSouth's failure to provide traffic reports in accordance with the terms of the parties' agreement. e.spire's reports only provided sufficient information to calculate the minutes terminated on BellSouth's system for March and April, 1998. In order to determine the specific amount owed by BellSouth to e.spire under the terms of the parties' agreement, it is, therefore, necessary to determine the differential between the minutes of use (MOUs) that e.spire terminated on BellSouth's system and that which BellSouth terminated on e.spire's system. Only after the full differential is identified can the specific amount owed by BellSouth to e.spire be determined.

In order to determine the differential and the specific amount owed by BellSouth to e.spire, we shall require the parties to determine the number of minutes originated by e.spire and terminated on BellSouth's system using actual, available information. The parties shall then use this amount to derive the differential between what e.spire terminated on BellSouth's system and what BellSouth terminated on e.spire's system.

If actual information is not available for the parties to use to determine the number of minutes originated by e.spire and terminated on BellSouth's system, then the parties shall be required to use the methodology described below to estimate the number of minutes originated from e.spire and terminated on BellSouth's system. Using the methodology described, the parties can input the information that is available in the record and derive an estimate of the differential. Upon estimating the number of minutes originated from e.spire and terminated on BellSouth's system, the differential between what was terminated on both parties' systems may be derived.

Methodology:

The amount of traffic over a network consists of incoming and outgoing calls over a company's lines. Based on the information that is available in this case, it appears to us that the amount of traffic over e.spire's lines in any month, both originating from e.spire and terminating on BellSouth, and originating from BellSouth and terminating on e.spire, can be assumed to be relatively consistent over the months in question. Using the information on incoming and outgoing usage provided by e.spire for the months of March and April, 1998, an average value for usage per line can be calculated. This average value (k), can be used to estimate how much traffic was originated from e.spire and terminated on BellSouth's system. For a particular month in the past, an estimate of the traffic from e.spire to BellSouth may be calculated by multiplying e.spire's lines for that month by the average value (k) and then subtracting the known BellSouth to e.spire traffic.

The parties shall report to us once they have determined the amount owed by BellSouth to e.spire based on the $.009 rate, and the amount has been paid to e.spire. The parties shall provide this report in a period not to exceed 4 months from the date of our vote at our March 16, 1999, Agenda Conference.

VII. CONCLUSION

We have based our determination herein upon the evidence presented, the briefs of the parties, and our staff's recommendation. We believe it is consistent with the agreement between the parties, which was approved by us pursuant to the Telecommunications Act of 1996, 47 U.S.C. §252(e).

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the Complaint filed by American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc.

and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. against BellSouth Telecommunications, Inc. is resolved as set forth in the body of this Order. It is further

ORDERED that the parties shall report to us by July 16, 1999, the amount owed by BellSouth Telecommunications, Inc. to American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. based on the $.009 rate, and the amount has been paid to American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. It is further

ORDERED that the provisions of this Order requiring the parties to determine the number of minutes originated from American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. and terminated on BellSouth Telecommunications, Inc.'s system using actual information or using the methodology set forth herein if actual information is not available are issued as proposed agency action and shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that if no timely protest is received from a substantially affected person of the requirement to determine the number of minutes originated from American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. and terminated on BellSouth Telecommunications, Inc.'s system using actual information or using the methodology set forth herein if actual information is not available, this Docket shall be closed upon the filing of the parties' report on their determination of the amount owed and paid by BellSouth Telecommunications, Inc. to American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. based on the $.009 rate.

By ORDER of the Florida Public Service Commission this 5th day of April, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of Intermedia Communications, Inc. against GTE Florida Incorporated for breach of terms of Florida partial interconnection agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and request for relief.

DOCKET NO. 980986-TP
ORDER NO. PSC-99-1477-FOF-TP
ISSUED: July 30, 1999

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON

ORDER ON ARBITRATION OF INTERCONNECTION AGREEMENT

BY THE COMMISSION:

On August 3, 1998, Intermedia Communications, Inc. (Intermedia) filed a complaint against GTE Florida Incorporated (GTEFL) for breach of the parties' Interconnection Agreement. Based on the initial complaint and GTEFL's response, this matter was set for hearing.

On February 26, 1999, the FCC released Order FCC 99-38 in CC Docket No. 96-98, its Declaratory Ruling on Inter-Carrier Compensation for ISP-bound Traffic and Notice of Proposed Rulemaking in CC Docket No. 99-68. In light of this FCC Order, the parties to this proceeding informed the Commission of certain procedural stipulations by letter dated March 2, 1999. The parties agreed to stipulate all of the prefiled testimony into the record, waive their right to cross-examination on that testimony, file supplemental, prefiled testimony by March 12, 1999, cancel the hearing set for March 9, 1999, and file briefs as originally scheduled. This request was granted by Order No. PSC-99-0458-PCO-TP, issued on March

4, 1999. In accordance with the parties' stipulation, supplemental testimony was filed on March 9, 1999, addressing the effect of the FCC's Declaratory Ruling on reciprocal compensation.

The issue before us is whether, under the parties' Interconnection Agreement, GTEFL and Intermedia are required to compensate each other for transport and termination of traffic to Internet Service Providers (ISPs). It is Intermedia's position that the term "local traffic", as used in the parties' Interconnection Agreement and as construed consistently by numerous regulatory bodies, contemplates calls from end users to ISPs both originating and terminating within GTEFL's local service area. Intermedia believes that GTEFL has breached the parties' Interconnection Agreement and should be required to pay Intermedia for terminating local traffic under the reciprocal compensation provisions of the Agreement.

It is GTEFL's position that the FCC has ruled that ISP traffic is jurisdictionally interstate and that GTEFL never agreed to include ISP traffic within the Agreement's local traffic definition. Further, GTEFL argues, there is no basis for subjecting this non-local traffic to reciprocal compensation obligations that the Agreement applies only to local traffic.

As stated above, the issue before us is to determine whether, according to the terms of their Interconnection Agreement, Intermedia and GTEFL are required to compensate each other for transport and termination of traffic to ISPs. In order for such reciprocal compensation to apply, traffic to ISPs must be considered "local traffic" as that term is defined in the parties' Agreement. We have addressed this issue previously in other similar cases. (See Docket Nos. 971478-TP, 980184-TP, 980495-TP, 980499-TP and 981008-TP) In making our decision in these earlier cases, we did not make a determination on the generic question of the jurisdictional nature of ISP traffic. In the first complaint (Dockets 971478-TP, et al), we stated:

> ...[I]n this decision we only address the issue of whether ISP traffic should be treated as local or interstate for purposes of reciprocal compensation as necessary to show what the parties might reasonably have intended at the time they entered into their contracts. Our decision does not address any generic questions about the ultimate nature of ISP traffic for reciprocal compensation purposes, or for any other purposes. (PSC-98-1216-FOF-TP, p.5)

As previously stated, the FCC has recently issued a Declaratory Ruling regarding the jurisdictional nature of ISP traffic in Order No. FCC 99-38 in CC Docket No. 96-98 released on February 26, 1999. In that Order the FCC concluded that "ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate." (FCC 99-38, ¶1) However, the FCC made no determination as to whether reciprocal compensation is due for ISP-bound traffic. Rather, the FCC stated:

> Currently, the Commission has no rule governing inter-carrier compensation for ISP-bound traffic. In the

> absence of such a rule, parties may voluntarily include this traffic within the scope of their interconnection agreements under sections 251 and 252 of the Act, even if these statutory provisions do not apply as a matter of law. Where parties have agreed to include this traffic within their section 251 and 252 interconnection agreements, they are bound by those agreements, as interpreted by state commissions. (FCC 99-38, ¶22)

As part of their Order, the FCC issued a Notice of Proposed Rulemaking in CC Docket No. 99-68 seeking comment on inter-carrier compensation for ISP-bound traffic. In the interim the FCC stated that "[u]ntil adoption of a final rule, state commissions will continue to determine whether reciprocal compensation is due for this traffic." (FCC 99-38, ¶28)

Further, in Order FCC 99-38, the FCC recognized that there was no rule in place governing ISP traffic and that some parties to Interconnection Agreements may have agreed, for the purposes of reciprocal compensation, to include ISP-bound traffic as local traffic. As cited above, the FCC left it to state commissions to ascertain the parties' intentions by interpreting existing Agreements. Also, the FCC provided a noninclusive list of factors that a state commission may use in ascertaining the parties intentions as it pertains to this traffic. (FCC 99-38, ¶24) Among the factors were: 1) whether incumbent LECs serving ESPs (including ISPs) have done so out of intrastate or interstate tariffs; 2) whether revenues associated with those services were counted as intrastate or interstate revenues; 3) whether there is evidence that incumbent LECs or CLECs made any effort to meter this traffic or otherwise segregate it from local traffic; 4) whether, in jurisdictions where incumbent LECs bill their end users by message units, incumbent LECs have included calls to ISPs in local telephone charges; and 5) whether if ISP traffic is not treated as local and subject to reciprocal compensation, incumbent LECs and CLECs would be compensated for this traffic. FCC 99-38, ¶24. We considered many of these factors in deciding previous ISP cases.

We note that in reaching our decision herein, we are considering whether reciprocal competition is due in an existing Agreement and what the parties may have reasonably intended at the time they entered their Agreement. We approved the Interconnection Agreement between Intermedia and GTEFL by Order No. PSC-97-0719-FOF-TP, issued June 19, 1997, and an amendment to this Agreement by Order No. PSC-97-0788-FOF-TP, issued July 2, 1997, almost two years prior to the FCC issuing its Declaratory Ruling on the jurisdictional nature of ISP traffic.

Section 1.20 of the parties' Interconnection Agreement defines "local traffic" as traffic:

> originated by an end user of one Party and terminates to the end user of the other Party within GTE's then current local serving area, including mandatory local calling scope arrangements. A mandatory local calling scope arrangement is an arrangement that requires end users to subscribe to a local calling scope beyond their basic

> exchange serving area. Local Traffic does not include optional local calling scopes (i.e., optional rate packages that permit the end user to choose a local calling scope beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS."

Section 3.1 of the Agreement regarding transport and termination of traffic states in part:

> The Parties shall reciprocally terminate Local Traffic originating on each other's networks utilizing either direct or indirect network interconnections as provided in this Article.

Regarding reciprocal compensation, Section 3.3.1 of the Agreement states:

> The Parties shall compensate each other for the exchange of Local Traffic in accordance with Appendix C attached to this Agreement and made a part hereof. Charges for the transport and termination of intraLATA toll, optional EAS arrangements and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate.

In her direct testimony, Intermedia witness Strow argues that traffic to ISPs fits the definition of "local traffic" as that term is defined in their Agreement, in that it is originated by a GTEFL end-user, delivered to Intermedia, and terminated on Intermedia's network. Witness Strow argues in rebuttal testimony that an Internet communication consists of two segments: (1) a local telephone call from an end-user to an ISP; and (2) an enhanced transmission from the ISP over the Internet. Witness Strow states that for purposes of reciprocal compensation, the call ends when it is delivered to the ISP. This is generally referred to as the "two-call" theory. Intermedia argues that in the Access Charge Reform Order, 12FCC RCD 15982, the FCC declined to allow LECs to assess interstate access charges on ISPs. GTEFL witness Pitterle counters "[t]hat the Commission exempted Enhanced Service Providers (ESPs) from access charges indicates its understanding that they in fact use interstate access service; otherwise, the exemption would not be necessary."

GTEFL witness Jones explains in his direct testimony how the Internet works and contends that traffic to ISPs is jurisdictionally interstate. Witness Pitterle states that the FCC's ruling in the GTE Asymmetric Digital Subscriber Line (ADSL) Order, FCC 98-292, to tariff GTE's ADSL service at the federal level, proved that ISP traffic was jurisdictionally interstate. However, we note that in that Order the FCC specifically states that "[t]his Order does not consider or address issues regarding whether local exchange carriers are entitled to receive reciprocal compensation when they deliver to information service providers, including

Internet service providers, circuit-switched dial-up traffic originated by interconnecting LECs." FCC 98-292, ¶2.

Both parties argue the jurisdictional nature of ISP traffic. The recent ruling by the FCC now asserts that ISP-bound traffic is jurisdictionally mixed but appears to be largely interstate. However, the FCC recognized that its record regarding the treatment of this traffic may not have always been clear, as it stated:

> Until now, however, it has been unclear whether or how the access charge regime or reciprocal compensation applies when two interconnecting carriers deliver traffic to an ISP. . . . Moreover, the Commission has directed states to treat ISP traffic as if it were local, by permitting ISPs to purchase their PSTN links through local business tariffs. As a result, and because the Commission had not addressed inter-carrier compensation under these circumstances, parties negotiating interconnection agreements and the state commissions charged with interpreting them were left to determine as a matter of first impression how interconnecting carriers should be compensated for delivering traffic to ISPs, leading to the present dispute. (FCC 99-38, ¶9)

In order to determine whether the parties considered ISP traffic to be local for purposes of reciprocal compensation, we must look to the plain language of the contract, the intent of the parties at the time their Agreement was executed and the subsequent actions of the parties. We have also reviewed our determinations on the jurisdictional nature of ISP traffic at the time the parties entered into their Agreement. Our first ISP dertermination involved WorldCom Technologies, Inc., Teleport Communications Group, Inc., Intermedia Communications, Inc., and MCI Metro Access Transmission Services, Inc. against BellSouth (Docket No. 971478-TP et. al). In that case, we determined that: "while there is some room for interpretation, we believe that current law weighs in favor of treating the traffic as local, regardless of jurisdiction, for purposes of the Interconnection Agreement." PSC-98-1216-FOF-TP, p.20. We note that BellSouth has appealed this decision to federal district court. Case No. 4:98CV352-RH BellSouth Telecommunications, Inc. vs. WorldCom Technologies, Inc. etc, et al. The FCC's recent Order is consistent with our previous ruling. In its recent Order it stated:

> [T]he Commission has maintained the ESP exemption, pursuant to which it treats ESPs as end users under the access charge regime and permits them to purchase their links to the PSTN through intrastate local business tariffs rather than through interstate access tariffs. As such, the Commission discharged its interstate regulatory obligations through the application of local business

> tariffs. Thus, although recognizing that it was interstate access, the Commission has treated ISP-bound traffic as though it were local. (FCC 99-38, ¶23)

In evaluating the actions of the parties, we find that neither party discussed ISP traffic during negotiations. Intermedia witness Strow argues that nothing in the Agreement creates a distinction pertaining to calls placed to telephone exchange end-users that happen to be ISPs. GTEFL argues in its brief that it has always correctly understood that ISP traffic is jurisdictionally interstate and thus outside the scope of local interconnection obligations. GTEFL further argues that its longstanding corporate position with regard to the jurisdictional nature of ISP traffic is a prominent matter of public record. GTEFL, however, did not provide any evidence to substantiate this latter claim. GTEFL also argues in its brief that during negotiations, Intermedia showed no signs of differing with GTEFL's well-known position on the jurisdictional nature of ISP traffic.

The most significant evidence in determining the parties' intent is that neither party had a means of measuring ISP traffic. Intermedia witness Strow argues that had GTEFL intended to exclude ISP traffic, a system to identify and measure ISP traffic would have had to been discussed by the parties. Witness Strow further states that neither company can currently distinguish these types of calls. The evidence of record supports these statements. GTEFL did not provide its first proposal to measure this traffic until February 5, 1998, which was some time after their Agreement had been approved by the Commission. Moreover, the method proposed by GTEFL to measure this traffic was to "estimate" based on call holding-times. GTEFL provided no evidence that it could measure actual usage of calls to ISPs. We conclude that had GTEFL intended to exclude calls to ISPs from "local traffic," knowing that ISP-bound calls would go across local trunks, they would have had a method in place to measure this traffic, or during contract negotiations they would have discussed a means to "estimate" this traffic with Intermedia. We note that GTEFL offered this proposed method to measure ISP traffic only after it received bills for reciprocal compensation.

Both parties point to the recent FCC Order in an attempt to help their case. Intermedia's primary argument is that a call to an ISP consists of two parts: (1) a local telephone call from an end-user to an ISP; and (2) an enhanced transmission from the ISP over the Internet. The FCC specifically repudiated this "two call" theory and stated:

> We disagree with those commenters that argue that, for jurisdictional purposes, ISP-bound traffic must be separated into two components: an intrastate telecommunications service, provided in this instance by one or more LECs, and an interstate information service, provided by the ISP. As discussed above, the Commission analyzes the totality of the communication when determining the jurisdictional nature of a communication. (FCC 99-38, ¶13)

GTEFL's primary argument is that ISP-bound traffic is jurisdictionally interstate, not local, and is not subject to reciprocal compensation.

We do not believe that the FCC's Declaratory Ruling is dispositive of the issue before the Commission. While the FCC did rule that ISP-bound traffic was jurisdictionally mixed and appeared to be largely interstate, it did not rule that reciprocal compensation was not due for this traffic. (FCC 99-38, ¶1) In making its determination the FCC recognized that its policy on ISP traffic may have been unclear because of its own treatment of ISP traffic. The FCC stated:

> While to date the Commission has not adopted a specific rule governing the matter, we note that our policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation, suggest that such compensation is due for that traffic. (FCC 99-38, ¶25)

The Order provided for state commissions to interpret existing Agreements, such as this one, and, until a final rule is adopted, to determine whether reciprocal compensation should apply for this traffic.

In conclusion, based on the record before us, we conclude that GTEFL has failed to establish that the parties intended to exclude ISP-bound traffic from "local traffic" as that term is defined in their Interconnection Agreement. We have considered what the parties may have reasonably intended at the time they entered into their contract by evaluating the plain language of the contract and the subsequent actions of the parties, as evidenced in the record.

The subsequent actions of the parties also do not show that either party intended to exclude ISP traffic from "local traffic." While GTEFL argues that it had a longstanding corporate position on the jurisdictional nature of ISP traffic, it did not provide any evidence to substantiate this claim. Rather, the record shows that GTEFL never considered ISP traffic as anything other than local until it received bills for reciprocal compensation from Intermedia. Further, GTEFL had no means of tracking ISP traffic. In addition, we cannot reconcile how GTEFL could have had a longstanding corporate policy on ISP traffic, knowing the "local" characteristics of this traffic (i.e., it appears as "local traffic" on their network), and not have had a means in place to measure this traffic in order to calculate reciprocal compensation obligations. Based on the foregoing, we conclude that the agreement contemplated ISP traffic to be local, and that GTEFL should compensate Intermedia according to the parties' Interconnection Agreement for the entire period the balance owed is outstanding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Interconnection Agreement between Intermedia Communications, Inc., and GTE Florida Incorporated, approved by this Commission Order No. PSC-97-0719-FOF-TP, issued June 19, 1997, and as amended, contemplated Internet Service Provider traffic to be local. It is further

ORDERED that GTE Florida Incorporated should compensate Intermedia Communications, Inc., according to their Interconnection Agreement for the entire period the balance owed is outstanding. It is further

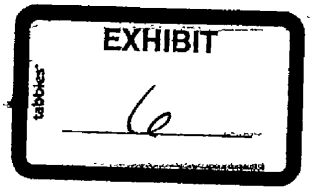
ORDERED that this docket may be closed.

By ORDER of the Florida Public Service Commission this 30th day of July, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

PUBLIC VERSION – CONFIDENTIAL MATERIAL REDACTED

EXHIBIT 5 TO EXHIBIT M REDACTED IN ITS ENTIRETY



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and/or petition for arbitration by Global NAPS, Inc. for enforcement of Section VI(B) of its interconnection agreement with BellSouth Telecommunications, Inc., and request for relief.

DOCKET NO. 991267-TP
ORDER NO. PSC-00-0802-FOF-TP
ISSUED: April 24, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

APPEARANCES:

Jon C. Moyle, Jr., Esquire, and Cathy M. Sellers, Esquire, Moyle Flanigan Katz Kolins Raymond & Sheehan, P.A., 118 North Gadsden Street, Tallahassee, Florida 32301 and Christopher W. Savage, Esquire, Cole, Raywid & Braverman, L.L.P., 1919 Pennsylvania Avenue, N.W., Suite 200, Washington, D.C. 20006.
On behalf of Global NAPs, Inc..

Michael P. Goggin, Esquire, and E. Earl Edenfield, Esquire, 150 South Monroe Street, #400, Tallahassee, Florida 32301
On behalf of BellSouth Telecommunications, Inc..

Beth Keating, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

FINAL ORDER ON COMPLAINT

BY THE COMMISSION:

I. CASE BACKGROUND

On August 31, 1999, Global NAPs, Inc. (Global NAPs or GNAPs) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) for alleged breach of the parties' Interconnection Agreement (Agreement). The subject Agreement was initially executed by DeltaCom, Inc.,(DeltaCom) on July 1, 1997, and was previously approved by the Commission by Order No. PSC-97-1265-FOF-TP, issued October 14, 1997, in Docket No. 970804-TP. DeltaCom's Agreement is effective in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. On January 18, 1999, GNAPs adopted the DeltaCom Agreement in its entirety.

In its complaint, GNAPs asserts that BellSouth has failed to properly compensate GNAPs for delivery of traffic to Internet Service Providers (ISPs) that are GNAPs' customers. GNAPs states that BellSouth has failed to comply with specific provisions of the Agreement concerning the payment of reciprocal compensation to GNAPs. GNAPs asks for relief, including payment of reciprocal compensation and attorney's fees, plus interest.

On September 27, 1999, BellSouth filed its Answer to GNAPs' complaint. Based on the complaint, and BellSouth's response, this matter was set for hearing on January 25, 2000.

On November 15, 1999, DeltaCom filed a petition to intervene in this proceeding. By Order No. PSC-99-2526-PCO-TP, DeltaCom's petition was denied.

II. Compensation for Traffic to Internet Service Providers

As stated above, the issue before us is whether, according to the terms of their Interconnection Agreement, GNAPs and BellSouth are required to compensate each other for delivery of traffic to ISPs. The Agreement in question is an amended version of an Agreement between ITC^DeltaCom and BellSouth, executed in July 1997, and amended in August 1997. This Agreement was subsequently adopted by GNAPs, pursuant to Section 252(i) of the Telecommunications Act of 1996 (the Act).

A. AGREEMENT TERMS

The following provisions are pertinent to this dispute:

> 49. "Local Traffic" means any telephone call that originates in one exchange or LATA and terminates in

> either the same exchange or LATA, or a corresponding Extended Area Service ("EAS") exchange. The terms Exchange, and EAS exchanges are defined and specified in Section A3. of BellSouth's General Subscriber Service Tariff.

(Agreement, Attachment B, page 8).

> With the exception of the local traffic specifically identified in subsection (C) hereafter, each party agrees to terminate local traffic originated and routed to it by the other party. Each Party will pay the other for terminating its local traffic on the other's network the local interconnection rate of $.009 per minute of use in all states. Each Party will report to the other a Percent Local usage ("PLU") and the application of the PLU will determine the amount of local minutes to be billed to the other party. Until such time as actual usage data is available, the parties agree to utilize a mutually acceptable surrogate for the PLU factor. For purposes of developing the PLU, each party shall consider every local call and every long distance call. Effective on the first of January, April, July and October of each year, the parties shall update their PLU.

(Fourth Amendment to Agreement, page 2).

1. GNAPS

GNAPs witness Rooney argues that BellSouth agreed to pay GNAPs reciprocal compensation for local traffic, including traffic to ISPs, pursuant to the language in the Agreement. He maintains that, otherwise, the parties did not discuss the topic of traffic to ISPs, nor did BellSouth tell GNAPs that it would not pay reciprocal compensation for traffic to ISPs under the adopted Agreement. Witness Rooney explains that he found this particularly relevant, because in his experiences in other states, the incumbent local exchange company (ILEC) would usually try to put conditions on the adoption if the ILEC had a problem with provisions in the Agreement. In this case, however, he maintains that BellSouth did not.

Witness Rooney further emphasizes that the Agreement does not contain a means to segregate traffic bound for ISPs from other traffic. Thus, the witness argues that it is clear that traffic to ISPs is subject to reciprocal compensation under the definition of local traffic. Furthermore, while witness Rooney agrees that the obligation to pay reciprocal compensation only applies to local traffic, he emphasizes that at the time the Agreement was drafted, ISP-bound traffic was being treated as local traffic and that nothing in the Agreement indicates that it should be treated otherwise. He notes that the FCC's ruling on the jurisdictional status of traffic to ISPs, FCC Order 99-68, issued February 26, 1999, (Declaratory Ruling) was released well after the original DeltaCom/BellSouth Agreement was executed. We note that FCC Order 99-68 was also released after GNAPs adopted the DeltaCom Agreement.

In addition, in response to questions about the impact of the FCC Order 99-68 on the definition of local traffic and reciprocal compensation under the Agreement, Witness Rooney contends:

> That definition [in the agreement] includes traffic that begins and ends within one LATA. And as I understand it, for purposes of the contract you begin and end in a LATA if it is rated to begin and end in a LATA. The thing is that at the time this contract came about, this is before the decision by the FCC. So you have nothing that is going to suggest that what was understood here to be subject to reciprocal compensation is what the FCC is talking about.

Further emphasizing that the FCC's decision came out after the DeltaCom Agreement was executed, witness Rooney states:

> So here you just have to look entirely within the contract as to what this means. And in here there is no way of separating out ISP-bound traffic from other local traffic, thus ISP-bound traffic is being treated like other local traffic.

GNAPs further argues that a decision reached in Alabama interpreting the DeltaCom Agreement to require reciprocal compensation for traffic to ISPs collaterally estops BellSouth from even arguing this case in Florida on the same Agreement. GNAPs argues:

> The issue at hand in this case--whether the DeltaCom agreement, that Global NAPs adopted under Section 252(i), calls for compensation for ISP-bound calling--is exactly the issue that BellSouth fought and lost in Alabama. And while Global NAPs is a different entity from DeltaCom, Global NAPs submits that its adoption of the DeltaCom contract under Section 252(i) means that, as a matter of law, it is in privity with DeltaCom on the question of the meaning of the DeltaCom contract that Global NAPs has adopted here. It follows that BellSouth may not properly relitigate that issue in this case.

It appears, however, that GNAPs has raised the issue of collateral estoppel for the first time in its post-hearing brief; therefore, BellSouth did not have an opportunity to address this argument. As such, we have not considered this argument and it does not serve as the basis for our decision.

2. BellSouth

BellSouth's witness Scollard responds that the DeltaCom Agreement has always stated that "reciprocal compensation is due only for the termination of local traffic and thus compensation is not due for ISP-bound traffic." (emphasis in original). Witness Scollard emphasizes that GNAPs adopted the Agreement on January 18, 1999, some time after BellSouth had publicly stated that it would not pay reciprocal compensation for traffic to ISPs. He argues that the FCC upheld BellSouth's position just a little over a month later. The witness further emphasizes that on April 14, 1999, GNAPs filed a tariff with the FCC that acknowledged the interstate nature of ISP-bound traffic.

BellSouth witness Halprin also argues that the FCC Order 99-68 supports BellSouth's position. Witness Halprin contends that the FCC clearly stated that ISP-bound traffic remains classified as interstate and does not terminate locally. He adds that calls to ISPs are "technically indistinguishable" from interstate dial-around calls, and, therefore, they "transcend the confines of local exchange areas. . . ."

BellSouth witness Shiroishi concedes, however, that subsequent to the execution of the DeltaCom Agreement, BellSouth did develop clarifying language addressing traffic to ISPs. Witness Shiroishi agrees that the clarifying language was never incorporated as an amendment to the Agreement adopted by GNAPs, although she maintains that this was due to BellSouth's own understanding of the clarity of the Agreement.

In its brief, BellSouth further argues that the plain language in the Agreement clearly provides only for reciprocal compensation for local traffic. BellSouth maintains that GNAPs has provided no evidence to demonstrate that the parties mutually intended to treat ISP traffic as if it were local for purposes of the Agreement.

DETERMINATION

We agree with BellSouth that the language in the Agreement adopted by GNAPs is clear and only calls for reciprocal compensation for local traffic. We emphasize, however, that the Agreement does not segregate traffic to ISPs from the rest of local traffic.

We note that in past decisions on somewhat similar issues, we have determined that circumstances that existed at the time the companies entered into the agreement, as well as the subsequent actions of the parties should be considered in determining what the parties intended when the language in the agreement is not clear. See Order No. PSC-98-1216-FOF-TP; and Order No. PSC-99-0658-FOF-TP.

In James v. Gulf Life Insur. Co., 66 So.2d 62, 63 (Fla. 1953), the Florida Supreme Court referred to Contracts, 12 Am.Jur. § 250, pages 791-93, for the general proposition concerning contract construction:

> Agreements must receive a reasonable interpretation, according to the intention of the parties at the time of executing them, if that intention can be ascertained from their language . . . Where the language of an agreement is contradictory, obscure, or ambiguous, or where its

> meaning is doubtful, so that it is susceptible of two constructions, one of which makes it fair, customary, and such as prudent men would naturally execute, while the other makes it inequitable, unusual, or such as reasonable men would not be likely to enter into, the interpretation which makes a rational and probable agreement must be preferred . . . An interpretation which is just to both parties will be preferred to one which is unjust.

In Order No. PSC-98-1216-FOF-TP, we also agreed that, in the construction of an agreement, the circumstances in existence at the time the agreement was made are evidence of the parties' intent. Triple E Development Co. v. Floridagold Citrus Corp., 51 So.2d 435, 438, r. den. (Fla. 1951). What a party did or omitted to do after the agreement was made may properly considered. Vans Agnew v. Fort Myers Drainage Dist., 69 F.2d 244, 246, rhg. en., (5th Cir.). Courts may look to the subsequent action of the parties to determine the interpretation that they themselves place on the contractual language. Brown v. Financial Service Corp., Intl., 489 F.2d 144, 151 (5th Cir.) citing LaLow v. Codomo, 101 So.2d 390 (Fla. 1958). See Order No. PSC-98-1216-FOF-TP at p. 16.

In this case, however, we believe that the plain language of the Agreement shows that the parties intended the payment of reciprocal compensation for all local traffic, including traffic bound for ISPs. Therefore, it is not necessary to look beyond the written agreement to the actions of the parties at the time the agreement was executed or to the subsequent actions of the parties to determine their intent.

As noted above, we find it particularly noteworthy that there is nothing in the Agreement that specifically addresses traffic bound for ISPs, nor is there any mechanism in the Agreement to account for such traffic, as explained by GNAPs. Thus, nothing in the Agreement indicates that this traffic was to be treated differently than local traffic. In addition, while BellSouth may have already made its position on traffic to ISPs publicly-known by the time GNAPs adopted the DeltaCom Agreement, BellSouth never modified the Agreement adopted by GNAPs to reflect its position, as noted by GNAPs' witness Rooney, even though BellSouth's witness Shiroishi indicated that BellSouth had developed such an amendment.

In addition, GNAPS witness Selwyn testified that the FCC has not precluded the state commissions from addressing this issue. We agree. Paragraph 27 Of the Declaratory Ruling states that

> . . . nothing in this Declaratory Ruling precludes state commissions from determining, pursuant to contractual principles or other legal or equitable considerations, that reciprocal compensation is an appropriate interim inter-carrier compensation rule pending completion of the rulemaking we initiate [it this order].

We emphasize that the FCC's Order was issued after GNAPs adopted the DeltaCom/BellSouth Agreement; therefore, even if the language in the Agreement

necessitated consideration of the surrounding circumstances at the time the agreement was executed to determine the parties' intent, the FCC Order 99-68 could not demonstrate or support either parties' argument regarding such intent or understanding of the law at the time the Agreement was adopted.

Although we need not look beyond the plain language in the Agreement in this instance, we note that we do not believe that the intent of the parties at the time of the adoption is the relevant intent when interpreting an Agreement adopted pursuant to Section 252(i) of the Act. Rather, we believe the intent of the original parties is the determining factor when the Agreement language is not clear. Otherwise, original and adopting parties to an Agreement could receive differing interpretations of the same Agreement, which is not consistent with the purpose of Section 252(i) of the Act. We also note that we believe the underlying Agreement negotiated by the original parties terminates on the date established by the original parties to the Agreement. Therefore, adopting an Agreement under Section 252(i) cannot perpetuate the terms of an agreement beyond the life of the original agreement.

B. ADDITIONAL ARGUMENTS

In addition to the arguments regarding the Agreement language and the intent of the parties, the parties also presented technical and policy arguments regarding traffic to ISPs. We have considered these additional arguments, as set forth below, although the basis of our decision is the plain-meaning of the language in the Agreement.

1. Jurisdictional Nature of Calls to ISPs

BellSouth argues that the FCC has consistently held, beginning with its original access order in 1983, that enhanced service providers (ESPs), which include ISPs, serve their customers through interstate access. BellSouth witness Shiroishi testifies that, "Throughout the evolution of the Internet, the FCC repeatedly has asserted that ISP-bound traffic is interstate." She adds that the FCC concluded in paragraph 12 of the Declaratory Ruling that calls do not terminate at the ISP's local server, but, instead, continue to the ultimate destination or destinations, which may be in another state. BellSouth witness Halprin agrees that, "It is a settled matter at this point in the public debate that the ISP Internet communications do not terminate at the ISP's local server."

In response, GNAPs witness Selwyn agrees that the FCC has held since 1983 that calls placed to ESPs are jurisdictionally interstate. He explains, however, that the FCC has required in a number of contexts that ISP traffic should be treated as local.

GNAPs witness Goldstein further argues that

> [s]ince ISP-bound calls are technically identical to local calls, the logical result from a technical perspective is to include ISP-bound calls with the category of 'local' calls in contracts regarding interconnection between carriers and inter-carrier compensation. Any claim that contracting parties would have had any technical or cost-related reason for distinguishing ISP-bound calls from other local calls is false.

The witness adds that, technically, ISP-bound calls are "indistinguishable from local voice calls," and contends that "[f]rom a traffic perspective, an ISP's modem pool looks very much like an incoming PBX trunk group." GNAPs witness Selwyn added that ISP calls are also economically equivalent to local calls.

Although BellSouth witness Milner argues that the supervisory signals or the signaling protocol used does not determine the nature of the traffic, the evidence shows that BellSouth does, however, treat traffic to ISPs as local in a number of ways. BellSouth witness Halprin agreed that, among other things, the FCC "has directed that ISPs and other ESPs be provisioned out of intrastate tariffs, that revenues be counted as intrastate for ARMIS reports, etc." He argues, however, that ILECs have no choice in these matters, noting that attempts to alter the reporting status of the traffic have been rebuffed by the FCC.

2. Methods of Compensation

Witness Banerjee argues that, because the FCC has ruled that ISP-bound calls are jurisdictionally interstate, not local, the proper model of interconnection that applies to ISP-bound calls is the same as that between an originating ILEC and an interexchange carrier (IXC). In support of this point, witness Banerjee states that the ISP is not an end-user of a serving ALEC but rather a carrier.

Witness Banerjee further argues that the principle of cost causation suggests that,

> *for the purposes of an Internet call,* the subscriber is properly viewed as a customer of the ISP, not of the originating ILEC (or even of the ALEC serving the ISP). The ILEC and the ALEC simply provide access-like functions to help the Internet call on its way, just as they might provide originating or terminating carrier access to help an IXC carry an interstate long distance call. [emphasis in original]

He contends that the ISP should compensate local carriers through usage-based access charges, as IXCs do, and recover that cost directly from the ISP customer. The witness also disagrees with the FCC regarding the appropriateness of the access charge exemption, because he believes it is a form of subsidy to ISPs, their customers, and the ALECs that serve the ISPs. He argues that the

> subsidy likely stimulates demand for Internet use beyond economically efficient levels--a fact not lost on anyone who has followed the phenomenal growth of Internet traffic over the past five years. However, if that subsidy to Internet users and providers (in short, the "Internet industry") were deemed to be in the public interest, then, as I explained before, it should be made explicit and provided for in a competitively neutral manner.

He continues that "the next-best cost-causative form of compensation would be an equitable sharing between the ILEC and the ALEC of revenues earned by the ALEC from the lines and local exchange usage that it sells to the ISP."

After the first two choices for a compensation model, which would likely each earn considerable revenues for the ILEC, witness Banerjee states that "[t]he third-best and a reasonable interim form of compensation would be bill and keep or, in effect, exchange of ISP-bound traffic between the ILEC and the ALEC at no charge to each other."

In response, GNAPs witness Selwyn states that bill and keep is based on the notion that the volume of calls flowing in each direction is balanced. He maintains that traffic is not likely to be in balance, and as a result, carriers have typically adopted the reciprocal compensation model.

3. Cost Recovery

If reciprocal compensation is not paid, GNAPs witness Selwyn argues that the originating carrier avoids the costs associated with call termination. GNAPs witness Rooney agrees, and argues that because traffic may not balanced, BellSouth would, essentially, be using GNAPs' facilities for free.

BellSouth witness Banerjee argues that when the compensation exceeds the actual cost to the ALEC of handling that traffic, ALECs will try to garner as much ISP in-bound traffic as possible in order to reap the benefits of reciprocal compensation. BellSouth witness Halprin states that the current model results in reciprocal compensation that greatly overcompensates ALECs for terminating traffic to ISPs originating on BellSouth's network. The witness maintains that because of the major differences between Internet usage and usage of the public switched telephone network, a per-minute charge is not appropriate if it is developed on the basis of the characteristics of local voice calling patterns.

GNAPs witness Selwyn contends that the $.009 per minute rate contained in the DeltaCom Agreement represents the cost that each participating LEC, the incumbent and the ALEC, incurs in terminating local traffic, or conversely avoids when someone else assumes responsibility for that function. In the case of a BellSouth customer and an ISP served by BellSouth, the witness argues that BellSouth incurs a termination cost for traffic delivered to the ISP, which is avoided if the ISP is the customer of an ALEC. According to witness Selwyn, in either case, BellSouth would have the same cost. He argues, therefore, that the current method of compensation is economically neutral. He adds that if the rate were lower, ALECs would seek high-volume call originating customers, because the ALECs would be underpaying BellSouth for terminating calls.

Witness Selwyn further notes that a call set-up rate could have been established for calls to ISPs, with separate call duration elements, if the duration of calls to ISPs were, in fact, a material cost factor. He emphasizes, however, that such a provision is not in the DeltaCom Agreement adopted by GNAPs.

DETERMINATION

While we have heard and considered the above arguments, the basis for our decision is set forth above in Section I of this Order. We believe the language is clear and that it requires the payment of reciprocal compensation for traffic to ISPs. We note that the evidence is also clear that a cost is involved in the delivery of this traffic, including traffic

to ISPs, and while a rate structure other than reciprocal compensation could have been used in the Agreement, it was not. The rate in the Agreement was set before GNAPs adopted it and was not modified by GNAPs and BellSouth. Therefore, there is no basis to set a different rate in this case. The rate in the Agreement controls.

III. ATTORNEY'S FEES

The parties have taken similar positions on this issue. The parties seem to agree that the language in the Agreement is clear that the prevailing party is entitled to attorneys' fees.

DETERMINATION

We agree. The language in the Agreement is clear that the prevailing party in a pute under this Agreement is entitled to attorneys' fees. Therefore, GNAPs is entitled to llect attorneys' fees associated with this dispute.

IV. CONCLUSION

Based on the foregoing, we find that reciprocal compensation is due under the Agreement adopted by GNAPs for all local traffic, including traffic to ISPs, at the rate set forth in the Agreement. Furthermore, the Agreement clearly provides that the prevailing party is entitled to receive attorneys' fees. Thus, based on our decision herein, GNAPs is entitled to attorneys' fees.

It is therefore

ORDERED by the Florida Public Service Commission that the dispute between Global NAPs, Inc. and BellSouth Telecommunications, Inc. is resolved as set forth in the body of this Order. It is further

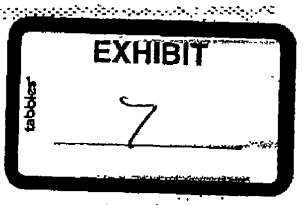
ORDERED that Global NAPs, Inc. is entitled to attorneys' fees as set forth herein. It is further

ORDERED that this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 24th day of April, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

ORDER 00-0803
IS AVAILABLE UPON REQUEST



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of ITC^DeltaCom Communications, Inc. against BellSouth Telecommunications, Inc. for breach of interconnection terms, and request for immediate relief.

DOCKET NO. 991946-TP
ORDER NO. PSC-00-1540-FOF-TP
ISSUED: August 24, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER

ORDER GRANTING MOTION FOR SUMMARY FINAL ORDER

BY THE COMMISSION:

Background

On December 17, 1999, ITC^DeltaCom Communications, Inc. (DeltaCom) filed a request for arbitration concerning a complaint against BellSouth Telecommunications, Inc. (BellSouth). At that time, DeltaCom also filed a Motion to Consolidate its complaint proceeding with the Global NAPs (GNAPs) proceeding in Docket No. 991267-TP. On December 28, 1999, BellSouth filed its Response to DeltaCom's Motion to Consolidate the GNAPs and DeltaCom complaints. On January 11, 2000, BellSouth filed its Answer and Response to DeltaCom's complaint. By Order No. PSC-00-0211-PCO-TP, issued February 2, 2000, DeltaCom's Motion to Consolidate GNAPs' and DeltaCom's complaints was denied. On May 18, 2000, Order No. PSC-00-0979-PCO-TP establishing procedure was issued.

On May 15, 2000, DeltaCom filed a Motion to Continue Proceedings and a Motion for Summary Final Order. On May 22, 2000, BellSouth filed its Response in Opposition to DeltaCom's Motion for Summary Final Order and Response to DeltaCom's Motion to Continue Proceedings. By Order No. PSC-00-1177-PCO-TP, issued June 29, 2000, DeltaCom's Motion to Continue Proceedings was granted. On May 25, 2000, DeltaCom filed a Supplemental Memorandum in Support of its Motion for Summary Final Order and on June 5, 2000, BellSouth filed its Response in Opposition to DeltaCom's Supplemental Memorandum in Support of its Motion for Summary Final Order.

The issues before us are as follows:

I. Under the BellSouth and ITC^DeltaCom interconnection Agreement, as amended, are the parties required to compensate

each other for delivery of traffic to ISPs? If so, what action, if any should be taken?

II. Is the prevailing party entitled to attorney's fees under the agreement?

Order No. PSC-00-0979-PCO-TP, Attachment "A," page 9. The Agreement and subsequent Fourth Amendment of August 27, 1997, under Section VI(B), address the exchange and termination of local traffic and conditions for mutual compensation between DeltaCom and BellSouth. Paragraph 3 of the Fourth Amendment to the Agreement was substituted for Section VI(B) of the Agreement and provides:

B. Compensation

With the exception of the local traffic specifically identified in subsection (C) hereafter, each party agrees to terminate local traffic originated and routed to it by the other party. Each Party will pay the other for terminating its local traffic on the other's network the local interconnection rate of $.009 per minute of use in all states. Each Party will report to the other a Percent Local Usage (PLU) and the application of the PLU will determine the amount of local minutes to be billed to the other Party. Until such time as actual usage data is available, the parties agree to utilize a mutually acceptable surrogate for the PLU factor. For purposes of developing the PLU, each party shall consider every local call and every long distance call. Effective on the first of January, April, July and October of each year, the parties shall update their PLU.

Section VI(A) of the Agreement provides as follows:

A. Exchange of Traffic

The Parties agree for the purpose of this Agreement only that local interconnection is defined as the delivery of local traffic to be terminated on each party's local network so that customers of either party have the ability to reach customers of the other party, without the use of any access code or delay in the processing of the call. Local traffic for these purposes shall include any telephone call that originates and terminates in the same LATA and is billed by the originating exchange outside of BellSouth's service area with respect to which BellSouth has a local interconnection arrangement with an independent LEC, with which DeltaCom is not directly connected. The Parties further agree that

> the exchange of traffic on BellSouth's Extended Area Service (EAS) shall be considered local traffic and compensation for the termination of such traffic shall be pursuant to the terms of this section. EAS routes are those exchanges within an exchange's Basic Local Calling Area, as defined in Section A3 of BellSouth's General Subscriber Services Tariff.

Finally, Attachment B to the Agreement defines "local traffic" as follows:

> 49. "Local Traffic" means any telephone call that originates in one exchange or LATA and terminates in either the same exchange or LATA, or a corresponding Extended Area Service (EAS) exchange. The terms Exchange, and EAS exchanges are defined and specified in Section A3. of BellSouth's General Subscriber Service Tariff.

ITC^DeltaCom's Motion

In its Motion for Summary Final Order (Motion), DeltaCom argues that there is no genuine issue as to any material fact and, as a matter of law, the same issues in a prior decision have been answered contrary to BellSouth's position; therefore, summary final order in favor of DeltaCom should be granted. In addition, as a matter of law, DeltaCom believes BellSouth is collaterally estopped by the decision of the Alabama Public Service Commission (PSC) from re-litigating the issue of whether BellSouth is required to pay reciprocal compensation for calls placed by customers of BellSouth to Information Services Providers (ISPs) served by DeltaCom.

DeltaCom argues that at least 25 state commissions have concluded that ISP traffic is subject to local compensation. In addition the Federal Communications Commission (FCC) issued on February 26, 1999, its decision concerning whether a local exchange carrier is entitled to reciprocal compensation for traffic it delivers to an ISP.[1] DeltaCom states that the FCC decided:

> 1. ISP traffic is jurisdictionally mixed and appears to be largely interstate.
>
> 2. The FCC's adoption of a rule regarding inter-carrier compensation for ISP traffic . . . to govern prospective compensation would serve the public interest. Because of an inadequate record, the FCC seeks comment on alternative proposals for such a rule.

[1] CC Dockets Nos. 96-98 & 99-68, FCC No. 98-38, Declaratory Ruling and Notice of Proposed Rulemaking, rel. February 26, 1999.

> 3. Since the FCC has not heretofore adopted a rule governing intercarrier compensation for ISP traffic, there is no reason [for the FCC] to interfere with state commission's findings as to whether reciprocal compensation provisions of interconnection agreements apply to ISP-bound traffic, pending adoption of [such a rule]. The FCC's ISP Declaratory Ruling is not to "be construed to question any determination a state commission has made, or may make in the future, that parties have agreed to treat ISP-bound traffic as local traffic under existing interconnection agreements." Moreover, "state commissions . . . may determine in their arbitration proceedings at this point that reciprocal compensation should be paid for this traffic." Indeed, although the FCC "has not adopted a specific rule governing the matter, . . . [its] policy of treating ISP bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation, suggest that such compensation is due for that traffic."

DeltaCom argues that it is clear the FCC will not interfere with any state commission decision requiring payment of reciprocal compensation for ISP traffic. At least, it adds, until the FCC promulgates a rule on the matter.

DeltaCom states that five state commissions have addressed this same issue in proceedings in which BellSouth was a party.[2] DeltaCom states that those state commissions interpreted interconnection agreements between BellSouth and various CLECs as providing for payment of reciprocal compensation on ISP traffic. DeltaCom adds that the Alabama PSC and this Commission interpreted the very same interconnection agreement at issue in this proceeding.

DeltaCom argues that in the Florida proceeding, we considered the case as "primarily a contract dispute between the parties" and therefore, addressed only "the issue of whether ISP traffic should be treated as local or interstate for the purposes of reciprocal compensation as necessary to show what the parties might reasonably have intended at the time they entered into their contracts." DeltaCom states that we concluded that BellSouth must compensate the alternative (or competitive) local exchange carriers (ALECs or CLECs) according to the parties' interconnection agreement, including interest for the entire period that the balance owed is outstanding.

DeltaCom further argues that the issue in this docket is a matter of contract interpretation and there are no genuine issues of material fact. DeltaCom argues that the interpretation of contracts is a matter of law and the admission of evidence is improper unless the language of the instrument is ambiguous. DeltaCom concludes that, unless the Commission finds that the Agreement between DeltaCom and BellSouth is unclear, it must determine the issue of reciprocal compensation for ISP traffic as a matter of law based on the plain language of the Agreement without any reference to testimony or other evidence.

---

[2] Alabama, Florida, Georgia, North Carolina, and Tennessee.

Specifically, DeltaCom argues that the issue in Docket No. 991267-TP[3] was the same as the issue before us in the instant docket because GNAPs adopted the agreement between DeltaCom and BellSouth pursuant to Section 252(i) of the Telecommunications Act of 1996 (the Act). Moreover, DeltaCom argues, we found that the "plain language of the Agreement shows that the parties intended the payment of reciprocal compensation for all local traffic, including traffic bound for ISPs" and decided, as a matter of law, "that the plain meaning of the contract between BellSouth and GNAPs was clear and did not require extrinsic evidence to determine the parties' intent." DeltaCom concludes that where there is not a genuine issue of material fact, and the same issues of law were answered in prior decisions, either expressly or impliedly, contrary to the position of the defendant, summary judgment is proper.

DeltaCom also argues that this matter has already been fully litigated and, therefore, BellSouth is collaterally estopped from re-litigating whether it must pay reciprocal compensation. In support of its position, DeltaCom argues that the Alabama PSC's March 1999 order[4] interpreted the Agreement between BellSouth and DeltaCom and also interpreted interconnection agreements between BellSouth and other ALECs. DeltaCom asserts the interconnection agreement before the Alabama PSC is the identical agreement, with amendments, that is at issue in this docket and that BellSouth has argued its same responses.

DeltaCom argues that under the doctrine of collateral estoppel, where the parties and issues are identical and where a particular matter has been fully litigated and determined in a prior litigation which has resulted in a final decision in a court of competent jurisdiction, the parties are barred from re-litigating the same issues. This doctrine, DeltaCom asserts, applies to the decisions of administrative agencies acting in a judicial capacity. DeltaCom notes that in Docket No. 991267-TP GNAPs also argued that the collateral estoppel principle applied based upon the Alabama PSC decision and Commission staff recommended on March 16, 2000, that collateral estoppel would not apply in the GNAPs case because the parties were different. DeltaCom concludes, in this instance consistent with staff's observation, that collateral estoppel does apply because the parties and issues are the same.

DeltaCom also addresses the issue of attorney's fees. DeltaCom states that this issue was also litigated in the GNAPs docket where we found that the language in the agreement is clear and the prevailing party is entitled to attorney's fees. DeltaCom concludes that we should rule as a matter of law that attorney's fees are due.

---

[3] In re: Complaint and/or Petition for Arbitration by Global NAPs, Inc. for Enforcement of Section VI(B) of its Interconnection Agreement with BellSouth Communications, Inc. and Request for Relief - Docket No. 991267-TP.

[4] Alabama Public Service Commission Order, issued March 4, 1999, Docket NO. 26619, In re: Emergency Petitions of ICG Telecom Group, Inc. and ITC^DeltaCom Telecommunications, Inc. For a Declaratory Ruling.

BellSouth's Response

In its Response, BellSouth responds to the three main points of DeltaCom's argument which are: (1) other state commissions and certain federal courts have upheld the payment of reciprocal compensation for ISP-bound traffic; (2) the Commission's GNAPs decision is binding on the parties to this proceeding; and (3) based upon a collateral estoppel theory, the Commission is bound by a decision from the Alabama PSC interpreting the DeltaCom/BellSouth Interconnection Agreement at issue in this proceeding.

BellSouth argues that we have not decided the issue in this case. BellSouth argues that the facts and circumstances surrounding the execution of the agreement and the amendment to the agreement must be considered. In support of its argument, BellSouth includes an affidavit of its employee, Jerry Hendrix, stating the intent of BellSouth and the facts and circumstances present when the agreement and amendment were signed. These facts and circumstances, BellSouth argues, demonstrate that genuine issues of material fact exist that preclude granting DeltaCom a judgment as a matter of law.

Next, BellSouth argues that the state commission decisions on ISP traffic cited by DeltaCom are not relevant to the resolution of this proceeding. BellSouth states that DeltaCom appears to imply that we should summarily rule in DeltaCom's favor because BellSouth has never prevailed in an ISP dispute in its region. BellSouth responds by asserting that DeltaCom fails to mention that the Louisiana PSC also considered this issue, based on similar language to that in the agreement before us, and ruled that reciprocal compensation was not due for ISP traffic. BellSouth noted another decision by the South Carolina PSC that BellSouth did not owe reciprocal compensation for ISP traffic. BellSouth states that the results for the BellSouth region are mixed, and therefore, asserts that DeltaCom's motion is based upon incorrect assumptions.

BellSouth also argues that DeltaCom's reliance on Order No. PSC-98-1216-FOF-TP[5] is misplaced. BellSouth asserts that in the WorldCom decision, we considered the circumstances surrounding the negotiation and execution of every interconnection agreement under which a dispute has arisen concerning reciprocal compensation for ISP traffic. BellSouth argues that DeltaCom has not provided any credible reason for us to depart from prior precedent in the handling of these matters.

BellSouth also claims DeltaCom ignores that the FCC has now ruled twice that calls to ISPs do not "terminate at the ISP." BellSouth argues that although the FCC's Declaratory Ruling has been reversed, the outcome of this case is not affected. BellSouth states that the D.C. Circuit did not establish any principle of law, but rather determined that the FCC had failed to provide a sufficient explanation for its conclusions. Moreover, BellSouth relies on the Chief of the FCC's Common Carrier Bureau who publicly stated that he believes the FCC can and will provide the requested clarification and reach the same conclusion that ISP-bound calls do not terminate locally. BellSouth argues that the FCC has made clear in other orders,

[5] Docket NO. 971478-TP - Complaint of WorldCom Technologies Against BellSouth Telecommunications, Inc. for Breach of Terms of Florida Partial Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 and Request for Relief.

which are unaffected by the D.C. Circuit's ruling, that ISP bound traffic does not terminate locally. Therefore, BellSouth argues that DeltaCom's invitation to decide this case based upon earlier decisions cannot be reconciled with FCC rulings.

BellSouth also argues that DeltaCom's reliance on cases from other states is equally misplaced as the facts and circumstances in the other cases are irrelevant to the issues in this proceeding. BellSouth argues that we must decide whether BellSouth and DeltaCom mutually agreed to pay reciprocal compensation for ISP bound traffic based on the facts in this record and not those developed in other cases interpreting other interconnection agreements.

BellSouth also argues that our GNAPs decision is not dispositive of this proceeding as DeltaCom contends. BellSouth argues that while the issue was litigated in the GNAPs proceeding, the issue was strictly limited to the facts and circumstances surrounding the negotiation and execution of the GNAPS/BellSouth interconnection agreement. BellSouth notes that DeltaCom's petition to intervene in that proceeding was denied. BellSouth asserts that the GNAPs proceeding was conducted under the unequivocal understanding that the GNAPS decision would not have precedential value as to this proceeding, and therefore, DeltaCom's argument should be rejected.

To DeltaCom's contention that the GNAPs decision renders moot any consideration of the intent of the parties in negotiating and executing the agreement, BellSouth argues that it was not permitted to introduce any evidence of BellSouth's and DeltaCom's intent in Docket No. 991267-TP; therefore, we could not have decided this issue, notwithstanding any language in the GNAPs decision to the contrary.

Finally, BellSouth argues that we are not collaterally estopped from considering BellSouth's position in this proceeding. BellSouth contests DeltaCom's suggestion that we lack the authority to consider this issue on our own and are bound by the decision of an administrative agency from another state. BellSouth asserts that in the context of a Section 252 arbitration proceeding where identical issues are litigated on a multi-state basis, under DeltaCom's theory, the first arbitration decision from a state commission would be binding upon all other state commissions, as the parties and subject matter would be the same in each jurisdiction.

In addition, BellSouth asserts that the Alabama PSC decision is based on a hearing that was conducted prior to the FCC's Declaratory Ruling; the Alabama PSC order is not a final order, as the decision is currently on appeal to the U.S. Court of Appeals for the Eleventh Circuit; the Alabama PSC decision is based on the nuances of Alabama law, not Florida law; and finally, that the cases footnoted by DeltaCom do not apply to foreign administrative decisions. BellSouth also notes that DeltaCom has a pending ISP complaint proceeding before the South Carolina PSC under this identical interconnection Agreement. Moreover, BellSouth asserts that DeltaCom requested summary judgment and the South Carolina PSC denied DeltaCom's motion.

Finally, BellSouth argues that it is bad policy for us to rely upon foreign administrative bodies to determine a course of action for Florida. BellSouth argues that we are in the best position to determine the appropriate course of action for Florida and are vested with the responsibility to do so.

DeltaCom's Supplemental Memorandum

In its May 25, 2000, Supplemental Memorandum in support of its Motion for Summary Final Order, DeltaCom asserts that BellSouth leaves out one critical argument it made. DeltaCom argues its point was that this case is a matter of contract interpretation for which extrinsic evidence is not admissible unless the contract language is ambiguous. DeltaCom argues that unless the provisions of the contract are ambiguous on their face, the decision in this case must be made as a matter of law and we may not admit or consider any evidence. DeltaCom argues that before we can allow either party to submit any evidence in this case, we must first make an affirmative finding that the controlling provisions of the interconnection agreement are unclear and ambiguous.[6] DeltaCom argues, otherwise, we must rule for one party or the other based on our interpretation of the interconnection agreement alone.

BellSouth's Response to DeltaCom's Memorandum

On June 5, 2000, BellSouth filed its response in opposition to DeltaCom's supplemental memorandum. BellSouth asserts that given its importance to the resolution of this proceeding, the fact that "terminates" is an undefined term raises a question of fact as to the usage of the term as of the effective date of the agreement; therefore, defeating DeltaCom's Motion for Summary Final Order.[7]

Finally, BellSouth notes that the contract is void of any express assertion of whether reciprocal compensation is due for ISP traffic, and that each party contends that the language is unambiguous as to that party's position. BellSouth asserts that in this situation the Courts have found that:

> it is a well-established legal principle that if a written contract is ambiguous so that the intent of the parties cannot be understood from an inspection of the instrument, extrinsic or parole evidence of the subject matter of the contract, of the relation of the parties, and of the circumstances surrounding them when they entered into the contract may be received in order to properly interpret the instrument.[8]

---

[6] See Emergency Associates of Tampa, P.A. v. Sassamo, 664, So 2d 1000, 1002 (Fla 2nd DCA 1995); See also Sears v. James Talcott, Inc., 174 So 2d 776, 778 (Fla. 2nd DCA 1965); Olive v. Tampa Educational Cable Consortium, 723 So 2d 883, 884 (Fla. 2nd DCA 1998).

[7] See Section 671.205(2), Florida Statutes, defining the usage of trade and stating that "[t]he existence and scope of such usage are to be proved as facts;" see also Affiliated FM Ins. Co. v. Constitution Reins Corp., 416 Mass. 839, 626 N.E. 2d 878, 882 (Mass. 1994); Restatement (Second) of Contracts, §222(2) (1991).

[8] See Lemon v. Aspen Emerald Lakes Assoc. Ltd. 446 So. 2d 177 (Fla. 5th DCA 1984).

Determination

Rule 28-106.204(4), Florida Administrative Code, provides:

> Any party may move for summary final order whenever there is no genuine issue as to any material fact. The motion may be accompanied by supporting affidavits. All other parties may, within seven days of service, file a response in opposition, with or without supporting affidavits. A party moving for summary final order later than twelve days before the final hearing waives any objection to the continuance of the final hearing.

The purpose of summary judgment, or in this instance summary final order, is to oid the expense and delay of trial when no dispute exists concerning the material facts. e record is reviewed in the most favorable light toward the party against whom the ummary judgment is to be entered. When the movant presents a showing that no material fact on any issue is disputed, the burden shifts to his opponent to demonstrate the falsity of the showing. If the opponent does not do so, summary judgment is proper and should be affirmed. The question for determination on a motion for summary judgment is the existence or nonexistence of a material factual issue. There are two requisites for granting summary judgment: first, there must be no genuine issue of material fact, and second, one of the parties must be entitled to judgment as a matter of law on the undisputed facts. (See Trawick's Florida Practice and Procedure, §25-5, Summary Judgment Generally, Henry P. Trawick, Jr. (1999).)

The first question is whether the record shows an absence of disputed material facts under the substantive law applicable to the action. To decide the question, the applicable substantive law must be determined and then compared with the facts in the record. If the comparison shows a genuinely disputed material factual issue, summary judgment must be denied and the court cannot decide the issue. Even though the facts are not disputed, a summary judgment is improper if differing conclusions or inferences can be drawn from the facts. (Id.)

The question before us is whether the interconnection agreement on its face is clear that reciprocal compensation is due for ISP bound traffic. We agree with DeltaCom that the issue is a question of contract interpretation. In that regard, the first question that we must answer is whether the record shows an absence of disputed material facts under the substantive law applicable to the action. As argued by DeltaCom, in a contract dispute, an affirmative finding must be made that the controlling provisions of the agreement are unclear and ambiguous.

We find that the language in the Agreement and the subsequent Fourth Amendment August 27, 1997, under paragraph 3 relating to Section VI(B), is clear and calls for eciprocal compensation for local traffic. The Agreement does not segregate traffic to ISPs from local traffic, nor is it addressed elsewhere in the agreement. Without some indication in the Agreement that traffic to ISPs was to be treated differently or somehow segregated from "local traffic," although dialed by the customer as a local call, we find no basis for BellSouth's contention that the definition of "local traffic" is not clear. Moreover, we believe

BellSouth's argument that the term "terminates" is "unidentified" is also without merit for the same reason.

In this case, we agree with DeltaCom that the plain language of the Agreement calls for the payment of reciprocal compensation for all local traffic, including traffic bound for ISPs. We further agree with DeltaCom that unless the Agreement between DeltaCom and BellSouth is unclear, the issue of reciprocal compensation for ISP traffic must be determined as a matter of law based on the face of the Agreement without any reference to testimony or other evidence. Therefore, we find it is not necessary to look beyond the written agreement to the actions of the parties at the time the agreement was executed or to the subsequent actions of the parties to determine their intent.

As to DeltaCom's argument that BellSouth is collaterally estopped from relitigating whether it must pay reciprocal compensation, we believe that because the Agreement is clear on its face, DeltaCom's arguments of collateral estoppel need not be reached. In addition, we believe that while the Alabama PSC decision is instructive, it is not controlling. Moreover, the decision of the Alabama PSC has been appealed to the U. S. Court of Appeals.

With regard to the statement in the GNAPs Order Denying Intervention that the decision in the GNAPs docket would not have precedential value in the instant proceeding, we believe that decision does not prohibit our findings in this case to be consistent with the outcome of that case. In addition, while we note DeltaCom's arguments that there is no issue of material fact to be decided because of the decisions made by the FCC, other state commissions, and this Commission, we believe that reliance should not be placed on those decisions because the decisions affected different parties and related to different interconnection agreements. Moreover, we note BellSouth's assertions that the opinions are not unanimous.

Based upon the foregoing discussion, we find it reasonable to grant DeltaCom's Motion for Summary Final Order. We believe that the language in the Agreement and the subsequent Fourth Amendment of August 27, 1997, under paragraph 3 relating to Section VI(B) is clear and calls for reciprocal compensation for local traffic. The Agreement does not segregate traffic to ISPs from local traffic. Thus, the plain language of the Agreement calls for the payment of reciprocal compensation for all local traffic, including traffic bound for ISPs.

ATTORNEY'S FEES

DeltaCom argues that it is entitled to attorney's fees as there is no genuine issue of material fact that the agreement is clear and the prevailing party is entitled to attorney's fees. DeltaCom argues that BellSouth agrees on this point and further argues that the prevailing party is entitled to attorney's fees because "the plain language of the Agreement is unambiguous." We note that BellSouth did not address this argument in its response.

The interconnection agreement clearly provides that the prevailing party is entitled to receive attorney's fees. (Section XXV, page 59 of the Agreement provides: [t]he Party which does not prevail shall pay all reasonable costs of the arbitration or other formal complaint proceeding, including reasonable attorney's fees and other legal expenses of the prevailing Party.) Therefore, we find that DeltaCom is entitled to attorney's fees.

Motion for Supplemental Authority

On August 9, 2000, DeltaCom filed a Motion for Leave to file Supplemental Authority. At our Prehearing Conference BellSouth stated that it planned to file a response and further stated that the authority DeltaCom sought to file had been stayed. We find that given our decision that the agreement is clear on its face, DeltaCom's Motion is moot.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that ITC^DeltaCom Motion for Summary Final Order is hereby granted. It is further

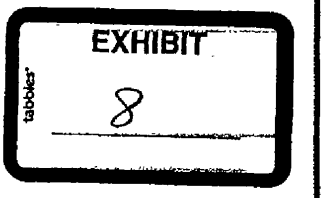
ORDERED that DeltaCom is entitled to attorney's fees pursuant to the interconnection agreement provides that the prevailing parties are entitled to receive attorney's fees. It is further

ORDERED that DeltaCom's Motion for Leave to File Supplemental Authority is moot. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 24th day of August, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting



State of New Jersey
County of Somerset

BEFORE ME, the undersigned authority, on this 29th day of July, 2002, personally appeared Paul E. Cain, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says as follows:

AFFIDAVIT OF PAUL CAIN

My name is Paul E. Cain. I am employed by TCG as a District Manager in the Business Services organization. My business address is 900 Route 202/206, Bedminster New Jersey, 07921. My affidavit addresses reciprocal compensation with respect to Internet Service Provider ("ISP") traffic and the tandem interconnection rate that is due to TCG.

1. I have worked in the field of telecommunications since 1989 when I joined National Economic Research Associates in White Plains, NY as a Research Associate investigating issues of pricing and competition for intrastate telephone service. In 1993, I joined Teleport Communications Group in Staten Island, NY where I served as Director - Government Affairs and Public Policy. In this capacity, I developed and advocated policy positions on universal service, residential service, and other issues bearing on the development of local competition. During 1998 and 1999, I was a member of the AT&T/TCG Integration Team and worked on a variety of projects designed to make effective use of the combined AT&T/TCG networks. In May 1999 I accepted my current position as District Manager for Switched Access and Interconnection Services with TCG's Business Services Organization. In this position, I am responsible for managing the revenue generated from services provided to other carriers, including reciprocal compensation.

2. I earned a Bachelor's Degree in Economics from the University of Rochester and a Master's Degree in Economics from Rensselaer Polytechnic Institute.

3. I have testified in regulatory proceedings in California, Texas, and New Jersey.

4. Teleport Communications Group Inc. ("Teleport") is the holding company parent of TCG South Florida (hereinafter referred to collectively as "TCG"). TCG is an "alternative local exchange telecommunications company" ("ALEC") within the meaning of Section 364.02(1), Florida Statutes. ALECs also are referred to as "competitive local exchange companies" or "CLECs."

5. TCG is the holder of ALEC Certificate No. 3519, issued by the Florida Public Service Commission ("FPSC" or "Commission"). An ALEC certificate authorizes the holder to provide local telecommunications service within the state of Florida, which includes local exchange service, exchange access service, and intraLATA toll service.

6. TCG is a "local exchange carrier" under the terms of the Interconnection Agreement at issue in this proceeding and 47 U.S.C. §153(26).

7. Verizon Florida, Inc. ("Verizon"), formerly known as GTE Florida Incorporated, is authorized to provide local exchange, exchange access and intraLATA toll services within its geographically defined service territory in the State of Florida and is a "local exchange telecommunications company" within the meaning of Section 364.02(6), Florida Statutes.[1]

8. Verizon is an "incumbent local exchange company" or "ILEC" under the terms of the Interconnection Agreement at issue in this proceeding and within the meaning of 47 U.S.C. §251(h).

RECIPROCAL COMPENSATION FOR ISP-BOUND TRAFFIC

9. AT&T and GTE entered into an interconnection agreement which was approved by the Florida PSC in May, 1997. TCG adopted the AT&T – GTE interconnection agreement in March, 1998. At the time AT&T and GTE entered into their agreement and at the time it was adopted by TCG, telecommunications traffic to Internet Service Providers ("ISPs") was local service pursuant to Florida PSC Order No. 21815, issued September 5, 1989, as well as the FCC's initial order implementing the Telecommunications Act of 1996, *In re Implementation of Local Competition in Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (FCC *Local Competition Order).*

10. Section 251(a) of the Telecom Act obligates all telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Pursuant to Section 251(a), TCG and Verizon have directly interconnected their networks to enable an end-user who has subscribed to Verizon's local exchange service to place local and intraLATA toll calls to end-users who have subscribed to TCG's local exchange service, and vice versa, under terms set forth in the TCG-GTE/Verizon Agreement. [2]

11. Section Sec. 43.3.1 of the TCG-GTE/Verizon Agreement provides as follows:

> Reciprocal Compensation applies for transport and termination of Local Traffic billable by GTE or AT&T which a Telephone Exchange Service Customer originates on GTE's or AT&T's network for termination on the other Party's network.

---

[1] Verizon also holds a Florida ALEC certificate, but Verizon's ALEC activities are not at issue in this Arbitration.

[2] End-users of each company similarly may place interLATA toll (switched access long distance) calls to end-users of any other company. InterLATA toll calls are dialed on a 1+ basis (1+ NPA+NXX+XXXX) and are routed over switched access trunks. InterLATA toll traffic is not at issue in this arbitration.

12. Attachment 6, Appendix C, Section 3 of the TCG-GTE/Verizon Agreement provides as follows:

> APPENDIX C
> INTERCONNECTION AND BILLING
> This Section describes the Meet Point Billing and Reciprocal Compensation requirements applicable when AT&T is interconnected to GTE network facilities.
> ***
> Reciprocal Compensation
>
> The Parties shall bill each other reciprocal compensation in accordance with the standards set forth in this Agreement for traffic terminated to the other Party's customer, where both such customers bear NPA-NXX designations associated with the same LATA or other authorized area (e.g., extended area service zones in adjacent LATAs), including those traffic types that have been traditionally referred to as "local calling", as "extended area service ("EAS"), and as "intraLATA toll". Where GTE is the recording company, such traffic shall be recorded and transmitted to AT&T in accordance with this Attachment. Further, the traffic exchanged pursuant to this Attachment shall be measured in billing minutes of use and shall be in actual conversation seconds. The total conversation seconds per chargeable traffic type will be totaled for the entire monthly billing cycle and then rounded to the next whole conversation minute. Reciprocal compensation for the termination of this traffic shall be charged at rates specified in Part V and Attachment 14.
>
> In lieu of the reciprocal compensation arrangement described above and where permitted by state law or Commission regulation or order, the Parties may elect in writing to adopt a bill and keep compensation arrangement or such other mutually agreed upon compensation arrangements.

13. GTE and TCG contracted to pay reciprocal and mutual compensation to each other for traffic that originates on one company's network and terminates on the other's network, including local traffic, extended area service ("EAS") traffic, and intraLATA toll traffic in accordance with Section 251(b)(5) of the Telecom Act.

14. "Local Traffic" for purposes of interconnection and mutual compensation is defined in the TCG-GTE/Verizon Agreement, to include traffic:

> that originates and terminates in the same GTE exchange area; or originates and terminates in different GTE exchange areas that share a common mandatory local calling area such as mandatory Extended Area Service (EAS).

Exhibit A to TCG Petition, Attachment 11, page 6.

15. The reciprocal compensation provisions in the TCG-GTE/Verizon Agreement provide that local traffic shall be exchanged on a "bill and keep" basis unless the traffic imbalance exceeded ten percent for the prior quarter. See Exhibit A, page 62, Sec. 43.3.1 and Attachment 14, page 14, par. 162. In a "bill and keep" arrangement, the parties do not bill each other for termination of local traffic received from the other party, but instead recover these costs from their own retail customers through local service rates. That is, they bill their own customers and keep the proceeds.

16. According to the TCG-GTE/Verizon Agreement, if the traffic imbalance for traffic exchanged between the companies within the State of Florida exceeded ten percent for the prior quarter, reciprocal compensation is to be charged at the rates set forth in Appendix 4 to Attachment 14 and Attachment 15 of the TCG-GTE/Verizon Agreement.

17. On April 1, 1999, TCG commenced billing Verizon for reciprocal compensation pursuant to Appendix 4 to Attachment 14 and Attachment 15 of the TCG-GTE/Verizon Agreement, as the traffic imbalance exceeded ten percent for the preceding three months. TCG included all minutes of use when calculating the traffic imbalance, including minutes of use originated by Verizon's end users and terminated by TCG to its end user customers who are ISPs.

18. The traffic imbalance has exceeded ten percent per month since April 1, 1999, and since that time TCG has billed Verizon reciprocal compensation for the transport and termination of Local Traffic, including traffic originated by Verizon's end-user customers and transported by TCG to ISPs served by TCG.

19. TCG has rendered monthly bills to Verizon for reciprocal compensation for the transporting and terminating calls originated by Verizon's end-user customers. The billings are reflected in TCG's invoices to Verizon, which were timely and properly delivered to Verizon pursuant to the TCG-GTE/Verizon Agreement. Verizon has failed and refused to pay such invoices in full. Instead, Verizon has withheld payment for minutes of use billed by TCG that Verizon deems to be ISP-bound traffic.

20. TCG has provided Verizon with interconnection services and has performed all of its material obligations pursuant to the TCG-GTE/Verizon Agreement.

21. Verizon first gave notice to TCG of its position that ISP-bound traffic was not subject to reciprocal compensation on March 25, 2000.

22. Verizon end-user customers have made and continue to make calls to TCG subscribers, including ISPs. TCG continues to transport and terminate such calls.

23. Verizon serves Enhanced Service Providers, including Internet Service Providers, out of its intrastate tariffs.

24. On information and belief, Verizon classifies revenues associated with Verizon's service to Enhanced Service Providers, including Internet Service Providers, as intrastate revenues.

25. Nothing in the TCG – GTE/Verizon Interconnection Agreement specifically addresses ISP-bound traffic.

26. There is no language anywhere in the TCG – GTE/Verizon Agreement that excludes, excepts or segregates ISP-bound calls from the definition of "local traffic".

27. There is no language anywhere in the TCG-GTE/Verizon Interconnection Agreement that requires the parties to meter, measure or identify ISP-bound traffic, or provides a methodology for doing so.

28. There is no language in the TCG – GTE/Verizon Interconnection Agreement allowing or suggesting that any traffic should be segregated or identified on the basis of call holding times.

29. The Interconnection Agreement does not distinguish between local exchange calls placed to ISP end-users and local exchange calls placed to end-users who are not ISPs.

30. Verizon end-user customers who subscribe to flat-rate local calling service may place local exchange calls to ISPs without additional charge.

31. Neither Verizon nor TCG have systems in place to meter or otherwise segregate calls to Internet Service Providers.

32. Verizon estimates what it deems to be ISP-bound traffic received from TCG based on call holding times.

33. ISP-bound calls travel across local trunks.

TANDEM RATE COMPENSATION

34. There are fundamental differences between the network architecture deployed by TCG and the legacy network architecture deployed by Verizon. Verizon's network is composed of numerous local switches, each of which provides dial tone to customers located within the wire center served by the switch. These local switches are connected

by tandem switches, until there is a sufficient volume of traffic to justify establishing direct connections between the local switches.

35. In contrast, TCG provides dial tone out of multi-functional switches with high capacity, each of which covers multiple Verizon rate centers.

36. TCG's switch is capable of serving the entire LATA, which is a geographic area comparable to the area served by Verizon's tandem switches. TCG's switch has had the capability of serving the entire LATA since TCG began providing service pursuant to the TCG-GTE/Verizon Agreement.

37. TCG provides local exchange services using a Class 5 switch. TCG is able to connect any customer in LATA 952 to the TCG switch serving that LATA either through (1) TCG's own facilities built to the customer premises, (2) UNE loops provisioned through collocation in Verizon end offices, or (3) using dedicated high-capacity facilities (in special access services or combinations of UNEs purchased from Verizon).

38. I have prepared two maps, which are marked as Exhibit A and Exhibit B. The exhibits show both color transparency maps and color copies (of the same maps). The transparent maps are supplied so that the arbitrator can "overlay" the maps and compare the geographic area served by TCG and Verizon's switches. A non-transparent copy of the Exhibits is being provided with this Affidavit, with the transparent copy to follow under separate cover.

39. These maps were created by using data contained in the Local Exchange Routing Guide (LERG). The LERG, produced by Telcordia Technologies, contains routing data that supports the current local exchange network configuration within the North American Numbering Plan (NANP) as well as identifying reported planned changes in the network.

The LERG data in conjunction with MapInfo V-4.1.1.2, a commercial mapping software package, was used to prepare the state-wide and LATA-specific maps attached herein. The maps accurately depict the area served by TCG and Verizon in LATA 952.

40. The first map, Exhibit A, shows the switch TCG operates in Florida within LATA 952. The second map, Exhibit B, shows the two tandem switches Verizon currently operates in Florida on in LATA 952. When the maps are superimposed over each other, it becomes clear that TCG's switch covers a comparable or greater geographic area as that covered by the corresponding Verizon tandem switch.

FURTHER AFFIANT SAYETH NOT.

I, Paul E. Cain, hereby declare under penalty of perjury that the information I have provided in this affidavit is true and correct of my own personal knowledge, or where indicated, upon information and belief.

Paul E. Cain

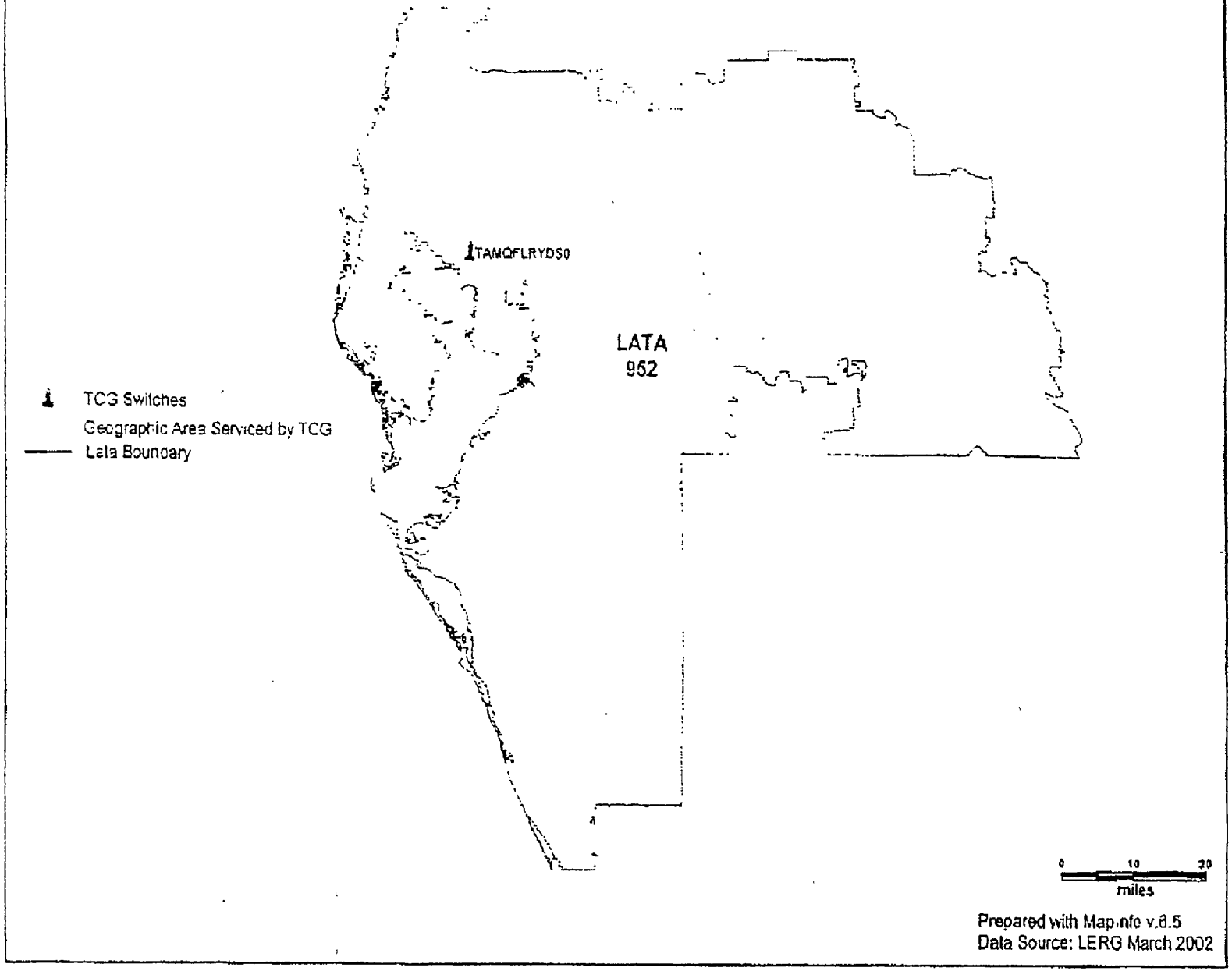
SWORN TO AND SUBSCRIBED before me on this 29th day of July, 2002.

Notary Public

My commission expires: 1/30, 2007

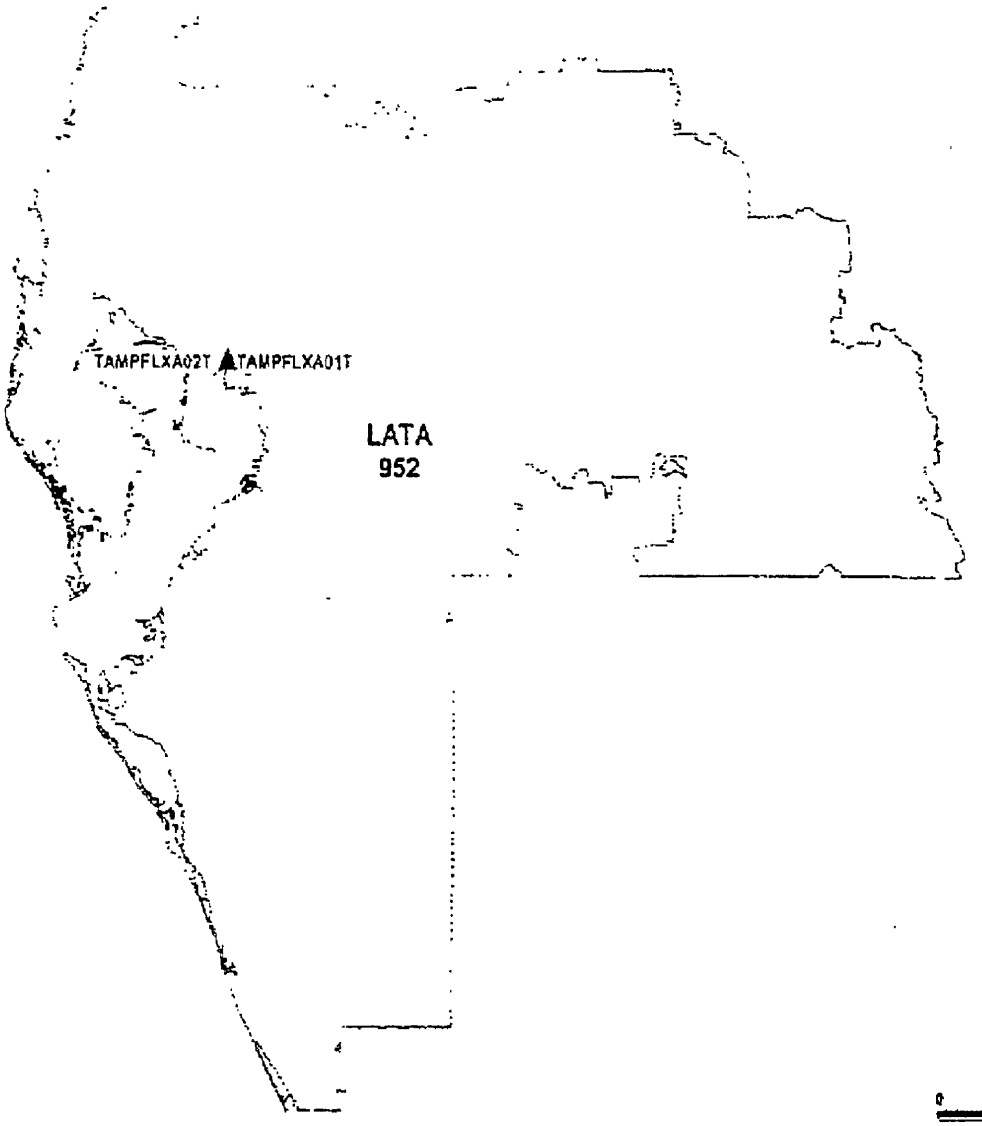
Catrina A. Lostrocco
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 1/30/2007

TCG Switches Serving Tampa, FL



PENGAD-Bayonne, N. J.
EXHIBIT
A

Verizon Tandems Serving Tampa, FL



Geographic Area Serviced by

TAMPFLXA01T
TAMPFLXA02T

▲ Verizon Tandems

—— Lata Boundary

Prepared with MapInfo v.6.5
Data Source: LERG March 2002

PENGAD-Bayonne, N. J.

EXHIBIT B

EXHIBIT
tabbies
9

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

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Inter-Carrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68

Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68

Adopted: February 25, 1999 Released: February 26, 1999

NPRM Comment Date: April 12, 1999

NPRM Reply Date: April 27, 1999

By the Commission: Commissioner Ness issuing a statement; Commissioner Furchtgott-Roth not participating; and Commissioner Powell concurring and issuing a statement.

I. INTRODUCTION

1. The Commission and the Common Carrier Bureau (Bureau) have received a number of requests to clarify whether a local exchange carrier (LEC) is entitled to receive reciprocal compensation for traffic that it delivers to an information service provider, particularly an Internet service provider (ISP).[1] Generally, competitive LECs (CLECs) contend that this is local

[1] *See, e.g.*, Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, 61 Fed. Reg. 53,922 (1996); Petition for Partial Reconsideration and Clarification of MFS Communications Co., Inc. at 28; Letter from Richard J. Metzger, General Counsel for ALTS, to Regina M. Keeney, Chief, Common Carrier Bureau, FCC (June 20, 1997) (ALTS Letter); Pleading Cycle Established for Comments on Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, CCB/CPD 97-30, DA 97-1399 (rel. July 2, 1997) (*ALTS Letter Notice*); Letter from Edward D. Young, Senior Vice President & Deputy General Counsel for Bell Atlantic, and Thomas J. Tauke, Senior Vice President -- Government Relations for Bell Atlantic, to Hon. William E. Kennard, Chairman, FCC (July 1, 1998). This question sometimes has been posed more narrowly, *i.e.*, whether an incumbent LEC must pay reciprocal compensation to a competitive LEC (CLEC) that delivers incumbent LEC-originated traffic to ISPs. Because the

traffic subject to the reciprocal compensation provisions of section 251(b)(5) of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996.[2] Incumbent LECs contend that this is interstate traffic beyond the scope of section 251(b)(5). After reviewing the record developed in response to these requests, we conclude that ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate. This conclusion, however, does not in itself determine whether reciprocal compensation is due in any particular instance. As explained below, parties may have agreed to reciprocal compensation for ISP-bound traffic, or a state commission, in the exercise of its authority to arbitrate interconnection disputes under section 252 of the Act, may have imposed reciprocal compensation obligations for this traffic. In the absence, to date, of a federal rule regarding the appropriate inter-carrier compensation for this traffic, we therefore conclude that parties should be bound by their existing interconnection agreements, as interpreted by state commissions.

II. BACKGROUND

2. Identifying the jurisdictional nature and regulatory treatment of ISP-bound communications requires us to determine how Internet traffic fits within our existing regulatory framework. We begin, therefore, with a brief description of relevant terminology and technology. We then turn to the specific matter of LEC delivery of ISP-bound communications.

---

pertinent provision of the 1996 Act pertains to all LECs, we examine this issue in the broader context. 47 U.S.C. § 251(b)(5).

For purposes of this Declaratory Ruling, we refer to providers of enhanced services and providers of information services as ESPs, a category which includes Internet service providers, which we refer to here as ISPs. As the Commission stated in the *Access Charge Reform Order*, the term "enhanced services," defined in the Commission's rules as "services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information," 47 C.F.R. § 64.702(a), is quite similar to "information services," defined in the Act as offering "a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications." 47 U.S.C. § 153(20). Access Charge Reform, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, 16131-32 n.498 (1997) (*Access Charge Reform Order*), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998). *See also* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, at 11516 (1998) (*Universal Service Report to Congress*) (reiterating Commission's conclusion that the 1996 Act's definitions of telecommunications services and information services "essentially correspond to the pre-existing categories of basic and enhanced services").

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.* (1996 Act).

A. The Internet and ISPs.

3. The Internet is an international network of interconnected computers enabling millions of people to communicate with one another and to access vast amounts of information from around the world.[3] The Internet functions by splitting up information into "small chunks or 'packets' that are individually routed . . . to their destination."[4] With packet-switching, "even two packets from the same message may travel over different physical paths through the network . . . which enables users to invoke multiple Internet services simultaneously, and to access information with no knowledge of the physical location of the service where the information resides."[5]

4. An ISP is an entity that provides its customers the ability to obtain on-line information through the Internet. ISPs purchase analog and digital lines from local exchange carriers to connect to their dial-in subscribers.[6] Under one typical arrangement, an ISP customer dials a seven-digit number to reach the ISP server in the same local calling area. The ISP, in turn, combines "computer processing, information storage, protocol conversion, and routing with transmission to enable users to access Internet content and services."[7] Under this arrangement, the end user generally pays the LEC a flat monthly fee for use of the local exchange network and generally pays the ISP a flat, monthly fee for Internet access.[8] The ISP typically purchases business lines from a LEC, for which it pays a flat monthly fee that allows unlimited incoming calls.

5. Although the Commission has recognized that enhanced service providers (ESPs), including ISPs, use interstate access services,[9] since 1983 it has exempted ESPs from the

---

[3] 47 U.S.C. § 230; *see also Reno v. American Civil Liberties Union*, 117 S. Ct. 2329, 2334 (1997).

[4] *Universal Service Report to Congress*, 13 FCC Rcd at 11531, 11532.

[5] *Id.*

[6] *Id.* at 11532.

[7] *Id.* at 11531.

[8] The Commission has acknowledged the significance of end users being able to place local, rather than toll, calls to ISPs, in analyzing, among other things, universal service issues. *See, e.g.*, Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 9142-43, 9159, 9160 (1997) (*Universal Service Order*); *Universal Service Report to Congress*, 13 FCC Rcd at 11541-42.

[9] *See, e.g*, MTS and WATS Market Structure, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 682, 711 (1983) (*MTS/WATS Market Structure Order*) ("[a]mong the variety of users of access service are . . . enhanced service providers"); Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215, Order, 3 FCC Rcd 2631 (1988) (*ESP Exemption Order*) (referring to "certain classes of exchange access users, including enhanced service providers"); Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215, Order, 2 FCC Rcd 4305, 4306 (1987) (ESPs, "like facilities-based interexchange carriers and resellers, use the local network to provide

payment of certain interstate access charges.[10] Pursuant to this exemption, ESPs are treated as end users for purposes of assessing access charges, and the Commission permits ESPs to purchase their links to the public switched telephone network (PSTN) through intrastate business tariffs rather than through interstate access tariffs.[11] Thus, ESPs generally pay local business rates and interstate subscriber line charges for their switched access connections to local exchange company central offices.[12] In addition, incumbent LEC expenses and revenue associated with ISP-bound traffic traditionally have been characterized as intrastate for separations purposes.[13] ESPs also pay the special access surcharge when purchasing special access lines under the same conditions as those applicable to end users.[14] In the *Access Charge Reform Order*, the Commission decided to maintain the existing pricing structure pursuant to which ESPs are treated as end users for the purpose of applying access charges.[15] Thus, the

---

interstate services"); *Access Charge Reform Order*, 12 FCC Rcd at 16131-32 (information service providers "may use incumbent LEC facilities to originate and terminate interstate calls").

[10] The exemption was adopted at the inception of the interstate access charge regime to protect certain users of access services, such as ESPs, that had been paying the generally much lower business service rates from the rate shock that would result from immediate imposition of carrier access charges. *See MTS/WATS Market Structure Order*, 97 FCC 2d at 715.

[11] Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215, Order, 3 FCC Rcd 2631, 2635 n.8, 2637 n.53 (1988) (*ESP Exemption Order*).

[12] *ESP Exemption Order*, 3 FCC Rcd at 2635 n.8, 2637 n.53. The subscriber line charge (SLC) is an access charge imposed on end users to recover at least a portion of the cost of the interstate portion of LEC facilities used to link each end user to the public switched telephone network (PSTN).

[13] Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79, Notice of Proposed Rulemaking, 4 FCC Rcd. 3983, 3987-88 (1989).

[14] *See* 47 C.F.R. § 69.5(a) ("End user charges shall be computed and assessed upon public end users, and upon providers of public telephones. . . ."); *see also* 47 C.F.R. § 69.5(c) ("Special access surcharges shall be assessed upon users of exchange facilities that interconnect these facilities with means of interstate or foreign telecommunications to the extent that carrier's carrier charges are not assessed upon such interconnected usage."). *See also* 47 C.F.R. § 69.2(m) (End user means "any customer of an interstate or foreign telecommunications service that is not a carrier except that a carrier other than a telephone company shall be deemed to be an 'end user' when such carrier uses a telecommunications service for administrative purposes and a person or entity that offers telecommunications services exclusively as a reseller shall be deemed to be an 'end user' if all resale transmissions offered by such reseller originate on the premises of such reseller.").

[15] *Access Charge Reform Order*, 12 FCC Rcd at 16133-34. On August 19, 1998, the U.S. Court of Appeals for the Eighth Circuit affirmed the Commission's *Access Charge Reform Order*. Specifically, the court found that the Commission's decision to exempt information services providers from the application of interstate access charges (other than SLCs) was consistent with past precedent, did not unreasonably discriminate in favor of ISPs, did not constitute an unlawful abdication of the Commission's regulatory authority in favor of the states, and did not deprive incumbents of the ability to recover their pertinent costs. *Southwestern Bell Telephone Co. v. FCC*, 153 F 3d 523, 542 (8th Cir 1998).

Commission continues to discharge its interstate regulatory obligations by treating ISP-bound traffic as though it were local.

6. The Internet provides citizens of the United States with the ability to communicate across state and national borders in ways undreamed of only a few years ago. The Internet also is developing into a powerful instrumentality of interstate commerce. In 1997, we decided that retaining the ESP exemption would avoid disrupting the still-evolving information services industry and advance the goals of the 1996 Act to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services."[16] This Congressional mandate underscores the obligation and commitment of this Commission to foster and preserve the dynamic market for Internet-related services. We emphasize the strong federal interest in ensuring that regulation does nothing to impede the growth of the Internet -- which has flourished to date under our "hands off" regulatory approach -- or the development of competition. We are mindful of the need to address the jurisdictional question at issue here, and the effect the jurisdictional determination may have on inter-carrier compensation for ISP-bound traffic, in a manner that promotes efficient entry by providers of both local telephone and Internet access services, and that, by the same token, does not encourage inefficient entry.

B. Incumbent LEC and CLEC Delivery of ISP-Bound Traffic.

7. Section 251(b)(5) of the Act requires all LECs "to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[17] In the *Local Competition Order*, this Commission construed this provision to apply only to the transport and termination of "local telecommunications traffic."[18] In order to determine what compensation is due when two carriers collaborate to deliver a call to an ISP, we must determine as a threshold matter whether this is interstate or intrastate traffic. In general, an originating LEC end user's call to an ISP served by another LEC is carried (1) by the originating LEC from the end user to the point of interconnection (POI) with the LEC serving the ISP; (2) by the LEC serving the ISP from the LEC-LEC POI to the ISP's local server; and (3) from the ISP's local server to a computer that the originating LEC end user desires to reach via the Internet. If these calls terminate at the ISP's local server (where another (packet-switched) "call" begins), as many CLECs contend, then they are intrastate calls, and LECs serving ISPs are entitled to reciprocal compensation for the "transport and termination" of this traffic. If, however, these calls do not terminate locally, incumbent LECs argue, then LECs serving ISPs are not entitled to reciprocal compensation under section 251(b)(5).

---

[16] *Access Charge Reform Order*, 12 FCC Rcd at 16134. *See also* 47 U.S.C. § 230(b)(2) ("It is the policy of the United States to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.").

[17] 47 U.S.C. § 251(b)(5).

[18] *See* 47 C.F.R. § 51.701; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket Nos. 96-98, 95-185, 11 FCC Rcd 15499, 16013 (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom Competitive Telecommunications Ass'n v. FCC*, 117

8. CLECs argue that, because section 251(b)(5) of the Act refers to the duty to establish reciprocal compensation arrangements for the "transport and termination of telecommunications,"[19] a transmission "terminates" for reciprocal compensation purposes when it ceases to be "telecommunications."[20] "Telecommunications" is defined in the Act as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[21] CLECs contend that, under this definition, Internet service is not "telecommunications" and that the "telecommunications" component of Internet traffic terminates at the ISP's local server. In addition, CLECs and ISPs argue that, given that ESPs are exempt from paying certain interstate access charges[22] and that, as a result, the PSTN links serving ESPs are treated as intrastate under the separations regime, the services that CLECs provide for ISPs must be deemed local.[23] Incumbent LECs contend, however, that the "telecommunications" terminate not at the ISP's local server, but at the Internet site accessed by the end user, in which case these are interstate calls for which, they argue, no reciprocal compensation is due.[24]

F.3d 1068 (8th Cir. 1997) (*CompTel*), *aff'd in part and vacated in part sub nom. Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997) (*Iowa Utils. Bd.*), *aff'd in part and rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999); *Order on Reconsideration*, 11 FCC Rcd 13042 (1996); *Second Order on Reconsideration*, 11 FCC Rcd 19738 (1996); *Third Order on Reconsideration and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 12460 (1997); *further recon. pending*. State commissions that considered this issue reached the same conclusion. *See, e.g.*, Petition of the Southern New England Tel. Co. for a Declaratory Ruling Concerning Internet Servs. Provider Traffic, Docket No. 97-05-22, Decision, at 9 (Conn. Comm'n September 17, 1997); *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*, R.95-04-04, Decision 98-10-057, at 7 (Cal. Comm'n October 28, 1998); Southwestern Bell Tel. Co. v. Public Util. Comm'n of Texas, MO-98-CA-43, slip op. at 7 (W.D. Tex. June 16, 1998). Section 251 of the Act makes clear that interstate traffic remains subject to the Commission's jurisdiction under section 201. *See* 47 U.S.C. § 251(i) ("Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201."). *See also CompTel*, 117 F.3d at 1075 (Commission acted within its jurisdiction in allowing incumbent LECs to collect, on an interim basis, access charges for interstate calls traversing the incumbent LECs' local switches for which the interconnecting carriers pay unbundled local switching element charges); 47 U.S.C. §152(a) (Commission has jurisdiction over "all interstate and foreign communications by wire").

[19] 47 U.S.C. § 251(b)(5) (emphasis added).

[20] *See, e.g.*, RCN Telecom Services (RCN) Comments at 6; Teleport Communications Group Inc. (TCG) Comments at 4-5; WorldCom, Inc. Comments at 8-9. Citations to parties' comments in this Declaratory Ruling and Notice of Proposed Rulemaking refer to comments filed in response to the *ALTS Letter Notice*.

[21] 47 U.S.C. § 153(43).

[22] We discuss the ESP exemption, *supra*.

[23] *See, e.g.*, American Communications Services, Inc. (ACSI) Comments at 5; Adelphia Communications Corporation (Adelphia), et al., Comments at 12-13; ALTS Letter at 6-7; ALTS Reply at 2, 13; Cox Communications, Inc. (Cox) Comments at 5; America Online, Inc. (AOL) Comments at 7-8; AT&T Corp. Comments at 4.

[24] *See, e.g.*, Ameritech Operating Cos. (Ameritech) Comments at 13; BellSouth Corporation (BellSouth) Reply

III. DISCUSSION

9. The Commission has no rule governing inter-carrier compensation for ISP-bound traffic. Generally speaking, when a call is completed by two (or more) interconnecting carriers, the carriers are compensated for carrying that traffic through either reciprocal compensation or access charges. When two carriers jointly provide interstate access (*e.g.*, by delivering a call to an interexchange carrier (IXC)), the carriers will share access revenues received from the interstate service provider. Conversely, when two carriers collaborate to complete a local call, the originating carrier is compensated by its end user and the terminating carrier is entitled to reciprocal compensation pursuant to section 251(b)(5) of the Act. Until now, however, it has been unclear whether or how the access charge regime or reciprocal compensation applies when two interconnecting carriers deliver traffic to an ISP. As explained above, under the ESP exemption, LECs may not impose access charges on ISPs; therefore, there are no access revenues for interconnecting carriers to share. Moreover, the Commission has directed states to treat ISP traffic as if it were local, by permitting ISPs to purchase their PSTN links through local business tariffs. As a result, and because the Commission had not addressed inter-carrier compensation under these circumstances, parties negotiating interconnection agreements and the state commissions charged with interpreting them were left to determine as a matter of first impression how interconnecting carriers should be compensated for delivering traffic to ISPs, leading to the present dispute.

---

at 4-6; Southwestern Bell Tel. Co., Pacific Bell, Nevada Bell (SBC) Reply at 5; United States Telephone Association (USTA) Comments at 5-6.

A. Jurisdictional Nature of Incumbent LEC and CLEC Delivery of ISP-Bound Traffic.

10. As many incumbent LECs properly note,[25] the Commission traditionally has determined the jurisdictional nature of communications by the end points of the communication and consistently has rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers. In *BellSouth MemoryCall*, for example, the Commission considered the jurisdictional nature of traffic that consisted of an incoming interstate transmission (call) to the switch serving a voice mail subscriber and an intrastate transmission of that message from that switch to the voice mail apparatus.[26] The Commission determined that the entire transmission constituted one interstate call, because "there is a continuous path of communications across state lines between the caller and the voice mail service."[27] The Commission's jurisdictional determination did not turn on the common carrier status of either the provider or the services at issue;[28] *BellSouth MemoryCall* is not, therefore, distinguishable on the grounds that ISPs are not common carriers.

11. Similarly, in *Teleconnect*, the Bureau examined whether a call using Teleconnect's "All-Call America" (ACA) service, a nationwide 800 travel service that uses AT&T's Megacom 800 service, is a single, end-to-end call.[29] Generally, an ACA call is initiated by an end user from a common line open end; the call is routed through a LEC to an AT&T Megacom line, and is then transferred from AT&T to Teleconnect by another LEC.[30] At that point, Teleconnect routes the call through the LEC to the end user being called.[31] The Bureau rejected the argument that the (ACA) 800 call used to connect to an interexchange carrier's (IXC) switch was a separate and distinct call from the call that was placed from that switch.[32] The Commission affirmed, noting that "both court and Commission decisions have considered the end-to-end nature of the communications more significant than the facilities used to complete such communications. According to these precedents, we regulate an interstate wire communications

---

[25] *See, e.g.*, Ameritech Comments at 13; BellSouth Reply at 4-6; SBC Reply at 5; USTA Comments at 5-6.

[26] Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation, 7 FCC Rcd 1619 (1992) (*BellSouth MemoryCall*).

[27] *Id.* at 1620.

[28] *Id.* at 1621-22. Indeed, the Commission expressly noted that, although BellSouth's "voice mail service is an enhanced service, that fact does not limit our authority to preempt." *Id.* at 1622 n.44.

[29] *Teleconnect Co. v. Bell Telephone Co. of Penn.*, E-88-83, 10 FCC Rcd 1626 (1995) (*Teleconnect*), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 116 F.3d 593 (D.C. Cir. 1997).

[30] *Id.* at 1627.

[31] *Id.* at 1627-28.

[32] *Id* at 1626.

under the Communications Act from its inception to its completion."[33] The Commission concluded that "an interstate communication does not end at an intermediate switch. . . . The interstate communication itself extends from the inception of a call to its completion, regardless of any intermediate facilities."[34] In addition, in *Southwestern Bell Telephone Company*, the Commission rejected the argument that "a credit card call should be treated for jurisdictional purposes as two calls: one from the card user to the interexchange carrier's switch, and another from the switch to the called party" and concluded that "switching at the credit card switch is an intermediate step in a single end-to-end communication."[35]

12. Consistent with these precedents,[36] we conclude, as explained further below, that the communications at issue here do not terminate at the ISP's local server, as CLECs and ISPs contend,[37] but continue to the ultimate destination or destinations, specifically at a Internet website that is often located in another state.[38] The fact that the facilities and apparatus used to deliver traffic to the ISP's local servers may be located within a single state does not affect our jurisdiction. As the Commission stated in *BellSouth MemoryCall*, "this Commission has jurisdiction over, and regulates charges for, the local network when it is used in conjunction with the origination and termination of interstate calls."[39] Indeed, in the vast majority of cases, the facilities that incumbent LECs use to provide interstate access are located entirely within one

[33] *Id.* at 1629 (citing *NARUC v. FCC*, 746 F.2d 1492, 1498 (D.C. Cir. 1984) (concluding that a physically intrastate in-WATS line, used to terminate an end-to-end interstate communication, is an interstate facility subject to Commission regulation)). *See also United States v. AT&T*, 57 F. Supp. 451, 454 (S.D.N.Y. 1944) (the Act contemplates the regulation of interstate wire communication from its inception to its completion), *aff'd sub nom. Hotel Astor v. United States*, 325 U.S. 837 (1945); *New York Telephone Co.*, 76 FCC 2d 349, 352-53 (1980) (physically intrastate foreign exchange facilities used to carry interconnected interstate traffic are subject to federal jurisdiction).

[34] *Teleconnect*, 10 FCC Rcd at 1629.

[35] In the Matter of Southwestern Bell Tel. Co., CC Docket No. 88-180, Order Designating Issues for Investigation, 3 FCC Rcd 2339, 2341 (1988) (*Southwestern Bell Tel. Co.*).

[36] Although the cited cases involve interexchange carriers rather than ISPs, and the Commission has observed that "it is not clear that ISPs use the public switched network in a manner analogous to IXCs," *Access Charge Reform Order*, 12 FCC Rcd at 16133, the Commission's observation does not affect the jurisdictional analysis.

[37] *See, e.g.*, ACSI Comments at 5; Adelphia, et al., Comments at 12-13; ALTS Letter at 6-7; Cox Comments at 5.

[38] This conclusion is fully consistent with *BellSouth MemoryCall*. Although MCI WorldCom relies on *BellSouth MemoryCall* to support its argument that the ISP is the relevant endpoint for purposes of the jurisdictional analysis (*see* Letter from Richard S. Whitt, Director -- Federal Affairs/Counsel, MCI WorldCom, Inc., to Magalie R. Salas, Secretary, FCC (October 2, 1998)), there, as here, the Commission analyzed the communication from its inception to the "transmission's ultimate destination." *BellSouth Memory Call*, 7 FCC Rcd at 1621.

[39] *BellSouth MemoryCall*, 7 FCC Rcd at 1621.

state.[40] Thus, we reject MCI WorldCom's assertion that the LEC facilities used to deliver traffic to ISPs must cross state boundaries for such traffic to be classified as interstate.[41]

13. We disagree with those commenters that argue that, for jurisdictional purposes, ISP-bound traffic must be separated into two components: an intrastate telecommunications service, provided in this instance by one or more LECs, and an interstate information service, provided by the ISP.[42] As discussed above, the Commission analyzes the totality of the communication when determining the jurisdictional nature of a communication.[43] The Commission previously has distinguished between the "telecommunications services component" and the "information services component" of end-to-end Internet access for purposes of determining which entities are required to contribute to universal service.[44] Although the Commission concluded that ISPs do not appear to offer "telecommunications service" and thus are not "telecommunications carriers" that must contribute to the Universal Service Fund,[45] it has never found that "telecommunications" end where "enhanced" service begins. To the contrary, in the context of open network architecture (ONA) elements, for example, the Commission stated that "an otherwise interstate basic service . . . does not lose its character as such simply because it is being used as a component in the provision of a[n enhanced] service that is not subject to Title II."[46] The 1996 Act is consistent with this approach. For example, as amended by the 1996 Act,

---

[40] *See Louisiana Public Serv. Comm'n v. FCC*, 476 U.S. 355, 360 (1986).

[41] *See* Letter from Richard S. Whitt, Director -- Federal Affairs/Counsel, MCI WorldCom, Inc., to Magalie R. Salas, Secretary, FCC (October 19, 1998) (*MCI WorldCom Ex Parte*). For this reason, we also reject CLEC arguments that provision of such services by a Bell Operating Company (BOC) violates section 271 of the Act unless the BOC has received authorization to provide in-region InterLATA service. *See, e.g., MCI WorldCom Ex Parte* at 4. Section 271 does not bar BOC provision of interstate access services, such as interLATA information access. *See* Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, 11 FCC Rcd 21905, 21962-63 (*Non-Accounting Safeguards Order*) ("When a BOC is neither providing nor reselling the interLATA transmission component of an information service that may be accessed across LATA boundaries, the statute does not require that service to be provided through a section 272 separate affiliate.").

[42] *See, e.g.*, RCN Comments at 6; TCG Comments at 4-5; WorldCom Comments at 8-9.

[43] *See United States v. AT&T*, 57 F. Supp. 451, 453-55 (S.D.N.Y. 1944), *aff'd*, 325 U.S. 837 (1945).

[44] *Universal Service Order*, 12 FCC Rcd at 9179-81. We disagree with MCI WorldCom's claim that the Commission determined in the *Universal Service Order* that there are two distinct transmissions when an end user contacts the Internet. *MCI WorldCom Ex Parte* at 4. In that order, the Commission discussed various "connections" involved with Internet access but in no way implied that any "transmission" or "traffic" terminated or originated at any intermediate point. *See Universal Service Order*, 12 FCC Rcd at 9180. As discussed, *supra*, MCI WorldCom's similar assertions regarding the *Non-Accounting Safeguards Order* are equally unpersuasive. *MCI WorldCom Ex Parte* at 4.

[45] *Id* at 9180. We confirmed this view in the *Universal Service Report to Congress*. *Universal Service Report to Congress* at 13 FCC Rcd 11522-23.

[46] *See* Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1, 141 (1988) ("when an enhanced

Section 3(20) of the Communications Act defines "information services" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications."[47] This definition recognizes the inseparability, for purposes of jurisdictional analysis, of the information service and the underlying telecommunications. Although it concluded in the *Universal Service Report to Congress* that ISPs do not provide "telecommunications" as defined in the 1996 Act,[48] the Commission reiterated the traditional analysis that ESPs enhance the underlying telecommunications service.[49] Thus, we analyze ISP traffic for jurisdictional purposes as a continuous transmission from the end user to a distant Internet site.

14. Some CLECs note that the language of section 252(d)(2) provides for the recovery of the costs of transporting and terminating a "call."[50] Although the 1996 Act does not define the term "call," these CLECs argue that it is used in the 1996 Act in a manner that implies a circuit-switched connection between two telephone numbers.[51] For example, Adelphia contends that a "call" takes place when two stations on the PSTN are connected to each other.[52] A call "terminates," according to Adelphia, when one station on the PSTN dials another station, and the second station answers.[53] Under this view, the "call" associated with Internet traffic ends at the ISP's local premises.[54]

---

service is interstate (that is, when it involves communications or transmissions between points in different states on an end-to-end basis), the underlying basic services are subject to Title II regulation"), *aff'd sub nom. People of State of Cal. v. FCC*, 3 F.3d 1505 (9th Cir. 1993). *See, e.g.*, Amendment of Section 64.702 of the Commission's Rules and Regulations, 2 FCC Rcd 3072, 3080 (1987) ("carriers must provide efficient nondiscriminatory access to the basic service facilities necessary to support their competitors' enhanced services"); *vacated on other grounds sub nom. People of State of Cal. v FCC*, 905 F.2d 1217 (9th Cir. 1990). *See also BellSouth MemoryCall*, 7 FCC Rcd at 1621 (rejecting "two call" argument as applied to interstate call to voice mail apparatus, even though voice mail is an enhanced service).

[47] 47 U.S.C. § 153(20) (emphasis added); *see also* 47 C.F.R. § 64.702(a) (enhanced services are provided "over common carrier transmission facilities used in interstate communications").

[48] *Universal Service Report to Congress*, 13 FCC Rcd at 11536-40. *See also Universal Service Order*, 12 FCC Rcd at 9180 n.2023.

[49] *See Universal Service Report to Congress*, 13 FCC Rcd at 11540. *See also Universal Service Order* 12 FCC Rcd at 9180 n.2023 (referencing *Amendment of Section 64.702 of the Commission's Rules and Regulations*, 2 FCC Rcd 3072, 3080 (1987)).

[50] 47 U.S.C. § 252(d)(2). *See, e.g.*, Adelphia, et al., Comments at 15.

[51] *See, e.g.*, Adelphia, et al., Comments at 15-20; Adelphia, et al., Reply at 5, 9-10, TCG Comments at 3-4; WorldCom Comments at 6-7.

[52] *See, e.g.*, Adelphia, et al., Comments at 15-16.

[53] *Id.*

[54] *Id.*

15. We find that this argument is inconsistent with Commission precedent, discussed above, holding that communications should be analyzed on an end-to-end basis, rather than by breaking the transmission into component parts. The examples cited by CLECs[55] to support the argument that calls end at the called number are not dispositive. The statutory sections upon which they rely were written to apply to specific situations, all of which, as far as we can tell, involve traditional telephony connections between two called numbers, as opposed to the novel circumstance of Internet traffic.[56]

16. Nor are we are persuaded by CLEC arguments that, because the Commission has treated ISPs as end users for purposes of the ESP exemption, an Internet call must terminate at the ISP's point of presence.[57] The Commission traditionally has characterized the link from an end user to an ESP as an interstate access service.[58] In the *MTS/WATS Market Structure Order*, for instance, the Commission concluded that ESPs are "among a variety of users of access service" in that they "obtain local exchange services or facilities which are used, in part or in whole, for the purpose of completing interstate calls which transit its location and, commonly, another location in the exchange area."[59] The fact that ESPs are exempt from access charges and purchase their PSTN links through local tariffs does not transform the nature of traffic routed to ESPs. That the Commission exempted ESPs from access charges indicates its understanding that ESPs in fact use interstate access service; otherwise, the exemption would not be necessary.[60] We emphasize that the Commission's decision to treat ISPs as end users for access charge purposes and, hence, to treat ISP-bound traffic as local, does not affect the Commission's ability to exercise jurisdiction over such traffic.[61]

---

[55] *Id.* at 15-16, 19-20; Adelphia, et al., Reply at 18 n.32.

[56] *See, e.g.*, 47 U.S.C. §§ 222(d)(3), 223(a)(1), 271(c)(2)(B)(x), and 271(j).

[57] *See, e.g.*, ACSI Comments at 5; Adelphia, et al., Comments at 12-13; ALTS Letter at 6-7; ALTS Reply at 2, 13; Cox Comments at 5; AOL Comments at 7-8; AT&T Comments at 4.

[58] *See, e.g., MTS/WATS Market Structure Order*, 97 FCC 2d at 715; Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215, Notice of Proposed Rulemaking, 2 FCC Rcd 4305 (1987).

[59] *MTS/WATS Market Structure Order*, 97 FCC 2d at 860; *see also* Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215, Notice of Proposed Rulemaking, 2 FCC Rcd 4305.

[60] *See, e.g., MTS/WATS Market Structure Order*, 97 FCC 2d at 860. *See also* Access Charge Reform, CC Docket No. 96-262, Notice of Proposed Rulemaking, 11 FCC Rcd 21354 at 21478 ("although ESPs may use incumbent LEC facilities to originate and terminate interstate calls, ESPs should not be required to pay interstate access charges") (emphasis added).

[61] Indeed, the Eighth Circuit found that "the Commission has appropriately exercised its discretion to require an ISP to pay intrastate charges for its line and to pay the SLC . . . , but not to pay the per-minute interstate access charge." *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d at 543 (emphasis added).

17. CLECs also argue that the traffic they deliver to ISPs must be deemed either "telephone exchange service"[62] or "exchange access."[63] They contend that ISP traffic cannot be "exchange access," because neither LECs nor CLECs assess toll charges for the service. CLEC delivery of ISP traffic is, therefore, according to CLECs, "telephone exchange service," a form of local telecommunications for which reciprocal compensation is due.[64] As discussed above, however, the Commission consistently has characterized ESPs as "users of access service" but has treated them as end users for pricing purposes.[65] Thus, we are unpersuaded by this argument.

18. Having concluded that the jurisdictional nature of ISP-bound traffic is determined by the nature of the end-to-end transmission between an end user and the Internet, we now must determine whether that transmission constitutes interstate telecommunications. Section 2(a) of the Act grants the Commission jurisdiction over "all interstate and foreign communication by wire."[66] Traffic is deemed interstate "when the communication or transmission originates in any state, territory, possession of the United States, or the District of Columbia and terminates in another state, territory, possession, or the District of Columbia."[67] In a conventional circuit-switched network, a call that originates and terminates in a single state is jurisdictionally intrastate, and a call that originates in one state and terminates in a different state (or country) is jurisdictionally interstate. The jurisdictional analysis is less straightforward for the packet-switched network environment of the Internet.[68] An Internet communication does not

[62] "Telephone exchange service" means "(A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service." 47 U.S.C. § 153(47).

[63] "Exchange access" is defined as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. §153(16). "Telephone toll services" is defined as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service." 47 U.S.C. § 153(48)

[64] *See, e.g.*, Adelphia, et al., Reply at 5-9.

[65] *MTS/WATS Market Structure Order*, 97 FCC 2d at 860; *see also* Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215, Notice of Proposed Rulemaking, 2 FCC Rcd 4305 (1987). *See also* 47 C.F.R. § 69.2(b) (defining "access service" as "services and facilities provided for the origination or termination of any interstate or foreign telecommunications").

[66] 47 U.S.C. § 152(a).

[67] *Universal Service Report to Congress*, 13 FCC Rcd at 11555.

[68] *See, e.g.*, Kevin Werbach, Digital Tornado: The Internet and Telecommunications Policy, OPP Working Paper No. 29, at 45 (Mar. 1997) (*Digital Tornado*).

necessarily have a point of "termination" in the traditional sense. An Internet user typically communicates with more than one destination point during a single Internet call, or "session," and may do so either sequentially or simultaneously. In a single Internet communication, an Internet user may, for example, access websites that reside on servers in various states or foreign countries, communicate directly with another Internet user, or chat on-line with a group of Internet users located in the same local exchange or in another country.[69] Further complicating the matter of identifying the geographical destinations of Internet traffic is that the contents of popular websites increasingly are being stored in multiple servers throughout the Internet, based on "caching" or website "mirroring" techniques.[70] After reviewing the record, we conclude that, although some Internet traffic is intrastate, a substantial portion of Internet traffic involves accessing interstate or foreign websites.[71]

19. Although ISP-bound traffic is jurisdictionally mixed, incumbent LECs argue that it is not technically possible to separate the intrastate and interstate ISP-bound traffic.[72] In the current absence of a federal rule governing inter-carrier compensation, however, we do not find it necessary to reach the question of whether such traffic is separable into intrastate and interstate traffic.[73]

20. Our determination that at least a substantial portion of dial-up ISP-bound traffic is interstate does not, however, alter the current ESP exemption. ESPs, including ISPs, continue to be entitled to purchase their PSTN links through intrastate (local) tariffs rather than through interstate access tariffs.[74] Nor, as we discuss below, is it dispositive of interconnection disputes currently before state commissions.

---

[69] *See, e.g., Digital Tornado* at 45. *See also* Adelphia, et al., Reply at 11 n.21.

[70] *See, e.g., MCI WorldCom Ex Parte* at 7.

[71] *See, e.g.*, Adelphia, et al., Comments at 22; Letter from Edward D. Young, Senior Vice President & Deputy General Counsel for Bell Atlantic, and Thomas J. Tauke, Senior Vice President -- Government Relations for Bell Atlantic, to Hon. William E. Kennard, Chairman, FCC (July 1, 1998) at Att. 2; Compuserve Comments at 4; Letter from B. Jeannie Fry, Director of Federal Regulatory Affairs, SBC Communications, Inc., to Magalie R. Salas, Secretary, FCC (May 13, 1998) Att. at 7; WorldCom Reply at 8-9.

[72] Even if it is technically impossible to separate the intrastate and interstate ISP traffic, it may be possible for LECs to determine whether dial-up traffic is in fact destined for an ISP.

[73] We note that in Section IV, *infra*, we seek comment on the separability of such traffic and whether the Commission should exercise exclusive jurisdiction over inter-carrier compensation for all ISP-bound traffic.

[74] ESPs also have certain flat-rated interstate offerings available to them. *See, e.g.*, GTE Telephone Operating Cos. GTOC Transmittal No. 1148, CC Docket No. 98-79, FCC No. 98-292, Memorandum Opinion and Order (rel. October 30, 1998), *recon. pending*

B. Inter-Carrier Compensation for Delivery of ISP-Bound Traffic.

21. We find no reason to interfere with state commission findings as to whether reciprocal compensation provisions of interconnection agreements apply to ISP-bound traffic, pending adoption of a rule establishing an appropriate interstate compensation mechanism. We seek comment on such a rule in Section IV, below.

22. Currently, the Commission has no rule governing inter-carrier compensation for ISP-bound traffic. In the absence of such a rule, parties may voluntarily include this traffic within the scope of their interconnection agreements under sections 251 and 252 of the Act, even if these statutory provisions do not apply as a matter of law. Where parties have agreed to include this traffic within their section 251 and 252 interconnection agreements, they are bound by those agreements, as interpreted and enforced by the state commissions.

23. Although we determine, above, that ISP-bound traffic is largely interstate, parties nonetheless may have agreed to treat the traffic as subject to reciprocal compensation. The Commission's treatment of ESP traffic dates from 1983 when the Commission first adopted a different access regime for ESPs.[75] Since then, the Commission has maintained the ESP exemption, pursuant to which it treats ESPs as end users under the access charge regime and permits them to purchase their links to the PSTN through intrastate local business tariffs rather than through interstate access tariffs. As such, the Commission discharged its interstate regulatory obligations through the application of local business tariffs. Thus, although recognizing that it was interstate access, the Commission has treated ISP-bound traffic as though it were local. In addition, incumbent LECs have characterized expenses and revenues associated with ISP-bound traffic as intrastate for separations purposes.[76]

24. Against this backdrop, and in the absence of any contrary Commission rule, parties entering into interconnection agreements may reasonably have agreed, for the purposes of determining whether reciprocal compensation should apply to ISP-bound traffic, that such traffic should be treated in the same manner as local traffic. When construing the parties' agreements to determine whether the parties so agreed, state commissions have the opportunity to consider all the relevant facts, including the negotiation of the agreements in the context of this Commission's longstanding policy of treating this traffic as local, and the conduct of the parties pursuant to those agreements. For example, it may be appropriate for state commissions to consider such factors as whether incumbent LECs serving ESPs (including ISPs) have done so

---

[75] *MTS/WATS Market Structure Order*, 97 FCC 2d at 715.

[76] Not all incumbent LECs characterize Internet traffic as intrastate traffic for separations purposes. In January, 1998, SBC indicated that it planned to allocate 100 percent of the costs associated with Internet traffic, which it previously had classified as local, to the interstate jurisdiction. *See* Letter from B. Jeannie Fry, Director of Federal Regulatory Affairs, SBC Communications., Inc., to Ken Moran, Chief, Accounting and Audits Division, FCC (Jan. 20, 1998)

out of intrastate or interstate tariffs; whether revenues associated with those services were counted as intrastate or interstate revenues; whether there is evidence that incumbent LECs or CLECs made any effort to meter this traffic or otherwise segregate it from local traffic, particularly for the purpose of billing one another for reciprocal compensation; whether, in jurisdictions where incumbent LECs bill their end users by message units, incumbent LECs have included calls to ISPs in local telephone charges; and whether, if ISP traffic is not treated as local and subject to reciprocal compensation, incumbent LECs and CLECs would be compensated for this traffic. These factors are illustrative only; state commissions, not this Commission, are the arbiters of what factors are relevant in ascertaining the parties' intentions. Nothing in this Declaratory Ruling, therefore, necessarily should be construed to question any determination a state commission has made, or may make in the future, that parties have agreed to treat ISP-bound traffic as local traffic under existing interconnection agreements.[77] Finally, we note that issues regarding whether an entity is properly certified as a LEC if it serves only or predominantly ISPs are matters of state jurisdiction.[78]

25. Even where parties to interconnection agreements do not voluntarily agree on an inter-carrier compensation mechanism for ISP-bound traffic, state commissions nonetheless may determine in their arbitration proceedings at this point that reciprocal compensation should be paid for this traffic. The passage of the 1996 Act raised the novel issue of the applicability of its local competition provisions[79] to the issue of inter-carrier compensation for ISP-bound traffic. Section 252 imposes upon state commissions the statutory duty to approve voluntarily-negotiated interconnection agreements and to arbitrate interconnection disputes. As we observed in the *Local Competition Order*, state commission authority over interconnection agreements

[77] This analysis is not inconsistent with our conclusion in the *Local Competition Order* that section 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within state-defined local calling areas. *Local Competition Order*, 11 FCC Rcd. at 16013. In so construing the statutory obligation, we did not preclude parties from agreeing to include interstate traffic (or non-local intrastate traffic) within the scope of their interconnection agreements, so long as no Commission rules were otherwise violated. *See* 47 U.S.C. § 252(a)(1) (parties may negotiate and enter into a binding agreement without regard to the standards set forth in section 251(b) and (c)).

[78] *See, e.g.*, Complaint of WorldCom Technologies, Inc. against New England Tel. and Tel. Co. for alleged breach of interconnection terms entered into under Section 251 and 252 of the Telecommunications Act of 1996, D.T.E. 97-116, at 13 (Mass. Comm'n October 26, 1998) (requesting information from parties regarding whether certain CLECs have been or are established solely (or predominantly) for the purpose of delivering traffic to ISPs, particularly ISPs affiliated with the CLECs in question, and stating that these facts might affect such CLECs' regulatory status); Letter from B. Jeannie Fry, Director of Federal Regulatory Affairs, SBC Communications, Inc., to Magalie R. Salas, Secretary, FCC (May 13, 1998) at Tab 5 (carrier's webpage advertisement invites parties to offer "free internet access while getting paid for it"). We believe the state commissions are capable of assessing whether and to what extent these and other anomalous practices are inconsistent with the statutory scheme (*e.g.*, definition of a carrier) and thereby outside the scope of any determination regarding inter-carrier compensation.

[79] *See* 47 U.S.C. §§ 251, 252

pursuant to section 252 "extends to both interstate and intrastate matters."[80] Thus the mere fact that ISP-bound traffic is largely interstate does not necessarily remove it from the section 251/252 negotiation and arbitration process.[81] However, any such arbitration must be consistent with governing federal law.[82] While to date the Commission has not adopted a specific rule governing the matter, we note that our policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation, suggest that such compensation is due for that traffic.

26. Some CLECs construe our rules treating ISPs as end users for purposes of interstate access charges as requiring the payment of reciprocal compensation for this traffic.[83] Incumbent LECs contend, however, that our rules preclude the imposition of reciprocal compensation obligations to interstate traffic and that, pursuant to the ESP exemption, LECs carrying ISP-bound traffic are compensated by their end user customers -- the originating end user or the ISP.[84] Either of these options might be a reasonable extension of our rules, but the Commission has never applied either the ESP exemption or its rules regarding the joint provision of access to the situation where two carriers collaborate to deliver traffic to an ISP. As we stated previously, the Commission currently has no rule addressing the specific issue of inter-carrier compensation for ISP-bound traffic.[85] In the absence of a federal rule, state commissions that have had to fulfill their statutory obligation under section 252 to resolve interconnection disputes between incumbent LECs and CLECs have had no choice but to establish an inter-carrier compensation mechanism and to decide whether and under what circumstances to require the payment of reciprocal compensation. Although reciprocal compensation is mandated under section 251(b)(5) only for the transport and termination of local traffic,[86] neither the statute nor our rules prohibit a state commission from concluding in an arbitration that reciprocal compensation is

---

[80] *Local Competition Order*, 11 FCC Rcd at 15544; *see also id. at* 15547 (sections 251 and 252 "address both interstate and intrastate aspects of interconnection, services, and access to unbundled network elements").

[81] *Id*

[82] *Cf.* 47 U.S.C. § 251(i) ("Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201.").

[83] *See* note 26, *supra*, and accompanying text.

[84] *See, e.g.*, Letter from Gary L. Phillips, Director of Legal Affairs, Ameritech, to Magalie Salas, Secretary, FCC (November 20, 1998). Ameritech argues, *inter alia*, that the Commission held in the *Local Competition Order* that reciprocal compensation does not apply to the transport and termination of interstate traffic. *Id.*, Att. A, at 6. It further argues that Commission rules do in fact address inter-carrier compensation for ISP traffic. In the usual case, two LECs jointly providing interstate access service share access revenues; because the Commission exempts ISPs from the payment of access charges, however, LECs carrying ISP traffic are limited to revenues they collect from their end user customers. *Id.*, Att. A, at 7.

[85] We seek comment on an appropriate compensation mechanism in Section IV, below.

[86] *See* 47 C.F.R. 51.701(a); *Local Competition Order*, 11 FCC Rcd at 16013.

appropriate in certain instances not addressed by section 251(b)(5), so long as there is no conflict with governing federal law.[87] A state commission's decision to impose reciprocal compensation obligations in an arbitration proceeding -- or a subsequent state commission decision that those obligations encompass ISP-bound traffic -- does not conflict with any Commission rule regarding ISP-bound traffic.[88] By the same token, in the absence of governing federal law, state commissions also are free not to require the payment of reciprocal compensation for this traffic and to adopt another compensation mechanism.

27. State commissions considering what effect, if any, this Declaratory Ruling has on their decisions as to whether reciprocal compensation provisions of interconnection agreements apply to ISP-bound traffic might conclude, depending on the bases of those decisions, that it is not necessary to re-visit those determinations. We recognize that our conclusion that ISP-bound traffic is largely interstate might cause some state commissions to re-examine their conclusion that reciprocal compensation is due to the extent that those conclusions are based on a finding that this traffic terminates at an ISP server, but nothing in this Declaratory Ruling precludes state commissions from determining, pursuant to contractual principles or other legal or equitable considerations, that reciprocal compensation is an appropriate interim inter-carrier compensation rule pending completion of the rulemaking we initiate below.

IV. Notice of Proposed Rulemaking (CC Docket No. 99-68)

A. Discussion.

28. We do not have an adequate record upon which to adopt a rule regarding inter-carrier compensation for ISP-bound traffic. We do believe, however, that adopting such a rule to govern prospective compensation would serve the public interest. As a general matter, we tentatively conclude that our rule should strongly reflect our judgment that commercial negotiations are the ideal means of establishing the terms of interconnection contracts. We seek comment on two alternative proposals for implementing such a regime. Until adoption of a final rule, state commissions will continue to determine whether reciprocal compensation is due for this traffic. As discussed above, the Commission's holding that parties' agreements, as interpreted by state commissions, should be binding also applies to those state commissions that have not yet addressed the issue.

[87] As noted, section 251(b)(5) of the Act and our rules promulgated pursuant to that provision concern inter-carrier compensation for interconnected *local* telecommunications traffic. We conclude in this Declaratory Ruling, however, that ISP-bound traffic is non-local interstate traffic. Thus, the reciprocal compensation requirements of section 251(b)(5) of the Act and Section 51, Subpart H (Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic) of the Commission's rules do not govern inter-carrier compensation for this traffic. As discussed, *supra*, in the absence a federal rule, state commissions have the authority under section 252 of the Act to determine inter-carrier compensation for ISP-bound traffic.

[88] As noted, in other contexts we have directed the states to treat such traffic as local. *See ESP Exemption Order*, 3 FCC Rcd 2631, 2635 n.8, 2637 n.53

29. For the traffic at issue here, we tentatively conclude that a negotiation process, driven by market forces, is more likely to lead to efficient outcomes than are rates set by regulation. In addition, setting a rate by regulation appears unwise because the actual amounts, need for, and direction of inter-carrier compensation might reasonably vary depending on the underlying commercial relationships with the end user, and who ultimately pays for transmission between its location and the ISP.[89] We acknowledge that, no matter what the payment arrangement, LECs incur a cost when delivering traffic to an ISP that originates on another LEC's network. We believe that efficient rates for inter-carrier compensation for ISP-bound traffic are not likely to be based entirely on minute-of-use pricing structures. In particular, pure minute-of-use pricing structures are not likely to reflect accurately how costs are incurred for delivering ISP-bound traffic. For example, flat-rated pricing based on capacity may be more cost-based. Parties also might reasonably agree to rates that include a separate call set-up charge, coupled with very low per-minute rates. These economic characteristics of this traffic are likely to make voluntary agreements among the parties easier to reach. For these reasons, we propose that inter-carrier compensation rates for ISP-bound traffic be based on commercial negotiations undertaken as part of the broader interconnection negotiations between incumbent LECs and CLECs. We seek comment below on two alternative proposals to govern the negotiations with respect to ISP-bound traffic.

1. We tentatively conclude that, as a matter of federal policy, the inter-carrier compensation for this interstate telecommunications traffic should be governed prospectively by interconnection agreements negotiated and arbitrated under sections 251 and 252 of the Act. Resolution of failures to reach agreement on inter-carrier compensation for interstate ISP-bound traffic then would occur through arbitrations conducted by state commissions, which are appealable to federal district courts. As with other issues on which parties petition state commissions for arbitration under section 252 of the Act, if a state commission fails to act, the Commission will assume the responsibility of the state commission within 90 days of being notified of such failure.[90] This proposal could help facilitate the policy goals set forth above by forcing the parties to hold a single set of negotiations regarding rates, terms, and conditions for interconnected traffic and to submit all disputes regarding interconnected traffic to a single arbitrator. We seek comment on this tentative conclusion.

2. We also seek comment on an alternative proposal that we adopt a set of federal rules governing inter-carrier compensation for ISP-bound traffic pursuant to which parties would engage in negotiations concerning rates, terms, and conditions applicable to delivery of interstate ISP-bound traffic. These negotiations would commence on the effective date of the adopted rule

[89] When an end user effectively purchases a telecommunications-based service from more than one service provider, it can pay for the costs of the underlying telecommunications either directly to the telecommunications service provider, or indirectly through the other service provider, which in turn pays the telecommunications provider. Both sets of arrangements exist today.

[90] 47 U.S.C. § 252(e)(5).

but could proceed in tandem with broader interconnection negotiations between the parties. We realize, however, that the success of any negotiation over rates is likely to depend on the availability of the swift and certain resolution of disputes, and the structure of the resolution process. For example, the Commission, through delegation to the Common Carrier Bureau, might resolve such disputes, at the request of either party, through an arbitration-like process, following a discrete period of voluntary negotiation. We seek comment on how such an approach would operate procedurally and what costing standards the Commission might use in arbitrating disputes. We also seek comment on how this proposal compares with a broad interconnection negotiation in which most disputes are resolved by a state arbitrator but disputes regarding ISP-bound traffic are resolved through a federal arbitration-like process. We also seek comment on whether it is possible, as a technical matter, to segregate intrastate and interstate ISP-bound traffic and whether any federal rules we adopt should apply to all intrastate and interstate ISP-bound traffic.

3. We also seek comment on whether the Commission has the authority to establish an arbitration process that is final and binding and not subject to judicial review. For instance, we note that parties might agree to binding arbitration pursuant to the Administrative Dispute Resolution Act.[91] We seek comment on whether and how such a system should be implemented. In particular, we seek comment on the desirability of arbitration before an arbitrator selected by the parties, as provided by the Administrative Dispute Resolution Act, as opposed to a federal or state decision-maker.[92]

4. We also invite parties to submit alternative proposals for inter-carrier compensation for interstate ISP-bound traffic that will advance our policy goals in this area. For example, Ameritech has proposed basing inter-carrier compensation for ISP-bound traffic on sharing the incumbent LEC's revenue associated with the interconnected ISP-bound traffic.[93] We also request parties to comment on how any alternatives they propose will advance the Commission's goals of ensuring the broadest possible entry of efficient new competitors, eliminating incentives for inefficient entry and irrational pricing schemes, and providing to consumers as rapidly as possible the benefits of competition and emerging technologies.

1. We are aware that disputes may arise regarding various terms and conditions for inter-carrier compensation for ISP-bound traffic. Although many such disputes could be resolved through a negotiation and arbitration process, we seek comment on whether there are any issues under our two proposals above that we can and should address in the first instance through rules rather than through arbitration. We request parties to comment on the need for rules pertaining

---

[91] Administrative Dispute Resolution Act, Pub. L. No. 101-552, 104 Stat. 2738, *codified at* 5 U.S.C. § 571 *et seq.*

[92] *See* 5 U.S.C. § 577.

[93] *See* Letter from Gary L. Phillips, Director of Legal Affairs, Ameritech, Inc., to Magalie R. Salas, Secretary, FCC (July 17, 1998).

to such matters and, to the extent that parties believe that rules are appropriate, the substance and degree of specificity of such rules. We emphasize, however, that we do not seek comment on whether interstate access charges should be imposed on ESPs as part of this proceeding. We recently reaffirmed that exemption in the *Access Charge Reform Order*, and we do not reconsider it here.[94]

1. Pursuant to section 252(i) of the Act,[95] interconnection agreements often have clauses (often referred to as "most-favored nation" or "MFN" provisions) that allow parties to select, to varying degrees of specificity, provisions from other parties' interconnection agreements with that particular LEC. We understand that an arbitrator recently permitted a CLEC to exercise MFN rights to opt into an interconnection agreement that an incumbent LEC previously had negotiated with another CLEC.[96] That interconnection agreement, executed in July 1996, has a three-year term. The arbitrator concluded that the new CLEC was entitled to opt into the agreement for a new three-year term, thus raising the possibility that the incumbent LEC might be subject to the obligations set forth in that agreement for an indeterminate length of time, without any opportunity for renegotiation, as successive CLECs opt into the agreement.[97] We seek comment, therefore, on whether and how section 252(i) and MFN rights affect parties' ability to negotiate or renegotiate terms of their interconnection agreements.

2. As discussed above, not all ISP-bound traffic is interstate. We seek comment on whether we should adopt rules for the interstate traffic that would coexist with state rules governing the intrastate traffic, or whether it is too difficult or inefficient to separate intrastate ISP-bound traffic from interstate ISP-bound traffic. We further seek comment on the technical and practical implications of requiring the separation of intrastate and interstate ISP-bound traffic. In addition, we seek comment on the implications of various proposals regarding inter-carrier compensation for ISP-bound traffic on the separations regime, such as the appropriate treatment of incumbent LEC revenues and payments associated with the delivery of such traffic. This Commission is mindful of concerns that our jurisdictional analysis may result in allocation to different jurisdictions of the costs and revenues associated with ISP-bound traffic,[98] and we wish to make clear that we have no intention of permitting such a mismatch to occur. With respect to current arrangements, we note that this order does not alter the long-standing determination that ESPs (including ISPs) can procure their connections to LEC end offices under intrastate end-user tariffs, and thus for those LECs subject to jurisdictional separations both the

[94] *Access Charge Reform Order*, 12 FCC Rcd at 16133.

[95] 47 U.S.C. § 252(i).

[96] *See* Letter from Michael E. Glover, Associate General Counsel, Bell Atlantic, to Magalie R. Salas, Secretary, FCC (October 28, 1998), at 2, Att. 3 at 6-8.

[97] *Id.*

[98] *See* Letter from James Bradford Ramsay, Assistant General Counsel, National Association of Regulatory Utility Commissioners, to Magalie R. Salas, Secretary, FCC (December 14, 1998).

costs and the revenues associated with such connections will continue to be accounted for as intrastate.

B. Procedural Matters.

1. Ex Parte Presentations.

3. This Notice of Proposed Rulemaking is a permit-but-disclose notice-and-comment rulemaking proceeding. *Ex Parte* presentations are permitted, in accordance with the Commission's rules, provided that they are disclosed as required.[99]

2. Initial Regulatory Flexibility Analysis.

4. As required by the Regulatory Flexibility Act (RFA),[100] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking* (*Notice*). Written public comments are requested on the IRFA. These comments must be filed by the deadlines for comment on the remainder of the *Notice*, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA), in accordance with the RFA, 5 U.S.C. § 603(a).

5. *Need for and Objectives of the Proposed Rules.* We tentatively conclude that we should adopt a rule regarding inter-carrier compensation for ISP-bound traffic that strongly reflects our judgment that commercial negotiations are the ideal means of establishing the terms of interconnection contracts. We seek comment on two alternative proposals for implementing such a regime. Until adoption of a final rule, state commissions will continue to determine whether reciprocal compensation is due for this traffic. In light of comments received in response to the *Notice*, we might issue new rules or alter existing rules.

6. *Legal Basis.* The legal basis for any action that may be taken pursuant to the *Notice* is contained in Sections 1, 2, 4, 201, 202, 274, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201, 202, 251, 252, and 303(r).

7. *Description and Estimate of the Number of Small Entities That May Be Affected by the Notice of Proposed Rulemaking.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that might be affected by proposed rules. The RFA defines the term "small entity" as having the same meaning as the

---

[99] *See generally* 47 C.F.R. §§ 1.1200, 1.1202, 1.1204, 1.1206.

[100] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act.[101] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by SBA.[102] The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be an entity with no more than 1,500 employees.[103] Consistent with prior practice, we here exclude small incumbent local exchange carriers (LECs) from the definition of "small entity" and "small business concern."[104] Although such a company may have 1,500 or fewer employees and thus fall within the SBA's definition of a small telecommunications entity, such companies are either dominant in their field of operations or are not independently owned and operated. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this present analysis and use the term "small incumbent LECs" to refer to any incumbent LEC that arguably might be defined by SBA as a small business concern.

8. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (the Census Bureau) reports that at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[105] This number includes a variety of different categories of carriers, including local exchange carriers (both incumbent and competitive), interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities because they are not "independently owned or operated."[106] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are either small entities or small incumbent LECs that may be affected by this *Notice*.

9. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition of small providers of local exchange services. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide

---

[101] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). The Commission may also develop additional definitions that are appropriate to its activities.

[102] 15 U.S.C. § 632.

[103] *See* 13 C.F.R. § 121.201.

[104] *See, e.g., Local Competition Order*, 11 FCC Rcd at 16150.

[105] United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) (*1992 Census*).

[106] 15 U.S.C. § 632(a)(1).

of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS).[107] According to our most recent data, 1,371 companies reported that they were engaged in the provision of local exchange services.[108] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, or are dominant, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 small providers of local exchange service are small entities or small incumbent LECs that may be affected by the *Notice.*

10. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* As a result of rules that we may adopt, incumbent LECs and CLECs may be required to discern the amount of traffic carried on their networks that is bound for ISPs. In addition, such incumbent LECs and entrants may be required to produce information regrading the costs of carrying ISP-bound traffic on their networks.

11. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Alternatives Considered.* As noted above, we propose to adopt rules that may require incumbent LECs and CLECs to discern the amount of traffic carried on their networks that is bound for ISPs.[109] We anticipate that if we adopt such rules, incumbent LECs and CLECs, including small entity incumbent LEC and CLECs, will be able to receive compensation for the delivery of ISP-bound traffic that they might not otherwise receive. The *Notice* also requests comment on alternative proposals.

12. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

3. Comment Filing Procedures.

13. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before April 12, 1999, and reply comments on or before April 27, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[110]

14. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission

[107] FCC, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Figure 2 (*Number of Carriers Paying into the TRS Fund by Type of Carrier*) (Nov. 1997).

[108] *Id.*

[109] *See* ¶¶ 28-36, *supra.*

[110] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail message to ecfs@fcc.gov and include "get form <your e-mail address>" in the body of the message. A sample form and directions will be sent in reply.

15. Parties that choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth St., S.W., Room TW-A325, Washington, DC 20554.

16. Parties that choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Harris, Federal Communications Commission, Common Carrier Bureau, Competitive Pricing Division, 445 Twelfth St., S.W., Fifth Floor, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the docket number in this case, CC Docket No. 99-68); type of pleading (comment or reply comment); date of submission; and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, DC 20036.

V. Ordering Clauses

17. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i) and (j), 201-209, 251, 252, and 403 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-209, 251, 252 and 403, that this Notice of Proposed Rulemaking IS HEREBY ADOPTED and comments ARE REQUESTED as described above.

18. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

Separate Statement
of
Commissioner Susan Ness

Re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket 96-98); and Inter-carrier Compensation for ISP-Bound Traffic (CC Docket No. 99-68)

This proceeding is one of unusual importance and unusual complexity.

The debate over reciprocal compensation for ISP-bound traffic is *important* for three main reasons. First, the issues we review here involve access to the Internet, a unique, extraordinary, and ever-evolving national and international network of networks that is rapidly transforming communication, commerce, and communities. Second, reciprocal compensation may substantially affect the nature and the extent of local telephone competition, which was a principal objective of the Telecommunications Act of 1996. Third, any decision in this area may affect relationships between state and federal regulatory authorities, who must work in harmony to achieve successful implementation of the Telecommunications Act.

The debate is *complex* because it involves the application of legal precedents from the early 1980s to services and carrier arrangements that were unimaginable only a few short years ago, as well as provisions of the 1996 Act that have already led to considerable controversy and litigation. We must grapple with equities that may be quite different when viewed prospectively than when viewed retrospectively. A further complication is that reciprocal compensation involves certain issues that can better be assessed by state public utility commissions than by the FCC, and yet it also implicates important national interests affecting access to an interstate (and international) service.

At the end of the day, however, I believe the case boils down to elementary and straightforward propositions. Switched network telephone calls to Internet service providers are inherently interstate, which is the decision most consistent with our prior creation of an ESP exemption from interstate access charges -- and with the interstate and international nature of the Internet. But to say this is *not* to overrule, undermine, or prevent state commission decisions that construe interconnection agreements to require reciprocal compensation for ISP-bound traffic. It was, and remains, reasonable for the states (and federal district courts) to so rule, given our prior decisions -- and the practices of the ILECs themselves -- to treat this traffic as local.[111]

[111] Since 1983, the Commission has consistently and consciously permitted enhanced service providers, a category that now includes Internet service providers (ISPs) to connect to their customers using local business lines. *See, e.g., MTS and WATS Market Structure*, 97 FCC 2d 682, 715, para. 83 (1983) (subsequent history omitted) Enhanced service providers use "*interstate* access" but pay "*local* business exchange service rates." *Id.* (emphasis

And, although we are declaring that there are national interests that must be respected on a going-forward basis, it may well be that these interests can be protected without changing the long-standing decision to treat this traffic as local. One could readily imagine, for example, that states will not seek to assess per-minute fees on Internet-bound calls, just as the FCC has repeatedly resisted entreaties to do so. One can also reasonably foresee that, even if ISP-bound traffic continues to be handled by the state commissions under the usual 251/252 process, the parties themselves (in voluntarily negotiated agreements) or the state commissions (if called upon to arbitrate agreements between incumbents and new entrants) will in future agreements address the issues associated with ISP-bound traffic in ways that avoid some of the obvious

---

added); *see also Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd. 2631, 2635 n.8 (1988) ("enhanced service providers generally pay *local* business rates and interstate subscriber line charges for their switched access connections to local exchange company central offices") (emphasis added); *accord id.* at 2637 n.53.

This decision was not altered by passage of the Telecommunications Act of 1996. After that law was passed, we expressly reiterated that ISPs "purchase services from incumbent LECs under the same *intrastate* tariffs available to end users" and determined that, if "*intrastate* rate structures fail to compensate incumbent LECs adequately for providing service to customers with high volumes of incoming calls, incumbent LECs may address their concerns to *state* regulators." *Access Charge Reform*, 12 FCC Rcd. 15982, 16132, para. 342 & 16135, para. 346 (1997), *aff'd Southwestern Bell Telephone Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998) (emphasis added). The Eighth Circuit explicitly recognized that the manner in which Internet-bound traffic is treated is a product of FCC "discretion." *Southwestern Bell Telephone*, 153 F.3d at 543. It is significant that, in the aforementioned *Access Charge Reform* proceeding, we implicitly affirmed both the FCC's ultimate authority over this traffic and the state commissions' competence to handle it unless and until directed otherwise. It is especially telling that the *Southwestern Bell Telephone* decision, acknowledging the Commission's ultimate authority over such inherently interstate traffic, came from a court that was otherwise quite resistant to FCC encroachment on matters that it deemed to be on the states' side of a "horse-high, hog-tight, and bull-strong fence." *Iowa Utilities Bd. v. FCC*, 120 F.3d 753, 800 (8th Cir. 1997), *rev'd in pertinent part*, *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999).

anomalies and competitive distortions that may result from some of the current ILEC-CLEC arrangements.

In short, I believe the decision we have adopted is one that (1) comports with the law, (2) is fair both to incumbent local exchange carriers and to competitive local exchange carriers, (3) does not unravel the core determinations of the more than two dozen state commissions that have addressed this issue, (4) sets the stage for future determinations that will eliminate or at least attenuate any anomalies inherent in current compensation arrangements, and (5) preserves this Commission's ability to safeguard the innovative, competitive, and unregulated character of the Internet. I hope that parties responding to the Notice of Proposed Rulemaking will focus on ways in which all of these objectives may continue to be advanced.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL K. POWELL, CONCURRING

Re: Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96-98) and Inter-Carrier Compensation for ISP-Bound Traffic (CC Docket No. 99-68).

I write separately to explain the bases upon which I concur in this action. Specifically, based on the long inquiry that has led to our action today, I agree with the majority that LEC-to-LEC Internet-bound traffic is properly classified as jurisdictionally interstate. Because of this agreement, and in light of the serious governmental interests implicated, I believe it is appropriate for the Commission to consider whether the current method of determining intercarrier compensation for this traffic at the state level continues to be appropriate. I believe, however, that in a well-meaning effort to preserve existing state decisions regarding reciprocal compensation for this traffic, we have strayed into areas best left to state authorities and may have unwittingly muddled our jurisdictional analysis.

As the attached decision correctly points out, a number of the Commission's precedents indicate that the jurisdictional nature of communications should be determined by the end points of the communication (*i.e.*, by looking at the entire communication as "one call"). I believe this method of evaluating jurisdiction remains valid and important, especially considering the growing number of creative and complex methods for transmitting and transporting communications. Indeed, the challenge of packet networks is that they make it nearly impossible (at present) to trace accurately the route of a single communication to its destination, especially given that each packet of which the communication is comprised may take a different route before reassembling at the intended destination. These and other technological developments will continue to frustrate traditional geographic boundaries.

Our decision that LEC-to-LEC Internet-bound traffic is interstate in nature fundamentally calls into question a number of state decisions that applied reciprocal compensation to LEC-to-LEC Internet-bound traffic based primarily or exclusively on the view, which we herein reject, that this traffic is local. I agree with the majority that this conclusion does not, in itself, dictate how or whether carriers of this traffic should be compensated, nor does this conclusion determine whether this Commission or state commissions should establish compensation arrangements. I likewise agree that not all state decisions to apply reciprocal compensation to this traffic share this basis, and that, as a general matter, there may be other bases upon which state commissions could continue these compensation schemes even after the action we take here.

But even given the fact that our decision today does not necessarily undermine each of the state decisions, I think the most prudent course would have been for us to decline to speculate on what bases there may be for upholding those decisions. The decisions themselves are not before us and it is properly for state authorities to explore the ramifications of our action

today on those decisions. Furthermore, having reviewed a number of the state decisions in this area, I am persuaded that the underlying facts, analytical underpinnings and applicable law vary enormously from state to state. We cannot, even in the most carefully worded or sweeping dicta, address all of these variations meaningfully.

That said, I might support some of the majority's suggested rationales for preserving existing state decisions, but cannot embrace others because I am unpersuaded either that they are sensitive to the wide variations in the facts, analysis and legal contexts or that the benefits of such rationales substantially exceed their potential risks. I put in the first category the view that state decisions applying reciprocal compensation to LEC-to-LEC Internet-bound traffic should be preserved where the state or reviewing court finds that the parties *agreed* to compensate each other for this traffic in this way. Sections 251 and 252 of the Act express a clear preference for negotiations as the primary method for carriers to determine the terms of interconnection, and the Act allows parties to agree even to terms that do not satisfy the requirements of these sections. Thus, I firmly believe that if a state commission or court interpreting state law determines that carriers agreed to apply reciprocal compensation to this traffic, those carriers should be held to the terms of their agreement. Furthermore, I have no strong objection to our dicta to the extent it suggests that state commissions or reviewing courts may identify other justifications for preserving state decisions to apply reciprocal compensation to this traffic under state law. If we had included only this rationale as a basis upon which states could uphold their existing decisions, my concerns with our decision today would have been significantly reduced.

But rather than merely acknowledging generally the possibility of state law bases on which we believe such agreements can be sustained, we have chosen to proffer other specific bases. I am concerned, however, that the other theories proffered here are legally and analytically unsound, may prospectively hinder our ability to address the public policy concerns that led us to assert jurisdiction here in the first place, and yet do very little retroactively to preserve state-sanctioned agreements. As such, I decline to subscribe to certain of the dicta in our decision.

First, I decline to subscribe to any suggestion that the state decisions could be preserved based on the theory that we had essentially delegated responsibility to state commissions to approve or determine compensation arrangements for LEC-to-LEC Internet-bound traffic. Unquestionably, we have in the past declined to apply certain types of existing federal compensation or charges to traffic flowing to enhanced service providers (ESPs) from individual LECs. As the decision appears to acknowledge, however, we have never made a conscious, affirmative choice to defer in similar fashion to local compensation measures for the situation we face here (*i.e.*, intercarrier compensation for LEC-to-LEC Internet-bound traffic). I do not question that a state may have understandably analogized the ESP precedent to this case. But no matter how apt the analogy to the facts before us now, one cannot assume delegated authority by analogy. Thus, I cannot support any suggestion that the Commission has heretofore delegated authority to state commissions to impose reciprocal compensation on this traffic.

Second, I decline to subscribe to the dicta in this decision to the extent it suggests that the state decisions can be preserved because state commissions and this Commission share jurisdiction for implementing the sections 251 and 252 of the Act.

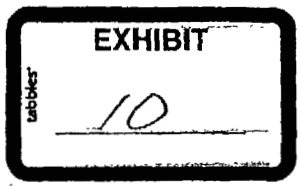
I fully agree that the states, to the extent they acted pursuant to their statutory obligation to arbitrate and approve interconnection agreements, acted reasonably in the absence of a clear federal rule. Nonetheless, I fail to see how such reasonableness will be a defense to claims that our jurisdictional analysis conflicts with that of a state. Such reasonableness does little to preserve those state decisions most likely to be disturbed by our "one call" jurisdictional analysis, namely, decisions based primarily or exclusively on a "two call" theory. In short, I think touching on the issue of shared jurisdiction muddles our conclusion that there is federal jurisdiction with respect to these questions.[112] I remain open to considering any reasonable compensation scheme (including delegating authority to states) but would have preferred to do so on the basis of our interstate authority, rather than on shared jurisdiction.

In closing, I wish to note that I would have preferred to avoid making tentative conclusions in the Notice section of today's decision. Indeed, in light of the complexity of the analysis, the importance of the issues and the long inquiry leading up to this decision, some may find it strange that our tentative conclusion in favor of state-level arbitrations would leave the method of establishing intercarrier compensation for this traffic virtually unchanged. I encourage commenters to provide information on both sides of this important issue so that we can assess more fully which compensation scheme is best.

For these reasons, I cannot fully support our decision today, and thus I concur in it. I wish to commend, however, my colleagues and our dedicated staff for their diligence and patience in wrestling with these knotty legal and policy issues.

---

[112] Any shared jurisdiction theory raises certain questions, such as: what are the limits of federal authority in crafting a compensation regime? Although the recent Supreme Court decision in *AT&T Corp. v. Iowa Utilities Board* begins to answer this question, the Court's answer may not be entirely complete. For example, in affirming the Commission's pricing jurisdiction, the Court states: "While it is true that the 1996 Act entrusts state commissions with the job of approving interconnection agreements . . . and granting exemptions to rural LECs, . . . these assignments . . . do not logically preclude the Commission's issuance of rules *to guide the state commission judgments*." *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999) (opinion of the court, section II) (emphasis added). Other than affirming the approach taken in the Commission's underlying order, however, the Court provided little guidance regarding the level of specificity with which the Commission can "guide the state commission judgments."



206 F.3d 1
199 P.U.R.4th 458
(Cite as: 206 F.3d 1, 340 U.S.App.D.C. 328)

H

United States Court of Appeals,
District of Columbia Circuit.

BELL ATLANTIC TELEPHONE COMPANIES,
Petitioner,
v.
FEDERAL COMMUNICATIONS COMMISSION
and United States of America, Respondents.
Telecommunications Resellers Association, et al.,
Intervenors.

Nos. 99-1094, 99-1095, 99-1097, 99-1106, 99-1126, 99-1134, 99-1136 and 99-1145.

Argued Nov. 22, 1999.
Decided March 24, 2000.

Incumbent local exchange carriers (LECs) and firms which provide local exchange telecommunications services to internet service providers (ISPs) petitioned for review of rulings of the Federal Communications Commission (FCC) determining that calls to ISPs within the caller's local calling area are not "local" so a to be subject to reciprocal compensation requirement applicable to "local telecommunications traffic," and determining that, in the absence of federal regulation, state commissions have the authority to impose reciprocal compensation. The Court of Appeals, Stephen F. Williams, Circuit Judge, held that the FCC failed to adequately explain why LECs that terminate calls to ISPs are not properly seen as "terminat[ing] ... local telecommunications traffic," and why such traffic is "exchange access" rather than "telephone exchange service," thus requiring remand.

Vacated and remanded

West Headnotes

[1] Telecommunications ⇐336
372k336 Most Cited Cases

Although internet service providers (ISPs) use telecommunications to provide information service, they are not themselves "telecommunications providers," and the Federal Communications Commission (FCC), in ruling that calls to ISPs within the caller's local calling area are not "local" so a to be subject to reciprocal compensation requirement, has not satisfactorily explained why local exchange carriers (LECs) that terminate calls to ISPs are not properly seen as "terminat[ing] ... local telecommunications traffic," nor has it adequately explained the appropriateness of its decision to treat end-to-end analysis, applicable to jurisdictional determinations, as controlling, thus requiring remand. Telecommunications Act of 1996, 47 U.S.C.A. § 251(b)(5); 47 C.F.R. §§ 51.701(a), 64.702(a).

[2] Telecommunications ⇐336
372k336 Most Cited Cases

The Federal Communications Commission (FCC), in ruling that calls to internet service providers (ISPs) within the caller's local calling area are not "local" so as to be subject to reciprocal compensation requirement, has not satisfactorily explained why such traffic is "exchange access" rather than "telephone exchange service" under the governing statute, thus requiring remand to the FCC. Communications Act of 1934, § 3(16, 47), 47 U.S.C.A. § 153(16, 47); Telecommunications Act of 1996, 47 U.S.C.A. § 251(b)(5); 47 C.F.R. § 51.701(a).

[3] Administrative Law and Procedure ⇐762
15Ak762 Most Cited Cases

Though Court of Appeals reviews agency's interpretation only for reasonableness where Congress has not resolved the issue, where a decision is valid only as a determination of policy or judgment which the agency alone is authorized to make and which it has not made, a judicial judgment cannot be made to do service.

***1 **328** On Petitions for Review of a Declaratory Ruling of the Federal Communications Commission.

***2 **329** Mark L. Evans and Darryl M. Bradford argued the causes for petitioners. With them on the briefs were Thomas F. O'Neil, III, Adam H. Charnes , Mark B. Ehrlich, Donald B. Verrilli, Jr., Jodie L. Kelley, John J. Hamill, Emily M. Williams, Theodore Case Whitehouse, Thomas Jones, Albert H. Kramer, Andrew D. Lipman, Richard M. Rindler , Robert M. McDowell, Robert D. Vandiver, Cynthia Brown Miller, Charles C. Hunter, Catherine M. Hannan, Michael D. Hays, Laura H.

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

206 F.3d 1
199 P.U.R.4th 458
(Cite as: 206 F.3d 1, 340 U.S.App.D.C. 328)

Phillips, J. G. Harrington, William P. Barr, M. Edward Whelan, III, Michael K. Kellogg, Michael E. Glover, Robert B. McKenna, William T. Lake, John H. Harwood, II, Jonathan J. Frankel, Robert Sutherland, William B. Barfield, Theodore A. Livingston and John E. Muench. Maureen F. Del Duca, Lynn R. Charytan, Gail L. Polivy, John F. Raposa and Lawrence W. Katz entered appearances.

Christopher J. Wright, General Counsel, Federal Communications Commission, argued the cause for respondents. With him on the brief were Daniel M. Armstrong, Associate General Counsel, and John E. Ingle, Laurence N. Bourne and Lisa S. Gelb, Counsel. Catherine G. O'Sullivan and Nancy C. Garrison, Attorneys, U.S. Department of Justice, entered appearances.

David L. Lawson argued the cause for intervenors in opposition to the LEC petitioners. With him on the brief were Mark C. Rosenblum, David W. Carpenter, James P. Young, Emily M. Wiliams, Andrew D. Lipman, Richard M. Rindler, Robert D. Vandiver, Cynthia Brown Miller, Theodore Case Whitehouse, Thomas Jones, John D. Seiver, Charles C. Hunter, Catherine M. Hannan, Carol Ann Bischoff and Robert M. McDowell.

William P. Barr, M. Edward Whelan, Michael E. Glover, Mark L. Evans, Michael K. Kellogg, Mark D. Roellig, Dan Poole, Robert B. McKenna, William T. Lake, John H. Harwood, II, Jonathan J. Frankel, Robert Sutherland, William B. Barfield, Theodore A. Livingston and John E. Muench were on the brief for the Local Exchange Carrier intervenors.

Robert J. Aamoth, Ellen S. Levine, Charles D. Gray, James B. Ramsay, Jonathan J. Nadler, David A. Gross, Curtis T. White, Edward Hayes, Jr., and David M. Janas entered appearances for intervenors

Before: WILLIAMS, SENTELLE and RANDOLPH, Circuit Judges.

Opinion for the Court filed by Circuit Judge STEPHEN F. WILLIAMS.

STEPHEN F. WILLIAMS, Circuit Judge:

The Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56, 47 U.S.C. §§ 151-714, requires local exchange carriers ("LECs") to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." *Id.* § 251(b)(5). When LECs collaborate to complete a call, this provision ensures compensation both for the originating LEC, which receives payment from the end-user, and for the recipient's LEC. By regulation the Commission has limited the scope of the reciprocal compensation requirement to "local telecommunications traffic." 47 CFR § 51.701(a). In the ruling under review, it considered whether calls to internet service providers ("ISPs") within the caller's local calling area are themselves "local." In doing so it applied its so-called "end-to- end" analysis, noting that the communication characteristically will ultimately (if indirectly) extend beyond the ISP to websites out-of-state and around the world. Accordingly it found the calls non-local. See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 14 FCC Rcd 3689, 3690 (¶ 1) (1999) ("FCC Ruling").

Having thus taken the calls to ISPs out of § 251(b)(5)'s provision for "reciprocal compensation" (as it interpreted it), the *3 **330 Commission could nonetheless itself have set rates for such calls, but it elected not to. In a Notice of Proposed Rulemaking, CC Docket 99-68, the Commission tentatively concluded that "a negotiation process, driven by market forces, is more likely to lead to efficient outcomes than are rates set by regulation," FCC Ruling, 14 FCC Rcd at 3707 (¶ 29), but for the nonce it left open the matter of implementing a system of federal controls. It observed that in the meantime parties may voluntarily include reciprocal compensation provisions in their interconnection agreements, and that state commissions, which have authority to arbitrate disputes over such agreements, can construe the agreements as requiring such compensation; indeed, even when the agreements of interconnecting LECs include no linguistic hook for such a requirement, the commissions can find that reciprocal compensation is appropriate. FCC Ruling, 14 FCC Rcd at 3703-05 (¶¶ 24- 25); see

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

§ 251(b)(1) (establishing such authority). "[A]ny such arbitration," it added, "must be consistent with governing federal law." FCC Ruling, 14 FCC Rcd at 3705 (¶ 25).

This outcome left at least two unhappy groups. One, led by Bell Atlantic, consists of incumbent LECs (the "incumbents"). Quite content with the Commission's finding of § 251(b)(5)'s inapplicability, the incumbents objected to its conclusion that in the absence of federal regulation state commissions have the authority to impose reciprocal compensation. Although the Commission's new rulemaking on the subject may eventuate in a rule that preempts the states' authority, the incumbents object to being left at the mercy of state commissions until that (hypothetical) time, arguing that the commissions have mandated exorbitant compensation. In particular, the incumbents, who are paid a flat monthly fee, have generally been forced to provide compensation for internet calls on a per-minute basis. Given the average length of such calls the cost can be substantial, and since ISPs do not make outgoing calls, this compensation is hardly "reciprocal."

Another group, led by MCI WorldCom, consists of firms that are seeking to compete with the incumbent LECs and which provide local exchange telecommunications services to ISPs (the "competitors"). These firms, which stand to receive reciprocal compensation on ISP-bound calls, petitioned for review with the complaint that the Commission erred in finding that the calls weren't covered by § 251(b)(5).

The end-to-end analysis applied by the Commission here is one that it has traditionally used to determine whether a call is within its interstate *jurisdiction*. Here it used the analysis for quite a different purpose, without explaining why such an extension made sense in terms of the statute or the Commission's own regulations. Because of this gap, we vacate the ruling and remand the case for want of reasoned decisionmaking.

* * *

In February 1996 Congress passed the Telecommunications Act of 1996 (the "1996 Act" or the "Act"), stating an intent to open local telephone markets to competition. See H.R. Conf. Rep. No. 104-458, at 113 (1996). Whereas before local exchange carriers generally had state-licensed monopolies in each local service area, the 1996 Act set out to ensure that "[s]tates may no longer enforce laws that impede[ ] competition," and subjected incumbent LECs "to a host of duties intended to facilitate market entry." *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 119 S.Ct. 721, 726, 142 L.Ed.2d 835 (1999).

Among the duties of incumbent LECs is to "provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network ... for the transmission and routing of telephone exchange service and exchange access." 47 U.S.C. § 251(c)(2). ("Telephone exchange service" and "exchange access" are words of art to which we shall later return.) ***4 **331** Competitor LECs have sprung into being as a result, and their customers call, and receive calls from, customers of the incumbents.

We have already noted that § 251(b)(5) of the Act establishes the duty among local exchange carriers "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251(b)(5). Thus, when a customer of LEC A calls a customer of LEC B, LEC A must pay LEC B for completing the call, a cost usually paid on a per- minute basis. Although § 251(b)(5) purports to extend reciprocal compensation to all "telecommunications," the Commission has construed the reciprocal compensation requirement as limited to local traffic. See 47 CFR § 51.701(a) ("The provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers."). LECs that originate or terminate long-distance calls continue to be compensated with "access charges," as they were before the 1996 Act. Unlike reciprocal compensation, these access charges are not paid by the originating LEC. Instead, the long- distance carrier itself pays both the LEC that originates the call and links the caller to the long distance network, and the LEC that terminates the call. See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16013 (¶ 1034) (1996) ("*Local Competition Order*").

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

The present case took the Commission beyond these traditional telephone service boundaries. The internet is "an international network of interconnected computers that enables millions of people to communicate with one another in 'cyberspace' and to access vast amounts of information from around the world." *Reno v. ACLU,* 521 U.S. 844, 844, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997). Unlike the conventional "circuit-switched network," which uses a single end-to-end path for each transmission, the internet is a "distributed packet-switched network, which means that information is split up into small chunks or 'packets' that are individually routed through the most efficient path to their destination." *In the Matter of Federal-State Joint Board on Universal Service,* 13 FCC Rcd 11501, 11532 (¶ 64) (1998) ("*Universal Service Report*"). ISPs are entities that allow their customers access to the internet. Such a customer, an "end user" of the telephone system, will use a computer and modem to place a call to the ISP server in his local calling area. He will usually pay a flat monthly fee to the ISP (above the flat fee already paid to his LEC for use of the local exchange network). The ISP "typically purchases business lines from a LEC, for which it pays a flat monthly fee that allows unlimited incoming calls." FCC Ruling, 14 FCC Rcd at 3691 (¶ 4).

In the ruling now under review, the Commission concluded that § 251(b)(5) does not impose reciprocal compensation requirements on incumbent LECs for ISP-bound traffic. FCC Ruling, 14 FCC Rcd at 3690 (¶ 1). Faced with the question whether such traffic is "local" for purposes of its regulation limiting § 251(b)(5) reciprocal compensation to local traffic, the Commission used the "end-to-end" analysis that it has traditionally used for jurisdictional purposes to determine whether particular traffic is interstate. Under this method, it has focused on "the end points of the communication and consistently has rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers." FCC Ruling, 14 FCC Rcd at 3695 (¶ 10). We save for later an analysis of the various FCC precedents on which the Commission purported to rely in choosing this mode of analysis.

Before actually applying that analysis, the Commission brushed aside a statutory argument of the competitor LECs. They argued that ISP-bound traffic must be either "telephone exchange service," as defined ****332 *5** in 47 U.S.C. § 153(47), or "exchange access," as defined in § 153(16). [FN1] IT COULD NOT BE THE LATTER, THEY REASONED, BECAUSE ISPS DO NOT ASSESS toll charges for the service (see *id.*, "the offering of access ... for the purpose of the origination or termination of telephone toll services"), and therefore it must be the former, for which reciprocal compensation is mandated. Here the Commission's answer was that it has consistently treated ISPs (and ESPs generally) as "users of access service," while treating them as end users merely for access charge purposes. FCC Ruling, 14 FCC Rcd at 3701 (¶ 17).

> FN1. "Telephone exchange service" is defined as:
> (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.
> 47 U.S.C. § 153(47). "Exchange access" is defined as:
> the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.
> *Id.* § 153(16).

Having decided to use the "end-to-end" method, the Commission considered whether ISP-bound traffic is, under this method, in fact interstate. In a conventional "circuit-switched network," the jurisdictional analysis is straightforward: a call is intrastate if, and only if, it originates and terminates in the same state. In a "packet-switched network," the analysis is not so simple, as "[a]n Internet communication does not necessarily have a point of 'termination' in the traditional sense." FCC Ruling,

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

14 FCC Rcd at 3701-02 (¶ 18). In a single session an end user may communicate with multiple destination points, either sequentially or simultaneously. Although these destinations are sometimes intrastate, the Commission concluded that "a substantial portion of Internet traffic involves accessing interstate or foreign websites." *Id.* Thus reciprocal compensation was not due, and the issue of compensation between the two local LECs was left initially to the LECs involved, subject to state commissions' power to order compensation in the "arbitration" proceedings, and, of course to whatever may follow from the Commission's new rulemaking on its own possible ratesetting.

* * *

The issue at the heart of this case is whether a call to an ISP is local or long-distance. Neither category fits clearly. The Commission has described local calls, on the one hand, as those in which LECs collaborate to complete a call and are compensated for their respective roles in completing the call, and long-distance calls, on the other, as those in which the LECs collaborate with a long-distance carrier, which itself charges the end-user and pays out compensation to the LECs. See *Local Competition Order,* 11 FCC Rcd at 16013 (¶ 1034) (1996).

Calls to ISPs are not quite local, because there is some communication taking place between the ISP and out-of-state websites. But they are not quite long- distance, because the subsequent communication is not really a continuation, in the conventional sense, of the initial call to the ISP. The Commission's ruling rests squarely on its decision to employ an end-to-end analysis for purposes of determining whether ISP-traffic is local. There is no dispute that the Commission has historically been justified in relying on this method when determining whether a particular communication is jurisdictionally interstate. But it has yet to provide an explanation why this inquiry is relevant to discerning whether a call to an ISP should fit within the local call model of two collaborating LECs or the long-distance model of a long- distance carrier collaborating with two LECs.

*6 **333 In fact, the extension of "end-to-end" analysis from jurisdictional purposes to the present context yields intuitively backwards results. Calls that are jurisdictionally *intra*state will be subject to the federal reciprocal compensation requirement, while calls that are *inter*state are not subject to federal regulation but instead are left to potential state regulation. The inconsistency is not necessarily fatal, since under the 1996 Act the Commission has jurisdiction to implement such provisions as § 251, even if they are within the traditional domain of the states. See *AT&T Corp.,* 119 S.Ct. at 730. But it reveals that arguments supporting use of the end-to-end analysis in the jurisdictional analysis are not obviously transferable to this context.

In attacking the Commission's classification of ISP-bound calls as non-local for purposes of reciprocal compensation, MCI WorldCom notes that under 47 CFR § 51.701(b)(1) "telecommunications traffic" is local if it "originates and terminates within a local service area." But, observes MCI WorldCom, the Commission failed to apply, or even to mention, its definition of "termination," namely "the switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises." *Local Competition Order,* 11 FCC Rcd at 16015 (¶ 1040); 47 CFR § 51.701(d). Calls to ISPs appear to fit this definition: the traffic is switched by the LEC whose customer is the ISP and then delivered to the ISP, which is clearly the "called party."

In its ruling the Commission avoided this result by analyzing the communication on an end-to-end basis: "[T]he communications at issue here do not terminate at the ISP's local server ..., but continue to the ultimate destination or destinations." FCC Ruling, 14 FCC Rcd at 3697 (¶ 12). But the cases it relied on for using this analysis are not on point. Both involved a single continuous communication, originated by an end-user, switched by a long-distance communications carrier, and eventually delivered to its destination. One, *Teleconnect Co. v. Bell Telephone Co.,* 10 FCC Rcd 1626 (1995), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC,* 116 F.3d 593 (D.C.Cir.1997) ("*Teleconnect*"), involved an 800 call to a long-distance carrier, which then routed the call to its intended recipient. The other, *In the Matter of Petition for Emergency Relief and Declaratory*

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

Ruling Filed by the BellSouth Corporation, 7 FCC Rcd 1619 (1992), considered a voice mail service. Part of the service, the forwarding of the call from the intended recipient's location to the voice mail apparatus and service, occurred entirely within the subscriber's state, and thus looked local. Looking "end-to-end," however, the Commission refused to focus on this portion of the call but rather considered the service in its entirety (i.e., originating with the out-of-state caller leaving a message, or the subscriber calling from out-of-state to retrieve messages). *Id.* at 1621 (¶ 12).

[1] ISPs, in contrast, are "information service providers," *Universal Service Report,* 13 FCC Rcd at 11532-33 (¶ 66), which upon receiving a call originate further communications to deliver and retrieve information to and from distant websites. The Commission acknowledged in a footnote that the cases it relied upon were distinguishable, but dismissed the problem out-of-hand: "Although the cited cases involve interexchange carriers rather than ISPs, and the Commission has observed that 'it is not clear that [information service providers] use the public switched network in a manner analogous to IXCs,' *Access Charge Reform Order,* 12 FCC Rcd at 16133, the Commission's observation does not affect the jurisdictional analysis." FCC Ruling, 14 FCC Rcd at 3697 n.36 (¶ 12). It is not clear how this helps the Commission. Even if the difference between ISPs and traditional long-distance carriers is irrelevant for jurisdictional purposes, it appears relevant for *7 **334 purposes of reciprocal compensation. Although ISPs use telecommunications to provide information service, they are not themselves telecommunications providers (as are long-distance carriers).

In this regard an ISP appears, as MCI WorldCom argued, no different from many businesses, such as "pizza delivery firms, travel reservation agencies, credit card verification firms, or taxicab companies," which use a variety of communication services to provide their goods or services to their customers. Comments of WorldCom, Inc. at 7 (July 17, 1997). Of course, the ISP's origination of telecommunications as a result of the user's call is instantaneous (although perhaps no more so than a credit card verification system or a bank account information service). But this does not imply that the original communication does not "terminate" at the ISP. The Commission has not satisfactorily explained why an ISP is not, for purposes of reciprocal compensation, "simply a communications-intensive business end user selling a product to other consumer and business end-users." *Id.*

The Commission nevertheless argues that although the call from the ISP to an out-of-state website is information service for the end-user, it is telecommunications for the ISP, and thus the telecommunications cannot be said to "terminate" at the ISP. As the Commission states: "Even if, from the perspective of the *end user* as customer, the telecommunications portion of an Internet call 'terminates' at the ISP's server (and information service begins), the remaining portion of the call would continue to constitute telecommunications from the perspective of the *ISP* as customer." Commission's Br. at 41. Once again, however, the mere fact that the ISP originates further telecommunications does not imply that the original telecommunication does not "terminate" at the ISP. However sound the end-to- end analysis may be for jurisdictional purposes, the Commission has not explained why viewing these linked telecommunications as continuous works for purposes of reciprocal compensation.

Adding further confusion is a series of Commission rulings dealing with a class, enhanced service providers ("ESPs"), of which ISPs are a subclass. See FCC Ruling, 14 FCC Rcd at 3689 n.1 (¶ 1). ESPs, the precursors to the 1996 Act's information service providers, offer data processing services, linking customers and computers via the telephone network. See *MCI Telecommunications Corp. v. FCC,* 57 F.3d 1136, 1138 (D.C.Cir.1995). [FN2] In its establishment of the access charge system for long-distance calls, the Commission in 1983 exempted ESPs from the access charge system, thus in effect treating them like end users rather than long-distance carriers. See *In the Matter of MTS & WATS Market Structure,* 97 F.C.C.2d 682, 711-15 (¶ 77-83), 1983 WL 183026 (1983). It reaffirmed this decision in 1991, explaining that it had "refrained from applying full access charges to ESPs out of concern that the industry has continued to be affected by a number of significant, potentially disruptive, and rapidly changing circumstances." *In the Matter of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network*

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

Architecture, 6 FCC Rcd 4524, 4534 (¶ 54) (1991). In 1997 it again preserved the status quo. *In the Matter of Access Charge Reform,* 12 FCC Rcd 15982 (1997) ("*Access Charge Reform Order* "). It justified the exemption in terms of the goals of the 1996 Act, saying that its purpose was to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services." *Id.* at 16133 (¶ 344) (quoting 47 U.S.C. § 230(b)(2)).

> FN2. The regulatory definition states that ESPs offer "services ... which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information." 47 CFR § 64.702(a).

*8 **335 This classification of ESPs is something of an embarrassment to the Commission's present ruling. As MCI WorldCom notes, the Commission acknowledged in the *Access Charge Reform Order* that "given the evolution in [information service provider] technologies and markets since we first established access charges in the early 1980s, it is not clear that [information service providers] use the public switched network in a manner analogous to IXCs [inter-exchange carriers]." 12 FCC Rcd at 16133 (¶ 345). It also referred to calls to information service providers as "local." *Id.* at 16132 (¶ 342 n.502). And when this aspect of the *Access Charge Reform Order* was challenged in the 8th Circuit, the Commission's briefwriters responded with a sharp differentiation between such calls and ordinary long- distance calls covered by the "end-to-end" analysis, and even used the analogy employed by MCI WorldCom here--that a call to an information service provider is really like a call to a local business that then uses the telephone to order wares to meet the need. Brief of FCC at 76, *Southwestern Bell v. FCC,* 153 F.3d 523 (8th Cir.1998) (No. 97-2618). When accused of inconsistency in the present matter, the Commission flipped the argument on its head, arguing that its exemption of ESPs from access charges actually confirms "its understanding that ESPs in fact use interstate access service; otherwise, the exemption would not be necessary." FCC Ruling, 14 FCC Rcd at 3700 (¶ 16). This is not very compelling. Although, to be sure, the Commission used policy arguments to justify the "exemption," it also rested it on an acknowledgment of the real differences between long-distance calls and calls to information service providers. It is obscure why those have now dropped out of the picture.

Because the Commission has not supplied a real explanation for its decision to treat end-to-end analysis as controlling, *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983) ; 5 U.S.C. § 706(2)(A), we must vacate the ruling and remand the case.

[2] There is an independent ground requiring remand--the fit of the present rule within the governing statute. MCI WorldCom says that ISP-traffic is "telephone exchange service[ ]" as defined in 47 U.S.C. § 153(16), which it claims "is synonymous under the Act with the service used to make local phone calls," and emphatically not "exchange access" as defined in 47 U.S.C. § 153(47) . Petitioner MCI WorldCom's Initial Br. at 22. In the only paragraph of the ruling in which the Commission addressed this issue, it merely stated that it "consistently has characterized ESPs as 'users of access service' but has treated them as end users for pricing purposes." FCC Ruling, 14 FCC Rcd at 3701 (¶ 17). In a statutory world of "telephone exchange *service*" and "exchange *access,*" which the Commission here says constitute the only possibilities, the reference to "access service," combining the different key words from the two terms before us, sheds no light. "Access service" is in fact a pre-Act term, defined as "services and facilities provided for the origination or termination of any interstate or foreign telecommunication." 47 CFR § 69.2(b).

If the Commission meant to place ISP-traffic within a third category, not "telephone exchange service" and not "exchange access," that would conflict with its concession on appeal that "exchange access" and "telephone exchange service" occupy the field. But if it meant that just as ESPs were "users of access service" but treated as end users for pricing purposes, so too ISPs are users of exchange access, the Commission has not provided a satisfactory

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

explanation why this is the case. In fact, in *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended,* 11 FCC Rcd 21905, 22023 (¶ 248) (1996), the Commission clearly stated that "ISPs do not use exchange access." After oral argument in this case the Commission overruled ****336 *9** this determination, saying that "non-carriers may be purchasers of those services." *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability,* FCC 99-413, at 21 (¶ 43) (Dec. 23, 1999). The Commission relied on its preAct orders in which it had determined that non-carriers can use "access services," and concluded that there is no evidence that Congress, in codifying "exchange access," intended to depart from this understanding. See *id* . at 21-22 (¶ 44). The Commission, however, did not make this argument in the ruling under review.

Nor did the Commission even consider how regarding noncarriers as purchasers of "exchange access" fits with the statutory definition of that term. A call is "exchange access" if offered "for the purpose of the origination or termination of *telephone toll services*." 47 U.S.C. § 153(16). As MCI WorldCom argued, ISPs provide information service rather than telecommunications; as such, "ISPs connect to the local network 'for the purpose of' providing information services, not originating or terminating telephone toll services." Petitioner MCI WorldCom's Reply Br. at 6.

[3] The statute appears ambiguous as to whether calls to ISPs fit within "exchange access" or "telephone exchange service," and on that view any agency interpretation would be subject to judicial deference. See *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842-43, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). But, even though we review the agency's interpretation only for reasonableness where Congress has not resolved the issue, where a decision "is valid only as a determination of policy or judgment which the agency alone is authorized to make and which it has not made, a judicial judgment cannot be made to do service." *SEC v. Chenery Corp.,* 318 U.S. 80, 88, 63 S.Ct. 454, 87 L.Ed. 626 (1943). See also *Acme Die Casting v. NLRB,* 26 F.3d 162, 166 (D.C.Cir.1994); *Leeco, Inc. v. Hays,* 965 F.2d 1081, 1085 (D.C.Cir.1992); *City of Kansas City v. Department of Housing and Urban Development,* 923 F.2d 188, 191-92 (D.C.Cir.1991).

* * *

Because the Commission has not provided a satisfactory explanation why LECs that terminate calls to ISPs are not properly seen as "terminat[ing] ... local telecommunications traffic," and why such traffic is "exchange access" rather than "telephone exchange service," we vacate the ruling and remand the case to the Commission. We do not reach the objections of the incumbent LECs--that § 251(b)(5) preempts state commission authority to compel payments to the competitor LECs; at present we have no adequately explained classification of these communications, and in the interim our vacatur of the Commission's ruling leaves the incumbents free to seek relief from state- authorized compensation that they believe to be wrongfully imposed.

So ordered.

206 F.3d 1, 199 P.U.R.4th 458, 340 U.S.App.D.C. 328

END OF DOCUMENT

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

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

In the Matter of	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68

ORDER ON REMAND AND REPORT AND ORDER

Adopted: April 18, 2001 **Released:** April 27, 2001

By the Commission: Chairman Powell issuing a statement; Commissioner Furchtgott-Roth dissenting and issuing a statement.

TABLE OF CONTENTS

Paragraph No.

I. INTRODUCTION 1

II. EXECUTIVE SUMMARY 3

III. BACKGROUND 9

IV. DISCUSSION 18

A. Background 18

B. Statutory Analysis 23

1. Introduction 24
2. Section 251(g) Excludes Certain Categories of Traffic from the Scope of "Telecommunications" Subject to Section 251(b)(5) 31
3. ISP-Bound Traffic Falls within the Categories Enumerated in Section 251(g) 42
4. Section 251(i) Preserves the Commission's Authority to Regulate Interstate Access Services 48
5. ISP-Bound Traffic Falls Within the Purview of the Commission's Section 201 Authority 52

C. Efficient Intercarrier Compensation Rates and Rate Structures 66

1. CPNP Regimes Have Distorted the Development of Competitive Markets 67
2. Intercarrier Compensation for ISP-bound Traffic 77
3. Relationship to Section 251(b)(5) 89

D. Conclusion 95

V. Procedural Matters 96

A. Final Regulatory Flexibility Analysis 96

1. Need for, and Objectives of, this Order on Remand and Report and Order 97
2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA 99
3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply 103
4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements 109
5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered 110

VI. Ordering Clauses 112

I. INTRODUCTION

1. In this Order, we reconsider the proper treatment for purposes of intercarrier compensation of telecommunications traffic delivered to Internet service providers (ISPs). We previously found in the *Declaratory Ruling*[1] that such traffic is interstate traffic subject to the jurisdiction of the Commission under section 201 of the Act[2] and is not, therefore, subject to the reciprocal compensation provisions of section 251(b)(5).[3] The Court of Appeals for the District of Columbia Circuit held on appeal, however, that the *Declaratory Ruling* failed adequately to explain why our jurisdictional conclusion was relevant to the applicability of section 251(b)(5) and

[1] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd 3689 (1999) (*Declaratory Ruling* or *Intercarrier Compensation NPRM*).

[2] *See* 47 U.S.C. § 201, Communications Act of 1934 (the Act), as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act). Hereinafter, all citations to the Act and to the 1996 Act will be to the relevant section of the United States Code unless otherwise noted.

[3] 47 U.S.C. § 251(b)(5)

remanded the issue for further consideration.[4] As explained in more detail below, we modify the analysis that led to our determination that ISP-bound traffic falls outside the scope of section 251(b)(5) and conclude that Congress excluded from the "telecommunications" traffic subject to reciprocal compensation the traffic identified in section 251(g), including traffic destined for ISPs. Having found, although for different reasons than before, that the provisions of section 251(b)(5) do not extend to ISP-bound traffic, we reaffirm our previous conclusion that traffic delivered to an ISP is predominantly interstate access traffic subject to section 201 of the Act, and we establish an appropriate cost recovery mechanism for the exchange of such traffic.

2. We recognize that the existing intercarrier compensation mechanism for the delivery of this traffic, in which the originating carrier pays the carrier that serves the ISP, has created opportunities for regulatory arbitrage and distorted the economic incentives related to competitive entry into the local exchange and exchange access markets. As we discuss in the *Unified Intercarrier Compensation NPRM*,[5] released in tandem with this Order, such market distortions relate not only to ISP-bound traffic, but may result from any intercarrier compensation regime that allows a service provider to recover some of its costs from other carriers rather than from its end-users. Thus, the *NPRM* initiates a proceeding to consider, among other things, whether the Commission should replace existing intercarrier compensation schemes with some form of what has come to be known as "bill and keep."[6] The *NPRM* also considers modifications to existing payment regimes, in which the calling party's network pays the terminating network, that might limit the potential for market distortion. The regulatory arbitrage opportunities associated with intercarrier payments are particularly apparent with respect to ISP-bound traffic, however, because ISPs typically generate large volumes of traffic that is virtually all one-way -- that is, delivered to the ISP. Indeed, there is convincing evidence in the record that at least some carriers have targeted ISPs as customers merely to take advantage of these intercarrier payments. Accordingly, in this Order we also take interim steps to limit the regulatory arbitrage opportunity presented by ISP-bound traffic while we consider the broader issues of intercarrier compensation in the *NPRM* proceeding.

---

[4] *See Bell Atl. Tel. Cos. v FCC*, 206 F.3d 1 (D.C. Cir. 2000) (*Bell Atlantic*).

[5] Developing a Unified Intercarrier Compensation Regime, CC Docket No 01-92, Notice of Proposed Rulemaking, FCC 01-132 (rel. April 27, 2001) ("*Unified Intercarrier Compensation NPRM*" or "*NPRM*").

[6] "Bill and keep" refers to an arrangement in which neither of two interconnecting networks charges the other for terminating traffic that originates on the other network. Instead, each network recovers from its own end-users the cost of both originating traffic that it delivers to the other network and terminating traffic that it receives from the other network. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 16045 (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) (*CompTel*), *aff'd in part and vacated in part sub nom. Iowa Utils. Bd v. FCC*, 120 F.3d 753 (8th Cir. 1997) (*Iowa Utils. Bd.*), *aff'd in part and rev'd in part sub nom., AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); Order on Reconsideration, 11 FCC Rcd 13042 (1996); Second Order on Reconsideration, 11 FCC Rcd 19738 (1996); Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460 (1997); *further recon. pending*. Bill and keep does not, however, preclude intercarrier charges for transport of traffic between carriers' networks. *Id.*

II. EXECUTIVE SUMMARY

3. As presaged above, we must wrestle with two difficult issues in this Order: first, whether intercarrier compensation for ISP-bound traffic is governed by section 251 or section 201; and, if the latter, what sort of compensation mechanism should apply. The first question is difficult because we do not believe it is resolved by the plain language of section 251(b)(5) but, instead, requires us to consider the relationship of that section to other provisions of the statute. Moreover, we recognize the legitimate questions raised by the court with respect to the rationales underlying our regulatory treatment of ISPs and ISP traffic. We seek to respond to those questions in this Order. Ultimately, however, we conclude that Congress, through section 251(g),[7] expressly limited the reach of section 251(b)(5) to exclude ISP-bound traffic. Accordingly, we affirm our conclusion in the *Declaratory Ruling* that ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5).

4. Because we determine that intercarrier compensation for ISP-bound traffic is within the jurisdiction of this Commission under section 201 of the Act, it is incumbent upon us to establish an appropriate cost recovery mechanism for delivery of this traffic. Based upon the record before us, it appears that the most efficient recovery mechanism for ISP-bound traffic may be bill and keep, whereby each carrier recovers costs from its own end-users. As we recognize in the *NPRM*, intercarrier compensation regimes that require carrier-to-carrier payments are likely to distort the development of competitive markets by divorcing cost recovery from the ultimate consumer of services. In a monopoly environment, permitting carriers to recover some of their costs from interconnecting carriers might serve certain public policy goals. In order to promote universal service, for example, this Commission historically has capped end-user common line charges and required local exchange carriers to recover any shortfall through per-minute charges assessed on interexchange carriers.[8] These sorts of implicit subsidies cannot be sustained, however, in the competitive markets for telecommunications services envisioned by the 1996 Act. In the *NPRM*, we suggest that, given the opportunity, carriers always will prefer to recover their costs from other carriers rather than their own end-users in order to gain competitive advantage. Thus carriers have every incentive to compete, not on basis of quality and efficiency, but on the basis of their ability to shift costs to other carriers, a troubling distortion that prevents market forces from distributing limited investment resources to their most efficient uses.

5. We believe that this situation is particularly acute in the case of carriers delivering traffic to ISPs because these customers generate extremely high traffic volumes that are entirely one-directional. Indeed, the weight of the evidence in the current record indicates that precisely the types of market distortions identified above are taking place with respect to this traffic. For example, comments in the record indicate that competitive local exchange carriers (CLECs), on average, terminate eighteen times more traffic than they originate, resulting in annual CLEC reciprocal compensation billings of approximately two billion dollars, ninety percent of which is

[7] 47 U.S.C. § 251(g).

[8] Access Charge Reform, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, 15998-99 (1997) (*Access Charge Reform Order*), *aff'd, Southwestern Bell Telephone Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998).

for ISP-bound traffic.[9] Moreover, the traffic imbalances for some competitive carriers are in fact much greater, with several carriers terminating more than forty times more traffic than they originate.[10] There is nothing inherently wrong with carriers having substantial traffic imbalances arising from a business decision to target specific types of customers. In this case, however, we believe that such decisions are driven by regulatory opportunities that disconnect costs from end-user market decisions. Thus, under the current carrier-to-carrier recovery mechanism, it is conceivable that a carrier could serve an ISP free of charge and recover all of its costs from originating carriers. This result distorts competition by subsidizing one type of service at the expense of others.

6. Although we believe this arbitrage opportunity is particularly manifest with respect to ISP-bound traffic, we suggest in the *NPRM* that any compensation regime based on carrier-to-carrier payments may create similar market distortions. Accordingly, we initiate an inquiry as to whether bill and keep is a more economically efficient compensation scheme than the existing carrier-to-carrier payment mechanisms. Alternatively, the record developed in that proceeding may suggest modifications to carrier-to-carrier cost recovery mechanisms that address the competitive concerns identified above. Based upon the current record, however, bill and keep appears the preferable cost recovery mechanism for ISP-bound traffic because it eliminates a substantial opportunity for regulatory arbitrage. We do not fully adopt a bill and keep regime in this Order, however, because there are specific questions regarding bill and keep that require further inquiry, and we believe that a more complete record on these issues is desirable before requiring carriers to recover most of their costs from end-users. Because these questions are equally relevant to our evaluation of a bill and keep approach for other types of traffic, we will consider them in the context of the *NPRM*. Moreover, we believe that there are significant advantages to a global evaluation of the intercarrier compensation mechanisms applicable to different types of traffic to ensure a more systematic, symmetrical treatment of these issues.

7. Because the record indicates a need for immediate action with respect to ISP-bound traffic, however, in this Order we will implement an interim recovery scheme that: (i) moves aggressively to eliminate arbitrage opportunities presented by the existing recovery mechanism for ISP-bound by lowering payments and capping growth; and (ii) initiates a 36-month transition towards a complete bill and keep recovery mechanism while retaining the ability to adopt an alternative mechanism based upon a more extensive evaluation in the *NPRM* proceeding. Specifically, we adopt a gradually declining cap on the amount that carriers may recover from

[9] *See, e.g.*, Letter from Robert T. Blau, BellSouth, to Magalie Roman Salas, Secretary, FCC (November 6, 2000); *see also* Verizon Remand Comments at 2 (Verizon will be billed more than one billion dollars in 2000 for Internet-bound calls); Letter from Richard J. Metzger, Focal, to Deena Shetler, Legal Advisor to Commissioner Gloria Tristani, FCC (Jan. 11, 2001)(ILECs owed $1.98 billion in reciprocal compensation to CLECs in 2000). On June 23, 2000, the Commission released a Public Notice seeking comment on the issues raised by the court's remand. *See* Comment Sought on Remand of the Commission's Reciprocal Compensation Declaratory Ruling by the U.S. Court of Appeals for the D.C. Circuit, CC Docket Nos. 96-98, 99-68, Public Notice, 15 FCC Rcd 11311 (2000) (*Public Notice*). Comments and reply comments filed in response to the *Public Notice* are identified herein as "Remand Comments" and "Remand Reply Comments," respectively. Comments and replies filed in response the 1999 *Intercarrier Compensation NPRM* are identified as "Comments" and "Reply Comments," respectively.

[10] *See, e.g.*, Verizon Remand Comments at 11, 21.

other carriers for delivering ISP-bound traffic. We also cap the amount of traffic for which any such compensation is owed, in order to eliminate incentives to pursue new arbitrage opportunities. In sum, our goal in this Order is decreased reliance by carriers upon carrier-to-carrier payments and an increased reliance upon recovery of costs from end-users, consistent with the tentative conclusion in the *NPRM* that bill and keep is the appropriate intercarrier compensation mechanism for ISP-bound traffic. In this regard, we emphasize that the rate caps we impose are not intended to reflect the costs incurred by each carrier that delivers ISP traffic. Some carriers' costs may be higher; some are probably lower. Rather, we conclude, based upon all of the evidence in this record, that these rates are appropriate limits on the amounts recovered from other carriers and provide a reasonable transition from rates that have (at least until recently) typically been much higher. Carriers whose costs exceed these rates are (and will continue to be) able to collect additional amounts from their ISP customers. As we note above, and explain in more detail below, we believe that such end-user recovery likely is the most efficient mechanism.

8. The basic structure of this transition is as follows:

* Beginning on the effective date of this Order, and continuing for six months, intercarrier compensation for ISP-bound traffic will be capped at a rate of $.0015/minute-of-use (mou). Starting in the seventh month, and continuing for eighteen months, the rate will be capped at $.0010/mou. Starting in the twenty-fifth month, and continuing through the thirty-sixth month or until further Commission action (whichever is later), the rate will be capped at $.0007/mou. Any additional costs incurred must be recovered from end-users. These rates reflect the downward trend in intercarrier compensation rates contained in recently negotiated interconnection agreements, suggesting that they are sufficient to provide a reasonable transition from dependence on intercarrier payments while ensuring cost recovery.

* We also impose a cap on total ISP-bound minutes for which a local exchange carrier (LEC) may receive this compensation. For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to compensation under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation for ISP-bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation for ISP-bound minutes up to a ceiling equal to the 2002 ceiling. These caps are consistent with projections of the growth of dial-up Internet access for the first two years of the transition and are necessary to ensure that such growth does not undermine our goal of limiting intercarrier compensation and beginning a transition toward bill and keep. Growth above these caps should be based on a carrier's ability to provide efficient service, not on any incentive to collect intercarrier payments.

* Because the transitional rates are *caps* on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps or on a bill and keep basis (or otherwise have not required payment of compensation for this traffic). The rate caps are designed to provide a transition toward bill and keep, and no transition is necessary for carriers already exchanging traffic at rates below the caps.

* In order to limit disputes and costly measures to identify ISP-bound traffic, we adopt a rebuttable presumption that traffic exchanged between LECs that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic subject to the compensation mechanism set forth in this Order. This ratio is consistent with those adopted by state commissions to identify ISP or other convergent traffic that is subject to lower intercarrier compensation rates. Carriers that seek to rebut this presumption, by showing that traffic above the ratio is not ISP-bound traffic or, conversely, that traffic below the ratio is ISP-bound traffic, may seek appropriate relief from their state commissions pursuant to section 252 of the Act.

* Finally, the rate caps for ISP-bound traffic (or such lower rates as have been imposed by states commissions for the exchange of ISP-bound traffic) apply only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate. An incumbent LEC that does not offer to exchange section 251(b)(5) traffic at these rates must exchange ISP-bound traffic at the state-approved or state-negotiated reciprocal compensation rates reflected in their contracts. The record fails to demonstrate that there are inherent differences between the costs of delivering a voice call to a local end-user and a data call to an ISP, thus the "mirroring" rule we adopt here requires that incumbent LECs pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.

III. BACKGROUND

9. In the *Declaratory Ruling* released on February 26, 1999, we addressed the regulatory treatment of ISP-bound traffic. In that order, we reached several conclusions regarding the jurisdictional nature of this traffic, and we proposed several approaches to intercarrier compensation for ISP-bound traffic in an accompanying *Intercarrier Compensation NPRM*. The order, however, was vacated and remanded on appeal.[11] This Order, therefore, again focuses on the regulatory treatment of ISP-bound traffic and the appropriate intercarrier compensation regime for carriers that collaborate to deliver traffic to ISPs.

10. As we noted in the *Declaratory Ruling*, an ISP's end-user customers typically access the Internet through an ISP server located in the same local calling area.[12] Customers generally pay their LEC a flat monthly fee for use of the local exchange network, including connections to their local ISP.[13] They also generally pay their ISP a flat monthly fee for access to the Internet.[14] ISPs then combine "computer processing, information storage, protocol

[11] *See Bell Atlantic*, 206 F.3d 1.

[12] *Declaratory Ruling*, 14 FCC Rcd at 3691.

[13] *Declaratory Ruling*, 14 FCC Rcd at 3691.

[14] *Declaratory Ruling*, 14 FCC Rcd at 3691.

conversion, and routing with transmission to enable users to access Internet content and services."[15]

11. ISPs, one class of enhanced service providers (ESPs),[16] also may utilize LEC services to provide their customers with access to the Internet. In the *MTS/WATS Market Structure Order*, the Commission acknowledged that ESPs were among a variety of users of LEC interstate access services.[17] Since 1983, however, the Commission has exempted ESPs from the payment of certain interstate access charges.[18] Consequently ESPs, including ISPs, are treated as end-users for the purpose of applying access charges and are, therefore, entitled to pay local business rates for their connections to LEC central offices and the public switched telephone network (PSTN).[19] Thus, despite the Commission's understanding that ISPs use *interstate* access services, pursuant to the ESP exemption, the Commission has permitted ISPs to take service under *local* tariffs.

12. The 1996 Act set standards for the introduction of competition into the market for local telephone service, including requirements for interconnection of competing telecommunications carriers.[20] As a result of interconnection and growing local competition, more than one LEC may be involved in the delivery of telecommunications within a local service

---

[15] *Declaratory Ruling*, 14 FCC Rcd at 3691 (citing Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11531 (1998) (*Universal Service Report to Congress*)).

[16] The Commission defines "enhanced services" as "services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information." 47 C.F.R. § 64.702(a). The 1996 Act describes these services as "information services." *See* 47 U.S.C. § 153(20) ("information service" refers to the "offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications."). *See also Universal Service Report to Congress*, 13 FCC Rcd at 11516 (the "1996 Act's definitions of telecommunications service and information service essentially correspond to the pre-existing categories of basic and enhanced services").

[17] MTS and WATS Market Structure, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 682, 711 (1983)(*MTS/WATS Market Structure Order*)(ESPs are "[a]mong the variety of users of access service" and "obtain[] local exchange services or facilities which are used, in part or in whole, for the purpose of completing interstate calls which transit [their] location and, commonly, another location.").

[18] This policy is known as the "ESP exemption." *See MTS/WATS Market Structure Order*, 97 FCC 2d at 715 (ESPs have been paying local business service rates for their interstate access and would experience rate shock that could affect their viability if full access charges were instead applied); *see also* Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket 87-215, Order, 3 FCC Rcd 2631, 2633 (1988) (*ESP Exemption Order*) ("the imposition of access charges at this time is not appropriate and could cause such disruption in this industry segment that provision of enhanced services to the public might be impaired"); *Access Charge Reform Order*, 12 FCC Rcd at 16133 ("[m]aintaining the existing pricing structure ... avoids disrupting the still-evolving information services industry").

[19] *ESP Exemption Order*, 3 FCC Rcd at 2635 n.8, 2637 n.53. *See also Access Charge Reform Order*, 12 FCC Rcd at 16133-35.

[20] 47 U.S.C. §§ 251-252.

area. Section 251(b)(5) of the Act addresses the need for LECs to agree to terms for the mutual exchange of traffic over their interconnecting networks. It specifically provides that LECs have the duty to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[21] The Commission determined, in the *Local Competition Order,* that section 251(b)(5) reciprocal compensation obligations "apply only to traffic that originates and terminates within a local area," as defined by state commissions.[22]

13. As a result of this determination, the question arose whether reciprocal compensation obligations apply to the delivery of calls from one LEC's end-user customer to an ISP in the same local calling area that is served by a competing LEC.[23] The Commission determined at that time that resolution of this question turned on whether ISP-bound traffic "originates and terminates within a local area," as set forth in our rule.[24] Many competitive LECs argued that ISP-bound traffic is local traffic that terminates at the ISP's local server, where a second, packet-switched "call" then begins.[25] Thus, they argued, the reciprocal compensation obligations of section 251(b)(5) apply to this traffic. Incumbent LECs, on the other hand, argued that no reciprocal compensation is due because ISP-bound traffic is interstate telecommunications traffic that continues through the ISP server and terminates at the remote Internet sites accessed by ISP customers.[26]

14. The Commission concluded in the *Declaratory Ruling* that the jurisdictional nature of ISP-bound traffic should be determined, consistent with Commission precedent, by the end

---

[21] 47 U.S.C. § 251(b)(5).

[22] *See Local Competition Order*, 11 FCC Rcd at 16013 ("With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered 'local areas' for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs."); *see also* 47 C.F.R. § 51.701(b)(1-2). For CMRS traffic, the Commission determined that reciprocal compensation applies to traffic that originates and terminates within the same Major Trading Area (MTA). *See* 47 C.F.R. § 51.701(b)(2).

[23] *See, e.g.*, Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, 61 Fed. Reg. 53922 (1996); Petition for Partial Reconsideration and Clarification of MFS Communications Co., Inc. at 28; Letter from Richard J. Metzger, ALTS, to Regina M. Keeney, Chief, Common Carrier Bureau, FCC (June 20, 1997); Pleading Cycle Established for Comments on Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, CCB/CPD 97-30, DA 97-1399 (rel. July 2, 1997); Letter from Edward D. Young and Thomas J. Tauke, Bell Atlantic, to William E. Kennard, Chairman, FCC (July 1, 1998). The Commission later directed parties wishing to make *ex parte* presentations regarding the applicability of reciprocal compensation to ISP-bound traffic to make such filings in CC Docket No. 96-98, the local competition proceeding. *See Ex Parte* Procedures Regarding Requests for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, CC Docket No. 96-98, Public Notice, 13 FCC Rcd. 15568 (1998).

[24] *Declaratory Ruling*, 14 FCC Rcd at 3693-94.

[25] *Declaratory Ruling*, 14 FCC Rcd at 3694.

[26] *Declaratory Ruling*, 14 FCC Rcd at 3695.

points of the communication.[27] Applying this "end-to-end" analysis, the Commission determined that Internet communications originate with the ISP's end-user customer and continue beyond the local ISP server to websites or other servers and routers that are often located outside of the state.[28] The Commission found, therefore, that ISP-bound traffic is not local because it does not "originate[] and terminate[] within a local area."[29] Instead, it is jurisdictionally mixed and largely interstate, and, for that reason, the Commission found that the reciprocal compensation obligations of section 251(b)(5) do not apply to this traffic.[30]

15. Despite finding that ISP-bound traffic is largely interstate, the Commission concluded that it had not yet established a federal rule to govern intercarrier compensation for this traffic.[31] The Commission found that, in the absence of conflicting federal law, parties could voluntarily include ISP-bound traffic in their interconnection agreements under sections 251 and 252 of the Act.[32] It also found that, even though section 251(b)(5) does not *require* reciprocal compensation for ISP-bound traffic, nothing in the statute or our rules prohibits state commissions from determining in their arbitrations that reciprocal compensation for this traffic is appropriate, so long as there is no conflict with governing federal law.[33] Pending adoption of a federal rule, therefore, state commissions exercising their authority under section 252 to arbitrate, interpret, and enforce interconnection agreements would determine whether and how interconnecting carriers should be compensated for carrying ISP-bound traffic.[34] In the *Intercarrier Compensation NPRM* accompanying the *Declaratory Ruling*, the Commission requested comment on the most appropriate intercarrier compensation mechanism for ISP-bound traffic.[35]

16. On March 24, 2000, prior to release of a decision addressing these issues, the court of appeals vacated certain provisions of the *Declaratory Ruling* and remanded the matter to the

---

[27] *Declaratory Ruling*, 14 FCC Rcd at 3695-3701; *see also* Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation, Memorandum Opinion and Order, 7 FCC Rcd 1619 (1992) (*BellSouth MemoryCall*), *aff'd, Georgia Pub. Serv. Comm'n v. FCC*, 5 F.3d 1499 (11th Cir. 1993)(table); Teleconnect Co. v. Bell Telephone Co. of Penn., E-88-83, 10 FCC Rcd 1626 (1995) (*Teleconnect*), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 116 F.3d 593 (D.C. Cir. 1997).

[28] *Declaratory Ruling*, 14 FCC Rcd at 3695-97.

[29] *Declaratory Ruling*, 14 FCC Rcd at 3697.

[30] *Declaratory Ruling*, 14 FCC Rcd at 3690, 3695-3703.

[31] *Declaratory Ruling*, 14 FCC Rcd at 3703.

[32] *Declaratory Ruling*, 14 FCC Rcd at 3703.

[33] *Declaratory Ruling*, 14 FCC Rcd at 3706.

[34] *Declaratory Ruling*, 14 FCC Rcd at 3703-06. The Commission did recognize, however, that its conclusion that ISP-bound traffic is largely interstate might cause some state commissions to re-examine their conclusions that reciprocal compensation is due to the extent that those conclusions were based on a finding that this traffic terminates at the ISP's server. *Id.* at 3706.

[35] *Declaratory Ruling*, 14 FCC Rcd at 3707-09.

Commission.[36] The court observed that, although "[t]here is no dispute that the Commission has historically been justified in relying on this [end-to-end] method when determining whether a particular communication is jurisdictionally interstate,"[37] the Commission had not adequately explained why the jurisdictional analysis was dispositive of, or indeed relevant to, the question whether a call to an ISP is subject to the reciprocal compensation requirements of section 251(b)(5).[38] The court noted that the Commission had not applied its definition of "termination" to its analysis of the scope of section 251(b)(5),[39] and the court distinguished cases upon which the Commission relied in its end-to-end analysis because they involve continuous communications switched by interexchange carriers (IXCs), as opposed to ISPs, the latter of which are not telecommunications providers.[40] As an "independent reason" to vacate, the court also held that the Commission had failed to address how its conclusions "fit . . . within the governing statute."[41] In particular, the court found that the Commission had failed to explain why ISP-bound traffic was not "telephone exchange service," as defined in the Act.[42]

17. In a public notice released June 23, 2000, the Commission sought comment on the issues raised by the court's remand.[43] The *Public Notice* specifically requested that parties comment on the jurisdictional nature of ISP-bound traffic, the scope of the reciprocal compensation requirement of section 251(b)(5), and the relevance of the concepts of "termination," "telephone exchange service," "exchange access service," and "information access."[44] It invited parties to update the record by responding to any *ex parte* presentations filed after the close of the reply period on April 27, 1999. It also sought comment on any new or innovative intercarrier compensation arrangements for ISP-bound traffic that parties may have considered or entered into during the pendency of the proceeding.

IV. DISCUSSION

A. Background

18. The nature and character of communications change over time. Over the last decade communications services have been radically altered by the advent of the Internet and the

[36] *See Bell Atlantic*, 206 F.3d 1.

[37] *Bell Atlantic*, 206 F.3d at 5.

[38] *Bell Atlantic*, 206 F.3d at 5; *see also id.* at 8 (the Commission had not "supplied a real explanation for its decision to treat end-to-end analysis as controlling" with respect to the application of section 251(b)(5)).

[39] *See Bell Atlantic*, 206 F.3d at 6-7.

[40] *See Bell Atlantic*, 206 F.3d at 6-7.

[41] *Bell Atlantic*, 206 F.3d at 8.

[42] *Bell Atlantic*, 206 F 3d at 8-9; 47 U.S.C. § 153(47) (defining "telephone exchange service")

[43] *Public Notice*, 15 FCC Rcd 11311.

[44] *Id.; see also* 47 U.S.C. § 251(g); 47 U.S.C. § 153(20).

nature of Internet communications. Indeed, the Internet has given rise to new forms of communications such as e-mail, instant messaging, and other forms of digital, IP-based services. Many of these new services and formats have been layered over and integrated with the existing public telephone systems. Most notably, Internet service providers have come into existence in order to facilitate mass market access to the Internet. A consumer with access to a standard phone line is able to communicate with the Internet, because an ISP converts the analog signal to digital and converts the communication to the IP protocol. This allows the user to access the global Internet infrastructure and communicate with users and websites throughout the world. In a narrowband context, the ISP facilitates access to this global network.

19. The Commission has struggled with how to treat Internet traffic for regulatory purposes, given the bevy of its rules premised on the architecture and characteristics of the mature public switched telephone network. For example, Internet consumers may stay on the network much longer than the design expectations of a network engineered primarily for voice communications. Additionally, the "bursty" nature of packet-switched communications skews the traditional assumptions of per minute pricing to which we are all accustomed. The regulatory challenges have become more acute as Internet usage has exploded.[45]

20. The issue of intercarrier compensation for Internet-bound traffic with which we are presently wrestling is a manifestation of this growing challenge. Traditionally, telephone carriers would interconnect with each other to deliver calls to each other's customers. It was generally assumed that traffic back and forth on these interconnected networks would be relatively balanced. Consequently, to compensate interconnecting carriers, mechanisms like reciprocal compensation were employed, whereby the carrier whose customer initiated the call would pay the other carrier the costs of using its network.

21. Internet usage has distorted the traditional assumptions because traffic to an ISP flows exclusively in one direction, creating an opportunity for regulatory arbitrage and leading to uneconomical results. Because traffic to ISPs flows one way, so does money in a reciprocal compensation regime. It was not long before some LECs saw the opportunity to sign up ISPs as customers and collect, rather than pay, compensation because ISP modems do not generally call anyone in the exchange. In some instances, this led to classic regulatory arbitrage that had two troubling effects: (1) it created incentives for inefficient entry of LECs intent on serving ISPs exclusively and not offering viable local telephone competition, as Congress had intended to facilitate with the 1996 Act; (2) the large one-way flows of cash made it possible for LECs serving ISPs to afford to pay their own customers to use their services, potentially driving ISP rates to consumers to uneconomical levels. These effects prompted the Commission to consider the nature of ISP-bound traffic and to examine whether there was any flexibility under the statute to modify and address the pricing mechanisms for this traffic, given that there is a federal statutory provision authorizing reciprocal compensation.[46] In the *Declaratory Ruling*, the Commission

[45] *See* Digital Economy 2000, U.S. Department of Commerce (June 2000) ("Three hundred million people now use the Internet, compared to three million in 1994.")

[46] 47 U.S.C. § 251(b)(5).

concluded that Internet-bound traffic was jurisdictionally interstate and, thus, not subject to section 251(b)(5).

22. In *Bell Atlantic*, the court of appeals vacated the *Declaratory Ruling* and remanded the case to the Commission to determine whether ISP-bound traffic is subject to statutory reciprocal compensation requirements. The court held that the Commission failed to explain adequately why LECs did not have a duty to pay reciprocal compensation under section 251(b)(5) of the Act and remanded the case to the Commission.

B. Statutory Analysis

23. In this section, we reexamine our findings in the *Declaratory Ruling* and conclude that ISP-bound traffic is not subject to the reciprocal compensation requirement in section 251(b) because of the carve-out provision in section 251(g), which excludes several enumerated categories of traffic from the universe of "telecommunications" referred to in section 251(b)(5). We explain our rationale and the interrelationship between these two statutory provisions in more detail below. We further conclude that section 251(i) affirms the Commission's role in continuing to develop appropriate pricing and compensation mechanisms for traffic -- such as Internet-bound traffic -- that travels over convergent, mixed, and new types of network architectures.

1. Introduction

24. In the *Local Competition Order*, the Commission determined that the reciprocal compensation provisions of section 251(b)(5) applied only to what it termed "local" traffic rather than to the transport and termination of interexchange traffic.[47] In the subsequent *Declaratory Ruling*, the Commission focused its discussion on whether ISP-bound traffic terminated within a local calling area such as to be properly considered "local" traffic. To resolve that issue, the Commission focused predominantly on an end-to-end jurisdictional analysis.

25. On review, the court accepted (without necessarily endorsing) the Commission's view that traffic was either "local" or "long distance" but faulted the Commission for failing to explain adequately why ISP-bound traffic was more properly categorized as long distance, rather than local. The Commission had attempted to do so by employing an end-to-end jurisdictional analysis of ISP traffic, rather than by evaluating the traffic under the statutory definitions of "telephone exchange service" and "exchange access." After acknowledging that the Commission "has historically been justified in relying on" end-to-end analysis for determining whether a communication is jurisdictionally interstate, the court stated: "But [the Commission] has yet to provide an explanation of why this inquiry is relevant to discerning whether a call to an ISP should fit within the local call model of two collaborating LECs or the long-distance model of a long-distance carrier collaborating with two LECs."[48] After reviewing the manner in which the Commission analyzed the parameters of section 251(b)(5) traffic in the *Declaratory Ruling*, the

[47] *Local Competition Order*, 11 FCC Rcd at 16012.

[48] *Bell Atlantic*, 206 F 3d at 5.

court found that the central issue was "whether a call to an ISP is local or long distance."[49] The court noted further that "[n]either category fits clearly."[50]

26. Upon further review, we find that the Commission erred in focusing on the nature of the service (*i.e.*, local or long distance) and in stating that there were only two forms of telecommunications services -- telephone exchange service and exchange access -- for purposes of interpreting the relevant scope of section 251(b)(5).[51] Those services are the only two expressly defined by the statute. The court found fault in the Commission's failure to analyze communications delivered by a LEC to an ISP in terms of these definitions.[52] Moreover, it cited the Commission's own confusing treatment of ISP-bound traffic as local under the ESP exemption and interstate for jurisdictional purposes.[53]

27. Part of the ambiguity identified by the court appears to arise from the ESP exemption, a long-standing Commission policy that affords one class of entities using interstate access -- information service providers -- *the option* of purchasing interstate access services on a flat-rated basis from intrastate local business tariffs, rather than from interstate access tariffs used by IXCs. Typically, information service providers have used this exemption to their advantage by choosing to pay local business rates, rather than the tariffed interstate access charges that other users of interstate access are required to pay.[54] In fending off challenges from those who argued that information service providers must be subject to access charges because they provide interexchange service, the Commission has often tried to walk the subtle line of arguing that the service provided by the LEC to the information service provider is an access service, but can justifiably be treated as akin to local telephone exchange service for purposes of the rates the LEC may charge. This balancing act reflected the historical view that there were only two kinds of intercarrier compensation: one for local telephone exchange service, and a second (access charges) for long distance services. Attempting to describe a hybrid service (the nature being an access service, but subject to a compensation mechanism historically limited to local service) was always a bit of mental gymnastics.

28. The court opinion underscores a tension between the jurisdictional nature of ISP-bound traffic, which the Commission has long held to be interstate, and the alternative compensation mechanism that the ESP exemption has permitted for this traffic. The court seems to recognize that, if an end-to-end analysis were properly applied to this traffic, this traffic would be predominantly interstate, and consequently "long distance." Yet it also questions whether this

---

[49] *Id.*

[50] *Id.*

[51] *Id.* at 8.

[52] *Id.* at 8-9.

[53] *Id.*

[54] Significantly, however, the compensation mechanism effected for this predominantly interstate access traffic is the result of a federal mandate, which requires states to treat ISP-bound traffic for compensation purposes in a manner similar to local traffic if ISPs so request. *See infra* note 105.

traffic should be considered "local" for purposes of section 251(b)(5) in light of the ESP exemption, by which the Commission has allowed information service providers at their option to be treated for compensation purposes (but *not* for jurisdictional purposes) as end-users.

29. The court also expresses consternation over what it perceives as an inconsistency in the Commission's reasoning. On the one hand, the court observes, the Commission has argued that calls to ISPs are predominantly interstate for jurisdictional purposes because they terminate at the ultimate destination of the traffic in a distant website or e-mail server (*i.e.*, the "one call theory"). On the other hand, the court notes, the Commission has defended the ESP exemption by analogizing an ISP to a high-volume business user, such as a pizza parlor or travel agent, that has different usage patterns and longer call holding times than the average customer.[55] The court questioned whether any such differences should not, as some commenters argued, lend support to treating this traffic as "local" for purposes of section 251(b)(5). As discussed in further detail below, while we continue to believe that retaining the ESP exemption is important in order to facilitate growth of Internet services, we conclude in section IV.C.1, *infra*, that reciprocal compensation for ISP-bound traffic distorts the development of competitive markets.

30. We respond to the court's concerns, and seek to resolve these tensions, by reexamining the grounds for our conclusion that ISP-bound traffic falls outside the scope of section 251(b)(5). A more comprehensive review of the statute reveals that Congress intended to exempt certain enumerated categories of service from section 251(b)(5) when the service was provided to interexchange carriers or information service providers. The exemption focuses not only on the nature of the service, but on to whom the service is provided. For services that qualify, compensation is based on rules, regulations, and policies that preceded the 1996 Act and not on section 251(b)(5), which was minted by the Act. As we explain more fully below, the service provided by LECs to deliver traffic to an ISP constitutes, at a minimum, "information access" under section 251(g) and, thus, compensation for this service is not governed by section 251(b)(5), but instead by the Commission's policies for this traffic and the rules adopted under its section 201 authority.[56]

---

[55] *Access Charge Reform Order*, 12 FCC Rcd at 16134 ("Internet access does generate different usage patterns and longer call holding times than average voice usage.").

[56] Some critics of the Commission's order may contend that we rely here on the same reasoning that the court rejected in *Bell Atlantic*. We acknowledge that there is a superficial resemblance between the Commission's previous order and this one: Here, as before, the Commission finds that ISP-bound traffic falls outside the scope of section 251(b)(5)'s reciprocal compensation requirement and within the Commission's access charge jurisdiction under section 201(b). The rationale underlying the two orders, however, differs substantially. Here the Commission bases its conclusion that ISP-bound traffic falls outside section 251(b)(5) on its construction of sections 251(g) and (i) -- not, as in the previous order, on the theory that section 251(b)(5) applies only to "local" telecommunications traffic and that ISP-bound traffic is interstate. Furthermore, to the extent the Commission continues to characterize ISP-bound traffic as interstate for purposes of its section 201 authority, it has sought in this Order to address in detail the *Bell Atlantic* court's concerns.

2. Section 251(g) Excludes Certain Categories of Traffic from the Scope of "Telecommunications" Subject to Section 251(b)(5)

a. Background

31. Section 251(b)(5) imposes a duty on all local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[57] On its face, local exchange carriers are required to establish reciprocal compensation arrangements for the transport and termination of *all* "telecommunications" they exchange with another telecommunications carrier, without exception. The Act separately defines "telecommunications" as the "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[58]

32. Unless subject to further limitation, section 251(b)(5) would require reciprocal compensation for transport and termination of *all* telecommunications traffic, – *i.e.*, whenever a local exchange carrier exchanges telecommunications traffic with another carrier. Farther down in section 251, however, Congress explicitly exempts certain telecommunications services from the reciprocal compensation obligations. Section 251(g) provides:

> On or after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier . . . shall provide exchange access, *information access*, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the [Federal Communications] Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment.[59]

33. The meaning of section 251(g) is admittedly not transparent. Indeed, section 251(g) clouds any plain reading of section 251(b)(5). Nevertheless, the Commission believes the two provisions can be read together consistently and in a manner faithful to Congress's intent.[60]

---

[57] 47 U.S.C. § 251(b)(5).

[58] 47 U.S.C. § 153(43).

[59] 47 U.S.C. § 251(g) (emphasis added).

[60] *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 397 (1999)("It would be a gross understatement to say that the Telecommunications Act of 1996 is not a model of clarity. It is in many important respects a model of ambiguity or indeed even self-contradiction. . . . But Congress is well aware that the ambiguities it chooses to produce in a statute will be resolved by the implementing agency. . . . We can only enforce the clear limits that the 1996 Act contains.").

b. Discussion

34. We conclude that a reasonable reading of the statute is that Congress intended to exclude the traffic listed in subsection (g) from the reciprocal compensation requirements of subsection (b)(5).[61] Thus, the statute does not mandate reciprocal compensation for "exchange access, information access, and exchange services for such access" provided to IXCs and information service providers. Because we interpret subsection (g) as a carve-out provision, the focus of our inquiry is on the universe of traffic that falls within subsection (g) and *not* the universe of traffic that falls within subsection (b)(5). This analysis differs from our analysis in the *Local Competition Order*, in which we attempted to describe the universe of traffic that falls within subsection (b)(5) as all "local" traffic. We also refrain from generically describing traffic as "local" traffic because the term "local," not being a statutorily defined category, is particularly susceptible to varying meanings and, significantly, is not a term used in section 251(b)(5) or section 251(g).

35. We agree with the court that the issue before us requires more than just a jurisdictional analysis. Indeed, as the court recognized, the 1996 Act changed the historic relationship between the states and the federal government with respect to pricing matters.[62] Instead, we focus upon the statutory language of section 251(b) as limited by 251(g). We believe this approach is not only consistent with the statute, but that it resolves the concerns expressed by the court in reviewing our previous analysis. Central to our modified analysis is the recognition that 251(g) is properly viewed as a limitation on the scope of section 251(b)(5) and that ISP-bound traffic falls under one or more of the categories set forth in section 251(g). For that reason, we conclude that ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5). We reach that conclusion regardless of the compensation mechanism that may be in place for such traffic under the ESP exemption.

36. We believe that the specific provisions of section 251(g) demonstrate that Congress did not intend to interfere with the Commission's pre-Act authority over "nondiscriminatory interconnection . . . obligations (including receipt of compensation)"[63] with respect to "exchange access, information access, and exchange services for such access" provided to IXCs or information service providers. We conclude that Congress specifically exempted the

---

[61] In the *Declaratory Ruling*, the Commission did not explain the relevance of section 251(g) nor discuss the categories of traffic exempted from reciprocal compensation by that provision, at least until the Commission should act otherwise. Reflecting this omission in the underlying order, the *Bell Atlantic* court does not mention the relationship of sections 251(g) and 251(b)(5), nor the enumerated categories of services referenced by subsection (g). Rather, the court focuses its review on the possible categorization of ISP-bound traffic as "local," terminology we now find inappropriate in light of the more express statutory language set forth in section 251(g).

[62] *Bell Atlantic*, 206 F.3d at 6; *see also AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. at 377-87.

[63] Authority over rates (or "receipt of compensation") is a core feature of "equal access and nondiscriminatory interconnection" obligations. Indeed, one of the Commission's primary goals when designing an access charge regime was to ensure that access users were treated in a nondiscriminatory manner when interconnecting with LEC networks in order to transport interstate communications. *See National Ass'n of Regulatory Util. Comm'nrs v. FCC*, 737 F.2d 1095, 1101-1108, 1130-34 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985)(*NARUC v. FCC*).

services enumerated under section 251(g) from the newly imposed reciprocal compensation requirement in order to ensure that section 251(b)(5) is not interpreted to override either existing or future regulations prescribed by the Commission.[64] We also find that ISP-bound traffic falls within at least one of the three enumerated categories in subsection (g).

37. This limitation in section 251(g) makes sense when viewed in the overall context of the statute. All of the services specified in section 251(g) have one thing in common: they are all access services or services associated with access.[65] Before Congress enacted the 1996 Act, LECs provided access services to IXCs and to information service providers in order to connect calls that travel to points – both interstate and intrastate -- beyond the local exchange. In turn, both the Commission and the states had in place access regimes applicable to this traffic, which they have continued to modify over time. It makes sense that Congress did not intend to disrupt these pre-existing relationships.[66] Accordingly, Congress excluded all such access traffic from the purview of section 251(b)(5).

---

[64] This view is consistent with previous Commission orders construing section 251(g). The Commission recognized in the *Advanced Services Remand Order*, for example, that section 251(g) preserves the requirements of the AT&T Consent Decree (*see United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982)(hereinafter AT&T Consent Decree or Modification of Final Judgment ("MFJ"), but that order does not conclude that section 251(g) preserves *only* MFJ requirements. Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 et al., Order on Remand, 15 FCC Rcd 385, 407 (1999)(*Advanced Services Remand Order*). Indeed, the ultimate issue addressed in that part of the order was *not* the status or scope of section 251(g) as a carve-out provision at all, but rather the question – irrelevant for our purposes here -- whether "information access" is a category of service that is mutually exclusive of "exchange access," as the latter term is defined in section 3(16) of the Act. *See id.* at 407-08; *see also infra* para. 42 & note 76. By contrast, when the Commission first addressed the scope of the reciprocal compensation obligations of section 251(b)(5) in the *Local Competition Order*, it expressly cited section 251(g) in support of the decision to exempt from those obligations the tariffed interstate access services provided by all LECs (not just Bell companies subject to the MFJ) to interexchange carriers. 11 FCC Rcd at 16013. The *Bell Atlantic* court did not take issue with the Commission's earlier conclusion that section 251(b)(5) is so limited. 206 F.3d at 4. The interpretation we adopt here -- that section 251(g) exempts from section 251(b)(5) information access services provided to information service providers, as well as access provided to IXCs – thus is fully consistent with the Commission's initial construction of section 251(g), in the *Local Competition Order*, as extending beyond the MFJ to *our own* access rules and policies.

[65] The term "exchange service" as used in section 251(g) is not defined in the Act or in the MFJ. Rather, the term "exchange service" is used in the MFJ as part of the definition of the term "exchange access," which the MFJ defines as "the provision of exchange services for the purpose of originating or terminating interexchange telecommunications." *United States v. AT&T*, 552 F. Supp. at 228. Thus, the term "exchange service" appears to mean, in context, the provision of services in connection with *interexchange* communications. Consistent with that, in section 251(g), the term is used as part of the longer phrase "exchange services for such [exchange] access to interexchange carriers and information service providers." The phrasing in section 251(g) thus parallels the MFJ. All of this indicates that the term "exchange service" is closely related to the provision of exchange access and information access.

[66] Although section 251(g) does not itself compel this outcome with respect to *intrastate* access regimes (because it expressly preserves only *the Commission's* traditional policies and authority over *interstate* access services), it nevertheless highlights an ambiguity in the scope of "telecommunications" subject to section 251(b)(5) – demonstrating that the term must be construed in light of other provisions in the statute. In this regard, we again conclude that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access (continued....)

38. At least one court has already affirmed the principle that the standards and obligations set forth in section 251 are not intended automatically to supersede the Commission's authority over the services enumerated under section 251(g). This question arose in the Eighth Circuit Court of Appeals with respect to the access that LECs provide to IXCs to originate and terminate interstate long-distance calls. Citing section 251(g), the court concluded that the Act contemplates that "LECs will continue to provide exchange access to IXCs for long-distance service, and continue to receive payment, under the *pre-Act* regulations and rates."[67] In *CompTel*, the IXCs had argued that the interstate access services that LECs provide properly fell within the scope of "interconnection" under section 251(c)(2), and that, notwithstanding the carve-out of section 251(g), access charges therefore should be governed by the cost-based standard of section 252(d)(1), rather than determined under the Commission's section 201 authority. The Eighth Circuit rejected that argument, holding that access service does not fall within the scope of section 251(c)(2), and observing that "it is clear from the Act that Congress did *not* intend all access charges to move to cost-based pricing, at least not immediately."[68] Neither the court nor the parties in *CompTel* distinguished between the situation in which *one LEC* provides access service (directly linking the end-user to the IXC) and the situation here in which *two LECs* collaborate to provide access to either an information service provider or IXC. In both circumstances, by its underlying rationale, *CompTel* serves as precedent for establishing that pre-existing regulatory treatment of the services enumerated under section 251(g) are carved out from the purview of section 251(b).

39. Accordingly, unless and until the Commission by regulation should determine otherwise, Congress preserved the pre-Act regulatory treatment of all the access services enumerated under section 251(g). These services thus remain subject to Commission jurisdiction under section 201 (or, to the extent they are *intra*state services, they remain subject to the jurisdiction of state commissions), whether those obligations implicate pricing policies as in *CompTel* or reciprocal compensation.[69] This analysis properly applies to the access services that incumbent LECs provide (either individually or jointly with other local carriers) to connect subscribers with ISPs for Internet-bound traffic. Section 251(g) expressly preserves the Commission's rules and policies governing "access . . . to information service providers" in the same manner as rules and policies governing access to IXCs.[70] As we discuss in more detail

(Continued from previous page)
regulations, because "it would be incongruous to conclude that Congress was concerned about the effects of potential disruption to the interstate access charge system, but had no such concerns about the effects on analogous intrastate mechanisms." *Local Competition Order*, 11 FCC Rcd at 15869.

[67] *CompTel*, 117 F.3d at 1073 (emphasis added). The court continued that the Commission would be free under section 201 to alter its traditional regulatory treatment of interstate access service in the future, but that the standards set out in sections 251 and 252 would *not* be controlling. *Id.*

[68] *CompTel*, 117 F.3d at 1072 (emphasis added).

[69] For further discussion of the jurisdictionally interstate nature of ISP-bound traffic, *see infra* paras. 55-64. *See also NARUC v. FCC*, 737 F.2d at 1136 (determining that traffic to ESPs may properly constitute interstate access traffic); Access Billing Requirements for Joint Service Provision, CC Docket 87-579, Memorandum Opinion and Order, 4 FCC Rcd 7183 (1989).

[70] The Commission has historically dictated the pricing policies applicable to services provided by LECs to information service providers, although those policies differ from those applicable to LEC provision of access (continued....)

below, ISP-bound traffic falls under the rubric of "information access," a legacy term carried over from the MFJ.[71]

40. By its express terms, of course, section 251(g) permits the Commission to supersede pre-Act requirements for interstate access services. Therefore the Commission may make an affirmative determination to adopt rules that subject such traffic to obligations different than those that existed pre-Act. For example, consistent with that authority, the Commission has previously made the affirmative determination that certain categories of interstate access traffic should be subject to section 251(c)(4).[72] Similarly, in implementing section 251(c)(3), the Commission has required incumbent LECs to unbundle certain network elements used in the provision of xDSL-based services.[73] In this instance, however, for the reasons set forth below,[74] we decline to modify the restraints imposed by section 251(g) and instead continue to regulate ISP-bound traffic under section 201.

41. Some may argue that, although the Commission did not analyze subsection (g) in the *Declaratory Ruling*, a passing reference to section 251(g) in one paragraph of the Commission's brief filed with the court in that proceeding suggests that the argument we make here has been specifically rejected by the court. We disagree. Because our analysis of subsection (g) was not raised in the order, the court, under established precedent, probably did not consider

(Continued from previous page)
services to IXCs. Prior to the 1996 Act, it was the Commission that determined that ESPs either may purchase their interstate access services from interstate tariffs or (at their discretion) pay a combination of local business line rates, the *federal* subscriber line charges associated with those business lines, and, where appropriate, the *federal* special access surcharge. *See* note 105, *infra*. We conclude that section 251(g) preserves our ability to continue to dictate the pricing policies applicable to this category of traffic. We do not believe, moreover, that section 251(g) extends only to those specific carriers providing service on February 7, 1996. At the very least, subsection (g) is ambiguous on this point. On the one hand, the first sentence of this provision states that its terms apply to "each local exchange carrier, to the extent that it provides wireline services," without regard to whether it may be a BOC or a competitive LEC. 47 U.S.C. § 251(g). On the other hand, that same sentence refers to restrictions and obligations applicable to "such carrier" prior to February 8, 1996. *Id.* We believe that the most reasonable interpretation of that sentence, in this context, is that subsection (g) was intended to preserve pre-existing regulatory treatment for the enumerated *categories* of carriers, rather than requiring disparate treatment depending upon whether the LEC involved came into existence before or after February 1996.

[71] *See United States v. AT&T*, 552 F. Supp. at 229; *Advanced Services Remand Order*, 15 FCC Rcd at 406-08.

[72] *See* Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Second Report and Order, 14 FCC Rcd 19237 (1997), *petition for review pending, Ass'n of Communications Enterprises v. FCC*, D.C. Circuit No. 00-1144. In effect, we have provided for concurrent authority under that provision and section 201 by permitting a party to purchase the same service under filed tariffs or to proceed under interconnection arrangements to secure resale services.

[73] *See* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3775 (1999). *See also Advanced Services Remand Order*, 15 FCC Rcd at 385, 386. We emphasize that these two examples are illustrative and may not be the only instances where the Commission chooses to supersede pre-Act requirements for interstate access services.

[74] *See infra* paras. 67-71.

the argument when rendering its decision.[75] Indeed, subsection (g) is not mentioned in the court's opinion.

3. ISP-Bound Traffic Falls within the Categories Enumerated in Section 251(g)

42. Having determined that section 251(g) serves as a limitation on the scope of "telecommunications" embraced by section 251(b)(5), the next step in our inquiry is to determine whether ISP-bound traffic falls within one or more of the categories specified in section 251(g): exchange access, information access, and exchange services for such access provided to IXCs and information service providers. Regardless of whether this traffic falls under the category of "exchange access" -- an issue pending before the D.C. Circuit in a separate proceeding[76] - - we conclude that this traffic, at a minimum, falls under the rubric of "information access," a legacy term imported into the 1996 Act from the MFJ, but not expressly defined in the Communications Act.

a. Background

43. Section 251(g) by its terms indicates that, in the provision of exchange access, information access, and exchange services for such access to IXCs and information service providers, various pre-existing requirements and obligations "including receipt of compensation" are preserved, whether these obligations stem from "any court order, *consent decree*, or regulation, order or policy of the Commission." (Emphasis added.) Similarly, in discussing this provision, the Joint Explanatory Statement of the Committee of Conference explicitly refers to preserving the obligations under the "AT&T Consent Decree."[77]

b. Discussion

44. We conclude that Congress's reference to "information access" in section 251(g) was intended to incorporate the meaning of the phrase "information access" as used in the AT&T Consent Decree.[78] The ISP-bound traffic at issue here falls within that category because it is

---

[75] *See, e.g., SEC v. Chenery Corp.*, 318 U.S. 80, 88 (1943).

[76] *See Worldcom, Inc. v. FCC*, No. 00-1022 et al. (D.C. Cir.). In that proceeding, the Commission has argued that the category previously labeled "information access" under the MFJ is a subset of those services now falling under the category "exchange access" as set forth in section 3(16) of the Act, 47 U.S.C. 153(16), while incumbent LECs and others have argued that the two categories are mutually exclusive. We need not reargue here whether "information access" is a subset of "exchange access" or whether instead they are mutually exclusive categories. The only issue relevant to our section 251(g) inquiry in this case is whether ISP-bound traffic falls, at a minimum, within the legacy category of "information access." Both the Commission and incumbent LECs have agreed that the access provided to ISPs satisfies the definition of information access

[77] *Joint Explanatory Statement of the Committee of Conference*, S. Conf. Rep. No. 230, 104th Cong., 2d Session at 123 (February 1, 1996)

[78] *United States v. AT&T*, 552 F. Supp. at 196, 229.

traffic destined for an information service provider.[79] Under the consent decree, "information access" was purchased by "information service providers" and was defined as "the provision of specialized exchange telecommunications services . . . in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services."[80] We conclude that this definition of "information access" was meant to include all access traffic that was routed by a LEC "to or from" providers of information services, of which ISPs are a subset.[81] The record in this proceeding also supports our interpretation.[82] When Congress passed the 1996 Act, it adopted new terminology. The term "information access" is not, therefore, part of the new statutory framework. Because the legacy term "information access" in section 251(g) encompasses ISP-bound traffic, however, this traffic is excepted from the scope of the "telecommunications" subject to reciprocal compensation under section 251(b)(5).

45. We recognize, as noted earlier, that based on the rationale of the *Declaratory Ruling*, the court indicated that the question whether this traffic was "local or interstate" was critical to a determination of whether ISP-bound traffic should be subject to reciprocal compensation.[83] We believe that the court's assessment was a result of our statement in

---

[79] *See* Letter from Gary L. Phillips, SBC, to Jon Nuechterlein, Deputy General Counsel, FCC, at 9 (Dec. 14, 2000)(stating that section 251(g) applies by its very terms to "information access").

[80] *United States v. AT&T*, 552 F. Supp. at 196, 229.

[81] This finding is consistent with our past statements on the issue. In the *Non-Accounting Safeguards Order*, we found that the access that LECs provide to enhanced service providers, including ISPs, constitutes "information access" as the MFJ defines that term. Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 22024 & n.621 (1996). Although we subsequently overruled our statement in that order that ISPs do not also purchase "exchange access" under section 3(16), we have not altered our finding that the access provided to enhanced service providers (including ISPs) is "information access." *Advanced Services Remand Order*, 15 FCC Rcd at 404-05.

[82] *See, e.g.*, Letter from Gary L. Phillips, SBC, to Jon Nuechterlein, Deputy General Counsel, FCC, at 9 (Dec. 14, 2000). Some have argued that "information access" includes only certain specialized functions unique to the needs of enhanced service providers and does not include basic telecommunications links used to provide enhanced service providers with access to the LEC network. *See, e.g.*, Brief of WorldCom, Inc., D.C. Circuit No. 00-1002, *et al.*, filed Oct. 3, 2000, at 16 n.12. The MFJ definition of information access, however, includes the telecommunications links used for the "origination, termination, [and] transmission" of information services, *and* "*where necessary*, the provision of network signalling" and other functions. *United States v. AT&T*, 552 F. Supp. at 229 (emphasis added). Others have argued that the "information access" definition engrafts a geographic limitation that renders this service category a subset of telephone exchange service. *See* Letter from Richard Rindler, Swindler, Berlin, to Magalie Roman Salas, Secretary, FCC, at 3 (Apr. 12, 2001). We reject that strained interpretation. Although it is true that "information access" is necessarily initiated "in an exchange area," the MFJ definition states that the service is provided "*in connection with* the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services" *United States v. AT&T*, 552 F. Supp. at 229 (emphasis added). Significantly, the definition does not further require that the transmission, once handed over to the information service provider, terminate within the same exchange area in which the information service provider first received the access traffic.

[83] *Bell Atlantic*, 206 F.3d at 5.

paragraph nine of the *Declaratory Ruling* that "when two carriers collaborate to complete a *local call*, the originating carrier is compensated by its end user and the terminating carrier is entitled to reciprocal compensation pursuant to section 251(b)(5) of the Act."[84] We were mistaken to have characterized the issue in that manner, rather than properly (and more naturally) interpreting the scope of "telecommunications" within section 251(b)(5) as being limited by section 251(g). By indicating that all "local calls," however defined, would be subject to reciprocal compensation obligations under the Act, we overlooked the interplay between these two inter-related provisions of section 251 -- subsections (b) and (g). Further, we created unnecessary ambiguity for ourselves, and the court, because the statute does not define the term "local call," and thus that term could be interpreted as meaning either traffic subject to local *rates* or traffic that is *jurisdictionally* intrastate. In the context of ISP-bound traffic, as the court observed, our use of the term "local" created a tension that undermined the prior order because the ESP exemption permitted ISPs to purchase access through local business tariffs,[85] yet the jurisdictional nature of this traffic has long been recognized as interstate.

46. For similar reasons, we modify our analysis and conclusion in the *Local Competition Order*.[86] There we held that "[t]ransport and termination of *local* traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 251(d)(2)." We now hold that the telecommunications subject to those provisions are all such telecommunications not excluded by section 251(g). In the *Local Competition Order*, as in the subsequent *Declaratory Ruling*, use of the phrase "local traffic" created unnecessary ambiguities, and we correct that mistake here.

47. We note that the exchange of traffic between LECs and commercial mobile radio service (CMRS) providers is subject to a slightly different analysis. In the *Local Competition Order*, the Commission noted its jurisdiction to regulate LEC-CMRS interconnection under section 332 of the Act[87] but decided, at its option, to apply sections 251 and 252 to LEC-CMRS interconnection.[88] At that time, the Commission declined to delineate the precise contours of or the relationship between its jurisdiction over LEC-CMRS interconnection under sections 251 and 332,[89] but it made clear that it was not rejecting section 332 as an independent basis for jurisdiction.[90] The Commission went on to conclude that section 251(b)(5) obligations extend to traffic transmitted between LECs and CMRS providers, because the latter are telecommunications

[84] *Declaratory Ruling*, 14 FCC Rcd at 3695 (emphasis added).

[85] This is the compensation mechanism chosen by the ISPs. *See* note 105, *infra*.

[86] *Local Competition Order*, 11 FCC Rcd at 1033-34.

[87] 47 U.S.C. § 332; *Local Competition Order*, 11 FCC Rcd at 16005-06.

[88] *Local Competition Order*, 11 FCC Rcd at 16005-06; *see also Iowa Utils. Bd. v. FCC*, 120 F.3d at 800 n. 21 (finding that the Commission had jurisdiction under section 332 to issue rules regarding LEC-CMRS interconnection, including reciprocal compensation rules).

[89] We seek comment on these issues in the *NPRM*.

[90] *Local Competition Order*, 11 FCC Rcd at 16005.

carriers.[91] The Commission also held that reciprocal compensation, rather than interstate or intrastate access charges, applies to LEC-CMRS traffic that originates and terminates within the same Major Trading Area (MTA).[92] In so holding, the Commission expressly relied on its "authority under section 251(g) to preserve the current interstate access charge regime" to ensure that interstate access charges would be assessed only for traffic "currently subject to interstate access charges,"[93] although the Commission's section 332 jurisdiction could serve as an alternative basis to reach this result. Thus the analysis we adopt in this Order, that section 251(g) limits the scope of section 251(b)(5), does not affect either the application of the latter section to LEC-CMRS interconnection or our jurisdiction over LEC-CMRS interconnection under section 332.

4. Section 251(i) Preserves the Commission's Authority to Regulate Interstate Access Services

48. Congress also included a "savings provision" – subpart (i) – in section 251, which provides that "[n]othing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201."[94] Under section 201, the Commission has the authority to regulate the *interstate* access services that LECs provide to connect end-users with IXCs or information service providers to originate and terminate calls that travel across state lines.

49. We conclude that subpart (i) provides additional support for our finding that Congress has granted us the authority on a going-forward basis to establish a compensation regime for ISP-bound traffic.[95] When read as a whole, the most natural reading of section 251 is as follows: subsection (b) sets forth reciprocal compensation requirements for the transport and termination of "telecommunications"; subsection (g) excludes certain access services (including ISP-bound traffic) from that requirement; and subsection (i) ensures that, on a going-forward basis, the Commission has the authority to establish pricing for, and otherwise to regulate, interstate access services.

50. When viewed in the overall context of section 251, subsections (g) and (i) serve compatible, but different, purposes. Subsection (g) preserves rules and regulations that existed at the time Congress passed the 1996 Act, and thus functions primarily as a "backward-looking" provision (although it does grant the Commission the authority to supersede existing regulations). In contrast, we interpret section 251(i) to be a "forward-looking" provision. Thus, subsection (i) expressly affirms the Commission's role in an evolving telecommunications marketplace, in which Congress anticipates that the Commission will continue to develop appropriate pricing and

---

[91] *Id.* at 16016.

[92] *Id* at 16016-17.

[93] *Id.* at 16017.

[94] 47 U.S.C. § 251(i).

[95] *See also* Letter from Gary L. Phillips, SBC, to Jon Nuechterlein, Deputy General Counsel, FCC, at 8 (Dec. 14, 2000).

compensation mechanisms for traffic that falls within the purview of section 201. This reading of section 251 is consistent with the notion that section 251 generally broadens the Commission's duties, particularly in the pricing context.[96]

51. We expect that, as new network architectures emerge, the nature of telecommunications traffic will continue to evolve. As we have already observed, since Congress passed the 1996 Act, customer usage patterns have changed dramatically; carriers are sending traffic over networks in new and different formats; and manufacturers are adding creative features and developing innovative network architectures. Although we cannot anticipate the direction that new technology will take us, we do expect the dramatic pace of change to continue. Congress clearly did not expect the dynamic, digital broadband driven telecommunications marketplace to be hindered by rules premised on legacy networks and technological assumptions that are no longer valid. Section 251(i), together with section 201, equips the Commission with the tools to ensure that the regulatory environment keeps pace with innovation.

5. ISP-Bound Traffic Falls Within the Purview of the Commission's Section 201 Authority

52. Having found that ISP-bound traffic is excluded from section 251(b)(5) by section 251(g), we find that the Commission has the authority pursuant to section 201 to establish rules governing intercarrier compensation for such traffic. Under section 201, the Commission has long exercised its *jurisdictional* authority to regulate the interstate access services that LECs provide to connect callers with IXCs or ISPs to originate or terminate calls that travel across state lines. Access services to ISPs for Internet-bound traffic are no exception. The Commission has held, and the Eighth Circuit has recently concurred, that traffic bound for information service providers (including Internet access traffic) often has an interstate component.[97] Indeed, that court observed that, although some traffic destined for information service providers (including ISPs) may be intrastate, the interstate and intrastate components cannot be reliably separated.[98] Thus, ISP traffic is properly classified as interstate,[99] and it falls under the Commission's section 201 jurisdiction.[100]

53. In its opinion remanding this proceeding, the court appeared to acknowledge that the end-to-end analysis was appropriate for determining the scope of the Commission's jurisdiction under section 201, stating that "[t]here is no dispute that the Commission has

---

[96] For example, section 251 has expanded upon our historic functions by providing us with the authority to set the framework for pricing rules applicable to unbundled network elements, purchased under interconnection agreements.

[97] *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523, 543 (8th Cir. 1998) (affirming the jurisdictionally mixed nature of ISP-bound traffic).

[98] *Id.*

[99] *See, e.g., Louisiana PSC v. FCC*, 476 U.S. 355, 375 n.4.

[100] *See* Letter from John W. Kure, Qwest, to Magalie Roman Salas, Secretary, FCC (Dec. 8, 2000)(attaching *A Legal Roadmap for Implementing a Bill and Keep Rule for All Wireline Traffic*, at 10-11)(*Qwest Roadmap*)

historically been justified in relying on this method when determining whether a particular communication is jurisdictionally interstate."[101] The court nevertheless found that we had not supplied a logical nexus between the jurisdictional end-to-end analysis (which delineates the contours of our section 201 authority) and our interpretation of the scope of section 251(b)(5). In that regard, the court appeared not to question the Commission's longstanding assertion of jurisdiction over ESP traffic, of which Internet-bound traffic is a subset.[102] It did, however, unambiguously question whether, for purposes of interpreting section 251(b)(5), the jurisdictional end-to-end analysis was dispositive. Accordingly, the court explained its basis for remand as follows: "Because the Commission has not supplied a real explanation for its decision to treat end-to-end analysis as controlling [in interpreting the scope of section 251(b)(5)] . . . we must vacate the ruling and remand the case."[103]

54. As explained above, we no longer construe section 251(b)(5) using the dichotomy set forth in the *Declaratory Ruling* between "local" traffic and interstate traffic. Rather, we have clarified that the proper analysis hinges on section 251(g), which limits the reach of the reciprocal compensation regime mandated in section 251(b). Thus our discussion no longer centers on the jurisdictional inquiry set forth in the underlying order. Nonetheless, we take this opportunity to respond to questions raised by the court regarding the differences between ISP-bound traffic (which we have always held to be predominantly interstate for jurisdictional purposes) and intrastate calls to "communications-intensive business end user[s],"[104] such as travel agencies and pizza parlors.

55. Contrary to the arguments made by some IXCs, the Commission has been consistent in its jurisdictional treatment of ISP-bound traffic. For compensation purposes, in order to create a regulatory environment that will allow new and innovative services to flourish, the Commission has exempted enhanced service providers (including ISPs) from paying for interstate access service at the usage-based rates charged to IXCs.[105] The ESP exemption was and remains an affirmative *exercise* of federal regulatory authority over interstate access service under section 201, and, in affirming pricing under that exemption, the D.C. Circuit expressly

---

[101] *Bell Atlantic*, 206 F.3d at 5; *see Qwest Roadmap* at 4.

[102] The D.C. Circuit itself has long recognized that ESPs use interstate access. *See, e.g., NARUC v. FCC*, 737 F.2d at 1136.

[103] *Bell Atlantic*, 206 F.3d. at 8.

[104] *Bell Atlantic*, 206 F.3d at 7.

[105] As noted, the Commission has permitted ESPs to pay local business line rates from intrastate tariffs for ILEC-provided access service, in lieu of interstate carrier access charges. *See, e.g., MTS/WATS Market Structure Order*, 97 FCC 2d at 715; *ESP Exemption Order*, 3 FCC Rcd at 2635 n.8, 2637 n.53. ESPs also pay the *federal* subscriber lines charges associated with those business lines and, where appropriate, the *federal* special access surcharge. The subscriber line charge (SLC) recovers a portion of the cost of a subscriber's line that is allocated, pursuant to jurisdictional separations, to the interstate jurisdiction. *See* 47 C.F.R. § 69.152 (defining SLC); 47 C.F.R. Part 36 (jurisdictional separations). The special access surcharge recovers for use of the local exchange when private line/PBX owners "circumvent the conventional long-distance network and yet achieve interstate connections beyond those envisioned by the private line service." *NARUC v. FCC*, 737 F.2d at 1138. *See* 47 C.F.R. § 69.115.

recognized that ESPs use *interstate* access service.[106] Moreover, notwithstanding the ESP exemption, the Commission has always *permitted* enhanced service providers, including ISPs, to purchase their interstate access out of interstate tariffs -- thus underscoring the Commission's consistent view that the link LECs provide to connect subscribers with ESPs is an interstate access service.[107]

56. We do not believe that the court's decision to remand the *Declaratory Ruling* reflects a finding that such traffic constitutes two calls, rather than a single end-to-end call, for jurisdictional purposes. The court expressly acknowledged that "the end-to-end analysis applied by the Commission here is one that it has traditionally used to determine whether a call is within its interstate jurisdiction."[108] The court also said that "[t]here is no dispute that the Commission has historically been justified in relying on this method when determining whether a particular communication is jurisdictionally interstate."[109] And the court appeared to suggest, at least for the sake of argument, that the Commission had not misapplied that analysis *as a jurisdictional matter* in finding that ISP-bound traffic was interstate.[110] We do recognize, however, that the court was concerned by how one would categorize this traffic under our *prior* interpretation of section 251(b)(5), which focused on whether or not ISP-bound calls were "local." That inquiry arguably implicated the compensation mechanism for the traffic (which included a local component), as well as the meaning of the term "termination" in the specific context of section 251(b); but neither of these issues is germane to our assertion of jurisdiction here under our section 201 authority.

57. For jurisdictional purposes, the Commission views LEC-provided access to enhanced services providers, including ISPs, on the basis of the end points of the communication, rather than intermediate points of switching or exchanges between carriers (or other providers).[111]

---

[106] With judicial approval, the Commission initially adopted this access service pricing policy in order to avoid rate shock to a fledgling enhanced services industry. *NARUC v. FCC*, 737 F.2d at 1136-37. In the decision affirming this pricing policy, the court expressly recognized that ESPs use interstate access service. *Id.* at 1136 (enhanced service providers "may, at times, heavily use exchange access"). The Commission recently decided to retain this policy, largely because it found that it made little sense to mandate, for the first time, the application of existing non-cost-based interstate access rates to enhanced services just as the Commission was reforming the access charge regime to eliminate implicit subsidies and to move such charges toward competitive levels. *Access Charge Reform Order*, 12 FCC Rcd at 16133, *aff'd, Southwestern Bell Telephone Co.*, 153 F.3d at 541-42.

[107] *See, e.g., MTS/WATS Market Structure Order*, 97 FCC 2d at 711-12, 722; Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Memorandum Opinion and Order, 4 FCC Rd 1, 141 (1988), *aff'd, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*ONA Plans Order*); GTE Telephone Operating Cos., CC Docket No. 98-79, Memorandum Opinion and Order, 13 FCC Rcd 22466 (1998).

[108] *Bell Atlantic*, 206 F.3d at 3.

[109] *Id. at 5.*

[110] *See, e.g., id.* at 6, 7 (accepting, *arguendo*, that ISP-bound traffic is like IXC-bound traffic for jurisdictional purposes).

[111] *See, e.g., BellSouth MemoryCall*, 7 FCC Rcd at 1620 (voicemail is interstate because "there is a continuous path of communications across state line between the caller and the voice mail service"); *ONA Plans Order*, 4 FCC

(continued....)

Thus, in the *ONA Plans Order*, the Commission emphasized that "when an enhanced service is interstate (that is, when it involves communications or transmissions between points in different states on an end-to-end basis), the underlying basic services are subject to [our jurisdiction]."[112] Consistent with that view, when end-to-end communications involving enhanced service providers cross state lines, the Commission has categorized the link that the LEC provides to connect the end-user with an enhanced service provider as interstate access service.[113] Internet service providers are a class of ESPs. Accordingly, the LEC-provided link between an end-user and an ISP is properly characterized as *interstate* access.[114]

58. Most Internet-bound traffic traveling between a LEC's subscriber and an ISP is indisputably interstate in nature when viewed on an end-to-end basis. Users on the Internet are interacting with a global network of connected computers. The consumer contracts with an ISP to provide access to the Internet. Typically, when the customer wishes to interact with a person, content, or computer, the customer's computer calls a number provided by the ISP that is assigned to an ISP modem bank. The ISP modem answers the call (the familiar squelch of computers handshaking). The user initiates a communication over the Internet by transmitting a command. In the case of the web, the user requests a webpage. This request may be sent to the computer that hosts the webpage. In real time, the web host may request that different pieces of that webpage, which can be stored on different servers across the Internet, be sent, also in real time, to the user. For example, on a sports page, only the format of the webpage may be stored at the host computer in Chicago. The advertisement may come from a computer in California (and it may be a different advertisement each time the page is requested), the sports scores may come from a computer in New York City, and a part of the webpage that measures Internet traffic and records the user's visit may involve a computer in Virginia. If the user decides to buy something from this webpage, say a sports jersey, the user clicks on the purchase page and may be transferred to a secure web server in Maryland for the transaction. A single web address frequently results in the return of information from multiple computers in various locations

(Continued from previous page)
Rcd at 141 (an enhanced service is subject to FCC authority if it is interstate, "that is, when it involves communications or transmissions between points in different states on an end-to-end basis").

[112] *ONA Plans Order*, 4 FCC Rcd at 141; *see also id.*, Memorandum Opinion and Order on Reconsideration, 5 FCC Rcd 3084, 3088-89 (1990), *aff'd, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993)(rejecting claim that basic service elements, consisting of features and functions provided by telephone company's local switch for benefit of enhanced service providers and others, are separate *intra*state offerings even when used in connection with end-to-end transmissions).

[113] *See, e.g., MTS/WATS Market Structure Order*, 97 FCC 2d at 711 ("[a]mong the variety of users of access service are ... enhanced service providers"); Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215, Notice of Proposed Rulemaking, 2 FCC Rcd 4305, 4305, 4306 (1987) (noting that enhanced service providers use "exchange access service"); *ESP Exemption Order*, 3 FCC Rcd at 2631 (referring to "certain classes of exchange access users, including enhanced service providers")

[114] *See, e.g., Access Charge Reform Order*, 12 FCC Rcd at 16131-32; GTE Telephone Operating Cos., 13 FCC Rcd at 22478. *Cf. Bell Atlantic*, 206 F.3d at 4, 6-7.

globally. These different pieces of the webpage will be sent to the user over different network paths and assembled on the user's display.[115]

59. The "communication" taking place is between the dial-up customer and the global computer network of web content, e-mail authors, game room participants, databases, or bulletin board contributors. Consumers would be perplexed to learn regulators believe they are communicating with ISP modems, rather than the buddies on their e-mail lists. The proper focus for identifying a communication needs to be the user interacting with a desired webpage, friend, game, or chat room, not on the increasingly mystifying technical and mechanical activity in the middle that makes the communication possible.[116] ISPs, in most cases, provide services that permit the dial-up Internet user to communicate directly with some distant site or party (other than the ISP) that the caller has specified.

60. ISP service is analogous, though not identical, to long distance calling service. An AT&T long distance customer contracts with AT&T to facilitate communications to out-of-state locations. The customer uses the local network to reach AT&T's facilities (its point of presence). By dialing "1" and an area code, the customer is in essence addressing his call to an out of state party and is instructing his LEC to deliver the call to his long distance carrier, and instructing the long distance carrier to pick up and carry that call to his intended destination. The caller on the other end will pick up the phone and respond to the caller. The communication will be between these two end-users. This analogy is not meant to prove that ISP service is identical to long distance service, but is used merely to bolster, by analogy, the reasonableness of not characterizing an ISP as the destination of a call, but as a facilitator of communication.

61. Moreover, as the local exchange carriers have correctly observed, the technical configurations for establishing dial-up Internet connections are quite similar to certain network configurations employed to initiate more traditional long-distance calls.[117] In most cases, an ISP's customer first dials a seven-digit number to connect to the ISP server before connecting to a website. Long-distance service in some network configurations is initiated in a substantially similar manner. In particular, under "Feature Group A" access, 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.[118] Internet calls operate in a similar manner: after reaching the ISP's server by dialing a seven-digit number, the caller selects a website (which is identified by a 12-digit Internet address, but which often is, in effect, "speed dialed" by clicking an icon) and the ISP connects the caller to the selected website. Such calling

[115] Of course, the Internet provides applications other than the World Wide Web, such as e-mail, games, chat sites, or streaming media, which have different technical characteristics but all of which involve computers in multiple locations, often across state and national boundaries.

[116] *See Qwest Roadmap* at 4-5, 9-10.

[117] *See, e.g.*, Verizon Remand Reply at 9 (Internet traffic is indistinguishable from Feature Group A access service).

[118] *See Local Competition Order*, 11 FCC Rcd at 15935 n. 2091 (describing "Feature Group A" access service); *see also MCI Telecomm. Corp. v. FCC*, 566 F.2d 365, 367 n.3 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1040 (1978).

should yield the same jurisdictional result as the analogous calls to IXCs using "Feature Group A" access.

62. Commission precedent also rejects the two-call theory in the context of calls involving enhanced services. In *BellSouth MemoryCall*, the Commission preempted a state commission order that had prohibited BellSouth from expanding its voice mail service -- an enhanced service -- beyond its existing customers.[119] In doing so, it rejected claims by the state that the Commission lacked jurisdiction to preempt because, allegedly, out-of-state calls to the voice mail service really constituted two calls: an *inter*state call from the out-of-state caller to the telephone company switch that routes the call to the intended recipient's location, and a separate *intra*state call that forwards the communication from the switch to the voice mail apparatus in the event that the called party did not answer.[120] The Commission explained that, whether a basic telecommunications service is at issue, or whether an enhanced service rides on the telephone company's telecommunications service, the Commission's jurisdiction does not end at the local switchboard, but continues to the ultimate destination of the call.[121]

63. The Internet communication is not analogous to traditional telephone exchange services. Local calls set up communication between two parties that reside in the same local calling area. Prior to the introduction of local competition, that call would never leave the network of the incumbent LEC. As other carriers were permitted to enter the local market, a call might cross two or more carriers' networks simply because the two parties to the communication subscribed to two different local carriers. The two parties intending to communicate, however, remained squarely in the same local calling area. An Internet communication is not simply a local call from a consumer to a machine that is lopsided, that is, a local call where one party does most of the calling, or most of the talking. ISPs are service providers that technically modify and translate communication, so that their customers will be able to interact with computers across the global Internet.[122]

64. The court in *Bell Atlantic* noted that FCC litigation counsel had differentiated ISP-bound traffic from ordinary long-distance calls by stating that the former "is really like a call to a local business" -- such as a pizza delivery firm, a travel reservation agency, a credit card verification firm, or a taxicab company -- "that then uses the telephone to order wares to meet the need."[123] We find, however, that this citation to a former litigation position does not require us to alter our analysis. First, the Commission itself has never analogized ISP-bound traffic in the manner cited in the agency's brief in *Southwestern Bell*. Indeed, in the particular order that the

[119] *BellSouth MemoryCall*, 7 FCC Rcd at 1619

[120] *Id.* at 1620.

[121] *Id* at 1621.

[122] It is important to note that a dial-up call to an ISP will not even be required when broadband services arrive. Those connections will be always on and there will be no phone call in any traditional sense. Indeed, the only initiating event will be the end-user interacting with other Internet content or users. Thus, increasingly, notions of two calls become meaningless.

[123] *Bell Atlantic*, 206 F.3d at 8 (citing FCC Brief at 76, *Southwestern Bell v. FCC*, 153 F 3d 523).

Commission was defending in *Southwestern Bell*, the Commission distinguished ISP-bound traffic from other access traffic on *other* grounds -- *e.g.*, call direction and call holding times[124] -- which have no arguable bearing on whether the traffic is one interstate call (as the Commission has always held) or two separate calls (one of which allegedly is intrastate) as some parties have contended. Second, the cited portion of the Commission's brief was not addressing jurisdiction at all. Rather, the brief was responding to a claim that the ESP exemption *discriminated* against IXCs and in favor of ISPs.[125] Finally, in the very case in which litigation counsel made the cited analogy, the Eighth Circuit affirmed the Commission's consistent view that ISP-bound traffic is, as a *jurisdictional* matter, predominantly interstate.[126] In any event, to the extent that our prior briefs could be read to conceptualize the nature of ISP service as local, akin to intense users of local service, we now embrace a different conceptualization that we believe more accurately reflects the nature of ISP service.

65. For the foregoing reasons, consistent with our longstanding precedent, we find that we continue to have jurisdiction under section 201, as preserved by section 251(i), to provide a compensation mechanism for ISP-bound traffic.

C. Efficient Intercarrier Compensation Rates and Rate Structures

66. Carriers currently recover the costs of call transport and termination through some combination of carrier access charges, reciprocal compensation, and end-user charges, depending upon the applicable regulatory regime. Having concluded that ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5), we must now determine, pursuant to our section 201 authority, what compensation mechanism is appropriate when carriers collaborate to deliver calls to ISPs. In the companion *NPRM*, we consider the desirability of adopting a uniform intercarrier compensation mechanism, applicable to all traffic exchanged among telecommunications carriers, and, in that context, we intend to examine the merits of a bill and keep regime for all types of traffic, including ISP-bound traffic. In the meantime, however, we must adopt an interim intercarrier compensation rule to govern the exchange of ISP-bound traffic, pending the outcome of the *NPRM*. In particular, we must decide whether to impose (i) a "calling-party's-network-pays" (CPNP) regime, like reciprocal compensation, in which the calling party's network pays the network serving the ISP; (ii) a bill and keep regime in which all networks recover costs from their end-user customers and are obligated to deliver calls that originate on the networks of interconnecting carriers; or (iii) some other cost recovery mechanism. As set forth more fully below, our immediate goal in adopting an interim compensation mechanism is to address the market distortions created by the prevailing intercarrier compensation regime, even as we evaluate in a parallel proceeding what longer-term intercarrier compensation mechanisms are appropriate for this and other types of traffic.

---

[124] *Access Charge Reform Order*, 12 FCC Rcd at 16133-34.

[125] *See* FCC Brief at 75-76, *Southwestern Bell v. FCC*, 153 F.3d 523.

[126] *Southwestern Bell v. FCC*, 153 F.3d at 534.

1. CPNP Regimes Have Distorted the Development of Competitive Markets

67. For the reasons detailed below, we believe that a bill and keep approach to recovering the costs of delivering ISP-bound traffic is likely to be more economically efficient than recovering these costs from originating carriers. In particular, requiring carriers to recover the costs of delivering traffic to ISP customers directly from those customers is likely to send appropriate market signals and substantially eliminate existing opportunities for regulatory arbitrage. As noted above, we consider issues related to the broader application of bill and keep as an intercarrier compensation regime in conjunction with the *NPRM* that we are adopting concurrently with this Order. In this Order, however, we adopt an interim compensation mechanism for the delivery of ISP-bound traffic that addresses the regulatory arbitrage opportunities present in the existing carrier-to-carrier payments by limiting carriers' opportunity to recover costs from other carriers and requiring them to recover a greater share of their costs from their ISP customers.

68. In most states, reciprocal compensation governs the exchange of ISP-bound traffic between local carriers.[127] Reciprocal compensation is a CPNP regime in which the originating carrier pays an interconnecting carrier for "transport and termination," *i.e.*, for transport from the networks' point of interconnection and for any tandem and end-office switching.[128] The central problem with any CPNP regime is that carriers recover their costs not only from their end-user customers, but also from *other carriers*.[129] Because intercarrier compensation rates do not reflect the degree to which the carrier can recover costs from its end-users, payments from other carriers may enable a carrier to offer service to its customers at rates that bear little relationship to its actual costs, thereby gaining an advantage over its competitors. Carriers thus have the incentive to seek out customers, including but not limited to ISPs, with high volumes of incoming traffic that will generate high reciprocal compensation payments.[130] To the extent that carriers offer these customers below cost retail rates subsidized by intercarrier compensation, these customers do not receive accurate price signals. Moreover, because the originating LEC typically charges its customers averaged rates, the originating end-user receives inaccurate price signals as the costs associated with the intercarrier payments are recovered through rates averaged across all of the originating carrier's end-users. Thus no subscriber faces a price that fully reflects the intercarrier

[127] In the *Declaratory Ruling*, we stated that, pending adoption of a federal rule governing intercarrier compensation for ISP-bound traffic, state commissions would determine whether reciprocal compensation was due for such traffic. *Declaratory Ruling*, 14 FCC Rcd at 3706. Since that time, most, though not all, states have ordered the payment of reciprocal compensation for ISP-bound traffic.

[128] 47 C.F.R. § 51.703(a).

[129] Recovery from other carriers is premised on the economic assumption that the carrier whose customer originates the call has "caused" the transport and termination costs associated with that call, and the originating carrier should, therefore, reimburse the interconnecting carrier for "transport and termination." The companion *NPRM* evaluates the validity of that assumption and tentatively concludes that it is an incorrect premise.

[130] *Cf. Local Competition Order*, 11 FCC Rcd at 16043 (symmetrical termination payments to paging providers based on ILECs' costs "might create uneconomic incentives for paging providers to generate traffic simply in order to receive termination compensation").

payments. An ISP subscriber with extensive Internet usage may, for example, cause her LEC to incur substantial reciprocal compensation obligations to the LEC that serves her ISP, but that subscriber receives no price signals reflecting those costs because they are spread over all of her LEC's customers.

69. The resulting market distortions are most apparent in the case of ISP-bound traffic due primarily to the one-way nature of this traffic, and to the tremendous growth in dial-up Internet access since passage of the 1996 Act. Competitive carriers, regardless of the nature of their customer base, exchange traffic with the incumbent LECs at rates based on the incumbents' costs.[131] To the extent the traffic exchange is roughly balanced, as is typically the case when LECs exchange voice traffic, it matters little if rates reflect costs because payments in one direction are largely offset by payments in the other direction. The rapid growth in dial-up Internet use, however, created the opportunity to serve customers with large volumes of exclusively *incoming* traffic. And, for the reasons discussed above, the reciprocal compensation regime created an incentive to target those customers with little regard to the costs of serving them – because a carrier would be able to collect some or all of those costs from *other* carriers that would themselves be unable to flow these costs through to their own customers in a cost-causative manner.

70. The record is replete with evidence that reciprocal compensation provides enormous incentive for CLECs to target ISP customers. The four largest ILECs indicate that CLECs, on average, terminate eighteen times more traffic than they originate, resulting in annual CLEC reciprocal compensation billings of approximately two billion dollars, ninety percent of which is for ISP-bound traffic.[132] Verizon states that it sends CLECs, on average, twenty-one times more traffic than it receives, and some CLECs receive more than forty times more traffic than they originate.[133] Although there may be sound business reasons for a CLEC's decision to serve a particular niche market, the record strongly suggests that CLECs target ISPs in large part because of the availability of reciprocal compensation payments.[134] Indeed, some ISPs even seek to become CLECs in order to share in the reciprocal compensation windfall, and, for a small

[131] 47 C.F.R. § 51.705 (an incumbent LEC's rates for transport and termination shall be established on the basis of the forward-looking economic costs of such offerings); 47 C.F.R. § 51.711 (subject to certain exceptions, rates for transport and termination shall be symmetrical and equal to those that the incumbent LEC assesses upon other carriers for the same services).

[132] Letter from Robert T. Blau, BellSouth, to Magalie Roman Salas, Secretary, FCC (November 6, 2000); *see also* Verizon Remand Comments at 2 (Verizon will be billed more than one billion dollars in 2000 for Internet-bound calls); Letter from Richard J. Metzger, Focal, to Deena Shetler, Legal Advisor to Commissioner Gloria Tristani, FCC (Jan. 11, 2001)(ILECs owed $1.98 billion in reciprocal compensation to CLECs in 2000).

[133] Verizon Remand Comments at 11, 21. Verizon also cites extreme cases of CLECs that terminate in excess of *eight thousand* times more traffic than they originate. *Id.* at 21. *See also* Letter from Robert T. Blau, BellSouth; Melissa Newman, Qwest; Priscilla Hill-Ardoin, SBC; and Susanne Guyer, Verizon, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC (Nov. 9, 2000).

[134] *See, e.g.*, Verizon Remand Comments at 15 (citing case of CLEC offer of free long distance service to dial-up Internet customers, an offer it did not extend to its customers that accessed the Internet via cable modem or DSL service), SBC Remand Comments at 45 (citing examples of CLEC offering free service to ISPs that collocated in its switching centers and CLECs offering to share reciprocal compensation revenues with ISPs).

number of entities, this revenue stream provided an inducement to fraudulent schemes to generate dial-up minutes.[135]

71. For these reasons, we believe that the application of a CPNP regime, such as reciprocal compensation, to ISP-bound traffic undermines the operation of competitive markets.[136] ISPs do not receive accurate price signals from carriers that compete, not on the basis of the quality and efficiency of the services they provide, but on the basis of their ability to shift costs to other carriers. Efficient prices result when carriers offer the lowest possible rates based on the costs of the service they provide to ISPs, not when they can price their services without regard to cost. We are concerned that viable, long-term competition among efficient providers of local exchange and exchange access services cannot be sustained where the intercarrier compensation regime does not reward efficiency and may produce retail rates that do not reflect the costs of the services provided. As we explain in greater detail in the companion *NPRM*, we believe that a compensation regime, such as bill and keep, that requires carriers to recover more of their costs from end-users may avoid these problems.

72. We acknowledge that we did not always hold this view. In the *Local Competition Order*, the Commission concluded that state commissions may impose bill and keep arrangements for traffic subject to section 251(b)(5) *only* when the flow of traffic between interconnected carriers is roughly balanced and is expected to remain so.[137] The Commission reasoned that "bill-and-keep arrangements are not economically efficient because they distort carriers' incentives, encouraging them to overuse competing carriers' *termination* facilities by seeking customers that primarily *originate* traffic."[138] The concerns about the opportunity for cost recovery and economic efficiency are not present, however, to the extent that traffic between carriers is balanced and payments from one carrier will be offset by payments from the other carrier. In these circumstances, the Commission found that bill and keep arrangements may minimize administrative burdens and transaction costs.[139]

73. Since that time, we have observed the development of competition in the local exchange market, and we now believe that the Commission's concerns about economic inefficiencies associated with bill and keep missed the mark, particularly as applied to ISP-bound traffic. The Commission appears to have assumed, at least implicitly, that the calling party was the sole cost causer of the call, and it may have overstated any incentives that a bill and keep regime creates to target customers that primarily originate traffic. A carrier must provide originating switching functions and must recover the costs of those functions from the originating end-user, not from other carriers. Originating traffic thus lacks the same opportunity for cost-shifting that reciprocal compensation provides with respect to serving customers with

[135] *See, e.g.*, Verizon Remand Comments at 17-18.

[136] The *NPRM* that we adopt in conjunction with this Order seeks comment on the degree to which a modified CPNP regime might address these concerns.

[137] *Local Competition Order*, 11 FCC Rcd at 16054-55; *see also* 47 C.F.R. § 51.713(b).

[138] *Local Competition Order*, 11 FCC Rcd at 16055 (emphases added).

[139] *Id.* at 16055.

disproportionately incoming traffic. Indeed, it has become apparent that the obligation to pay reciprocal compensation to interconnecting carriers may give rise to uneconomic incentives. As the current controversy about ISP-bound traffic demonstrates, reciprocal compensation encourages carriers to overuse competing carriers' *origination* facilities by seeking customers that *receive* high volumes of traffic.

74. We believe that a bill and keep regime for ISP-bound traffic may eliminate these incentives and concomitant opportunity for regulatory arbitrage by forcing carriers to look only to their ISP customers, rather than to other carriers, for cost recovery. As a result, the rates paid by ISPs and, consequently, their customers should better reflect the costs of services to which they subscribe. Potential subscribers should receive more accurate price signals, and the market should reward efficient providers.[140] Although we do not reach any firm conclusions about bill and keep as a permanent mechanism for this or any other traffic, our evaluation of the record evidence to date strongly suggests that bill and keep is likely to provide a viable solution to the market distortions caused by the application of reciprocal compensation to ISP-bound traffic. We take that observation into account, below, as we fashion an interim compensation mechanism for this traffic.

75. Bill and keep also may address the problem regulators face in setting intercarrier compensation rates that correlate to the costs carriers incur to carry traffic that originates on other networks. The record suggests that market distortions appear to have been exacerbated by the prevalence of excessively high reciprocal compensation rates. Many CLECs argue that the current traffic imbalances between CLECs and ILECs are the product of greediness on the part of ILECs that insisted on above-cost reciprocal compensation rates in the course of negotiating or arbitrating initial interconnection agreements.[141] CLECs argue that, because these rates were artificially high, they naturally responded by seeking customers with large volumes of incoming traffic. If the parties or regulatory bodies merely set cost-based rates and rate structures, they argue, arbitrage opportunities and the resulting windfalls would disappear.[142] They note that reciprocal compensation rates have fallen dramatically as initial agreements expire and the parties negotiate new agreements.[143]

76. We do not believe that the solution to the current problem is as simple as the CLECs suggest.[144] We seek comment in the accompanying *NPRM* on the potential for a modified

---

[140] We also note that bill and keep arrangements are common among entities providing Internet backbone services, where the larger carriers engage in so-called "peering" arrangements.

[141] Time Warner Remand Comments at 15-16.

[142] Time Warner Remand Comments at 16. Some parties suggest that a bifurcated rate structure (a call set-up charge and a minute of use charge) would ensure appropriate cost recovery. *See* Sprint Remand Comments at 2-4. We seek comment on this approach in the *NPRM*.

[143] *See infra* note 158.

[144] We note that many CLECs expressed the same view following adoption of the *Declaratory Ruling* in 1999, yet the problems persist. *See, e.g.*, Cox Reply Comments at 6 (If termination "rates are too high, this is entirely at the ILEC's behest, and should be remedied in the next round of negotiations.").

CPNP regime, such as the CLECs advocate, to solve some of the problems we identify here. We are convinced, however, that intercarrier payments for ISP-bound traffic have created severe market distortions. Although it would be premature to institute a full bill and keep regime before resolving the questions presented in the *NPRM*,[145] in seeking to remedy an exigent market problem, we cannot ignore the evidence we have accumulated to date that suggests that a bill and keep regime has very fundamental advantages over a CPNP regime for ISP-bound traffic. Contrary to the view espoused by CLECs, we are concerned that the market distortions caused by applying a CPNP regime to ISP-bound traffic cannot be cured by regulators or carriers simply attempting to "get the rate right." A few examples may illustrate the vexing problems regulators face. Reciprocal compensation rates have been determined on the basis of the ILEC's average costs of transport and termination. These rates do not, therefore, reflect the costs incurred by any particular carrier for providing service to a particular customer. This encourages carriers to target customers that are, on average, less costly to serve, and reap a reciprocal compensation windfall. Conversely, new entrants lack incentive to serve customers that are, on average, more costly to serve, even if the new entrant is the most efficient provider. It is not evident that this problem can be remedied by setting reciprocal compensation rates on the basis of the costs of carrier serving the called party (or, in the case of ISP-bound traffic, the CLEC that serves the ISP).[146] Apart from our reluctance to require new entrants to perform cost studies, it is entirely impracticable, if not impossible, for regulators to set different intercarrier compensation rates for each individual carrier, and those rates still might fail to reflect a carrier's costs as, for example, the nature of its customer base evolves. Furthermore, most states have adopted per minute reciprocal compensation rate structures. It is unlikely that any minute-of-use rate that is based on average costs and depends upon demand projections will reflect the costs of any given carrier to serve any particular customer. To the extent that transport and termination costs are capacity-driven, moreover, virtually any minute-of-use rate will overestimate the cost of handling an additional call whenever a carrier is operating below peak capacity.[147] Regulators and carriers have long struggled with problems associated with peak-load pricing.[148] Finally, and most important, the fundamental problem with application of reciprocal compensation to ISP-bound traffic is that the intercarrier payments fail altogether to account for a carrier's opportunity to recover costs from its ISP customers. Modifications to intercarrier rate levels or rate structures suggested by CLECs do not address carriers' ability to shift costs from their own customers onto other carriers and their customers.

---

[145] A number of questions must be resolved before we are prepared to implement fully a bill and keep regime where most costs are recovered from end-users. (We say most, not all, costs are recovered from end-users because a bill and keep regime may include intercarrier charges for transport between networks.) These questions include, for example, the allocation of transport costs between interconnecting carriers and the effect on retail prices of adopting a bill and keep regime that is not limited to ISP-bound traffic. We seek comment on these and other issues in the accompanying intercarrier *NPRM*.

[146] *Cf.* Verizon Remand Reply Comments at 14-15.

[147] The problem of putting a per minute price tag, in the form of intercarrier payments, where no per minute cost exists is exacerbated in the case of local exchange carriers that, in most cases, recover costs from their end-users on a flat-rated basis.

[148] *See, e.g., Local Competition Order*, 11 FCC Rcd at 16028-29.

2. Intercarrier Compensation for ISP-bound Traffic

77. We believe that a hybrid mechanism that establishes relatively low per minute rates, with a cap on the total volume of traffic entitled to such compensation, is the most appropriate interim approach over the near term to resolve the problems associated with the current intercarrier compensation regime for ISP-bound traffic. Our primary goal at this time is to address the market distortions under the current intercarrier compensation regimes for ISP-bound traffic. At the same time, we believe it prudent to avoid a "flash cut" to a new compensation regime that would upset the legitimate business expectations of carriers and their customers. Subsequent to the Commission's *Declaratory Ruling*, many states have required the payment of reciprocal compensation for ISP-bound traffic, and CLECs may have entered into contracts with vendors or with their ISP customers that reflect the expectation that the CLECs would continue to receive reciprocal compensation revenue. We believe it appropriate, in tailoring an interim compensation mechanism, to take those expectations into account while simultaneously establishing rates that will produce more accurate price signals and substantially reduce current market distortions. Therefore, pending our consideration of broader intercarrier compensation issues in the *NPRM*, we impose an interim intercarrier compensation regime for ISP-bound traffic that serves to limit, if not end, the opportunity for regulatory arbitrage, while avoiding a market-disruptive "flash cut" to a pure bill and keep regime. The interim regime we establish here will govern intercarrier compensation for ISP-bound traffic until we have resolved the issues raised in the intercarrier compensation *NPRM*.

78. Beginning on the effective date of this Order, and continuing for six months, intercarrier compensation for ISP-bound traffic will be capped at a rate of $.0015/minute-of-use (mou). Starting in the seventh month, and continuing for eighteen months, the rate will be capped at $.0010/mou. Starting in the twenty-fifth month, and continuing through the thirty-sixth month or until further Commission action (whichever is later), the rate will be capped at $.0007/mou. In addition to the rate caps, we will impose a cap on total ISP-bound minutes for which a LEC may receive this compensation. For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to compensation under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation under that agreement in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the 2002 ceiling applicable to that agreement.[149]

79. We understand that some carriers are unable to identify ISP-bound traffic. In order to limit disputes and avoid costly efforts to identify this traffic, we adopt a rebuttable presumption that traffic delivered to a carrier, pursuant to a particular contract, that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic that is subject to the compensation

[149] This interim regime affects only the intercarrier *compensation* (*i.e.*, the rates) applicable to the delivery of ISP-bound traffic. It does not alter carriers' other obligations under our Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection.

mechanism set forth in this Order. Using a rebuttable presumption in this context is consistent with the approach that numerous states have adopted to identify ISP-bound traffic or "convergent" traffic (including ISP traffic) that is subject to a lower reciprocal compensation rate.[150] A carrier may rebut the presumption, for example, by demonstrating to the appropriate state commission that traffic above the 3:1 ratio is in fact local traffic delivered to non-ISP customers. In that case, the state commission will order payment of the state-approved or state-arbitrated reciprocal compensation rates for that traffic. Conversely, if a carrier can demonstrate to the state commission that traffic it delivers to another carrier is ISP-bound traffic, even though it does not exceed the 3:1 ratio, the state commission will relieve the originating carrier of reciprocal compensation payments for that traffic, which is subject instead to the compensation regime set forth in this Order. During the pendency of any such proceedings, LECs remain obligated to pay the presumptive rates (reciprocal compensation rates for traffic below a 3:1 ratio, the rates set forth in this Order for traffic above the ratio), subject to true-up upon the conclusion of state commission proceedings.

80. We acknowledge that carriers incur costs in delivering traffic to ISPs, and it may be that in some instances those costs exceed the rate caps we adopt here. To the extent a LEC's costs of transporting and terminating this traffic exceed the applicable rate caps, however, it may recover those amounts from its own end-users.[151] We also clarify that, because the rates set forth above are *caps* on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps we adopt here or on a

[150] *See* Texas Public Utility Commission, Docket No. 21982, Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996, at 36 (July 12, 2000)(applying a blended tandem switching rate to traffic up to a 3:1 (terminating to originating) ratio; traffic above that ratio is presumed to be convergent traffic and is compensated at the end office rate unless the terminating carrier can prove tandem functionality); New York Public Service Commission, Op. No. 99-10, Proceeding on Motion of the Commission to Reexamine Reciprocal compensation, Opinion and Order, at 59-60 (Aug. 26, 1999) (traffic above a 3:1 ratio is presumed to be convergent traffic and is compensated at the end office rate unless the terminating carrier can demonstrate "that [the terminating] network and service are such as to warrant tandem-rate compensation"); Massachusetts Dept. of Telecommunications and Energy, D.T.E. 97-116-C, at 28-29 n.31 (May 19, 1999) (requiring reciprocal compensation for traffic that does not exceed a 2:1 (terminating to originating) ratio as a proxy to distinguish ISP-bound traffic from voice traffic; carriers may rebut that presumption).

[151] We note that CLEC end-user recovery is generally not regulated. As non-dominant carriers, CLECs can charge their end-users what the market will bear. Access Charge Reform, CC Docket No. 96-262, Sixth Report and Order, 15 FCC Rcd 12962, 13005 (2000) (*CALLS Order*)("Competitive LECs are not regulated by the Commission and are not restricted in the same manner as price caps LECs in how they recover their costs."). Accordingly, we permit CLECs to recover any additional costs of serving ISPs from their ISP customers. ILEC end-user charges, however, are generally regulated by the Commission, in the case of interstate charges, or by state commissions, for intrastate charges. Pursuant to the ESP exemption, ILECs will continue to serve their ISP customers out of intrastate business tariffs that are subject to state regulation. As the Commission said in 1997, if ILECs feel that these rates are so low as to preclude cost recovery, they should seek relief from their state commissions. *Access Charge Reform Order*, 12 FCC Rcd at 16134 ("To the extent that some intrastate rate structures fail to compensate incumbent LECs adequately for providing service to customers with *high volumes of incoming calls*, incumbent LECs may address their concerns to state regulators." (emphasis added)).

bill and keep basis (or otherwise have not required payment of compensation for this traffic).[152] The rate caps are designed to provide a transition toward bill and keep or such other cost recovery mechanism that the Commission may adopt to minimize uneconomic incentives, and no such transition is necessary for carriers already exchanging traffic at rates below the caps. Moreover, those state commissions have concluded that, at least in their states, LECs receive adequate compensation from their own end-users for the transport and termination of ISP-bound traffic and need not rely on intercarrier compensation.

81. Finally, a different rule applies in the case where carriers are not exchanging traffic pursuant to interconnection agreements prior to adoption of this Order (where, for example, a new carrier enters the market or an existing carrier expands into a market it previously had not served). In such a case, as of the effective date of this Order, carriers shall exchange ISP-bound traffic on a bill-and-keep basis during this interim period. We adopt this rule for several reasons. First, our goal here is to address and curtail a pressing problem that has created opportunities for regulatory arbitrage and distorted the operation of competitive markets. In so doing, we seek to confine these market problems to the maximum extent while seeking an appropriate long-term resolution in the proceeding initiated by the companion *NPRM*. Allowing carriers in the interim to expand into new markets using the very intercarrier compensation mechanisms that have led to the existing problems would exacerbate the market problems we seek to ameliorate. For this reason, we believe that a standstill on any expansion of the old compensation regime into new markets is the more appropriate interim answer.[153] Second, unlike those carriers that are presently serving ISP customers under existing interconnection agreements, carriers entering new markets to serve ISPs have not acted in reliance on reciprocal compensation revenues and thus have no need of a transition during which to make adjustments to their prior business plans.

82. The interim compensation regime we establish here applies as carriers re-negotiate expired or expiring interconnection agreements. It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions. This Order does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here. Because we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue. For this same reason, as of the date this Order is published in the Federal Register, carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic.[154] Section 252(i)

---

[152] Thus, if a state has ordered all LECs to exchange ISP-bound traffic on a bill and keep basis, or if a state has ordered bill and keep for ISP-bound traffic in a particular arbitration, those LECs subject to the state order would continue to exchange ISP-bound traffic on a bill and keep basis.

[153] *See American Public Communications Council v. FCC*, 215 F.3d 51 (D.C. Cir. 2000)("Where existing methodology or research in a new area of regulation is deficient, the agency necessarily enjoys broad discretion to attempt to formulate a solution to the best of its ability on the basis of available information.").

[154] 47 U.S.C. § 252(i) (requiring LECs to "make available any interconnection, service, or network element provided under an agreement approved under this section" to "any other requesting telecommunications carrier"). This Order will become effective 30 days after publication in the Federal Register. We find there is good cause under 5 U.S.C § 553(d)(3), however, to prohibit carriers from invoking section 252(i) with respect to rates paid for (continued....)

applies only to agreements arbitrated or approved by state commissions pursuant to section 252; it has no application in the context of an intercarrier compensation regime set by this Commission pursuant to section 201.[155]

83. This interim regime satisfies the twin goals of compensating LECs for the costs of delivering ISP-bound traffic while limiting regulatory arbitrage. The interim compensation regime, as a whole, begins a transition toward what we have tentatively concluded, in the companion *NPRM*, to be a more rational cost recovery mechanism under which LECs recover more of their costs from their own customers. This compensation mechanism is fully consistent with the manner in which the Commission has directed incumbent LECs to recover the costs of serving ESPs, including ISPs.[156] The three-year transition we adopt here ensures that carriers have sufficient time to re-order their business plans and customer relationships, should they so choose, in light of our tentative conclusions in the companion *NPRM* that bill and keep is the appropriate long-term intercarrier compensation regime. It also affords the Commission adequate time to consider comprehensive reform of all intercarrier compensation regimes in the *NPRM* and any resulting rulemaking proceedings. Both the rate caps and the volume limitations reflect our view that LECs should begin to formulate business plans that reflect decreased reliance on revenues from intercarrier compensation, given the trend toward substantially lower rates and the strong possibility that the *NPRM* may result in the adoption of a full bill and keep regime for ISP-bound traffic.

84. We acknowledge that there is no exact science to setting rate caps to limit carriers' ability to draw revenue from other carriers, rather than from their own end-users. Our adoption of the caps here is based on a number of considerations. First, rates that produce meaningful reductions in intercarrier payments for ISP-bound traffic must be at least as low as rates in existing interconnection agreements. Second, although we make no finding here regarding the actual costs incurred in the delivery of ISP-bound traffic, there is evidence in the record to suggest that technological developments are reducing the costs incurred by carriers in handling all sorts of traffic, including ISP-bound traffic.[157] Third, although the process has proceeded too

(Continued from previous page)
the exchange of ISP-bound traffic upon publication of this Order in the Federal Register, in order to prevent carriers from exercising opt in rights during the thirty days after Federal Register publication. To permit a carrier to opt into a reciprocal compensation rate higher than the caps we impose here during that window would seriously undermine our effort to curtail regulatory arbitrage and to begin a transition from dependence on intercarrier compensation and toward greater reliance on end-user recovery.

[155] In any event, our rule implementing section 252(i) requires incumbent LECs to make available "[i]ndividual interconnection, service, or network element arrangements" to requesting telecommunications carriers only "for a reasonable period of time." 47 C.F.R. § 51.809(c). We conclude that any "reasonable period of time" for making available rates applicable to the exchange of ISP-bound traffic expires upon the Commission's adoption in this Order of an intercarrier compensation mechanism for ISP-bound traffic.

[156] *Access Charge Reform Order*, 12 FCC Rcd at 16133-34.

[157] *See, e.g.*, Letter from David J. Hostetter, SBC, to Magalie Roman Salas, Secretary, FCC (Feb. 14, 2001), Attachment (citing September 2000 Morgan Stanley Dean Witter report that discusses utilization of lower cost switch technology); Donny Jackson, "One Giant Leap for Telecom Kind?," *Telephony*, Feb. 12, 2001, at 38 (discussing cost savings associated with replacing circuit switches with packet switches); Letter from Gary L. Phillips, SBC, to Magalie Roman Salas, Secretary, FCC (Feb. 16, 2001) (attaching press release from Focal (continued ...)

slowly to address the market distortions discussed above, we note that negotiated reciprocal compensation rates continue to decline as ILECs and CLECs negotiate new interconnection agreements. Finally, CLECs have been on notice since the 1999 *Declaratory Ruling* that it might be unwise to rely on the continued receipt of reciprocal compensation for ISP-bound traffic, thus many have begun the process of weaning themselves from these revenues.

85. The rate caps adopted herein reflect all these considerations. The caps we have selected approximate the downward trend in intercarrier compensation rates reflected in recently negotiated interconnection agreements. In these agreements, carriers have agreed to rates, like those we adopt here, that decline each year of a three-year contract term, and at least one agreement reflects different rates for balanced and unbalanced traffic.[158] For example, the initial rate cap of $.0015/mou approximates the rates applicable this year in agreements Level 3 has negotiated with Verizon and SBC.[159] The $.0010/mou rate that applies during most of the three-year interim period reflects a proposal by ALTS, the trade association representing CLECs, for a transition plan pursuant to which intercarrier compensation payments for ISP-bound traffic would decline to $.0010/mou.[160] Similarly, the $.0007/mou rate reflects the average rate applicable in 2002 under Level 3's agreement with SBC.[161] We conclude, therefore, that the rate caps constitute a reasonable transition toward the recovery of costs from end-users.

86. We impose an overall cap on ISP-bound minutes for which compensation is due in order to ensure that growth in dial-up Internet access does not undermine our efforts to limit

(Continued from previous page)
Communications announcing planned deployment of next-generation switching technology "at a fraction of the cost of traditional equipment"); *see also infra* para. 93.

[158] The Commission takes notice of the following interconnection agreements: (1) Level 3 Communications and SBC Communications (effective through May 2003): This 13-state agreement has two sets of rates. For balanced traffic, the rate is $.0032/mou. For traffic that is out of balance by a ratio exceeding 3:1, the rate starts at $.0018/mou, declining to a weighted average rate of $.0007/mou by June 1, 2002. *See* PR Newswire, WL PRWIRE 07:00:00 (Jan. 17, 2001); Letter from John T. Nakahata, Harris, Wiltshire & Grannis, to Magalie Roman Salas, Secretary, FCC, Attachment (Jan. 19, 2001). (2) ICG Communications and BellSouth (retroactively effective to Jan. 1, 2000): This agreement provides for rates to decline over three years, from $0.002/mou to $0.00175/mou to $0.0015/mou. *See* Communications Daily, 2000 WL 4694709 (Mar. 15, 2000). (3) KMC Telecom and BellSouth: This agreement provides for a rate of $0.002/mou in 2000, $0.00175/mou in 2001, $0.0015/mou in 2002. *See* Business Wire, WL 5/18/00 BWIRE 12:50:000 (May 18, 2000). (4) Level 3 Communications and Verizon (formerly Bell Atlantic) (effective Oct. 14, 1999): This agreement governs all of the former Bell Atlantic/NYNEX states. The applicable rate declines over the term of the agreement from $.003/mou in 1999 to rates in 2001 of $.0015/mou for balanced traffic and $.0012/mou where the traffic imbalance exceeds a 10:1 ratio. *See* Letter from Joseph J. Mulieri, Bell Atlantic, to Magalie Roman Salas, Secretary, FCC (Nov. 22, 1999)(attaching agreement); *see also* Letter from John T. Nakahata, Harris, Wiltshire & Grannis, to Magalie Roman Salas, Secretary, FCC, at 2 (Jan. 4, 2001)(reciprocal compensation rate in most recent Level 3 – Verizon agreement is now $.0012/mou in all states except New York, where the rate is $.0015/mou).

[159] In the Level 3 – SBC agreement, the applicable rate is $.0018/mou for traffic that exceeds a 3:1 ratio; in the Level 3 – Verizon agreement, the applicable rate is $.0015/mou for balanced traffic and $.0012/mou for traffic that exceeds a 10:1 ratio. *See supra* note 158.

[160] *See* Letter from Jonathan Askin, ALTS, to Magalie Roman Salas, Secretary, FCC, at 3 (Dec. 19, 2000).

[161] *See supra* note 158.

intercarrier compensation for this traffic and to begin, subject to the conclusion of the *NPRM* proceedings, a smooth transition toward a bill and keep regime. A ten percent growth cap, for the first two years, seems reasonable in light of CLEC projections that the growth of dial-up Internet minutes will fall in the range of seven to ten percent per year.[162] We are unpersuaded by the ILECs' projections that dial-up minutes will grow in the range of forty percent per year,[163] but adoption of a cap on growth largely moots this debate. If CLECs have projected growth in the range of ten percent, then limiting intercarrier compensation at that level should not disrupt their customer relationships or their business planning. Nothing in this Order prevents any carrier from serving or indeed expanding service to ISPs, so long as they recover the costs of additional minutes from their ISP customers. The caps merely ensure that growth in minutes above the caps is based on a given carrier's ability to provide efficient and quality service to ISPs, rather than on a carrier's desire to reap an intercarrier compensation windfall.

87. We are not persuaded by arguments proffered by CLECs that requiring them to recover more of their costs from their ISP customers will render it impossible for CLECs profitably to serve ISPs or will lead to higher rates for Internet access.[164] First, as noted above, this compensation mechanism is fully consistent with the manner in which this Commission has directed ILECs to recover the costs of serving ISPs.[165] Moreover, the evidence in the record does not demonstrate that CLECs cannot compete for ISP customers in the growing number of states that have adopted bill and keep for ISP-bound traffic or that the cost of Internet access has increased in those states. Second, next-generation switching and other technological developments appear to be contributing to a decline in the costs of serving ISPs (and other customers).[166] Third, if reciprocal compensation merely enabled CLECs to recover the costs of serving ISPs, CLECs should be indifferent between serving ISPs and other customers. Instead, CLECs have not contradicted ILEC assertions that more than ninety percent of CLEC reciprocal compensation billings are for ISP-bound traffic,[167] suggesting that there may be a considerable margin between current reciprocal compensation rates and the actual costs of transport and

[162] *See, e.g.*, Letter from Jonathan Askin, ALTS, to Magalie Roman Salas, Secretary, FCC (Dec. 18, 2000) (offering evidence that dial-up traffic per household will grow only 7%/year from 1998 to 2003 and that dial-up household penetration will decline between 2000 and 2003); Letter from Jonathan Askin, ALTS, to Magalie Roman Salas, Secretary, FCC (Jan. 9, 2001)(citing, *inter alia*, Merrill Lynch estimate of 7% annual increased Internet usage per user between 1999 and 2003, and PricewaterhouseCoopers' study suggesting that Internet usage per user declined from 1999 to 2000).

[163] *See, e.g.*, Letter from Robert T. Blau, BellSouth, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC (Dec. 22, 2000) (forecasting 42% annual growth in total Internet access minutes between 2000 and 2003); *but see* Dan Beyers, "Internet Use Slipped Late Last Year," Washingtonpost.com, Feb. 22, 2001, at E10 (noting decline in average time spent online in 2000).

[164] *See, e.g.*, Time Warner Remand Comments at 4-5; Centennial Remand Comments at 2, 6-7.

[165] *Access Charge Reform Order*, 12 FCC Rcd at 16134; *MTS/WATS Market Structure Order*, 97 FCC 2d at 720-721.

[166] *See infra* para. 93

[167] *See* Letter from Robert T. Blau, BellSouth, *et al.*, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 4 (Nov. 3, 2000); SBC Remand Comments at 42, 51, 57

termination.[168] Finally, there is reason to believe that our failure to act, rather than the actions we take here, would lead to higher rates for Internet access, as ILECs seek to recover their reciprocal compensation liability, which they incur on a minute-of-use basis, from their customers who call ISPs.[169] Alternatively, ILECs might recover these costs from all of their local customers, including those who do not call ISPs.[170] There is no public policy rationale to support a subsidy running from all users of basic telephone service to those end-users who employ dial-up Internet access.[171]

88. We also are not convinced by the claim of CLECs that limiting intercarrier compensation for ISP-bound traffic will result in a windfall for the incumbent LECs.[172] The CLECs argue that the incumbents' local rates are set to recover the costs of originating and terminating calls and that the ILECs avoid termination costs when their end-users call ISP customers served by CLECs. The record does not establish that ILECs necessarily avoid costs when they deliver calls to CLECs,[173] and CLECs have not demonstrated that ILEC end-user rates are designed to recover from the originating end-user the costs of delivering calls to ISPs. The ILECs point out that, in response to their complaints about the costs associated with delivering traffic to ISPs, the Commission has directed them to seek permission from state regulators to raise the rates they charge *the ISPs*, an implicit acknowledgement that ILECs may not recover all of their costs from the originating end-user.[174]

---

[168] We do not suggest that it costs CLECs less to serve ISPs than other types of customers. New switching technologies make it less costly to serve *all* customers. If, however, costs are lower than prevailing reciprocal compensation rates, then CLECs are likely to target customers, such as ISPs, with predominantly incoming traffic, in order to maximize the resulting profit.

[169] *See, e.g.*, Verizon Remand Comments at 16.

[170] *Id.*

[171] Most CLECs assert that they compete with ILECs on service, not price, and that the rates they charge to ISPs are comparable to the ILEC rates for the same services. *See, e.g.*, Time Warner Remand Comments at 5. We acknowledge, however, that any CLECs that use reciprocal compensation payments to offer below cost service to ISPs may be unable to continue that practice under the compensation regime we adopt here. We reiterate that we see no public policy reason to maintain a subsidy running from ILEC end-users to ISPs and their customers.

[172] *See, e.g.*, Letter from Robert W. McCausland, Allegiance Telecom; Kelsi Reeves, Time Warner Telecom; Richard J. Metzger, Focal, R. Gerard Salemme, XO Communications; and Heather B. Gold, Intermedia; to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 6 (Oct. 20, 2000).

[173] *See, e.g.*, SBC Remand Reply Comments at 31-32 (explaining how an ILEC may incur additional switching and transport costs when its end-user customer calls an ISP served by a CLEC).

[174] *See Access Charge Reform Order*, 12 FCC Rcd at 16134; *see also MTS/WATS Market Structure Order*, 97 FCC 2d at 721 (the local business line rate paid by ISPs subsumes switching costs). Moreover, most states have adopted price cap regulation of local rates, in which case rates do not necessarily correlate to cost in the manner the CLECs suggest. *See* "Price Caps Standard Form of Telco Regulation in 70% of States," Communications Daily, 1999 WL 7580319 (Sept. 8, 1999).

3. Relationship to Section 251(b)(5)

89. It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payors,[175] while permitting them to exchange traffic at state reciprocal compensation rates, which are much higher than the caps we adopt here, when the traffic imbalance is reversed.[176] Because we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to "pick and choose" intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier. The rate caps for ISP-bound traffic that we adopt here apply, therefore, *only* if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5)[177] at the same rate. Thus, if the applicable rate cap is $.0010/mou, the ILEC must offer to exchange section 251(b)(5) traffic at that same rate. Similarly, if an ILEC wishes to continue to exchange ISP-bound traffic on a bill and keep basis in a state that has ordered bill and keep, it must offer to exchange all section 251(b)(5) traffic on a bill and keep basis.[178] For those incumbent LECs that choose *not* to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts.[179] This "mirroring" rule ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.

90. This is the correct policy result because we see no reason to impose different rates for ISP-bound and voice traffic. The record developed in response to the *Intercarrier Compensation NPRM* and the *Public Notice* fails to establish any inherent differences between the costs on any one network of delivering a voice call to a local end-user and a data call to an ISP.[180]

---

[175] The four largest incumbent LECs – SBC, BellSouth, Verizon, and Qwest – estimate that they owed over $2 billion in reciprocal compensation for ISP-bound traffic in 2000. *See, e.g.,* Letter from Robert T. Blau, BellSouth, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC (Jan. 16, 2001).

[176] More calls are made from wireless phones to wireline phones than vice-versa. The ILECs, therefore, are net recipients of reciprocal compensation from wireless carriers

[177] Pursuant to the analysis we adopt above, section 251(b)(5) applies to telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that is not interstate or intrastate access traffic delivered to an IXC or an information service provider, and to telecommunications traffic between a LEC and a CMRS provider that originates and terminates within the same MTA. *See supra* § IV.B.

[178] If, however, a state has ordered bill and keep for ISP-bound traffic only with respect to a particular interconnection agreement, as opposed to state-wide, we do not require the incumbent LEC to offer to exchange all section 251(b)(5) traffic on a bill and keep basis. This limitation is necessary so that an incumbent is not required to deliver all section 251(b)(5) in a state on a bill and keep basis even though it continues to pay compensation for most ISP-bound traffic in that state. *See, e.g.,* Letter from John W. Kure, Qwest, to Magalie Roman Salas, Secretary, FCC (April 2, 2001)(citing, for example, Washington state, where 16% of ISP-bound traffic is subject to bill and keep). In those states, the rate caps we adopt here will apply to ISP-bound traffic that is not subject to bill and keep under the particular interconnection agreement if the incumbent LEC offers to exchange all section 251(b)(5) traffic subject to those rate caps.

[179] ILECs may make this election on a state-by-state basis.

[180] Many commenters argue that there is, in fact, no difference between the cost and network functions involved in terminating ISP-bound calls and the cost and functions involved in terminating other calls to users of the public (continued....)

Assuming the two calls have otherwise identical characteristics (*e.g.*, duration and time of day), a LEC generally will incur the same costs when delivering a call to a local end-user as it does delivering a call to an ISP.[181] We therefore are unwilling to take any action that results in the establishment of separate intercarrier compensation rates, terms, and conditions for local voice and ISP-bound traffic.[182] To the extent that the record indicates that per minute reciprocal compensation rate levels and rate structures produce inefficient results, we conclude that the problems lie with this recovery mechanism in general and are not limited to any particular type of traffic.

91. We are not persuaded by commenters' claims that the rates for delivery of ISP-bound traffic and local voice traffic should differ because delivering a data call to an ISP is inherently less costly than delivering a voice call to a local end-user. In an attached declaration to Verizon's comments, William Taylor argues that reciprocal compensation rates may reflect switching costs associated with both originating and terminating functions, despite the fact that ISP traffic generally flows in only one direction.[183] If correct, however, this observation suggests a need to develop rates or rate structures for the transport and termination of *all* traffic that exclude costs associated solely with originating switching.[184] Mr. Taylor similarly argues that ISP-bound calls generally are longer in duration than voice calls, and that a per-minute rate structure applied to calls of longer duration will spread the fixed costs of these calls over more minutes, resulting in lower per-minute costs, and possible over recovery of the fixed costs incurred.[185] Any possibility of over recovery associated with calls (to ISPs or otherwise) of longer than average duration can be eliminated through adoption of rate structures that provide

(Continued from previous page)
switched telephone network. *See, e.g.*, AOL Comments at 10-12 ("there is absolutely no technical distinction, and therefore no cost differences, between the way an incumbent LEC network handles ISP-destined traffic and the way it handles other traffic within the reciprocal compensation framework."); AT&T Comments at 10-11 ("[T]here is no economic justification for subjecting voice and data traffic to different compensation rules." "ILECs have not demonstrated, and cannot demonstrate, that the costs of transporting and terminating data traffic differ categorically from the costs of transporting and terminating ordinary voice traffic."); Choice One Comments at 8 ("[C]osts do not vary significantly based on whether data or voice traffic is being transmitted."); Corecomm Reply at 2 (network functions are identical whether a carrier is providing service to an ISP or any other end-user); Cox Comments at 7 & Exhibit 2, Statement of Gerald W. Brock at 2 ("None of the distinctions between ISP calls and average calls relate to a cost difference for handling the calls."); MediaOne Comments at 4 (LECs incur the same costs for terminating calls to an ISP as they do for terminating any other local calls); Time Warner Comments at 9 ("[A]ll LECs perform the same functions when transporting and delivering calls to ISP end-users as they do when transporting and delivering calls to other end-users. When LECs perform the same functions, they incur the same costs."); Letter from Donald F. Shepheard, Time Warner Telecom, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC (Feb. 28, 2001)(disputing claim that CLEC switching costs are as low as the ILECs argue).

[181] *See, e.g.*, Cox Comments at Exhibit 2, Statement of Gerald W. Brock at 2.

[182] *See, e.g.*, Intermedia Comments at 3-4 (arguing that the rates for transport and termination of ISP-bound traffic must be identical to the rates established for the transport and termination of local traffic).

[183] *See* Verizon Remand Comments, Declaration of William E. Taylor at 14, 17.

[184] *See* Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 14. *See also* Letter from John W. Kure, Qwest, to Magalie Roman Salas, Secretary, FCC, Attachment at 7-8 (Oct. 26, 2000).

[185] *See* Verizon Remand Comments, Declaration of William E. Taylor at 14-15.

for recovery of per-call costs on a per-call basis, and minute-of-use costs on a minute-of-use basis.[186] We also are not convinced that ISP-bound calls have a lower load distribution (*i.e.*, number and duration of calls in the busy hour as a percent of total traffic), and that these calls therefore impose lower additional costs on a network.[187] It is not clear from the record that there is any "basis to speculate that the busy hour for calls to ISPs will be different than the CLEC switch busy hour,"[188] especially when the busy hour is determined by the flow of both voice and data traffic.

92. Nor does the record demonstrate that CLECs and ILECs incur different costs in delivering traffic that would justify disparate treatment of ISP-bound traffic and local voice traffic under section 251(b)(5). Ameritech maintains that it costs CLECs less to deliver ISP-bound traffic than it costs incumbent LECs to deliver local traffic because CLECs can reduce transmission costs by locating their switches close to ISPs.[189] The proximity of the ISP or other end-user to the delivering carrier's switch, however, is irrelevant to reciprocal compensation rates.[190] The Commission concluded in the *Local Competition Order* that the non-traffic sensitive cost of the local loop is not an "additional" cost of terminating traffic that a LEC is entitled to recover through reciprocal compensation.[191]

93. SBC argues that CLECs should not be entitled to symmetrical reciprocal compensation rates for the delivery of ISP-bound traffic, because CLECs do not provide end office switching functionality to their ISP customers and therefore do not incur the same costs that ILECs incur when delivering local voice traffic. Specifically, SBC claims that the switching functionality that CLECs provide to ISPs is more like a trunk-to-trunk connection than the switching functionality normally provided at end offices.[192] SBC also claims that CLECs are able to reduce the costs of delivering ISP-bound traffic by using new, less expensive switches that do not perform the functions necessary for both the origination and delivery of two-way voice traffic.[193] Similarly, GTE asserts that new technologies and system architectures make it possible for some CLECs to reduce costs by entirely avoiding circuit-switching on calls "to selected

[186] *See* Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 10-11. Time Warner also disputes that the "average duration of calls to ISPs has been accurately measured to date." *Id.* at 11.

[187] *See* Verizon Remand Comments, Declaration of William E. Taylor at 17-18.

[188] *See* Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 14-15.

[189] *See* Letter from Gary L. Phillips, Ameritech, to Magalie Roman Salas, Secretary, FCC, Attachment at 5 (Sept. 14, 1999). *See also* SBC Remand Comments at 32-33 (referring to Global NAPS Comments, Exhibit 1, Statement of Fred Goldstein at 6, which describes CLEC reduction of loop costs through collocation); Letter from Melissa Newman, U S West, to Magalie Roman Salas, Secretary, FCC, Attachment at 8 (Dec. 2, 1999).

[190] *See* Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 25.

[191] *See Local Competition Order*, 11 FCC Rcd at 16025.

[192] SBC Remand Comments at 33.

[193] SBC Remand Comments at 33-34 (referring, *inter alia*, to "managed modem" switches).

telephone numbers."[194] CLECs respond, however, that they are in fact using the same circuit switching technology used by ILECs to terminate the vast portion of Internet traffic.[195] In any event, it is not evident from any of the comments in the record that the apparent efficiencies associated with new system architectures apply exclusively to data traffic, and not to voice traffic as well. ILECs and CLECs alike are free to deploy new technologies that provide more efficient solutions to the delivery of certain types of traffic,[196] and these more efficient technologies will, over time, be reflected in cost-based reciprocal compensation rates. The overall record in this proceeding does not lead us to conclude that any system architectures or technologies widely used by LECs result in material differences between the cost of delivering ISP-bound traffic and the cost of delivering local voice traffic, and we see no reason, therefore, to distinguish between voice and ISP traffic with respect to intercarrier compensation.

94. Some CLECs take this argument one step further. Whatever the merits of bill and keep or other reforms to intercarrier compensation, they say, any such reform should be undertaken only in the context of a comprehensive review of *all* intercarrier compensation regimes, including the interstate access charge regime.[197] First, we reject the notion that it is inappropriate to remedy some troubling aspects of intercarrier compensation until we are ready to solve all such problems. In the most recent of our access charge reform orders, we recognized that it is "preferable and more reasonable to take several steps in the right direction, even if incomplete, than to remain frozen" pending "a perfect, ultimate solution."[198] Moreover, it may

[194] GTE Comments at 7-8 (noting the existence of SS7 bypass devices that can avoid circuit switching and arguing that competitive LEC networks are far less complex and utilize fewer switches than incumbent LEC networks); GTE Reply Comments at 16 (compensating competitive LECs based on an incumbent LEC's costs inflates the revenue that competitive LECs receive); Letter from W. Scott Randolph, GTE, to Magalie Roman Salas, Secretary, FCC, Attachment (Dec. 8, 1999 (new generation traffic architectures may use SS7 Gateways instead of more expensive circuit-switched technology).

[195] *See, e.g.*, Letter from John D. Windhausen, Jr., ALTS, and H. Russell Frisby, Jr., CompTel, to Kyle Dixon, Legal Advisor, Chairman Michael Powell, FCC, at 4-5 (March 16, 2001)(Focal is testing two softswitches, but as of now all ISP-bound traffic terminated by Focal uses traditional circuit switches; Allegiance Telecom has a single softswitch in its network; Advanced Telecom Group, Inc. is in the testing phase of softswitch deployment; Pac-West Telecomm, Inc., does not have any softswitches in its network; e.spire uses only circuit switches to terminate ISP-bound traffic);Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 27 (Time Warner is "deploying fully functional end office switches"); Letter from Donald F. Shepheard, Time Warner, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 3 (February 28, 2001)(Time Warner "does not provide managed modem services." Like the ILECs, Time Warner "has an extensive network of circuit switched technology" and has only just begun to deploy softswitches); Letter from Teresa Marrero, AT&T, to Magalie Roman Salas, Secretary, FCC, at 1 (April 11, 2001)("Virtually all of AT&T's ISP-bound traffic is today terminated using full circuit switches.").

[196] *See* Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 28; *see also* Letter from Donald F. Shepheard, Time Warner, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 3 (Feb. 28, 2001)("if softswitch technology will lower carriers' costs, then all carriers, including the ILECs[,] will have incentive to deploy them"); Letter from John D. Windhausen, Jr., ALTS, and H. Russell Frisby, Jr., CompTel, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 4 (February 16, 2001)(same).

[197] *See, e.g.*, Letter from Karen L. Gulick, Harris, Wiltshire & Grannis, to Magalie Roman Salas, Secretary, FCC, at 1 (Dec. 22, 2000).

[198] *See CALLS Order*, 15 FCC Rcd at 12974.

make sense to begin reform by rationalizing intercarrier compensation between competing providers of telecommunications services, to encourage efficient entry and the development of robust competition, rather than waiting to complete reform of the interstate access charge regime that applies to incumbent LECs, which was created in a monopoly environment for quite different purposes. Second, the interim compensation scheme we adopt here is fully consistent with the course the Commission has pursued with respect to access charge reform. A primary feature of the *CALLS Order* is the phased elimination of the PICC and CCL,[199] two intercarrier payments we found to be inefficient, in favor of greater recovery from end-users through an increased SLC, an end-user charge.[200] Finally, like the *CALLS Order*, the interim regime we adopt here "provides relative certainty in the marketplace" pending further Commission action, thereby allowing carriers to develop business plans, attract capital, and make intelligent investments.[201]

D. Conclusion

95. In this Order, we strive to balance the need to rationalize an intercarrier compensation scheme that has hindered the development of efficient competition in the local exchange and exchange access markets with the need to provide a fair and reasonable transition for CLECs that have come to depend on intercarrier compensation revenues. We believe that the interim compensation regime we adopt herein responds to both concerns. The regime should reduce carriers' reliance on carrier-to-carrier payments as they recover more of their costs from end-users, while avoiding a "flash cut" to bill and keep which might upset legitimate business expectations. The interim regime also provides certainty to the industry during the time that the Commission considers broader reform of intercarrier compensation mechanisms in the *NPRM* proceeding. Finally, we hope this Order brings an end to the legal confusion resulting from the Commission's historical treatment of ISP-bound traffic, for purposes of jurisdiction and compensation, and the statutory obligations and classifications adopted by Congress in 1996 to promote the development of competition for all telecommunications services. We believe the analysis set forth above amply responds to the court's mandate that we explain how our conclusions regarding ISP-bound traffic fit within the governing statute.[202]

---

[199] The PICC, or presubscribed interexchange carrier charge, and the CCLC, carrier common line charge, are charges levied by incumbent LECs upon IXCs to recover portions of the interstate-allocated cost of subscriber loops. *See* 47 C.F.R. §§ 69.153, 69.154.

[200] *CALLS Order*, 15 FCC Rcd at 12975 (permitting a greater proportion of the local loop costs of primary residential and single-line business customers to be recovered through the SLC).

[201] *CALLS Order*, 15 FCC Rcd at 12977 (The CALLS proposal is aimed to " bring lower rates and less confusion to consumers; and create a more rational interstate rate structure. This, in turn, will support more efficient competition, more certainty for the industry, and permit more rational investment decisions.")

[202] *Bell Atlantic*, 206 F.3d at 8.

V. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

96. As required by the Regulatory Flexibility Act (RFA),[203] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Declaratory Ruling and NPRM*.[204] The Commission sought and received written comments on the IRFA. The Final Regulatory Flexibility Analysis (FRFA) in this Order on Remand and Report and Order conforms to the RFA, as amended.[205] To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules, or statements made in preceding sections of this Order on Remand and Report and Order, the rules and statements set forth in those preceding sections shall be controlling.

1. Need for, and Objectives of, this Order on Remand and Report and Order

97. In the *Declaratory Ruling*, we found that we did not have an adequate record upon which to adopt a rule regarding intercarrier compensation for ISP-bound traffic, but we indicated that adoption of a rule would serve the public interest.[206] We sought comment on two alternative proposals, and stated that we might issue new rules or alter existing rules in light of the comments received.[207] Prior to the release of a decision, the Court of Appeals for the District of Columbia Circuit vacated certain provisions of the *Declaratory Ruling* and remanded the matter to the Commission.[208]

98. This Order on Remand and Report and Order addresses the concerns of various parties to this proceeding and responds to the court's remand. The Commission exercises jurisdiction over ISP-bound traffic pursuant to section 201, and establishes a three-year interim intercarrier compensation mechanism for the exchange of ISP-bound traffic that applies if incumbent LECs offer to exchange section 251(b)(5) traffic at the same rates. During this interim period, intercarrier compensation for ISP-bound traffic is subject to a rate cap that declines over the three-year period, from $.0015/mou to $.0007/mou. The Commission also imposes a cap on the total ISP-bound minutes for which a LEC may receive this compensation under a particular interconnection agreement equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to receive compensation during the first quarter of 2001, increased

---

[203] *See* 5 U.S.C. § 603

[204] *Declaratory Ruling*, 14 FCC Rcd at 3710-13.

[205] *See* 5 U.S.C. § 604. The Regulatory Flexibility Act, 5 U.S.C. § 601 *et. seq.*, was amended by the "Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), which was enacted as Title II of the Contract With America Advancement Act of 1996, Pub.L. No. 104-121, 110 Stat. 847 (1996) (CWAAA).

[206] *Declaratory Ruling and Intercarrier Compensation NPRM*, 14 FCC Rcd at 3707.

[207] *Declaratory Ruling and Intercarrier Compensation NPRM*, 14 FCC Rcd at 3711.

[208] *See Bell Atlantic*, 206 F.3d 1.

by ten percent in each of the first two years of the transition. If an incumbent LEC does not offer to exchange all section 251(b)(5) traffic subject to the rate caps set forth herein, the exchange of ISP-bound traffic will be governed by the reciprocal compensation rates approved or arbitrated by state commissions.

2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

99. The Office of Advocacy, U.S. Small Business Administration (Office of Advocacy) submitted two filings in response to the IRFA.[209] In these filings, the Office of Advocacy raises significant issues regarding our description, in the IRFA, of small entities to which our rules will apply, and the discussion of significant alternatives considered and rejected. Specifically, the Office of Advocacy argues that the Commission has failed accurately to identify all small entities affected by the rulemaking by refusing to characterize small incumbent local exchange carriers (LECs), and failing to identify small ISPs, as small entities.[210] We note that, in the IRFA, we stated that we excluded small incumbent LECs from the definitions of "small entity" and "small business concern" because such companies are either dominant in their field of operations or are not independently owned and operated.[211] We also stated, however, that we would nonetheless, out of an abundance of caution, include small incumbent LECs in the IRFA, and did so.[212] Small incumbent LECs and other relevant small entities are included in our present analysis as described below.

100. The Office of Advocacy also states that Internet service providers (ISPs) are directly affected by our actions, and therefore should be included in our regulatory flexibility analysis. We find, however, that rates charged to ISPs are only indirectly affected by our actions. We have, nonetheless, briefly discussed the effect on ISPs in the primary text of this Order.[213]

101. Last, the Office of Advocacy also argues that the Commission has failed to adequately address significant alternatives that accomplish our stated objective and minimize any significant economic impact on small entities.[214] We note that, in the IRFA, we described the nature and effect of our proposed actions, and encouraged small entities to comment (including giving comment on possible alternatives). We also specifically sought comment on the two alternative proposals for implementing intercarrier compensation – one that resolved intercarrier compensation pursuant to the negotiation and arbitration process set forth in Section 252, and

---

[209] Office of Advocacy, U.S. Small Business Administration *ex parte*, May 27, 1999; Office of Advocacy, U.S. Small Business Administration *ex parte*, June 14, 1999.

[210] Office of Advocacy, U.S. Small Business Administration *ex parte*, May 27, 1999, at 1-3; Office of Advocacy, U.S. Small Business Administration *ex parte*, June 14, 1999, at 2-3.

[211] *Declaratory Ruling and Intercarrier Compensation NPRM*, 14 FCC Rcd at 3711.

[212] *Declaratory Ruling and Intercarrier Compensation NPRM*, 14 FCC Rcd at 3711.

[213] *See supra* paras. 87-88.

[214] Office of Advocacy, U.S. Small Business Administration *ex parte*, June 14, 1999, at 3.

another that would have had us adopt a set of federal rules to govern such intercarrier compensation.[215] We believe, therefore, that small entities had a sufficient opportunity to comment on alternative proposals.

102. NTCA also filed comments, not directly in response to the IRFA, urging the Commission to fulfill its obligation to consider small telephone companies.[216] Some commenters also raised the issue of small entity concerns over increasing Internet traffic and the use of Extended Area Service (EAS) arrangements.[217] We are especially sensitive to the needs of rural and small LECs that handle ISP-bound traffic, but we find that the costs that LECs incur in *originating* this traffic extends beyond the scope of the present proceeding and should not dictate the appropriate approach to compensation for *delivery* of ISP-bound traffic.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

103. The rules we are adopting apply to local exchange carriers. To estimate the number of small entities that would be affected by this economic impact, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction."[218] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[219] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.[220] The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.[221]

104. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Carrier Locator report, derived from filings made in connection with the Telecommunications Relay Service (TRS).[222]

---

[215] *Declaratory Ruling [IRFA]*, 14 FCC Rcd at 3711 (para. 39); *see also Declaratory Ruling*, 14 FCC Rcd at 3707-08 (paras. 30-31).

[216] NTCA Comments at vi, 15.

[217] *See, e.g.*, ICORE Comments at 1-7; IURC Comments at 7; Richmond Telephone Company Comments at 1-8.

[218] 5 U.S.C. § 601(6).

[219] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

[220] 15 U.S.C. § 632.

[221] 13 C.F.R. § 121.201.

[222] FCC, Carrier Locator, Interstate Service Providers, Figure 1 (Jan. 2000) (*Carrier Locator*).

According to data in the most recent report, there are 4,144 interstate carriers.[223] These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

105. We have included small incumbent local exchange carriers (LECs) in this regulatory flexibility analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[224] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[225] We have therefore included small incumbent LECs in this regulatory flexibility analysis, although we emphasize that this action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

106. Total Number of Telephone Companies Affected. The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[226] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."[227] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rule changes adopted in this proceeding.

---

[223] *Carrier Locator* at Fig. 1.

[224] 5 U.S.C. § 601(3).

[225] Office of Advocacy, U.S. Small Business Administration *ex parte*, May 27, 1999, at 1-3; Office of Advocacy, U.S. Small Business Administration *ex parte*, June 14, 1999, at 2-3. The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g.*, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

[226] United States Department of Commerce. Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (*1992 Census*).

[227] 15 U.S.C. § 632(a)(1).

107. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[228] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[229] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rule changes adopted in this proceeding.

108. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition particular to small LECs, interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[230] According to our most recent TRS data, there are 1,348 incumbent LECs and 212 CAPs and competitive LECs.[231] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 1,348 incumbent LECs and fewer than 212 CAPs and competitive LECs that may be affected by the decisions and rule changes adopted in this proceeding.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

109. The rule we are adopting imposes direct compliance requirements on interconnected incumbent and competitive LECs, including small LECs. In order to comply with this rule, these entities will be required to exchange their ISP-bound traffic subject to the rules we are adopting above.

---

[228] *1992 Census* at Firm Size 1-123.

[229] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4813.

[230] 13 C.F.R. § 121.201, SIC Code 4813.

[231] *Carrier Locator* at Fig. 1

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

110. In the *Declaratory Ruling and Intercarrier Compensation NPRM* the Commission proposed various approaches to intercarrier compensation for ISP-bound traffic.[232] During the course of this proceeding the Commission considered and rejected several alternatives.[233] None of the significant alternatives considered would appear to succeed as much as our present rule in balancing our desire to minimize any significant economic impact on relevant small entities, with our desire to deal with the undesirable incentives created under the current reciprocal compensation regime that governs the exchange of ISP-bound traffic in most instances. We also find that for small ILECs and CLECs the administrative burdens and transaction costs of intercarrier compensation will be minimized to the extent that LECs begin a transition toward recovery of costs from end-users, rather than other carriers.

111. Although a longer transition period was considered by the Commission, it was rejected because a three-year period was considered sufficient to accomplish our policy objectives with respect to all LECs.[234] Differing compliance requirements for small LECs or exemption from all or part of this rule is inconsistent with our policy goal of addressing the market distortions attributable to the prevailing intercarrier compensation mechanism for ISP-bound traffic and beginning a smooth transition to bill-and-keep.

Report to Congress: The Commission will send a copy of this Order on Remand and Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[235] In addition, the Commission will send a copy of this Order on Remand and Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order on Remand and Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.[236]

VI. ORDERING CLAUSES

112. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i) and (j), 201-209, 251, 252, 332, and 403 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-209, 251, 252, 332, and 403, and Section 553 of Title 5, United States Code, 5 U.S.C. § 553, that this Order on Remand and Report and Order and revisions to Part 51 of the Commission's rules, 47 C.F.R. Part 51, ARE ADOPTED. This Order on Remand and Report and Order and the rule revisions adopted herein will be effective 30 days after publication in the Federal Register except that, for good cause shown, as set forth in paragraph 82 of this Order, the

---

[232] *Declaratory Ruling*, 14 FCC Rcd at 3707-10.

[233] *See supra* paras. 67-76 (rejecting application of a reciprocal compensation mechanism to ISP-bound traffic).

[234] We note, however, that the interim regime we adopt here governs for 36 months or until further action by the Commission, *whichever is longer*.

[235] 5 U.S.C § 801(a)(1)(A).

[236] *See* 5 U.S.C. § 604(b).

provision of this Order prohibiting carriers from invoking section 252(i) of the Act to opt into an existing interconnection agreement as it applies to rates paid for the exchange of ISP-bound traffic will be effective immediately upon publication of this Order in the Federal Register.

113. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Order on Remand and Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

Appendix A
List of Commenters in CC Docket Nos. 96-98, 99-68

Comments Filed in Response to the June 23, 2000 Public Notice

Advanced TelCom Group, Inc.; e.spire Communications, Inc.; Intermedia Communications, Inc.; KMC Telecom, Inc.; Nextlink Communications, Inc.; The Competitive Telecommunications Association
Alliance for Public Technology
Association of Communications Enterprises
Association for Local Telecommunications Services
AT&T Corp. (AT&T)
BellSouth Corporation
Cablevision Lightpath, Inc.
California State and California Public Utilities Commission
Centennial Communications Corp. (Centennial)
Florida Public Service Commission
Focal Communications Corporation, Allegiance Telecom, Inc., and Adelphia Business Solutions, Inc.
General Services Administration
Global NAPs, Inc.
ICG Telecom Group, Inc.
Keep America Connected; National Association of the Deaf; National Association of Development Organizations; National Black Chamber of Commerce; New York Institute of Technology; Ocean of Know; Telecommunications for the Deaf, Inc.; United States Hispanic Chamber of Commerce
Massachusetts Department of Telecommunications & Energy
Missouri Public Service Commission
National Consumers League
National Exchange Carrier Association, Inc.
New York Department of Public Service
Pac-West Telecomm, Inc.
Pennsylvania Office of Consumer Advocate
Prism Communications Services, Inc.
Qwest Corporation
RCN Telecom Services, Inc. and Connect Communications Corporation
RNK, Inc.
Rural Independent Competitive Alliance
SBC Communications, Inc. (SBC)
Sprint Corporation (Sprint)
Texas Public Utility Commission
Time Warner Telecom Inc. (Time Warner)
United States Telecom Association
Verizon Communications (Verizon)
Western Telephone Integrated Communications, Inc.
WorldCom, Inc.

Reply Comments Filed in Response to the June 23, 2000 Public Notice

Adelphia Business Solutions, Inc.; Allegiance TeleCom, Inc., Focal Communications Corporation, and RCN Telcom Services, Inc.
AT&T Corp.
BellSouth Corporation
Cablevision Lightpath, Inc.
Cincinnati Bell Telephone Company
Commercial Internet Exchange Association
Converscent Communications, LLC
Covad Communication Company
Duckenfield, Pace
e.spire Communications, Inc., Intermedia Communications Inc., KMC Telecom, Inc., NEXTLINK Communications, Inc., The Association for Local Telecommunications Services, and The Competitive Telecommunications Association
General Services Administration
Global NAPs, Inc.
ICG Telecom Group, Inc.
Keep America Connected; National Association of Development Organizations; National Black Chamber of Commerce; New York Institute of Technology; United States Hispanic Chamber of Commerce
Pac-West Telecomm, Inc.
Prism Communications Services, Inc.
Qwest Corporation
Riter, Josephine
SBC Communications, Inc. (SBC)
Sprint Corporation
Time Warner Telecom Inc. (Time Warner)
US Internet Industry Association
United States Telecom Association
Verizon Communications (Verizon)
Western Telephone Integrated Communications, Inc.
WorldCom, Inc.

Comments Filed in Response to the February 26, 1999 Notice of Proposed Rulemaking

Airtouch Paging
America Online, Inc. (AOL)
Ameritech
Association for Local Telecommunications Services
AT&T Corp. (AT&T)
Baldwin, Jesse
Bardsley, June
Bell Atlantic Corporation
BellSouth Corporation
Cablevision Lightpath, Inc.
California Public Utilities Commission
Choice One Communications (Choice One)
Cincinnati Bell Telephone Company
Commercial Internet eXchange Association
Competitive Telecommunications Association)
Corecomm Limited
Cox Communications, Inc. (Cox)
CT Cube, Inc. & Leaco Rural Telephone Cooperative, Inc.
CTSI, Inc.
Florida Public Service Commission
Focal Communications Corporation
Frontier Corporation
General Communication, Inc.
General Services Administration
Global NAPs Inc.
GST Telecom, Inc.
GTE Services Corporation (GTE)
GVNW Consulting, Inc.
Hamilton, Dwight
ICG Communications
ICORE, Inc.
Indiana Utility Regulatory Commission
Information Technology Association of America
Intermedia Communications Inc. (Intermedia)
Keep America Connected: Federation of Hispanic Organizations of the Baltimore Metropolitan Area, Inc; Latin American Women and Supporters; League of United Latin American Citizens; Massachusetts Assistive Technology Partnership; National Association of Commissions for Women; National Association of Development Organizations; National Hispanic Council on Aging; New York Institute of Technology; Resources for Independent Living; Telecommunications Advocacy Project; The Child Health Foundation; The National Trust for the Development of African American Men; United Homeowners Association; United Seniors Health Cooperative
KMC Telecom Inc.
Lewis, Shawn
Lloyd, Kimberly, D.

MCI WorldCom, Inc.
MediaOne Group (Media One)
Miner, George
Missouri Public Service Commission
National Telephone Cooperative Association
New York State Department of Public Service
Pennsylvania Public Utility Commission
Personal Communications Industry Assoc.
Public Utility Commission of Texas
Prism Communications Services, Inc.
RCN Telecom Services, Inc.
Reinking, Jerome C.
Richmond Telephone Company
RNK Inc.
SBC Communications
Schaefer, Karl W.
Sefton, Tim
Shook, Ofelia E.
Sprint Corporation
John Staurulakis, Inc.
Telecommunications Resellers Association
Telephone Association of New England
Thomas, William J.
Time Warner Telecom Inc. (Time Warner)
United States Telephone Association
Verio Inc.
Vermont Public Service Board
Virgin Islands Telephone Corporation
Wisconsin State Telecommunications Association

Reply Comments Filed in Response to the February 26, 1999 Notice of Proposed Rulemaking

Airtouch Paging
Ameritech
Association for Local Telecommunications Services
AT&T Corp.
Bell Atlantic Corporation
BellSouth Corporation and BellSouth Telecommunications, Inc.
Competitive Telecommunications Association
Corecomm Limited (CoreComm)
Cox Communications, Inc. (Cox)
Focal Communications Corporation
General Services Administration
Global NAPs Inc.
GST Telecom Inc.
GTE Services Corporation (GTE)
GVNW Consulting, Inc.

ICG Communications, Inc
Illinois Commerce Commission
Intermedia Communications Inc.
KMC Telecom Inc.
MCI WorldCom, Inc.
National Exchange Carrier Association, Inc.
National Telephone Cooperative Association
Network Plus, Inc.
New York State Department of Public Services
Pac-West Telecomm., Inc.
Pennsylvania Public Utility Commission
Personal Communications Industry Association
Prism Communications Services, Inc.
Public Service Commission of Wisconsin
RCN Telecom Services
RNK Telecom
SBC Communications, Inc.
Sprint Corporation
Supra Telecommunications & Information Systems, Inc.
TDS Telecommunications Corporation
Time Warner Telecom
United States Telephone Association
US West Communications, Inc.
Verio Inc.
Virgin Islands Telephone Corporation
Wyoming Public Service Commission

Appendix B – Final Rules

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

Part 51, Subpart H, of Title 47 of the Code of Federal Regulations (C.F.R.) is amended as follows:

1. The title of part 51, Subpart H, is revised to read as follows:

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

2. Section 51.701(b) is revised to read as follows:

(a) **§ 51.701 Scope of transport and termination pricing rules.**

*****

(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, paras. 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.

3. Sections 51.701(a), 51.701(c) through (e), 51.703, 51.705, 51.707, 51.709, 51.711, 51.713, 51.715, and 51.717 are each amended by striking "local" before "telecommunications traffic" each place such word appears.

SEPARATE STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic (CC Docket Nos. 96-98, 99-68)

In this *Order*, we re-affirm our prior conclusion that telecommunications traffic delivered to Internet service providers (ISPs) is subject to our jurisdiction under section 201 of the Act. Thus, we reject arguments that section 251(b)(5) applies to this traffic. I firmly believe that this *Order* is supported by reasonable interpretations of statutory provisions that read together are ambiguous and, absent a reconciling interpretation, conflicting.

I also support the fact that this *Order*, for the first time, establishes a transition mechanism that will gradually wean competitive carriers from heavy reliance on the excessive reciprocal compensation charges that incumbents have been forced to pay these competitors for carrying traffic from the incumbent to the ISP. This transition mechanism was carefully crafted to balance the competing interests of incumbent and competitive telephone companies and other parties, so as not to undermine the Act's goal of promoting efficient local telephone competition.

I write separately only to emphasize a few points:

As an initial matter, I respectfully disagree with the objections to our conclusion that section 251(g) "carves out" certain categories of services that, in the absence of that provision, would likely be subject to the requirements of section 251(b)(5).[1] Section 251(b)(5)'s language first appears to be far-reaching, in that it would seem to apply, by its express terms, to all "telecommunications."[2] There is apparently no dispute, however, that at least one category of the LEC-provided telecommunications services enumerated in section 251(g) (namely, "exchange access") is not subject to section 251(b)(5), despite the broad language of this provision. Indeed, the *Bell Atlantic* Court appears to have endorsed that conclusion.[3] The question then arises whether the other categories of traffic that are enumerated in section 251(g) (including, "information access") should also be exempted from the application of section 251(b)(5). We answer this question in the affirmative, and no justification (compelling or otherwise) has been offered for why only one service – exchange access – should be afforded disparate treatment in the construction of section 251(g). I would note, moreover, that on the only other occasion in

---

[1] To be more precise, section 251(g) refers to certain categories of service *provided by LECs to ISPs and interexchange carriers.* 47 U.S.C. § 251(g). In this statement, I use a short-hand reference to the "categories of services" enumerated in section 251(g).

[2] 47 U.S.C. § 251(b)(5).

[3] *See cf. Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1, 4 (D.C. Cir. 2000) ("Although [section] 251(b)(5) purports to extend reciprocal compensation to all 'telecommunications,' the Commission has construed the reciprocal compensation requirement as limited to local traffic."). The Court then went on to conclude that the Commission had not provided an adequate explanation of why LECs that carry traffic to ISPs are providing "'exchange access,' rather than 'telephone exchange service.'" *Id.* at 9. The Court does not appear to have questioned anywhere in its opinion the notion that the scope of the reciprocal compensation requirement does not extend to certain categories of LEC-provided services, including "exchange access."

which the Commission directly addressed the question whether section 251(g) serves as such a "carve-out," the Commission concluded, as we do here, that it does perform that function.[4]

Nor do I find the position we adopt here irreconcilable with our decision in the *Advanced Services Remand Order*.[5] In discussing the term "information access" in that *Order*, we were not addressing the question whether section 251(g) exempts certain categories of traffic provided by LECs to ISPs and interexchange carriers from the other requirements of section 251. Rather, we addressed only the relationship between "information access" and the categories of "exchange access" and "telephone exchange service." Specifically, we "decline[d] to find that information access services are a separate category of services, distinct from, and mutually exclusive with, telephone exchange and exchange access services."[6] But under the reading of section 251(g) put forth in this *Order*, the question whether information access is distinct from these other services is irrelevant. Because information access is specifically enumerated in section 251(g), it is not subject to the requirements of section 251(b)(5), whether or not that category of service overlaps with, or is distinct from, telephone exchange service or exchange access.

Similarly, I reject the suggestion that section 251(g) *only* preserves the MFJ requirements. The language of section 251(g) specifically refers to "each local exchange carrier," not just to the Bell Operating Companies.[7] Section 251(g) also expressly refers to any "regulation, order, or policy of the Commission."[8] Such clauses support the reading of section 251(g) that we adopt today.[9]

Finally, I disagree that section 251(g) cannot be construed to exempt certain categories of traffic from the requirements of section 251(b)(5), simply because the former provision does not include the words "exclude" or "reciprocal compensation" or "telecommunications."[10] As I have said, our reading that the categories of LEC-provided services enumerated in subsection (g) are exempted from reciprocal compensation arises from our duty to give effect to both section 251(g)

---

[4] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Dkt. Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499 (1996), ¶ 1034.

[5] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dkt. Nos. 98-147 et al., Order on Remand, 15 FCC Rcd 385 (1999) (*Advanced Services Remand Order*); *see also WorldCom, Inc. v. FCC*, No. 00-1002 (D.C. Cir. filed Apr. 20, 2001) (affirming *Advanced Services Remand Order* on one of the alternative grounds proffered by the Commission).

[6] *Advanced Services Remand Order*, 15 FCC Rcd at 406, ¶ 46.

[7] 47 U.S.C. § 251(g).

[8] *Id.*

[9] Had the language of section 251(g) been limited to the Bell Companies or to court orders and consent decrees, for example, perhaps one could construct an argument that Congress meant to limit the scope of section 251(g) to the MFJ requirements

[10] Section 251(b)(5) states that all LECs must "establish *reciprocal compensation* arrangements for the transport and termination of *telecommunications*." 47 U.S.C. § 251(g) (emphasis added).

and section 251(b)(5). I also would point out that section 251(g) does include a specific reference to "receipt of compensation," just as the services enumerated in that section (e.g., exchange access, information access) undeniably involve telecommunications.[11]

In closing, I would only reiterate that the statutory provisions at issue here are ambiguous and, absent a reconciling interpretation, conflicting. Thus, the Commission has struggled long and hard in an effort to give as full a meaning as possible to each of the provisions in a manner we conclude is consistent with the statutory purpose. It would not be overstating matters to acknowledge that these issues are highly complex, disputed and elusive, and that what we decide here will have enormous impact on the development of new technologies and the economy more broadly. It is for their relentless efforts to wrestle with (and now resolve) these issues that I am deeply grateful to my colleagues and our able staff.

[11] As the *Order* suggests, Section 251(g) enumerates "exchange access," "information access" and "exchange services for such access." 47 U.S.C. § 251(g). For purposes of subsection (g), all of these services are provided by LECs to "interexchange carriers and information service providers." These three categories undeniably involve telecommunications. "Information access" was defined in the MFJ as "the provision of specialized exchange *telecommunications* services" to information service providers. *United States v. AT&T*, 552 F. Supp. 131, 196, 229 (D.D.C. 1982). The term "exchange service" as used in section 251(g) is not defined in the Act or in the MFJ. Rather, the term "exchange service" is used in the MFJ as part of the definition of the term "exchange access," which the MFJ defines as "the provision of exchange services for the purposes of originating or terminating interexchange *telecommunications*." *United States v. AT&T*, F. Supp. at 228. Thus, the term "exchange service" appears to mean, in context, the provision of services in connection with *interexchange* communications. Consistent with that, in section 251(g), the term is used as part of the longer phrase "exchange services for such [exchange] access to interexchange carriers and information service providers." All of this indicates that the term "exchange service" is closely related to the provision of exchange access and information access, and that all three involve telecommunications.

DISSENTING STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re: *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, CC Docket Nos. 96-98, 99-68.

To some observers, the Telecommunications Act of 1996 ("1996 Act"), in general, and sections 251 and 252 (47 U.S.C. §§ 251 and 252), in particular, have become unnecessary inconveniences. The poster child for those who proclaim the 1996 Act's failure is reciprocal compensation. It has led to large billings – some paid, some unpaid – among telecommunications carriers. These billings have not shrunk, in large part because the Commission's interpretation of the pick-and-choose provision of the Act (47 U.S.C. § 252(i)) has led to unstable contracts, with perverse incentives for renegotiation.

Reciprocal compensation is an obscure and tedious topic. It is not, however, a topic that Congress overlooked. To the contrary, in describing reciprocal compensation arrangements in sections 251 and 252, Congress went into greater detail than it did for almost any other commercial relationship between carriers covered in the 1996 Act. Among other things, Congress mandated that reciprocal compensation arrangements would be:
(1) made by contract; (2) under State supervision; (3) at rates to be negotiated or arbitrated; and (4) would utilize a bill-and-keep plan only on a case-by-case basis under specific statutory conditions. *See* 47 U.S.C. §§ 251(b)(5), 252(a), 252(b), 252(d)(2).

Faced with these statutory mandates, how should the large billings for reciprocal compensation be addressed? Renegotiating contracts would be the simple market solution, only made precarious by our pick-and-choose rules. Another solution would be to seek review of reciprocal compensation agreements by State commissions. Other solutions would be for this Commission to change its pick-and-choose rules or to issue guidelines for State commission decisions (*see AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 385 (1999)).

Each of these solutions, of course, would reflect at least a modicum of respect for States, their lawmakers, their regulators, federal law, and the Congress that enacted the 1996 Act. Each would also be consistent with, and respectful of, the prior ruling on reciprocal compensation by the Court of Appeals for the D.C. Circuit. *See Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

There is, however, one solution that is not respectful of other governmental institutions. It is a solution that places under exclusive federal jurisdiction broad expanses of telecommunications. It is a solution that does not directly solve the problem at hand. It is a solution that can be reached only through a twisted interpretation of the law and a vitiation of economic reasoning and general common sense. That solution is nationwide price regulation. That is the regrettable solution the Commission has adopted.

The Commission's decision has broad consequences for the future of telecommunications regulation. In holding that essentially all packetized communications fall within federal jurisdiction, the Commission has dramatically diminished the States' role going forward, as such

communications are fast becoming the dominant mode. Whatever the merits of this reallocation of authority, it is a reallocation that properly should be made only by Congress. It certainly should not be made, as here, by a self-serving federal agency acting unilaterally.

There is doubtlessly underway a publicity campaign by the proponents of today's action. It will spin nationwide mandatory price regulation as "deregulation." It will spin the abandonment of States and contracts as "good government."

The media might be spun by this campaign. The public might be spun. But it will be far more difficult to convince the courts that the current action is lawful.

A Flawed Order From Flawed Decisionmaking

Today's order is the product of a flawed decisionmaking process that occurs all too frequently in this agency. It goes like this. First, the Commission settles on a desired outcome, based on what it thinks is good "policy" and without giving a thought to whether that outcome is legally supportable. It then slaps together a statutory analysis. The result is an order like this one, inconsistent with the Commission's precedent and fraught with legal difficulties.

In March 2000, the Court of Appeals for the D.C. Circuit vacated the Commission's conclusion that section 251(b)(5) does not apply to calls made to Internet service providers ("ISPs"). *See Bell Atlantic*, 206 F.3d at 9. The court ruled that, among other things, the Commission had not provided a "satisfactory explanation why LECs that terminate calls to ISPs are not properly seen as 'terminating . . . local telecommunications traffic,' and why such traffic is 'exchange access' rather than 'telephone exchange service.'" *Id.*

The Commission has taken more than a year to respond to the court's remand decision. My colleagues some time ago decided on their general objective – asserting section 201(b) jurisdiction over ISP-bound traffic and permitting incumbent carriers to ramp down the payments that they make to competitive ones. The delay in producing an order is attributable to the difficulty the Commission has had in putting together a legal analysis to support this result, which is at odds with the agency's own precedent as well as the plain language of the statute.

Today, the Commission rules, once again, that section 251(b)(5) does not apply to ISP-bound traffic. In a set of convoluted arguments that sidestep the court's objections to its previous order, the Commission now says that ISP-bound traffic is "information access," which, the Commission asserts, is excluded "from the universe of 'telecommunications' referred to in section 251(b)(5)" (Order ¶¶ 23, 30) – despite the Commission's recent conclusion in another context that "information access" is not a separate category of service exempt from the requirements of section 251. *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Remand, 15 FCC Rcd 385, ¶¶ 46-49 (1999) ("*Advanced Services Remand Order*").

The result will be another round of litigation, and, in all likelihood, this issue will be back at the agency in another couple of years. In the meantime, the uncertainty that has clouded the issue of compensation for ISP-bound traffic for the last five years will continue. The Commission would act far more responsibly if it simply recognized that ISP-bound traffic comes within section

251(b)(5). To be sure, this conclusion would mean that the Commission could not impose on these communications any rule that it makes up, as the agency believes it is permitted to do under section 201(b). Rather, the Commission would be forced to work within the confines of sections 251(b)(5) and 252(d)(2), which, among other things, grant authority to State commissions to decide on "just and reasonable" rates for reciprocal compensation. 47 U.S.C. § 252(d)(2). But the Commission surely could issue "rules to guide the state-commission judgments" regarding reciprocal compensation (*Iowa Utilities Bd.*, 525 U.S. at 385) and perhaps could even put in place the same compensation scheme it orders here. At the same time, the confusion that this order will add to the agency's already bewildering precedent on Internet-related issues would be avoided.

The Commission's Previous Order and the Court's Remand Decision

To see how far the Commission has come in its attempt to assert section 201(b) jurisdiction over ISP-bound traffic, let us briefly review the court's decision on the Commission's previous order, which receives little attention in the order released today. In its previous order, issued in February 1999, the Commission focused on the jurisdictional nature of ISP-bound traffic. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling, 14 FCC Rcd 3689 (1999) ("*Reciprocal Compensation Declaratory Ruling*"). Applying an "end-to-end" analysis, the agency concluded that calls to ISPs do not terminate at the ISP's local server, but instead continue to the "ultimate destination or destinations, specifically at a[n] Internet website that is often located in another state." *Id.* ¶ 12. Based on this jurisdictional analysis, the Commission ruled that a substantial portion of calls to ISPs are jurisdictionally interstate, and it described ISP-bound traffic as interstate "access service." *Id.* ¶¶ 17, 18. The Commission reasoned that, since reciprocal compensation is required only for the transport and termination of *local* traffic, section 251(b)(5)'s obligations did not apply to ISP-bound calls. *See id.* ¶¶ 7, 26.

1. The Court Asked the Commission Why ISPs Are Not Like Other Local Businesses

The court vacated the Commission's decision. It held that, regardless of the jurisdictional issue, the Commission had not persuasively distinguished ISPs from other businesses that use communications services to provide goods or services to their customers. *See Bell Atlantic*, 206 F.3d at 7. In the court's view, the Commission had failed to explain why "an ISP is not, for purposes of reciprocal compensation, 'simply a communications-intensive business end user selling a product to other consumer and business end-users.'" *Id.* (citation omitted).

2. The Court Asked the Commission Why Calls Do Not Terminate at ISPs

The court also questioned the Commission's conclusion that a call to an ISP did not "terminate" at the ISP. "[T]he mere fact that the ISP originates further telecommunications does not imply that the original telecommunication does not 'terminate' at the ISP." *Id.* The court concluded that, "[h]owever sound the end-to-end analysis may be for jurisdictional purposes," the Commission had failed to explain why treating these "linked telecommunications as continuous works for purposes of reciprocal compensation." *Id.*

3. The Court Asked the Commission How Its Treatment of ISP-Bound Traffic Is Consistent with Its Treatment of Enhanced Service Providers

The court also wondered whether the Commission's treatment of ISP-bound traffic was consistent with the approach it applies to enhanced service providers ("ESPs"), which include ISPs. *See id.* at 7-8. The Commission has long exempted ESPs from the access charge system, effectively treating them as end-users of local service rather than long-distance carriers. The court observed that this agency, in the Eighth Circuit access charge litigation, had taken the position "that a call to an information service provider is really like a call to a local business that then uses the telephone to order wares to meet the need." *Id.* at 8. The court rejected as "not very compelling" the Commission's argument that the ESP exemption is consistent with the understanding that ESPs use interstate access services. *Id.*

4. The Court Asked the Commission Whether ISP-Bound Traffic is "Exchange Access" or "Telephone Exchange Service"

Finally, the court rejected the Commission's suggestion that ISPs are "users of access service." *Id.* The court noted that the statute creates two statutory categories – "telephone exchange service" and "exchange access" – and observed that on appeal, the Commission had conceded that these categories occupied the field. *Id.* If the Commission had meant to say that ISPs are users of "exchange access," wrote the court, it had "not provided a satisfactory explanation why this is the case." *Id.*

The Commission's Latest Order

Today, the Commission fails to answer any of the court's questions. Recognizing that it could not reach the desired result within the framework it used previously, the Commission offers up a completely new analysis, under which it is irrelevant whether ISP-bound traffic is "local" rather than "long-distance" or "telephone exchange service" rather than "exchange access."

In today's order, the Commission concludes that section 251(b)(5) is not limited to local traffic as it had previously maintained, but instead applies to all "telecommunications" traffic except the categories specifically enumerated in section 251(g). *See* Order ¶¶ 32, 34. The Commission concludes that ISP-bound traffic falls within one of these categories – "information access" – and is therefore exempt from section 251(b)(5). *See id.* ¶ 42. The agency wraps up with a determination that ISP-bound traffic is interstate, and it thus has jurisdiction under section 201(b) to regulate compensation for the exchange of ISP-bound traffic. *See id.* ¶¶ 52-65.

The Commission's latest attempt to solve the reciprocal compensation puzzle is no more successful than were its earlier efforts. As discussed below, its determination that ISP-bound traffic is "information access" and, hence, exempt from section 251(b)(5) is inconsistent with still-warm Commission precedent. Moreover, its interpretation of section 251(g) cannot be reconciled with the statute's plain language.

1. Today's decision is a complete reversal of the Commission's recent decision in the *Advanced Services Remand Order*. In that order, the Commission rejected an argument that xDSL traffic is exempt from the unbundling obligations of section 251(c)(3) as "information

access." Among other things, the Commission found meritless the argument that section 251(g) exempts "information access" traffic from other requirements of section 251. *Id.* ¶ 47. Rather, the Commission explained, "this provision is merely a continuation of the equal access and nondiscrimination provisions of the Consent Decree until superseded by subsequent regulations of the Commission." *Id.* According to the Commission, section 251(g) "is a transitional enforcement mechanism that obligates the incumbent LECs to continue to abide by equal access and nondiscriminatory interconnection requirements of the MFJ." *Id.* The Commission thus concluded that section 251(g) was not intended to exempt xDSL traffic from section 251's other provisions. *See id.* ¶¶ 47-49.

In addition, the Commission rejected the contention that "information access" is a statutory category distinct from "telephone exchange service" and "exchange access." *See id.* ¶ 46.[1] It pointed out that "'information access' is not a defined term under the Act, and is cross-referenced in only two transitional provisions." *Id.* ¶ 47. It ultimately concluded that nothing in the Act suggests that "information access" is a category of services mutually exclusive with exchange access or telephone exchange service. *See id.* ¶ 48.

The Commission further determined that ISP-bound traffic is properly classified as "exchange access." *See id.* ¶ 35. It noted that exchange access refers to "access to telephone exchange services or facilities for the purpose of originating or terminating communications that travel outside an exchange." *Id.* ¶ 15. Applying this definition, and citing the *Reciprocal Compensation Declaratory Ruling*, the Commission reasoned that the service provided by the local exchange carrier to an ISP is ordinarily exchange access service, "because it enables the ISP to transport the communication initiated by the end-user subscriber located in one exchange to its ultimate destination in another exchange, using both the services of the local exchange carrier and in the typical case the telephone toll service of the telecommunications carrier responsible for the interexchange transport." *Id.* ¶ 35.

The *Advanced Services Remand Order* was appealed to the D.C. Circuit. *See WorldCom*, 2001 WL 395344. The Commission argued to the court in February that the term "information access" is merely "a holdover term from the MFJ, which the 1996 Act supersedes." *WorldCom, Inc. v. FCC*, Brief for Respondents at 50 (D.C. Cir. No. 00-1002). Its brief also emphasized that section 251(g) was "designed simply to establish a transition from the MFJ's equal access and nondiscrimination provisions . . . to the new obligations set out in the statute." *Id.*

Today, just two months after it made those arguments to the D.C. Circuit, the Commission reverses itself. It now says that section 251(g) exempts certain categories of traffic, including "information access," entirely from the requirements of section 251(b)(5) and that ISP-bound traffic is "information access." *See* Order ¶¶ 32, 34, 42. The Commission provides nary a word to explain this reversal.

Of course, the Commission's conclusions in the *Advanced Services Remand Order* that

[1] This aspect of the *Advanced Services Remand Order* was remanded to the Commission by the D.C. Circuit because of its reliance on the vacated *Reciprocal Compensation Declaratory Ruling*. *See WorldCom, Inc. v. FCC*, No. 00-1062, 2001 WL 395344, *5-*6 (D.C. Cir. Apr 20, 2001).

ISP-bound traffic is "exchange access" and that the term "information access" has no relevance under the 1996 Act were themselves reversals of earlier Commission positions. In the *Non-Accounting Safeguards Order*,[2] the Commission concluded, relying in part on a purported distinction between "exchange access" and "information access," that ISPs "do not use exchange access as it is defined by the Act." *Id.* ¶ 248. In that order, the Commission was faced with determining the scope of section 272(e)(2), which states that a Bell operating company ["BOC"] "shall not provide any facilities, services, or information regarding its provision of exchange access to [a BOC affiliate] unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions." 47 U.S.C. § 272(e)(2). The Commission rejected the argument that BOCs are required to provide exchange access to ISPs, reasoning that ISPs do not use exchange access. *See Non-Accounting Safeguards Order* ¶ 248. In making that decision, the Commission relied on the language of the statute as well as the MFJ's use of the term "information access." *See id.* ¶ 248 & n. 621. As the Commission explained, its "conclusion that ISPs do not use exchange access is consistent with the MFJ, which recognized a difference between 'exchange access' and 'information access.'" *Id.* ¶ 248 n.621.

Thus, in reversing itself yet again, the Commission here follows a time-honored tradition. When it is expedient to say that ISPs use "exchange access" and that there is no such thing as "information access," that is what the Commission says. *See Advanced Service Remand Order* ¶¶ 46-48. When it is convenient to say that ISPs use the local network like local businesses, then the Commission adopts that approach. *See Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, ¶ 345 (1997). And, today, when it helps to write that ISPs use "information access," then that is what the Commission writes. The only conclusion that one can soundly draw from these decisions is that the Commission is willing to make up whatever law it can dream up to suit the situation at hand.

Nevertheless, there is one legal proposition that the Commission has, until now, consistently followed -- a fact that is particularly noteworthy given the churn in the Commission's other legal principles. The Commission has consistently held that section 251(g) serves only to "preserve[] the LECs' existing equal access obligations, originally imposed by the MFJ." *Operator Communications, Inc., D/B/A Oncor Communications*, Memorandum Opinion and Order, 14 FCC Rcd 12506, ¶ 2 n.5 (1999).[3] Today's order ignores this precedent and transforms

---

[2] *Implementation of the Non-Accounting Safeguards Of Sections 271 and 272 of the Communications Act of 1934, as Amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) ("*Non-Accounting Safeguards Order*").

[3] *See also, e.g., Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding U S West Petitions To Consolidate Latas in Minnesota and Arizona*, Memorandum Opinion and Order, 14 FCC Rcd 14392, ¶ 17 (1999) ("In section 251(g), Congress delegated to the Commission sole authority to administer the 'equal access and nondiscriminatory interconnection restrictions and obligations' that applied under the AT&T Consent Decree."); *AT&T Corporation, et al., Complainants*, Memorandum Opinion and Order, 13 FCC Rcd 21438, ¶ 5 (1998) ("Separately, section 251(g) requires the BOCs, both pre- and post-entry, to treat all interexchange carriers in accordance with their preexisting equal access and nondiscrimination obligations, and thereby neutralize the potential anticompetitive impact they could have on the long distance market until such time as the Commission finds it reasonable to revise or eliminate those obligations.").

section 251(g) into a categorical exemption for certain traffic from section 251(b)(5). It is this transformation – much more than the shell game played with "information access" and "exchange access" – that is most offensive in today's decision.

2. The Commission's claim that section 251(g) "excludes several enumerated categories of traffic from the universe of 'telecommunications' referred to in section 251(b)(5)" (Order ¶ 23) stretches the meaning of section 251(g) past the breaking point. Among other things, that provision does not even mention "exclud[ing]," "telecommunications," "section 251(b)(5)," or "reciprocal compensation."

Section 251(g), which is entitled, "Continued enforcement of exchange access and interconnection requirements," states in relevant part:

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

47 U.S.C. § 251(g).

As an initial matter, it is plain from reading this language that section 251(g) has absolutely no application to the vast majority of local exchange carriers, including those most affected by today's order. The provision states that "each local exchange carrier . . . shall provide [the enumerated services] . . . in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations . . . *that apply to such carrier on the date immediately preceding February 8, 1996.*" *Id.* (emphasis added). If a carrier was not providing service on February 7, 1996, no restrictions or obligations applied to "such carrier" on that date, and section 251(g) would appear to have no impact on that carrier. The Commission has thus repeatedly stated that section 251(g) applies to "Bell Operating Companies" and is intended to incorporate aspects of the MFJ. *Applications For Consent To The Transfer Of Control Of Licenses And Section 214 Authorizations From Tele-Communications, Inc., Transferor To AT&T Corp., Transferee.*, Memorandum Opinion and Order, 14 FCC Rcd 3160, ¶ 53 (1999); *see also* cases cited *supra* note 3. Accordingly, by its express terms, section 251(g) says nothing about the obligations of most CLECs serving ISPs, which are the primary focus of the Commission's order.

Moreover, it is inconceivable that section 251(g)'s preservation of pre-1996 Act "equal access and nondiscriminatory interconnection restrictions and obligations" is intended to displace section 251(b)(5)'s explicit compensation scheme for local carriers transporting and terminating each other's traffic. Prior to passage of the 1996 Act, there were no rules governing compensation for such services, whether or not an ISP was involved. It seems unlikely, at best,

that Congress intended the absence of a compensation scheme to preempt a provision explicitly providing for such compensation.[4] At the very least, one would think Congress would use language more explicit than that seized upon by the Commission in section 251(g).

Finally, if, as the Commission maintains, section 251(g) "excludes several enumerated categories of traffic from the universe of 'telecommunications' referred to in section 251(b)(5)" (Order ¶ 23), why does section 251(g) not also exclude this traffic from the "universe of 'telecommunications'" referred to in the rest of section 251, or, indeed, in the entire 1996 Act? As noted, section 251(g) nowhere mentions "reciprocal compensation" or even "section 251." In fact, there appears to be no limiting principle. It would thus seem that, under the Commission's interpretation, the traffic referred to in section 251(g) is exempt from far more than reciprocal compensation – a consequence the Commission is sure to regret. *See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order 11 FCC Rcd 15499, ¶ 356 (1996) (concluding that "exchange access" provided to IXCs is subject to the unbundling requirements of section 251(c)(3)).

* * *

The end result of today's decision is clear. There will be continued litigation over the status of ISP-bound traffic, prolonging the uncertainty that has plagued this issue for years. At the same time, the Commission will be forced to reverse itself yet again, as soon as it dislikes the implication of treating ISP-bound traffic as "information access" or reading section 251(g) as a categorical exemption from other requirements of the 1996 Act. The Commission could, and should, have avoided these consequences by applying its original analysis in the manner sought by the court.

[4] The case of IXC traffic is thus completely different. There was a compensation scheme in effect for such traffic prior to enactment of the 1996 Act – the access charge regime. Because reciprocal compensation and the access charge regime could not both apply to the same traffic, the Commission could reasonably conclude that the access charge regime should trump the reciprocal compensation provision of section 251(b)(5). *See Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068, 1072-73 (8th Cir. 1997). Here, there is no pre-1996 Act compensation scheme to conflict with reciprocal compensation. As the Commission has stated, "the Commission has never applied either the ESP exemption or its rules regarding the joint provision of access to the situation where two carriers collaborate to deliver traffic to an ISP." *Reciprocal Compensation Declaratory Ruling* ¶ 26.

288 F.3d 429
(Cite as: 288 F.3d 429)

H

United States Court of Appeals,
District of Columbia Circuit.

WORLDCOM, INC., Petitioner,
v.
FEDERAL COMMUNICATIONS COMMISSION
and United States of America, Respondents.
Sprint Corporation, et al., Intervenors.

Nos. 01-1218, 01-1229, 01-1243, 01-1255 through 01-1257, 01-1267, 01-1274, 01-1310, 01-1311, 01-1313, 01-1319, 01-1321.

Argued Feb. 12, 2002.
Decided May 3, 2002.

Group of competitive local exchange carriers (LECs) that delivered calls to internet service providers (ISP), and group of states and state regulatory commissions, petitioned for review of Federal Communications Commission (FCC) order, 2001 WL 455869, creating exception to reciprocal compensation requirement under the Telecommunications Act for calls made to ISPs located within the caller's local calling area. The Court of Appeals, Stephen F. Williams, Senior Circuit Judge, held that order was not authorized by section of Act which provided for continued enforcement of certain pre-Act regulatory interconnection restrictions and obligations until they are superceded by FCC action.

Remanded.

West Headnotes

Telecommunications ⇐267
372k267 Most Cited Cases

Section of Telecommunications Act, which provided for continued enforcement of certain pre-Act regulatory interconnection restrictions and obligations until they are superceded by Federal Communications Commission (FCC) action, did not authorize FCC order creating exception to Act's reciprocal compensation requirement for calls made to ISPs located within the caller's local calling area. Communications Act of 1934, § 251(b)(5), (g), as amended, 47 U.S.C.A. § 251(b)(5), (g).
*429 On Petitions for Review of an Order of the Federal Communications Commission.

Darryl M. Bradford argued the cause for Carrier petitioners and supporting intervenors. With him on the briefs were Thomas F. O'Neil III, William Single, IV, Brian J. Leske, John J. Hamill, Jodie L. Kelley, Mark C. Rosenblum, H. Richard Juhnke, John T. Nakahata, Timothy J. Simeone, Christopher W. Savage, David W. *430 Carpenter, David L. Lawson, Paul J. Zidlicky, Thomas Jones, Glenn B. Manishin, Genevieve Morelli, Richard J. Metzger, Brad Mutschelknaus, Richard M. Rindler, Charles C. Hunter, Catherine M. Hannan, Robert J. Aamoth, Deborah M. Royster and Albert H. Kramer. James P. Young entered an appearance.

James B. Ramsay argued the cause for State Commission petitioners and supporting intervenors. With him on the briefs were Gretchen Dumas, Ellen S. LeVine, Lawrence G. Malone, Diane T. Dean, Susan Stevens Miller, Tracey L. Stokes, Betty D. Montgomery, Attorney General, State of Ohio, Duane W. Luckey and Steven T. Nourse, Assistant Attorneys General. Carl F. Patka entered an appearance.

John A. Rogovin, Deputy General Counsel, Federal Communications Commission, argued the cause for respondents. With him on the brief were John E. Ingle, Deputy Associate General Counsel, and Laurence N. Bourne and Rodger D. Citron, Counsel. Catherine G. O'Sullivan and Nancy C. Garrison, Attorneys, U.S. Department of Justice, entered appearances.

Mark L. Evans argued the cause for intervenors BellSouth Corporation, et al. With him on the brief were Michael K. Kellogg, Sean A. Lev, Aaron M. Panner, Scott H. Angstreich, Roger K. Toppins, Gary L. Phillips, James D. Ellis, Michael E. Glover, Edward H. Shakin, John M. Goodman, Lawrence E. Sarjeant, Linda L. Kent, John W. Hunter and Julie E. Rones.

Howard J. Symons, Sara F. Leibman and Douglas I. Brandon were on the brief for intervenor AT&T Wireless Services, Inc. Michelle M. Mundt entered an appearance.

Before: SENTELLE and TATEL, Circuit Judges, and WILLIAMS, Senior Circuit Judge.

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

Opinion for the Court filed by Senior Circuit Judge WILLIAMS.

STEPHEN F. WILLIAMS, Senior Circuit Judge:

Section 251(b)(5) of the Telecommunications Act of 1996, 47 U.S.C. §§ 151-714 (the "1996 Act" or the "Act"), directs all local exchange carriers ("LECs") to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251(b)(5). In the order before us the Federal Communications Commission held that under § 251(g) of the Act it was authorized to "carve out" from § 251(b)(5) calls made to internet service providers ("ISPs") located within the caller's local calling area. It relied entirely on § 251(g). Because that section is worded simply as a transitional device, preserving various LEC duties that antedated the 1996 Act until such time as the Commission should adopt new rules pursuant to the Act, we find the Commission's reliance on § 251(g) precluded. Thus we remand the case. Because there may well be other legal bases for adopting the rules chosen by the Commission for compensation between the originating and the terminating LECs in calls to ISPs, we neither vacate the order nor address petitioners' attacks on various interim provisions devised by the Commission.

* * *

Due in part to the 1996 Act, local telephone service areas are now typically (perhaps universally) served by more than one LEC. The reciprocal compensation requirement of § 251(b)(5), quoted above, is aimed at assuring compensation for the LEC that completes a call originating within the same area. Although its literal language purports to extend reciprocal compensation to *all* "telecommunications," the Commission has construed it as limited ***431** to "local" traffic only. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* 11 FCC Rcd 15499, 16012-13, ¶ ¶ 1033-34, 16015-16, ¶ 1040, 1996 WL 452885 (1996) ("*Local Competition Order*"); 47 C.F.R. § 51.701(a). For long distance calls, by contrast, the long-distance carrier collects from the user and pays both LECs--the one originating and the one terminating the call. *Local Competition Order*, 11 FCC Rcd at 16013, ¶ 1034.

In an earlier order, the Commission excluded ISP calls from the reach of § 251(b)(5) on the theory that they were indeed not "local." *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic,* 14 FCC Rcd 3689, 1999 WL 98037 (1999) ("*Initial Order*"). It reached this conclusion by applying its "end-to-end" analysis, traditionally employed in determining whether a call was jurisdictionally interstate or not, stressing that ISP-bound traffic ultimately reaches websites that are typically located out-of state. See *id.* at 3689-90, ¶ 1, 3695-98, ¶ ¶ 10-12, 3703, ¶ 23 (1999). On review, we held that the order had failed to adequately explain why the traditional "end-to-end" jurisdictional analysis was relevant to deciding whether ISP calls fitted the local call or the long-distance call model, and vacated and remanded the order. *Bell Atlantic Tel. Cos. v. FCC,* 206 F.3d 1, 5, 8 (D.C.Cir.2000).

On remand, the FCC again reached the conclusion that the compensation between two LECs involved in delivering internet-bound traffic to an ISP should not be governed by the reciprocal compensation provision of § 251(b)(5). *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic,* 16 FCC Rcd 9151, 9152-53, ¶ 1 (2001) ("*Remand Order*"). This decision rested, as we said, on § 251(g). Having thus taken ISP calls out of § 251(b)(5)'s reciprocal compensation obligation, the FCC proceeded to establish what it believed was an appropriate cost recovery mechanism. *Remand Order*, 16 FCC Rcd at 9154, ¶ 4. The system adopted was "bill-and- keep," whereby each carrier recovers its costs from its own end-users. *Id.*

In reaching the bill-and-keep solution, the Commission pointed to a number of flaws in the prevailing intercarrier compensation mechanism for ISP calls, under which the originating LEC paid the LEC that served the ISP. Because ISPs typically generate large volumes of one-way traffic in their direction, the old system attracted LECs that entered the business simply to serve ISPs, making enough money from reciprocal compensation to pay their ISP customers for the privilege of completing the calls. The Commission saw this as leading, at least potentially, to ISPs' charging *their* customers below cost. *Remand Order,* 16 FCC Rcd at 9153,

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

¶ 2, 9154-55, ¶ ¶ 4-6, 9162, ¶ ¶ 19-21.

To smooth the transition to bill-and-keep (but without fully committing itself to it), the FCC adopted several interim cost-recovery rules that sought to limit arbitrage opportunities by lowering the amounts and capping the growth of ISP-related intercarrier payments. These tend to force ISP-serving LECs to recover an increasing portion of their costs from their own subscribers rather than from other LECs. *Remand Order*, 16 FCC Rcd at 9155-57, ¶ ¶ 7-8. The transitional rules take effect on the expiration of existing interconnection agreements. *Id.* at 9189, ¶ 82. Finally, the Commission specified that, having carved ISP-bound calls out of § 251(b)(5) ***432** under § 251(g), it was establishing the interim compensation regime under its general authority to regulate the rates and terms of interstate telecommunications services and interconnections between carriers under § 201 of the Act; as a result, the state regulatory commissions would no longer have jurisdiction over ISP-bound traffic as part of their power to resolve LEC interconnection issues under § 252(e)(1) of the Act. *Id.*

Two sets of petitioners now challenge the Remand Order. One, headed by WorldCom (collectively "WorldCom"), consists of competitive LECs that deliver calls to ISPs, and thus stand to lose reciprocal compensation payments. These companies contend that the Commission erred in finding that § 251(g) authorized Commission exclusion of such calls from § 251(b)(5), and that, in any event, the interim compensation rules that the FCC adopted were not a product of reasoned decisionmaking and are contrary to the Act's terms. The other group, composed of several states and state regulatory commissions, complains that the order unlawfully preempts their authority to determine the compensation of ISP-serving LECs.

* * *

Section 251(g) reads as follows:

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

47 U.S.C. § 251(g) (emphasis added). Both sides assume that *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), is applicable, so that we must defer to any reasonable Commission interpretation not precluded by the language of the statute, read with the ordinary tools of statutory construction. We agree with petitioners that § 251(g) is not susceptible to the Commission's reading.

On its face, § 251(g) appears to provide simply for the "continued enforcement" of certain pre-Act regulatory "interconnection restrictions and obligations," including the ones contained in the consent decree that broke up the Bell System, until they are explicitly superceded by Commission action implementing the Act. As the Conference Report explained, "[b]ecause the [Act] completely eliminates the prospective effect of the AT&T Consent Decree, some provision is necessary to keep these requirements in place.... Accordingly, the conference agreement includes a new section 251(g)." H.R. Rep. 104-458, at 122-23 (1996), U.S.Code Cong. & Admin.News 1996, 10, 134.

***433** On a prior occasion, the Commission also framed the scope of § 251(g) in similarly narrow terms:

> The term "information access" first appears [in the Act] in sections [sic] 251(g). That provision is a *transitional enforcement mechanism* that obligates the incumbent LECs to continue to abide by equal access and nondiscriminatory interconnection requirements of the [AT&T Consent Decree] when such carriers "provide

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

> exchange access, information access and exchange services for such access to interexchange carriers and information service providers...." Because the provision incorporates into the Act, on a transitional basis, these [AT&T Consent Decree] requirements, the Act uses [AT&T Consent Decree] terminology in this section. *However, this provision is merely a continuation of the equal access and nondiscrimination provisions of the Consent Decree until superseded by subsequent regulations of the Commission.*

In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, 15 FCC Rcd 385, 407, ¶ 47, 1999 WL 1244007 (1999) (footnote omitted) (emphasis added).

Of course such explanatory language can't be assumed to be exclusive; legislative or agency explanations of a provision may naturally tend to focus on its most salient features. Thus, despite legislative history speaking only in terms of the Consent Decree, plainly the pre-existing "restrictions and obligations" covered by § 251(g) are *not* limited to Consent Decree obligations; the statute itself explicitly embraces preexisting obligations under a "regulation, order, or policy of the Commission." See also *Noland v. Shalala,* 12 F.3d 258, 262 (D.C.Cir.1994) ("Although the legislative history ... suggests an exclusive focus [of the statutory provision in question], the statutory language is broader and may permit [an alternative] construction."). But nothing in § 251(g) seems to invite the Commission's reading, under which (it seems) it could override virtually any provision of the 1996 Act so long as the rule it adopted were in some way, however remote, linked to LECs' pre-Act obligations.

We will assume without deciding that under § 251(g) the Commission might *modify* LECs' pre-Act "restrictions" or "obligations," pending full implementation of relevant sections of the Act. The Fifth Circuit appeared to make that assumption in *Texas Office of Public Utility Counsel v. FCC,* 265 F.3d 313 (5th Cir.2001), where it implicitly relied on § 251(g) (by quoting language from an Eighth Circuit case, *Competitive Telecom. Ass'n v. FCC,* 117 F.3d 1068, 1072 (8th Cir.1997)), in sustaining modifications of pre-Act regulations governing the access charges paid to LECs by inter-exchange carriers ("IXCs"). *Id.* at 324-25. But this assumption is not enough to justify the Commission's action here, as it seems uncontested--and the Commission declared in the Initial Order--that there had been *no* pre-Act obligation relating to intercarrier compensation for ISP-bound traffic. See *Initial Order,* 14 FCC Rcd at 3695, ¶ 9; see also *id.* at 3690, ¶ 1, 3707-3710, ¶ ¶ 28-36. The best the Commission can do on this score is to point to pre-existing LEC obligations to provide interstate access for ISPs. See, e.g., *Remand Order,* 16 FCC Rcd at 9164, ¶ 27; *In the Matter of MTS & WATS Market Structure,* 97 F.C.C.2d 682, 711-15, ¶ ¶ 77-83 (1983). Indeed, the Commission does not even point to any pre-Act, federally created obligation for LECs to interconnect to each other for ISP-bound calls. And even if this hurdle were overcome, there would remain the fact that § 251(g) speaks only of services provided "to interexchange carriers and information ***434** service providers"; LECs' services to other LECs, even if en route to an ISP, are not "to" either an IXC or to an ISP.

Having found that § 251(g) does not provide a basis for the Commission's action, we make no further determinations. For example, as in *Bell Atlantic,* we do not decide whether handling calls to ISPs constitutes "telephone exchange service" or "exchange access" (as those terms are defined in the Act, 47 U.S.C. §§ 153(16), 153(47)) or neither, or whether those terms cover the universe to which such calls might belong. Nor do we decide the scope of the "telecommunications" covered by § 251(b)(5). Nor do we decide whether the Commission may adopt bill-and-keep for ISP-bound calls pursuant to § 251(b)(5); see § 252(d)(B)(i) (referring to bill-and-keep). Indeed these are only samples of the issues we do not decide, which are in fact all issues other than whether § 251(g) provided the authority claimed by the Commission for not applying § 251(b)(5).

Moreover, we do not decide petitioners' claims that the interim pricing limits imposed by the Commission are inadequately reasoned. Because we can't yet know the legal basis for the Commission's ultimate rules, or even what those rules may prove to be, we have no meaningful context in which to assess these explicitly transitional measures.

Finally, we do not vacate the order. Many of the petitioners themselves favor bill-and-keep, and there is plainly a non-trivial likelihood that the

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

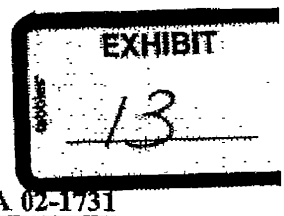
Commission has authority to elect such a system (perhaps under §§ 251(b)(5) and 252(d)(B)(i)). See, e.g., *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm.*, 988 F.2d 146, 150-51 (D.C.Cir.1993) ("The decision whether to vacate depends on 'the seriousness of the order's deficiencies (and thus the extent of doubt whether the agency chose correctly) and the disruptive consequences of an interim change that may itself be changed.' "). Thus, we simply remand the case to the Commission for further proceedings.

So ordered.

288 F.3d 429

END OF DOCUMENT

Copr. © West 2002 No Claim to Orig. U.S. Govt Works



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

In the Matter of	)	
	)	
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 No. 00-218
	)	
In the Matter of Petition of Cox Virginia Telcom, 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 Arbitration	)	CC Docket No. 00-249
	)	
In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc.	)	CC Docket No. 00-251
	)	

MEMORANDUM OPINION AND ORDER

Adopted: July 17, 2002 **Released: July 17, 2002**

By the Chief, Wireline Competition Bureau:

TABLE OF CONTENTS

PARAGRAPH

MEMORANDUM OPINION AND ORDER 1

I. INTRODUCTION 4

II. PROCEDURAL HISTORY 7

III. OUTSTANDING PROCEDURAL MOTIONS 10

A. VERIZON'S RENEWED MOTION TO DISMISS CONSIDERATION OF PERFORMANCE MEASURES AND ASSURANCE PLAN ISSUES 10
B. MISCELLANEOUS MOTIONS 11
1. *Verizon's Objection to AT&T Response to Record Requests* 11
2. *WorldCom's Objection and Response to Verizon's Corrections to WorldCom Responses to Record Requests* 12
3. *Cox's Objection and Request for Sanctions* 13
4. *WorldCom Motion to Strike* 13

IV. UNRESOLVED ISSUES 15

A. STANDARD OF REVIEW 15
B. NETWORK ARCHITECTURE 18
1. *Issues I-1/VII-1/VII-3/VII-4 (Single Point of Interconnection and Related Matters)* 18
2. *Issues I-2/VII-5 (Distance-Sensitive Rates and Transport of Verizon Traffic from the IP to the POI)* 30
3. *Issue I-3 (Reciprocal Collocation)* 39
4. *Issue I-4 (End Office Trunking)* 41
5. *Issues I-7/III-4 (Trunk Forecasting Issues)* 49
6 *Issues III-1/III-2/IV-1 (Tandem Transit Service)* 57
7. *Issues III-3, III-3-A (Mid-Span Fiber Meet-Point Interconnection)* 65
8. *Issue III-4-B (Disconnection of Underutilized Trunks)* 72
9. *Issue IV-2 (Mutual Agreement on Two-Way Trunks)* 75
10. *Issue IV-3 (Trunk and Facilities Augmentation)* 79
11. *Issue IV-4 (Interconnection Interval)* 83
12. *Issue IV-5 (Compensation for the Lease of Interconnection Facilities)* 86
13. *Issue IV-6 (Meet Point Trunking Arrangements)* 89
14. *Issue IV-8 (Trunking Arrangements for Operator Services and Directory Assistance)* 92
15. *Issue IV-11 (Usage Measurement)* 95
16. *Issue IV-37 (Meet-Point Billing Arrangements)* 97
17. *Issues V-1/V-8 (Competitive Access Service)* 100
18. *Issue V-2 (Interconnection Transport)* 106
19. *Issue V-16 (Reciprocal Transit Services)* 109
20. *Issue VI-1-A (Trunk Types)* 111
21. *Issues VI-1-B/VII-6 (Transmission and Routing of Telephone Exchange Access Traffic, and Intermediate Hub Locations in NECA Tariff 4)* 113
22. *Issue VI-1-C (Toll-Free Service Access Code Traffic)* 119
C. INTERCARRIER COMPENSATION ISSUES 121
1. *Issue I-5 (Intercarrier Compensation for ISP-Bound Traffic)* 121
2 *Issue I-6 (Toll Rating and Virtual Foreign Exchanges)* 140
3 *Issue III-5 (Tandem Switching Rate)* 146
4. *Issue IV-35 (Reciprocal Compensation for Local Traffic)* 151
D. UNBUNDLED NETWORK ELEMENTS 155
1 *Issue III-6 ("Currently Combines" versus "Ordinarily or Typically Combined" UNEs)* 155
2. *Issue III-7-A (Service Disruption and OSS Degradation)* 162
3 *Issues III-7-B/VII-11 (Bulk Ordering)* 166
4. *Issue III-7-C (Termination Liability)* 168
5 *Issue III-8 (Interconnection at any Technically Feasible Point)* 170
6 *Issue III-9 (Four-line Switching Exception)* 173
7. *Issue III-10 (Line Sharing and Line Splitting)* 184

8. *Issues III-11/IV-19 (Subloops and NID)* 203
9. *Issue III-12 (Dark Fiber)* 220
10. *Issue IV-14 (Certain Definitions and Operational Terms)* 237
11. *Issue IV-15 (Full Features, Functions, Combinations, Capabilities)* 240
12. *Issue IV-18 (Multiplexing/Concentrating Equipment)* 241
13. *Issue IV-21 (Unbundled Transport)* 244
14. *Issue IV-23 (Line Information Database)* 253
15. *Issue IV-24 (Directory Assistance Database)* 254
16. *Issue IV-25 (Calling Name Database)* 257
17. *Issue IV-28 (Collocation of Advanced Services Equipment)* 261
18. *Issues IV-80/IV-81 (Customized Routing for Directory Assistance and Operator Services)* 263
19. *Issues V-3/V-4-A (UNE-Platform Traffic with Other LECs)* 268
20. *Issue V-4 (LATA-Wide Reciprocal Compensation)* 270
21. *Issue V-7 (Specific Porting Intervals for Large Business Customers)* 272
22. *Issue V-12 (Off-Hours Number Porting)* 274
23. *Issue V-12-A (Three Calendar Day Porting Interval for Residential Orders)* 276
24. *Issue V-13 (Port Confirmation)* 277
25. *Issue VI-3-B (Technical Standards and Specifications)* 279
26. *Issue VII-10 (IDLC Intervals)* 282

E. PRICING TERMS AND CONDITIONS 286
1. *Issue I-9 (Price Caps for Competitive LEC Services)* 286
2. *Issues III-18/IV-85 (Tariffs v. Interconnection Agreements)* 291
3. *Issue IV-30 (Pricing Tables v. Tariffs)* 298
4. *Issue IV-32 (Exclusivity of Rates and Electronic Pricing Table Updates)* 302
5. *Issue IV-36 (Detailed Schedule of Itemized Charges)* 308
6. *Issue VII-12 (Reference to Industry Billing Forums)* 308

F. RESALE 310
1. *Issues V-9/IV-84 (Resale of Advanced Services)* 310
2. *Issue V-10 (Resale of Vertical Features)* 315

G. BUSINESS PROCESS REQUIREMENTS 317
1. *Issues I-8/IV-97 (Access to CPNI)* 317
2. *Issues IV-7/IV-79 (911 and E911)* 319
3. *Issue IV-56 (Subscriber Payment History)* 325
4. *Issue IV-74 (Billing Procedures)* 328

H. GENERAL TERMS AND CONDITIONS 330
1. *Issue I-11 (Termination of OSS Access)* 330
2. *Issue III-15 (Intellectual Property of Third Parties)* 334
3. *Issue IV-45 (Fraud Prevention)* 338
4. *Issue IV-95 (Costs of Compliance)* 341
5. *Issue IV-101 (Alternative Dispute Resolution)* 343
6. *Issue IV-106 (Indemnification)* 346
7. *Issue IV-107 (Intellectual Property of the Parties)* 348
8. *Issues IV-113/VI-1-E (Application of General Change of Law Provisions and UNE-Specific Change of Law Rules)* 350
9. *Issue IV-129 (Definitions)* 352
10 *Issue V-11 (Indemnification for Directory Listings)* 352
11. *Issue VI-1-N (Assurance of Payment)* 354
12. *Issue VI-1-O (Default)* 356
13. *Issue VI-1-P (Discontinuance of Service)* 358
14. *Issue VI-1-Q (Insurance)* 360
15. *Issue VI-1-R (References)* 363

I. MISCELLANEOUS AND RIGHTS OF WAY 365

1. *Issue VI-1-AA (Information Services Traffic)* 365
2. *Issues III-13 and III-13-H (Rights-of-Way)* 367

V. ORDERING CLAUSES 373

I. INTRODUCTION

1. In this order, we issue the first of two decisions that resolve questions presented by three petitions for arbitration of the terms and conditions of interconnection agreements with Verizon Virginia, Inc. (Verizon). Following the enactment of the Telecommunications Act of 1996 (1996 Act),[1] the Commission adopted various rules to implement the legislatively mandated, market-opening measures that Congress put in place.[2] Under the 1996 Act's design, it has been largely the job of the state commissions to interpret and apply those rules through arbitration proceedings. In this proceeding, the Wireline Competition Bureau, acting through authority expressly delegated from the Commission, stands in the stead of the Virginia State Corporation Commission. We expect that this order, and the second order to follow, will provide a workable framework to guide the commercial relationships between the interconnecting carriers before us in Virginia.

2. The three requesting carriers in this proceeding, AT&T Communications of Virginia, Inc. (AT&T), WorldCom, Inc. (WorldCom) and Cox Virginia Telcom, Inc. (Cox) (collectively "petitioners"), have presented a wide range of issues for decision. They include issues involving network architecture, the availability of unbundled network elements (UNEs), and inter-carrier compensation, as well as issues regarding the more general terms and conditions that will govern the interconnecting carriers' rights and responsibilities. As we discuss more fully below, after the filing of the initial pleadings in this matter, the parties conducted extensive discovery while they participated in lengthy staff-supervised mediation, which resulted in the settlement of a substantial portion of the issues that the parties initially presented. After the mediation, we conducted over a month of hearings at which both the petitioners and Verizon had full opportunity to present evidence and make argument in support of their position on the remaining issues. We base our decisions in this order on the analysis of the record of these hearings, the evidence presented therein, and the subsequent briefing materials filed by the parties.

---

[1] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). We refer to the Communications Act of 1934, as amended by the 1996 Act and other statutes, as the Communications Act, or the Act. *See* 47 U.S.C. §§ 151 *et seq.*

[2] *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition First Report and Order*) (subsequent history omitted); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*).

3. Many of the issues that the parties have presented raise significant questions of communications policy that are also currently pending before the Commission in other proceedings. For example, certain of the network architecture issues implicate questions that the Commission is addressing through its ongoing rulemaking relating to inter-carrier compensation.[3] The Commission's pending triennial review of UNEs also touches on many of the issues presented here.[4] While we act, in this proceeding, under authority delegated by the Commission,[5] the arbitration provisions of the 1996 Act require that we decide all issues fairly presented.[6] Accordingly, in addressing the issues that the parties have presented for arbitration – the only issues that we decide in this order – we apply current Commission rules and precedents, with the goal of providing the parties, to the fullest extent possible, with answers to the questions that they have raised.

4. In our review of each issue before us, we have been mindful of recent court decisions relating to the Commission's applicable rules and precedent. Most significantly, we recognize that the United States Court of Appeals for the District of Columbia Circuit recently issued an order reviewing two Commission decisions that set forth rules governing unbundled network elements (UNEs) and line sharing.[7] The court's order remanded the *UNE Remand Order* for further action by the Commission, and it vacated and remanded the *Line Sharing Order*. Because the court remanded the *UNE Remand Order* without vacating or otherwise modifying it, its rules governing the availability of UNEs remain in effect pending further action by the Commission in response to the court's order. Similarly, because the Commission has sought rehearing of the court's order, the effect of that order has been stayed, even with respect to the line sharing rules, until further action by the court.[8] Accordingly, to the extent they are

---

[3] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).

[4] *See Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Notice of Proposed Rulemaking, FCC 01-361, 16 FCC Rcd 22781 (2001) (*Triennial UNE Review NPRM*).

[5] *See* 47 U.S.C. § 155(c)(1); *see also Procedures for Arbitrations Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1934, as amended*, 16 FCC Rcd 6231, 6233, paras. 8-10 (2001) (*Arbitration Procedures Order*) (delegating authority to the Bureau to conduct and decide these arbitration proceedings).

[6] *See* 47 U.S.C. § 252(b)(4)(C) (state commission shall resolve each issue in petition and response); *id.* § 252(c) (state commission shall resolve by arbitration any open issue).

[7] *See United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA v. FCC*"). The court reviewed two Commission decisions: the *UNE Remand Order* and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

[8] *See* Petition of FCC and United States for Rehearing or Rehearing *En Banc*, D.C. Circuit Nos. 00-1012, *et al.* & 00-1015, *et al.*, filed July 8, 2002.

implicated in issues presented by the parties, we apply the Commission's existing UNE and line sharing rules. To the extent that these rules are modified in the future, the parties may rely on the change of law provisions in their respective agreements.

5. This order is the first of two that will decide the questions presented for arbitration. Below, we decide the "non-cost" issues that the parties have raised. Specifically, we resolve those issues that do not relate to the rates that Verizon may charge for the services and network elements that it will provide to the requesting carriers under this agreement. We have determined that it will best serve the interests of efficiency and prompt resolution of the parties' disputes to issue our decision on these non-cost issues in advance of the pricing decision, which will follow.

6. The requesting carriers in this proceeding, AT&T, WorldCom and Cox, originally brought their interconnection disputes with Verizon to the Virginia State Corporation Commission (Virginia Commission), as envisioned in section 252(b).[9] In the case of each requesting carrier, the Virginia Commission declined to arbitrate the terms and conditions of an interconnection agreement under federal standards, as required by section 252(c) of the Act.[10] The Virginia Commission explained that it had concluded it could not apply federal standards in interconnection arbitrations without potentially waiving its Eleventh Amendment sovereign immunity, which it did not have the authority to do.[11] The three requesting carriers then

---

[9] 47 U.S.C. § 252(b). WorldCom filed an arbitration petition with the Virginia Commission. *See Petition of MCI Metro Access Transmission Services of Virginia, Inc. and MCI WorldCom Communications of Virginia, Inc. for Arbitration of an Interconnection Agreement with Bell Atlantic-Virginia, Inc.*, Case No. PUC000225 (filed with Virginia Commission Aug. 10, 2000). Cox requested a declaratory ruling reconsidering the Virginia Commission's prior refusals to apply federal law in arbitrating interconnection disputes and, in the event the Virginia Commission granted that request, sought the arbitration of its interconnection dispute. *See Petition of Cox Virginia Telcom, Inc., for Declaratory Judgment and Conditional Petition for Arbitration*, Case No. PUC000212 (filed with Virginia Commission July 27, 2000). AT&T also requested a declaratory ruling that the Virginia Commission would arbitrate its interconnection dispute. *See Petition of AT&T Communications of Virginia, Inc., et al., for Declaratory Judgment*, Case No. PUC000261 (filed with Virginia Commission Sept. 25, 2000); AT&T subsequently sought arbitration of its interconnection dispute with Verizon. *See Application of AT&T Communications of Virginia, Inc., et al., for Arbitration*, Case No. PUC000282 (filed with Virginia Commission Oct. 20, 2000).

[10] 47 U.S.C. § 252(c). Section 252(c) requires that, in arbitrating an interconnection agreement, a state commission apply the "requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251" and apply the pricing standards of section 252(d). 47 U.S.C. § 252(c)(1) – (2). The Virginia Commission declined to follow section 252(c), offering instead to apply Virginia state law in its disposition of the three requesting carriers' disputes with Verizon. *See Petition of MCI Metro Access Transmission Services of Virginia, Inc. and MCI WorldCom Communications of Virginia, Inc., for Arbitration of an Interconnection Agreement with Bell Atlantic-Virginia, Inc.*, Case No. PUC000225, Order, at 3 (issued by Virginia Comm'n Sept. 13, 2000) (*WorldCom Virginia Order*); *Petition of Cox Virginia Telcom, Inc.*, Case No. PUC000212, Order of Dismissal, at 5 (issued by Virginia Comm'n Nov. 1, 2000); *Petition for Declaratory Judgment and Application for Arbitration of AT&T Communications of Virginia, Inc., et al.*, Case Nos. PUC000261 and PUC000282, Order, at 3 (issued by Virginia Comm'n Nov. 22, 2000).

[11] *See, e.g., WorldCom Virginia Order* at 2. *Cf. Petition of Cavalier Telephone, LLC*, Case No. PUC990191, Order, at 3-4 (issued by Virginia Comm'n June 15, 2000) ("We have concluded that there is substantial doubt (continued....)

petitioned the Commission to preempt the Virginia Commission pursuant to section 252(e)(5).[12] The Commission granted those petitions in January of 2001 and assumed jurisdiction to resolve the requests for arbitration.[13]

7. On January 19, 2001, the same date on which it granted WorldCom's preemption petition, the Commission issued an order governing the conduct of section 252(e)(5) proceedings in which it has preempted the arbitration authority of state commissions. The order delegates to the Chief of the Bureau the authority to serve as the Arbitrator.[14] As discussed at greater length below, the Commission also revised the interim rule that it had previously adopted and established a hybrid scheme of "final offer" arbitration for interconnection arbitrations. The revised standard grants the Arbitrator the "discretion to require the parties to submit new final offers, or adopt a result not submitted by any party, in circumstances where a final offer submitted by one or more of the parties fails to comply with the Act or the Commission's rules."[15]

II. PROCEDURAL HISTORY

(Continued from previous page)
whether we can take action in this matter solely pursuant to the Act, given that we have been advised by the United States District Court for the Eastern District of Virginia that our participation in the federal regulatory scheme constructed by the Act, with regard to the arbitration of interconnection agreements, effects a waiver of the sovereign immunity of the Commonwealth.").

[12] *Petition of WorldCom, Inc., Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-218, (filed Oct. 26, 2000); *Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-249 (filed Dec. 12, 2000); *Petition of AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-251 (filed Dec. 15, 2000).

[13] *Petition of WorldCom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-218, Memorandum Opinion and Order, 16 FCC Rcd 6224 (2001) (*WorldCom Preemption Order*); *Petition of Cox Virginia Telecom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-249, Memorandum Opinion and Order, 16 FCC Rcd 2321 (2001); *Petition of AT&T Communications of Virginia, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-251, Memorandum Opinion and Order, 16 FCC Rcd. 2326 (2001).

[14] *Arbitration Procedures Order*, 16 FCC Rcd 6233. The Commission's rules governing review of action taken on delegated authority are found at 47 C.F.R. § 1.115. At the time of the *Arbitration Procedures Order*, the Commission delegated its authority to the Chief of the Common Carrier Bureau. Since then, the Bureau has been renamed the Wireline Competition Bureau. *See In the Matter of Establishment of the Media Bureau, Wireline Competition Bureau and Consumer and Governmental Affairs Bureau*, Order, 17 FCC Rcd 4672 (2002)

[15] *See* 47 C.F.R. § 51.807(f)(3).

8. In March, 2001, as required by the *Procedural Public Notice*, the parties contacted the Arbitrator to schedule a pre-filing conference.[16] On March 22, 2001, the parties met with the Arbitrator and Bureau staff to discuss a list of issues identified in the *Procedural Public Notice*, including the status of negotiations, procedures to be followed in the arbitration proceeding, potential consolidation of the proceedings, and a procedural schedule. On March 27, we issued a letter ruling on several issues raised during the pre-filing conference. Among other rulings, we set a procedural schedule, under which the parties were to conduct discovery and file testimony throughout the summer. The evidentiary hearing was scheduled for September, 2001 and post-hearing briefs were to be due in October, 2001. At the request of the parties, we postponed until July 2, 2001, the due date for cost studies, which originally were to be filed with the petitions for arbitration. The parties preferred that they be permitted to file separate petitions, with the option of later seeking consolidation of the proceedings; however, we instructed them each to assign shared issues the same number, to facilitate staff's review.

9. On April 23, AT&T, Cox and WorldCom filed separate petitions for arbitration. Consistent with the *Procedural Public Notice*, each petition contained a Request for Arbitration, listing with specificity both the resolved and unresolved issues, along with the relevant contract language, and a Statement of Relevant Authority for each issue. On May 31, 2001, Verizon filed its Answer, responding to each issue raised by petitioners, and raising additional issues. On June 18, petitioners filed their responses to Verizon's additional issues. In all, petitioners identified approximately 180 issues in their initial petitions, some of them raised jointly, and Verizon raised an additional 68 issues in its Answer.

10. *Supervised Negotiations*. On July 10, 2001, the Arbitrator convened a status conference to discuss, among other things, parties' efforts to simplify or settle issues and the schedule for the remainder of the proceeding. At this meeting, the parties jointly requested that Bureau staff assist with the settlement of certain issues, through supervised negotiations or mediation, and agreed to identify a list of "mediation issues." The parties also requested a delay of several weeks in all aspects of the procedural schedule, to allow them to focus on settlement negotiations, and to accommodate their request for an additional "surrebuttal" round of written testimony on cost issues.

11. We convened ten days of supervised negotiations, pursuant to a schedule set by the parties and staff, on July 25 through August 9. With the help of questions and other input from staff and, in particular, all sides' willingness to work toward compromise, the parties were able to reach agreement on new language for many issues, and agreed to continue unsupervised discussions on many others.

---

[16] Procedures Established For Arbitration Of Interconnection Agreements Between Verizon and AT&T, Cox, and WorldCom, CC Docket Nos. 00-218, 00-249, 00-251, Public Notice, DA 01-270 (rel. Feb 1, 2001) (*Procedural Public Notice*) (setting forth additional procedures, including requirements regarding contents of arbitration petition and response, discovery process and conduct of the evidentiary hearing).

12. *Written, Pre-Filed Testimony.* The procedural schedule that we set in March, 2001 originally envisioned the submission of pre-filed direct and rebuttal testimony on all issues according to the same schedule. In light of the parties' request for supervised negotiations, and for additional time to prepare their cost-related arguments, we extended the filing deadlines and split the schedule into several tracks. Accordingly, for the bulk of issues, the parties filed direct testimony on July 31, and rebuttal testimony on August 17; and for "mediated" issues, the parties filed direct testimony on August 17, and rebuttal testimony on September 5.[17]

13. *Discovery.* Our February 1, 2001 *Procedural Public Notice* established general guidelines governing the discovery process. Pursuant to the schedule set by the Arbitrator, discovery began on May 31, 2001 and, after various extension requests from the parties, concluded for non-cost issues on August 31, and for cost issues on September 26. The parties were permitted to obtain discovery through document requests, interrogatories, oral depositions, and requests for admissions.

14. *Evidentiary Hearing.* The non-cost evidentiary hearing, at which the parties submitted documentary evidence and examined witnesses, began on October 3 and concluded on October 18, 2001. Before the hearing, the parties had developed a detailed schedule with Bureau staff, under which the non-pricing issues would be addressed first, followed by the consideration of pricing-related issues. The hearing was transcribed, and a copy of the transcript was filed with the Secretary of the Commission for inclusion in the record.

15. *Joint Decision Point Lists and Revised Contract Language.* At three points in the proceeding, the staff requested that the parties submit a "Joint Decision Point List" (JDPL) – a list and summary of the disputed issues, positions and relevant contract language, intended as a tool to assist Bureau staff in navigating the considerable record. The first JDPL was submitted jointly by the parties on June 18, 2001. The parties submitted revised JDPLs separately in September, before the evidentiary hearing, with final JDPLs submitted in early November. Importantly, in addition to listing their proposed language on an issue-by-issue basis in the JDPL after the evidentiary hearing, parties also submitted their full, proposed contracts on November 13, 2001.[18]

16. *Post-Hearing Briefs.* The parties filed post-hearing briefs and reply briefs. As with many other aspects of this proceeding, the schedule was divided and postponed at the joint

[17] The parties marked their pre-filed direct and rebuttal testimony as exhibits and moved them into evidence at the hearing. Below, we refer to the pre-filed testimony by its exhibit number.

[18] Our review of these documents revealed that, in certain instances, the JDPLs and the proposed contracts did not match, and each contained certain inaccuracies. Reviewing the full contracts, the November JDPL, and the parties' briefs, we determined that there were fewer inaccuracies in the parties' complete contracts than in the earlier-filed November JDPLs. Consequently, unless expressly noted otherwise, the contract proposals that we refer to below are from the parties' full contracts; our citations to a party's "November Proposed Agreement" are to the full contracts.

request of all parties to allow additional time to address certain issues. Briefs for the non-pricing issues were submitted on November 16, 2001, with replies on December 11, 2001.

III. OUTSTANDING PROCEDURAL MOTIONS

A. Verizon's Renewed Motion to Dismiss Consideration of Performance Measures and Assurance Plan Issues

17. On November 9, 2001, Verizon submitted its renewed motion to dismiss several unresolved issues relating to performance measurements and remedies.[19] Verizon argues that the Virginia Commission has not failed to act in this context, pursuant to section 252 of the Act, because it has agreed to act on and determine exactly the same performance-related issues raised by the petitioners.[20] Verizon also contends that, as a matter of comity, the Commission should defer to the Virginia Commission, which has the expertise and is expending significant resources to resolve these performance-related issues.[21] According to Verizon, the Act does not impose a specific requirement that remedies be incorporated into an interconnection agreement and it argues that including a performance assurance plan (PAP) in a contract is unnecessary and administratively problematic.[22] AT&T and WorldCom argue that, despite having established a collaborative on performance measures, the Virginia Commission failed to act on the parties' petitions, which included performance-related issues.[23] Consequently, the petitioners' contend that these issues are appropriate for consideration and decision by the Arbitrator.

18. We grant Verizon's renewed motion to dismiss consideration of issues related to performance measures and assurance plans.[24] While we disagree with Verizon that we lack jurisdiction to decide the issues set forth in AT&T's and WorldCom's petitions, we agree that, as a practical matter and a matter of comity, we should defer to the Virginia Commission on performance issues. Subsequent to the parties' filings on this motion, the Virginia Commission issued an order adopting performance measurements and standards applicable to Verizon.[25]

---

[19] The issues that are the subject of this Verizon motion are: Issues III-14, IV-120, IV-121, and IV-30.

[20] Verizon's Renewed Motion to Dismiss Consideration of Issues Related to Performance Measures and Assurance Plans at 1-2 (Verizon Renewed Motion).

[21] Verizon Renewed Motion at 6.

[22] Verizon Reply 5, 6.

[23] WorldCom Response to Verizon Renewed Motion at 2 (arguing that it is "wholly irrelevant" that the Virginia Commission is addressing performance measures and remedies in generic proceedings); AT&T Opposition to Verizon Renewed Motion at 4-5 (asserting that the Commission's finding that the Virginia Commission failed to carry out its section 252 responsibilities encompassed all of the issues AT&T designated in its petition).

[24] Specifically, we dismiss Issues III-14, IV-120, IV-121, and IV-130.

[25] *See Establishment of Carrier Performance Standards for Verizon Virginia Inc.*, Case No. PUC010206, Order Establishing Carrier Performance Standards with Implementation Schedule and Ongoing Procedure to Change (continued....)

Moreover, the parties to a collaborative proceeding in Virginia have reached agreement on a remedy plan for Verizon.[26] Since the Virginia Commission appears close to issuing an order approving a remedy plan, which will include an effective date, we determine that it is appropriate for us to defer to the state commission on all performance matters, including remedies. As noted by AT&T in its opposition to Verizon's renewed motion, we find that there is no present need for us to "retrace the steps" of the Virginia Collaborative and Virginia Commission.[27] However, in recognition of the possibility that the Virginia Commission may decide that the effective date for Verizon's PAP should be some date after the interconnection agreements go into effect, we direct Verizon to make retroactive, if necessary, any payments due to AT&T or WorldCom under the Virginia Commission-approved remedy plan. Should any dispute arise about whether payment is due and for what amount, we expect the parties to follow the dispute resolution processes set forth in their respective contracts.

B. Miscellaneous Motions

19. Before discussing each remaining motion individually, we determine that it would be helpful to explain several guiding principles we will follow in deciding these motions. First, we recognize the importance of a full and robust record to decide the unresolved issues presented by the parties. To that end, we will generally rule on the side of allowing information presented by any party into the record and then according that material the appropriate evidentiary weight. Next we will consider whether the petitioning party was afforded a meaningful opportunity to examine and respond to the other party's submission (*e.g.*, revised contract language). In making that determination, we will look at whether the parties agreed to waive cross examination on a particular issue that is now the subject of one of these motions. Finally, we note that this is not a static process and we will not rule in a manner that deters parties from revising their proposals either to reflect agreement reached during the proceeding or to acknowledge and address the other party's stated concerns.

1. Verizon's Objection to AT&T Response to Record Requests

20. On December 10, 2001, Verizon filed an objection to AT&T's Response to Record Requests, which the Bureau received on November 8, 2001. According to Verizon, AT&T's filing is nothing more than an inappropriate attempt to supplement the record testimony of its witness on Issues V-3, V-4, and V-4-a.[28] Specifically, Verizon argues that Commission

(Continued from previous page)
Metrics (issued by Virginia Comm'n on Jan. 4, 2002) (*Virginia Commission Performance Metrics and Standards Order*).

[26] The remaining dispute among the parties to this collaborative, which includes AT&T and WorldCom, is the effective date of the remedy plan. *See Establishment of a Performance Assurance Plan for Verizon Virginia, Inc.*, Case No. PUC-2001-00226, Fourth Preliminary Order (Virginia Commission, April 17, 2002).

[27] AT&T Opposition at 6-7.

[28] Verizon's Objection to AT&T Response to Record Requests at 1.

staff did not request AT&T to supplement the record at a later date and that it would be inappropriate to admit AT&T's information to the record and unfair to Verizon. Consequently, Verizon urges us to strike AT&T's response to the "fictitious" "Record Request 1."[29] AT&T argues that the record is best served by the inclusion of complete information on the issues and, to that end, AT&T states that it understood that, as a consequence of its witness's statements made at the hearing, it owed the Commission the complete answer that its witness was unable to provide at the hearing.[30]

21. We deny Verizon's objection but admit its filing, and AT&T's response to "Record Request 1," as exhibits.[31] In this particular instance we do not rely on either party's response as a basis for our decision in Issues V-3, V-4, and V-4-a.[32] However, as stated above, we determine that our record would benefit by the inclusion of such additional information.[33]

2. WorldCom's Objection and Response to Verizon's Corrections to WorldCom Responses to Record Requests

22. On December 4, 2001, WorldCom filed its objection to Verizon's corrections to WorldCom's record request responses.[34] WorldCom argues that Verizon has no procedural right to "correct" WorldCom's responses to record requests, set forth in its exhibit 52.[35] Moreover, WorldCom contends that its responses are accurate and Verizon's "corrections" contained in its exhibit 83 are inaccurate.[36] Although WorldCom asks us to exclude Verizon exhibit 83 from the record, in the alternative, it requests that we include its objection and response as WorldCom exhibit 53.[37]

---

[29] *Id.* at 2. As an alternative, Verizon suggests that we accept its objection into the record as Verizon exhibit 84. *Id.* at 5.

[30] AT&T Reply at 2, 3. AT&T also states that it has no objection to admitting Verizon's December 10 filing as Verizon exhibit 84. *Id.* at 3.

[31] We mark and admit into the record AT&T's response as AT&T exhibit 40 and Verizon's objection as Verizon exhibit 84.

[32] *See* Issues V-3/V-4-A and V-4 *infra*, for our discussion of these unresolved issues.

[33] We also note that since AT&T filed its response on November 8, Verizon had the opportunity to respond to AT&T's information in both its brief and reply.

[34] Verizon filed its corrections on November 28, 2001, arguing that since WorldCom's responses were submitted after the hearing, Verizon should be given the opportunity to correct the record and asks the Commission to admit its response as Verizon exhibit 83. Verizon's Corrections to WorldCom's Responses to Record Requests

[35] WorldCom's Objection and Response to Verizon's Corrections to WorldCom's Responses to Record Requests at 1-2.

[36] *Id.* at 2

[37] *Id.* at 8.

23. Consistent with our holding above, we deny WorldCom's objection and, instead, mark as exhibits and admit both carriers' responses into the record.[38] Also, as is the case above, we do not rely on either party's newly-admitted exhibit as a basis for our decisions in Issues I-1 and IV-1.[39] Consequently, we find that neither party is prejudiced by supplementing the record in this fashion.

3. Cox's Objection and Request for Sanctions

24. On November 7, 2001, Cox filed an objection to new language proposed by Verizon and a request for sanctions. Cox argues that, in its November JDPL, Verizon filed new language that significantly changes its previous position on Issues I-1, I-2 and I-9.[40] Cox asserts that none of these proposals was made to Cox during negotiations or in any previous contract language filings made with the Commission.[41] Consequently, Cox contends that it has been deprived of the opportunity to prepare direct and rebuttal testimony on these proposals and of a fair opportunity to cross examine Verizon witnesses on this new language.[42] For these reasons, Cox argues that the Commission should reject Verizon's new language and require Verizon to return to its earlier positions stated in September. Additionally, Cox states that Verizon should be sanctioned for its ongoing disregard for the Commission's requirements in this proceeding.[43] On November 20, 2001, Verizon submitted its opposition to Cox's objection and request for sanctions.

25. As we discuss further below, we rule for Cox, and against Verizon, on the three issues for which Cox challenges Verizon's language as belatedly revised. Accordingly, we deny as moot Cox's objection and request for sanctions.

4. WorldCom Motion to Strike

a. Positions of the Parties

26. On November 27, 2001, WorldCom filed a motion to strike contract language proposed by Verizon in the November JDPL that was not contained in the September JDPL. WorldCom asserts that Verizon submitted new contract provisions on over 30 issues in this

---

[38] Verizon's November 28 filing will become Verizon exhibit 83 and WorldCom's objection and response will become WorldCom exhibit 53.

[39] *See* Issues I-1 and IV-1 *infra* for our discussion of these issues

[40] Cox Objection and Request for Sanctions at 1.

[41] *Id.* at 2. For Cox's discussion of the three issues in dispute, *see id.* at 4-8, 10-11 for Issue I-1; *id* at 11 for Issue I-2; and *id.* at 12 for Issue 1-9.

[42] *Id.* at 3.

[43] *Id*

November filing.[44] According to WorldCom, the Due Process Clause of the Fifth Amendment and the APA require that each party has the opportunity to respond to other parties' submissions.[45] WorldCom contends that permitting Verizon to introduce new proposals at such a late stage in the proceeding denies WorldCom the opportunity to present evidence refuting Verizon's positions and would be arbitrary and capricious.[46] WorldCom also asserts that the Commission's procedural orders make clear that the parties' proposals should have come to rest by the time the hearings began.[47]

27. Verizon filed its opposition to WorldCom's motion on December 14, 2001. Verizon argues that the nature of Verizon's edits to the November JDPL are consistent with the Commission's purpose in requesting a corrected and updated JDPL, which was to ensure that the JDPL included all contract language pertinent to an issue that was updated to reflect Verizon's most current substantive proposal on an issue.[48] Moreover, Verizon contends that the majority of what WorldCom terms "new contract provisions" are, in fact, edits derived from Verizon's previous JDPLs or its originally filed proposed contract with WorldCom.[49] The few remaining edits, Verizon argues, reflect Verizon's efforts to update its proposal based on testimony or to ensure consistency or correct mistakes.[50] Verizon asserts that updating its proposal to conform to testimony does not make the resulting contract language a "new proposal" when WorldCom was "fully informed of, and presented with a full and fair opportunity to explore" Verizon's position as set forth in testimony on the open issues.[51] Verizon also argues that due process requires the opportunity to be heard at a meaningful time in a meaningful manner and WorldCom had such an opportunity to rebut Verizon's substantive positions.[52]

b. Discussion

28. We deny, in whole, WorldCom's motion to strike. With respect to the substantial majority of the issues for which WorldCom alleges that Verizon submitted new language, WorldCom's motion is moot, either because we reject Verizon's proffered language, or because

---

[44] WorldCom Motion to Strike at 5.

[45] *Id.* at 5-6, citing 5 U.S.C. § 706(2)(A), (E).

[46] *Id.* at 7.

[47] *Id.* at 7-8.

[48] Verizon Opposition to WorldCom Motion to Strike at 3.

[49] *Id.* at 3, citing Ex. B.

[50] *Id.* at 4, citing Ex. C.

[51] *Id.* at 4.

[52] *Id.* at 6.

the parties had settled the issue by the end of the hearing.[53] For other issues that WorldCom identifies, the language Verizon proposed in November was more favorable to WorldCom than Verizon's previous proposals, and we therefore perceive no prejudice that WorldCom could have suffered arising from any inability to respond to the new proposals.[54] Additionally, we conclude that WorldCom had ample opportunity, during the initial and reply briefs, to respond to any changes in Verizon's November language.[55] Lastly, on one issue, Verizon's November language, while not identical to its earlier proposal, does not differ in any legally or operationally significant respect.[56]

IV. UNRESOLVED ISSUES

A. Standard of Review

29. Section 252(c) of the Act sets forth the standard of review to be used in arbitrations by the Commission and state commissions in resolving any open issue and imposing conditions upon the parties in the interconnection agreement.[57] This section states that any decision or condition must meet the requirements of section 251 and accompanying Commission regulations, establish rates in accordance with section 252(d), and provide an implementation schedule.[58] As mentioned earlier, section 252(e)(5) requires the Commission to issue an order preempting a state commission that fails to act to carry out is responsibilities under section 252, and to assume the responsibility of the state commission. In its *Local Competition First Report and Order*, the Commission promulgated rule 51.807 implementing section 252(e)(5).[59] Rule 51.807 provides, among other things, that (a) the Commission is not bound to apply state laws or standards that would have otherwise applied if the state commission were arbitrating the section 252 proceeding; (b) except as otherwise provided, the Commission's arbitrator shall use final

---

[53] *See, e.g.*, Network Architecture Issues I-1, III-2, III-4, IV-1, IV-8, IV-11; Intercarrier Compensation Issues I-6, III-5, IV-35; UNE Issues III-6, III-7, III-8, III-9, III-10, III-11/IV-19, IV-23, IV-24, IV-25, VI-3-B; Business Process Issue IV-56 (settled); Rights of Way Issue III-13-H (settled); General Terms and Conditions Issues I-11, IV-101, IV-110 (settled).

[54] *See, e.g.*, Intercarrier Compensation Issue 1-5 (language regarding calling party number percentage requirement changes from 95 to 90); General Terms and Conditions Issue III-15 (Verizon agrees to provide WorldCom additional information regarding Verizon's inability to obtain intellectual property rights).

[55] *See, e.g.*, Intercarrier Compensation Issue 1-5 (WorldCom fully briefed issues relating to compensation for ISP-bound traffic); UNE Issues III-12 (WorldCom counsel cross examined Verizon witness on language WorldCom now challenges as late-proposed), IV-18 (despite opportunity in two briefs, WorldCom failed to identify how Verizon's language conflicted with statute or regulations).

[56] *See infra*, Issue IV-45, n.2300.

[57] 47 U.S.C. § 252(c).

[58] 47 U.S.C. § 252(c)(1)-(3).

[59] *Local Competition First Report and Order*, 11 FCC Rcd at 16127-32, paras. 1283-95.

offer arbitration; and (c) absent mutual consent of the parties, the Arbitrator's decision shall be binding on the parties.[60]

30. Based on the states' experience arbitrating interconnection disputes since 1996, the Commission modified rule 51.807 last year to provide the Arbitrator additional flexibility to resolve interconnection issues.[61] Specifically, rule 51.807(f)(3) was amended so that, if a final offer submitted by one or more parties fails to comply with the other requirements of this rule, or if the Arbitrator determines in unique circumstances that another result would better implement the Act, the Arbitrator has discretion to direct the parties to submit new final offers or to adopt a result not submitted by any party that is consistent with section 252 of the Act and the Commission's rules adopted pursuant to that section.[62] In its order approving this modification, the Commission explained that it would not identify those unique circumstances under which the Arbitrator could conclude that another result is appropriate. Below, we attempt to summarize two main categories of those instances in which we have found it necessary to depart from the proposals of the parties.

31. *Modifying to Achieve Consistency with the Act and Commission Rules.* In certain instances, we have modified one party's proposal, rather than either adopt one party's proposal or reject both and direct the parties to submit new final offers.[63] In these instances, where modification of the language can bring the agreement into conformity with the Act and Commission rules, we find that it conserves administrative resources to direct the parties simply to submit a compliance filing containing the corrected language that we provide.[64] Furthermore, just as the Commission recognized that the Arbitrator may conduct issue-by-issue final offer arbitration (as opposed to selecting one entire proposed contract over another), so too we find that, for certain issues, it is appropriate *within* an issue to select language from both parties to resolve the dispute (*i.e.*, to choose one subsection from one party and another subsection from the other party) or to adopt some but not all of a party's proposal.[65] We reiterate that we base our

---

[60] *See* 47 C.F.R. § 51.807(b), (d), (h).

[61] *See Arbitration Procedures Order*, 16 FCC Rcd at 6232, paras. 4-6

[62] *See* 47 C.F.R. § 51.807(f)(3); *Arbitration Procedures Order*, 16 FCC Rcd at 6232, para. 5.

[63] *See, e.g.*, Issues III-3/III-3-A, III-11, and III-12.

[64] We note that, on a few occasions, we have directed a petitioner and Verizon to incorporate corrected language provided by a second petitioner or by Verizon to that second petitioner (after determining that neither the first petitioner's proposal nor Verizon's proposal to that first petitioner was consistent with our rules or the Act). *See* Issues III-1/III-2/IV-1 and III-3/III-3-A. Similarly, we have determined that, in at least one issue, the proposals offered by the parties are unnecessary and language adopted elsewhere in the contract addresses their concerns. *See, e.g.*, Issue III-8.

[65] *See, e.g.*, Issues IV-74 (finding that both parties had legitimate concerns that could be addressed harmoniously by adopting language from each proposal), V-12, and IV-45. In this regard, we note that the parties defined the content of each numbered issue without our involvement. *See also, e.g.*, Issues IV-4, III-9, and IV-32 (adopting part, but not all, of a carrier's proposal).

decisions on current Commission rules and precedent, and therefore reject or modify parties' proposals that extend beyond existing law.

32. *Modifying to Reflect Concessions Made at Hearing or on Other Issues*. During the course of the hearings, the parties made numerous concessions or compromises, some of which were incorporated into their most recent contract proposals[66] and several of which were not.[67] In those instances where one party clearly indicated that it supported or no longer opposed the other party's conceptual proposal or contract language[68] or indicated that it was willing to modify its own proposal to reflect the other party's concerns,[69] we determine that it is appropriate to direct the parties to submit language conforming to such statements.[70]

33. We also feel it necessary to comment on a theme running through many of the issues in this proceeding. In response to a petitioner's proposal that simply paraphrases or quotes a particular Commission rule, Verizon often indicates that its proposed language requires it to comply with the requirements of "applicable law," and argues that the petitioner's language is therefore unnecessary. We generally determine that Verizon should prevail on such issues. If there is no disagreement between the parties about what is the "applicable law" (*e.g.*, the relevant section of the Act, Commission rule or order) and the petitioner's proposed language is a mere recitation of that Commission rule or order, we typically conclude that the petitioner's proposal adds little to no value to the contract. Simply memorializing a Commission requirement in an interconnection agreement is unnecessary to ensure a carrier's rights or make clear a carrier's obligations with respect to that requirement. Indeed, we find it unlikely that quoting or paraphrasing a Commission rule in the parties' contract would reduce the likelihood of disputes over interpretation of that rule.

34. Including language that requires Verizon to comply with all applicable law affords a petitioner the same contractual remedies that would be available if the contract paraphrased the relevant Commission rule. Moreover, for those issues that we arbitrate, quoting a Commission rule will not "grandfather" or insulate it from the contract's change of law clause.

---

[66] *See, e.g.*, Issue III-10 (AT&T modifying its proposal by eliminating many "operational details" to address Verizon's concern about the level of detail in AT&T's earlier proposal).

[67] *See, e.g.*, Issues III-4-B (directing parties to file compliance language incorporating AT&T's agreement, expressed during hearing and in post-hearing briefs, to return a firm order confirmation within a certain number of days).

[68] *See, e.g.* Issues I-7/III-4 (Verizon's witness testifying that WorldCom's 15 percent overhead proposal "sounds fine to us"). *See also* Tr. at 1501.

[69] *See, e.g.* Issue VI-3-B (WorldCom indicating that it is willing to delete one section of its proposal)

[70] *See, e.g.*, Issue IV-5. Also, in resolving one issue related to assurance of payment, we determine that it is appropriate to apply a compromise offered in another issue, concerning insurance. For these two issues (Issues VI-1-N and VI-1-P), we find that our rationale for adopting the compromise in one issue is equally applicable to the second.

To be clear, pursuant to section 252(a), and subject to the disclosure requirements of section 252(h), parties are permitted to negotiate terms and conditions without regard to subsections (b) and (c) of section 251. [71] In other words, if they so choose, the parties may memorialize in the contract a Commission rule or directive and exempt it from the agreement's change of law language. Similarly, they may agree to terms that are not compelled by, or are even inconsistent with, sections 251(b) and (c) of the Act. However, if the parties have not reached such an understanding and have asked the Commission to arbitrate their dispute, we will do so based on existing law and expect that any change in that law will be reflected in the contract. Notwithstanding this general approach towards use of the term "applicable law," we find that language clarifying a particular rule, or adding details of how the rule should operate in a commercial environment, may well be appropriate for adoption, if the proposed language is consistent with the Commission's rules and the Act.[72]

35. Finally, we note briefly that, in addressing the parties' disputes, we attempt to dispose fully of the substantive issue that the parties have presented and to provide adequate direction on how the parties should memorialize our decision in their respective interconnection agreements. As discussed above, our decision may take the form of adopting or rejecting proffered language, or adopting one side's language in modified form. We emphasize, however, that we have largely restricted ourselves to addressing the issues and the contract language that the parties have directly placed at issue through their presentations during the hearings we conducted and, most importantly, through their post-hearing briefs. There may be instances in which we have not specifically spoken to particular contract language because neither party addressed it in their advocacy, although it may have appeared in the contracts that the parties submitted after the hearings or even have appeared under a particular issue number in the JDPL. In those cases, we expect that the parties will generally be able to apply the analysis of the relevant portion of this order and the Commission precedents discussed therein to resolve any remaining disputes that they may have relating to contract language that the parties – and therefore the Bureau – left unaddressed.

B. Network Architecture

1. Issues I-1/VII-1/VII-3/VII-4 (Single Point of Interconnection and Related Matters)[73]

---

[71] *See* 47 U S.C § 252(a), (h).

[72] *See, e.g.*, Issue VI-3-B, *infra*.

[73] Because these issues present interrelated sets of contract language and disputed matters, we address them together. Issue I-1 concerns the financial implications of establishing a "single point of interconnection" in a LATA, and the parties' proposals defining their respective obligations to compensate each other for delivering traffic. Issue VII-4 addresses Verizon's proposed terms to AT&T for lowering reciprocal compensation payments under its "VGRIPs" compensation proposal. Issues VII-1 and VII-3 both address Verizon's objection to AT&T not using the term "interconnection point" in its interconnection proposal presented for arbitration Issue VII-1 also (continued....)

Pages 19 - 120 are not included . . . . . .

that, even assuming it could ascertain the identities of the relevant third-parties, Verizon does not explain how WorldCom could recoup Verizon's access charges from them when WorldCom's tariff does not include charges for third-party access.[816] WorldCom argues that there is no justification for placing on WorldCom Verizon's problems in collecting for access services.[817]

c. Discussion

243. We find that the language WorldCom seeks to add to Verizon's proposed section 10.2 is reasonable, and direct the parties to include this language in their final agreement.[818] Verizon has not provided sufficient explanation for why WorldCom should be assessed for exchange access services Verizon provides to toll-free service providers. Furthermore, Verizon fails to explain how an originating or terminating competitive LEC is in any better position than Verizon to know the identity of a toll-free service provider that does not provide a CIC code in the SMS database.[819] In the absence of such an explanation, Verizon's proposal to bill WorldCom for exchange access services Verizon provides to toll-free service providers amounts to little more than a transfer of Verizon's collection problems onto WorldCom. Indeed, Verizon's witness conceded that the appropriate party to be assessed for these services is the toll-free service provider, not WorldCom.[820]

C. Intercarrier Compensation Issues

1. Issue I-5 (Intercarrier Compensation for ISP-Bound Traffic)

a. Introduction

244. The *ISP Intercarrier Compensation Order*, which was issued after the filing of the arbitration petitions in this proceeding, sets forth an interim regime that establishes a gradually declining rate cap on the compensation that carriers may recover for terminating ISP-bound traffic, and a cap with a limited growth factor on the amount of traffic for which any such compensation is owed.[821] Generally speaking, the petitioners propose analogous, detailed

---

[816] *See* WorldCom Reply at 63, citing Tr. at 2460.

[817] *See* WorldCom Reply at 63.

[818] We thus adopt WorldCom's November Proposed Agreement, Attach. IV, § 11.2, and reject Verizon's November Proposed Agreement to WorldCom, Intercon. Attach., § 10.2.

[819] *See* Tr. at 2462-63, 2466.

[820] *See* Tr. at 2514-15.

[821] *See Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9161, 9155-56 para. 7 (2001) ("*ISP Intercarrier Compensation Order*"), *remanded sub nom. WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). Before release of the order, the petitioners argued in their arbitration petitions that ISP-bound traffic is "local" traffic subject to reciprocal compensation. AT&T Petition, Ex. 1 at 75; WorldCom Petition at 40-41; Cox Petition at 14-15. The Commission later ruled in its *ISP Intercarrier* (continued .)

provisions to implement the Commission's order. They argue that, because the order lacks detail, the parties need a roadmap for implementation.[822] Verizon asserts that the order is largely self-executing and would be better implemented through business negotiations outside of this arbitration.[823]

245. We note that, after the parties briefed this issue, the U.S. Court of Appeals for the D.C. Circuit remanded the *ISP Intercarrier Compensation Order* to the Commission, holding that section 251(g) of the Act did not support the Commission's conclusion that ISP-bound traffic fell outside of the section 251(b)(5) reciprocal compensation obligation.[824] The court did not, however, vacate the compensation regime that the order established, nor did it reverse the Commission's conclusion that ISP-bound traffic is not subject to section 251(b)(5).[825] Consistent with the manner in which we have applied other rules affected by judicial remands, we resolve issues relating to compensation for ISP-bound traffic on the basis of existing law, which, in this instance, includes the applicable interim compensation mechanism.[826] To the extent that the Commission's rules change at a later date, the parties may implement those changes through their agreements' change of law procedures.

b. "Mirroring Rule" and Past-Due Payment

246. Under the "mirroring rule" in the *ISP Intercarrier Compensation Order*, incumbent LECs can only take advantage of the rate caps on compensation for ISP-bound traffic if they offer to exchange, at those same capped rates, all traffic subject to the reciprocal compensation provisions of section 251(b)(5).[827] The parties disagree about whether Verizon's existing offers to implement the mirroring rule must be memorialized in their agreements, and whether Verizon must pay reciprocal compensation that allegedly has accrued under existing agreements before it may take advantage of the capped rates. We reject the petitioners' proposed language on both of these points.

(Continued from previous page)
Compensation Order, however, that ISP-bound traffic is not eligible for reciprocal compensation under section 251(b)(5). *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9170-71, para. 42. In the wake of that order, the Bureau directed the parties to submit "agreed statements of the issues that must still be arbitrated" if the parties could not reach agreement on implementation of the order. Letter from Jeffrey H. Dygert to Scott Randolph, Robert Quinn, Lisa B. Smith and Alexandra Wilson (July 11, 2001).

822 AT&T Brief at 79; WorldCom Brief at 79; Cox Brief at 31.

823 Verizon IC Brief at 2; Tr. at 1766-67.

824 *See WorldCom v. FCC*, 288 F.3d at 433-34.

825 *See id.* at 434.

826 *Cf. supra* para. 4.

827 *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9193-94, para. 89.

(i) Positions of the Parties

247. AT&T and WorldCom propose language that would incorporate into their interconnection agreements Verizon's obligations under the mirroring rule.[828] They argue that Verizon's offer to carriers to implement the mirroring rule outside of this proceeding is insufficient. WorldCom contends that, if the offer is not memorialized in any other legally enforceable document, such as a filing with the Virginia Commission, it can be rescinded unilaterally at any time.[829] AT&T and WorldCom further argue that Verizon should not be permitted to take advantage of the rate caps until Verizon has paid them, at the rates that they claim were applicable, for their delivery of all ISP-bound traffic before the effective date of the *ISP Intercarrier Compensation Order*.[830] AT&T asserts that Verizon has unilaterally refused to pay millions of dollars in reciprocal compensation for ISP-bound traffic that accrued during the period before the *ISP Intercarrier Compensation Order* established a new compensation regime.[831] WorldCom adds that, according to the Virginia Commission, reciprocal compensation was the appropriate mechanism for ISP-bound traffic prior to the new regime.[832] Therefore, WorldCom asserts, there can be no dispute as to the amount that Verizon owes.[833] Furthermore, WorldCom argues, its proposed contract provision regarding past-due payment is an effective enforcement mechanism for future true-ups as necessary.[834]

248. In response, Verizon notes that on May 14, 2001, it sent a letter offer, pursuant to the mirroring rule, to every competitive LEC and commercial mobile radio service (CMRS)

---

[828] AT&T Brief at 84; WorldCom Brief at 74. Specifically, AT&T and WorldCom propose that the capped rates for ISP-bound traffic should be available to Verizon only if: "(a) Verizon requests that ISP-bound Traffic be treated at the rates specified in the ISP Remand Order; (b) Verizon offers to exchange all traffic subject to the reciprocal compensation provisions of section 251(b)(5) with LECs, CLECs, and CMRS providers, at these information access rates; and (c) Verizon has paid all past due amounts owed on WorldCom's delivery of ISP-bound Traffic prior to June 14, 2001." *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.2.3; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.3.

[829] WorldCom Brief at 74.

[830] AT&T Brief at 79; WorldCom Brief at 74-76.

[831] AT&T Brief at 79 n.264. AT&T estimates that, throughout the entire Verizon region, the past due amount is in excess of $10 to 20 million. Tr. at 1665.

[832] WorldCom Brief at 74-75, citing *Petition of Cox Virginia Telecom, Inc. for Enforcement of Interconnection Agreement with Bell Atlantic-Virginia, Inc.; Arbitration Award for Reciprocal Compensation for the Termination of Local Calls to Internet Service Providers*, Final Order, Case No. PUC970069 (issued by Virginia Comm'n on Oct. 24, 1997).

[833] WorldCom Brief at 75. WorldCom estimates that Verizon owes WorldCom over $100 million for termination of ISP-bound traffic. WorldCom Reply at 71, citing Tr. at 1834.

[834] WorldCom Brief at 75.

provider with which it interconnects in Virginia.[835] Verizon argues that it thereby satisfied the mirroring rule and may avail itself of the rate caps. It argues that the offer need not be included in each interconnection agreement.[836] Verizon also disagrees that it must pay disputed arrearages for ISP-bound traffic before it can avail itself of the rate caps.[837] Verizon notes that these disputes over past-due payments arise under Verizon's existing interconnection agreements with AT&T and WorldCom, and thus do not belong in this arbitration.[838] In any case, Verizon argues, there is no support for such a true-up in the *ISP Intercarrier Compensation Order*.[839] Furthermore, Verizon denies that it owes any past due reciprocal compensation to AT&T or WorldCom under their existing contracts.[840] In this regard, Verizon asserts that neither AT&T nor WorldCom has taken any action to collect past-due amounts under their existing interconnection agreements with Verizon.[841]

(ii) Discussion

249. We agree with Verizon that it has satisfied the mirroring rule through its letter offers, sent to interconnecting carriers in Virginia, to exchange all traffic subject to section 251(b)(5) at the capped rates.[842] The *ISP Intercarrier Compensation Order* does not specify the manner in which this offer must be made. We do not believe that contract language covering Verizon's commitment is necessary, particularly since neither AT&T nor WorldCom suggests that Verizon has not fulfilled the requirements of the mirroring rule. Given our decision below to memorialize in the contract the rates at which Verizon has offered to exchange this traffic, we are not concerned that Verizon will attempt to end its compliance with the mirroring rule in the absence of a change of law. Accordingly, we reject AT&T's and WorldCom's proposed language on the mirroring rule.[843]

---

[835] Verizon IC Brief at 7, citing Tr. at 1863-64.

[836] *Id.*

[837] *Id.* at 7-8.

[838] *Id.* at 8. Verizon notes that the existing interconnection agreements have dispute resolution mechanisms, through which AT&T and WorldCom can seek past-due compensation.

[839] *Id.*

[840] *Id.* n.3.

[841] Verizon IC Reply at 5-6 n.22.

[842] Verizon submitted an example letter offer as an exhibit to this arbitration. *See* Verizon Ex. 55.

[843] AT&T and WorldCom articulate the mirroring rule through two separate provisions in each of their proposed contracts. *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.2.3(a), (b); WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.3(a), (b). We reject each of these provisions for both parties.

250. We also decline to adopt AT&T and WorldCom's language requiring payment of disputed compensation amounts for ISP-bound traffic prior to June 14, 2001, the effective date of the *ISP Intercarrier Compensation Order*.[844] The order does not indicate that this type of dispute must be resolved before the incumbent LEC can avail itself of the capped rates. As Verizon correctly notes, these disputes arise under its existing interconnection agreements with AT&T and WorldCom. Accordingly, they should be resolved pursuant to the dispute resolution mechanisms or other enforcement options available under those agreements.[845]

c. Change of Law Provision

251. In the event that the *ISP Intercarrier Compensation Order* is successfully appealed or modified, the petitioners each propose a change of law provision establishing the appropriate intercarrier compensation regime for ISP-bound traffic, with a retroactive effect on amounts due.[846] The petitioners argue that such provisions are important because the order remains subject to further modification and review.[847] Verizon opposes inclusion of these provisions in the contracts. Because each party has agreed to a general change of law provision, we reject the petitioners' change of law provisions that are specific to this issue.

(i) Positions of the Parties

252. AT&T asserts that, because of the uncertainty created by the ongoing review of the controlling Commission order, the interconnection agreement should contain a change of law provision specific to the issue of compensation.[848] Under AT&T and WorldCom's specific change of law provisions, upon reversal or modification of the Commission's order, ISP-bound traffic would be deemed section 251(b)(5) traffic subject to reciprocal compensation.[849] They add that, in this situation, retroactive payment would be due for the period when, consistent with

---

[844] Accordingly, we reject AT&T's proposed section 5.7.5.2.2.3(c); and WorldCom's proposed Part C, Attachment I, section 8.3(c), and the remaining text in section 8.3.

[845] We express no opinion on the appropriate compensation mechanism for ISP-bound traffic before June 14, 2001, or on any amounts that may be due.

[846] *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.5; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6; Cox's November Proposed Agreement to Verizon, § 5.7.7.1(c).

[847] *See WorldCom, Inc. v. FCC*, 288 F.3d at 434-34 (remanding order to Commission, holding that section 251(g) does not support Commission's conclusion that ISP-bound traffic falls outside section 251(b)(5)). Although the court remanded the matter to the Commission, we expect that, because the court did not vacate the Commission's rules or decide what rate should apply to ISP-bound traffic, the petitioners' concerns persist.

[848] AT&T Brief at 85.

[849] AT&T's November Proposed Agreement to Verizon, § 2.5; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6. *See* Tr. at 1673; WorldCom Brief at 78-79. WorldCom conceded at the hearing, however, that the *ISP Intercarrier Compensation Order* does not assert at any point that reciprocal compensation for ISP-bound traffic was required by law prior to the order. Tr. at 1686.

the terms of the *ISP Intercarrier Compensation Order*, Verizon did not pay the higher reciprocal compensation rate for termination of ISP-bound traffic.[850] WorldCom asserts that interconnection agreements typically contain analogous provisions regarding replacement of agreed-to rates caused by an intervening change in law, and sometimes also give the new rates retroactive application.[851] WorldCom argues that the interconnection agreement's general change of law provision would not settle uncertainties regarding ISP intercarrier compensation, because the general provision requires negotiation of new contract terms and Verizon has no incentive to negotiate on this issue.[852] Moreover, WorldCom and Cox assert that the history between the carriers of disagreeing on the appropriate compensation for ISP-bound traffic compels a provision that specifies the proper compensation in the event that the *ISP Intercarrier Compensation Order* is successfully appealed.[853]

253. Verizon argues that the petitioners' issue-specific change of law provisions are unnecessary in light of the agreements' general change of law provisions, which would apply if the federal rules governing ISP-bound traffic are successfully appealed or modified.[854] Verizon further argues that AT&T and WorldCom's retroactivity provisions fail to offer an equivalent true-up for Verizon to account for the higher reciprocal compensation rates that Verizon paid for ISP-bound traffic before the *ISP Intercarrier Compensation Order* became effective.[855] Verizon argues that, under the petitioners' proposed change of law provisions, section 251(b)(5) reciprocal compensation for ISP-bound traffic would result from even the most nominal modification of the order, regardless of whether the Commission's interim rates were disturbed by the appeal.[856]

---

[850] AT&T's November Proposed Agreement to Verizon, § 2.5; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6.

[851] WorldCom Brief at 79 n.41, citing WorldCom Pet., Ex. D (Interconnection Agreement Governing Current Relations), Attach. I, Table 1.

[852] WorldCom Brief at 79 n.40; WorldCom Reply at 70.

[853] WorldCom Brief at 78; Cox Brief at 33-34; Cox Reply at 24. WorldCom notes that, because Verizon maintains that ISP-bound traffic is not subject to reciprocal compensation, a successful appeal would result in Verizon refusing to pay for delivery of ISP-bound traffic altogether. WorldCom Reply at 70 & n.27. Cox does not argue for retroactive payment of reciprocal compensation for ISP-bound traffic upon successful appeal of the order. Cox Brief at 34 n.134; Cox Reply at 23-24. Cox's proposal would apply, *inter alia*, if the *ISP Intercarrier Compensation Order* were "affected by any legislative or other legal action." Cox's November Proposed Agreement to Verizon, § 5.7.7.1(c).

[854] Verizon IC Brief at 12; Verizon IC Reply at 7.

[855] Verizon IC Brief at 12-13.

[856] *Id.* at 13; Verizon IC Reply at 7-8. WorldCom's change of law provision would apply "if any legislative, regulatory, or judicial action, rule, or regulation modifies, reverses, vacates, or remands the ISP Remand Order, in whole or in part." WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6. AT&T's change of law provision would apply section 251(b)(5) reciprocal compensation to ISP-bound traffic "at such time (continued....)

(ii) Discussion

254. We agree with Verizon that the general change of law provision in each interconnection agreement is sufficient to address any changes that may result from the ongoing proceedings relating to the *ISP Intercarrier Compensation Order*. None of the petitioners demonstrates that the general change of law provision would be inadequate to effectuate any court decision that reverses, remands or otherwise modifies the *ISP Intercarrier Compensation Order*. Verizon has asserted, as to Cox, that its general change of law provision's renegotiation terms would be activated by a reversal, other court decision, or remand of the *ISP Intercarrier Compensation Order*.[857] It appears that the same is true for the change of law provisions in the agreements with AT&T and WorldCom.[858] Additionally, the dispute resolution procedures incorporated into the parties' general change of law provisions are sufficient to address the petitioners' concerns that any change of law would trigger protracted negotiations when Verizon has no incentive to reach agreement.[859] Therefore, in light of the agreed-to general change of law provisions and related dispute resolution procedures, we reject the petitioners' proposed change of law provisions that are specific to this issue.[860]

255. We also find troubling those portions of AT&T and WorldCom's proposed change of law provisions that would retroactively increase the compensation due for delivery of ISP-bound traffic in the event of any stay, modification or (in the case of WorldCom) remand of the *ISP Intercarrier Compensation Order*.[861] These proposals sweep too broadly and could, as

(Continued from previous page)
as the ISP Remand Order is stayed, reversed or modified." AT&T's November Proposed Agreement to Verizon, § 2.5.

[857] Tr. at 1790-92. *See* Verizon's November Proposed Agreement to Cox, § 27.

[858] *See* Verizon's November Proposed Agreement to AT&T, § 27; *see also* Issues IV-113/VI-1-E *infra* (adopting WorldCom's proposed section 25.2 of Part A).

[859] For example, according to the agreed-to general change of law provisions between Cox and Verizon, the parties commit to two rounds of good-faith negotiations that cannot exceed 45 days each. If they still cannot reach agreement, either side may file a complaint with the Virginia Commission or take other appropriate regulatory or legal action. *See* Verizon's November Proposed Agreement to Cox, § 28.9. *See also* Verizon's November Proposed Agreement to AT&T, § 28.11; Verizon's November Proposed Agreement to WorldCom, Part A, § 14, WorldCom's November Proposed Agreement to Verizon, Part A § 13; Issue IV-101 (dispute resolution provisions)

[860] Accordingly, we reject AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.5; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6; and Cox's November Proposed Agreement to Verizon, § 5.7.7.1(c).

[861] AT&T proposes that upon a stay, reversal or modification of the order, "then (1) ISP-bound Traffic shall be deemed Local Traffic retroactive to the effective date of this Agreement; (2) any compensation that would have been due under this Agreement since its effective date for the exchange of ISP-bound traffic shall immediately be due and payable." AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.5. WorldCom proposes that certain contract provisions, including rates, "may be voided by either Party . . . if any legislative, regulatory, or judicial action, rule, or regulation modifies, reverses, vacates, or remands the ISP Remand Order, in whole or in
(continued...)

Verizon argues, be triggered by a modification or remand that did not reject, or even address, the order's rate structure for ISP-bound traffic. Indeed, we note that the D.C. Circuit's recent remand of the *ISP Intercarrier Compensation Order* likely would have triggered at least WorldCom's proposed language, even though the court expressly declined to reach the issue of rates for ISP-bound traffic.

d. Definition of "Internet Traffic"

256. In the *ISP Intercarrier Compensation Order*, the Commission determined that ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5).[862] Generally speaking, the order focused on traffic bound for ISPs over the public switched telecommunications network, which the Commission referred to as "ISP-bound traffic." Because the order "carved out" ISP-bound traffic as one category of traffic not subject to section 251(b)(5) reciprocal compensation, the parties argue about precisely how to define the rest of the universe of traffic that is not subject to section 251(b)(5) reciprocal compensation. Verizon also proposes the term "Measured Internet Traffic" to define the traffic that is bound for an ISP and therefore not subject to reciprocal compensation under section 251(b)(5).

(i) Positions of the Parties

257. The petitioners assert that Verizon's proposed contract, which provides that reciprocal compensation does not apply to "interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access,"[863] is over-inclusive and could be read to exclude from reciprocal compensation not only ISP-bound traffic, but also other forms of information access traffic, or more broadly, all of the traffic types listed in section 251(g).[864] Cox argues that Verizon's proposed language improperly reverses the presumption in section 251(g), exempting the traffic types listed therein from reciprocal compensation, rather than, as the statute requires, leaving in place previous compensation regimes until they have been superseded by new rules.[865]

(Continued from previous page)
part," adding that ISP-bound traffic would be deemed section 251(b)(5) traffic, and retroactive payment would be due. WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6.

[862] *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9166-74, paras. 34-47. As we note above, this order has been remanded to the Commission. *See WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

[863] *See, e.g.*, Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.1.

[864] WorldCom Brief at 80; Cox Reply at 22-23; *see* Verizon's November Proposed Agreement to AT&T, § 1.68(a); Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.1; Verizon's November Proposed Agreement to Cox, § 1.60a. According to WorldCom, exclusion of information access services could affect "traffic to other enhanced service providers that has traditionally been treated as local." WorldCom Brief at 80.

[865] Cox Reply at 23, citing 47 U.S.C. § 251(g)

258. WorldCom complains that Verizon's defined term, "Measured Internet Traffic," which incorporates another Verizon-defined term – "Internet Traffic" – defines ISP-bound traffic more broadly than does the *ISP Intercarrier Compensation Order* and therefore generates confusion.[866] AT&T complains that Verizon's proposed definition of "Measured Internet Traffic" includes not only traffic delivered to an ISP, but also any traffic that is delivered to a customer and that is "transmitted to or returned from the Internet at any point during the duration of the transmission."[867] AT&T argues that, through this definition, Verizon is attempting to expand the universe of traffic exempted from reciprocal compensation by including all traffic that traverses the Internet and is delivered to any customer, not just traffic delivered to an ISP.[868] AT&T argues that, for example, Verizon could seek to use this language to avoid paying compensation for packet-switched voice calls.[869]

259. Verizon argues that the petitioners' approaches are under-inclusive. Verizon claims that petitioners' language is inconsistent with the Commission's rules because petitioners fail to exclude certain types of traffic, especially toll traffic, from section 251(b)(5) reciprocal compensation.[870] The result, according to Verizon, is that access traffic and toll traffic in particular would be subject to reciprocal compensation by being grouped together with bona fide section 251(b)(5) traffic traditionally rated as "local."[871] In this context, Verizon argues that AT&T's use of the terms "local traffic" and "voice traffic" are problematic because they fail to account for certain distinctions that the Commission has recognized. Verizon says the correct

---

[866] *See* WorldCom Brief at 79. On August 7, 2001, Cox filed a motion to strike the term "Internet Traffic" that Verizon added through the filing of a revised JDPL, after the parties had previously agreed to a definition of ISP-bound traffic. Cox Motion to Strike Untimely Raised Issues Related to Issue I-5 at 4 (filed Aug. 7, 2001) (Cox Motion to Strike). Cox argued that Verizon's proposed definition of "Internet Traffic" is overbroad, and could be construed to extend beyond dial-up ISP-bound traffic into other advanced telecommunications services such as IP telephony. *Id.* at 5-6. In an August 17, 2001 letter, we granted Cox's motion in part, striking the term "Internet Traffic" from Verizon's proposed language to the extent that Verizon sought to use the term and definition to introduce an issue beyond the implementation of the Commission's Order. Letter from Jeffrey H. Dygert to Scott Randolph and Alexandra Wilson (Aug. 17, 2001) (*August 17 Letter Order*) In a September 18, 2001 revised JDPL, Verizon continued to use the term "Internet Traffic," prompting Cox to file a motion to enforce the *August 17 Letter Order*. Cox Motion to Enforce the August 17 Order (filed Sept. 21, 2001).

[867] AT&T Brief at 80-81. Verizon has agreed, with respect to Cox and WorldCom, to define "Measured Internet Traffic" to include only traffic delivered to an ISP, not this broader category of traffic delivered to any customer.

[868] *Id*; *see also* Verizon's November Proposed Agreement to AT&T, § 1.52(a).

[869] AT&T Brief at 81.

[870] Verizon IC Brief at 4.

[871] *Id.* at 4.

approach focuses instead on traffic subject to section 251(b)(5) reciprocal compensation obligations, together with traffic excluded from those obligations by section 251(g).[872]

260. With regard to its definition of Measured Internet Traffic, Verizon asserts that when it describes traffic that is delivered to a customer *or* an ISP, there is no real distinction between the two terms within the definition.[873] In addition, as noted above, through its hearing testimony, Verizon agreed to replace the phrase "delivered to a customer or an ISP" with "delivered to an ISP" in Cox's contract.[874] It appears that Verizon has made the same change in its proposed contract to WorldCom.[875]

(ii) Discussion

261. We disagree with Verizon's assertion that every form of traffic listed in section 251(g) should be excluded from section 251(b)(5) reciprocal compensation. In remanding the *ISP Intercarrier Compensation Order* to the Commission, the D.C. Circuit recently rejected the Commission's earlier conclusion that section 251(g) supports the exclusion of ISP-bound traffic from section 251(b)(5)'s reciprocal compensation obligations.[876] Accordingly, we decline to adopt Verizon's contract proposals that appear to build on logic that the court has now rejected.[877] We address below Verizon's argument that exchange access (*e.g.*, toll traffic) should not be subject to reciprocal compensation under the Commission's rules.

262. Furthermore, we agree that use of Verizon's term "Measured Internet Traffic" rather than "ISP-bound traffic," which is the term used by the Commission in the *ISP Intercarrier Compensation Order*, may be confusing. Verizon's term does not appear in the

---

[872] *Id.* at 4-5. Verizon notes that the Pennsylvania and Maryland Commissions have rejected a "local traffic" definition, in favor of "reciprocal compensation traffic." *Id.* at 4, citing *Petition of Sprint Communication Co., L.P. for an Arbitration Award Pursuant to 47 U.S.C. § 252(b)*, Opinion and Order, A-310183F002, at 47 (issued by Pennsylvania Comm'n Oct. 14, 2001); *In re Arbitration of Sprint Communications Co., L.P. v. Verizon Maryland, Inc., Pursuant to Section 252(b)*, Order No. 77320, Case No. 8887, at 23-24 (issued by Maryland Comm'n Oct. 24, 2001).

[873] Tr. at 1740-41.

[874] *Id.* at 1784 We note that Verizon was referring to section 1.41(a) of Verizon's proposed agreement with Cox.

[875] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.12.

[876] *WorldCom v. FCC*, 288 F.3d at 433-34.

[877] Therefore, we strike Verizon's November Proposed Agreement to AT&T, § 1.68(a); Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.1 and corresponding language in § 7.14; Verizon's November Proposed Agreement to Cox, § 1.60a.

petitioners' language that we adopt herein. Accordingly, we reject it and its companion term "Internet Traffic."[878]

e. Rebuttable Presumption of 3:1

263. Rather than requiring parties separately to identify ISP-bound traffic and section 251(b)(5) traffic for purposes of calculating intercarrier compensation, the *ISP Intercarrier Compensation Order* created a rebuttable presumption that "traffic delivered to a carrier, pursuant to a particular contract, that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic."[879] To rebut this presumption, a carrier must demonstrate to the relevant state commission that the 3:1 ratio fails accurately to reflect the traffic flow.[880] The parties offer competing language to implement the 3:1 ratio and procedures for rebutting it.[881] We adopt the petitioners' language.

(i) Positions of the Parties

264. AT&T describes the 3:1 calculation in terms of separating "local traffic" from ISP-bound traffic.[882] Specifically, AT&T defines "local traffic" as traffic that stays within a local calling area as determined by the NPA-NXX codes of the calling and called parties;[883] it does not consider any toll traffic qualifying for access payments to be subject to the 3:1 calculation.[884] AT&T contends that it defines "ISP-bound traffic" in the same manner as the *ISP Intercarrier Compensation Order* uses the term.[885] WorldCom also asserts that it would not include

---

[878] Accordingly, we reject Verizon's November Proposed Agreement to AT&T, § 1.52(a); Verizon's November Proposed Agreement to Cox, §§ 1.36, 1.41; and Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., §§ 7.10, 7.12.

[879] *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9187-88, para. 79.

[880] *Id.*

[881] *See* Verizon's November Proposed Agreement to AT&T § 5.7.4; AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.1; Verizon's November Proposed Agreement to Cox § 5.7.4; Cox's November Proposed Agreement to Verizon, § 5.7.7.3(a); Verizon's November Proposed Agreement to WorldCom , Part C, Interconnection Attach., § 7.3.2.1, WorldCom's November Proposed Agreement to Verizon, Part C, Attach. 1, § 8.4.

[882] AT&T Brief at 80; AT&T's November Proposed Agreement to Verizon, § 2.1.

[883] AT&T Brief at 80 n.269, citing AT&T's November Proposed Agreement to Verizon, § 1.51. The rating of calls based on the NPA-NXX codes of the calling and called parties is discussed in Issue I-6 below.

[884] Tr. at 1654.

[885] AT&T Brief at 80. Specifically, AT&T clarifies that the term ISP-bound traffic "shall have the same meaning, when used in this Agreement, as used in the [*ISP Intercarrier Compensation Order*]." AT&T's November Proposed Agreement to Verizon, § 1.46.

intraLATA toll calls in the 3:1 calculation.[886] However, WorldCom does seek to include within the 3:1 calculation its traffic originating over both interconnection trunks and UNE-platform arrangements.[887] WorldCom argues that nothing in its proposal precludes rebuttal of the 3:1 presumption; indeed, it offers to make explicit the rebuttable nature of the 3:1 presumption.[888] Cox also proposes contractual provisions to implement the 3:1 calculation.[889] Cox states that, according to its proposed language, toll traffic would not be subjected to the 3:1 calculation.[890]

265. Verizon disagrees with each petitioner's approach to implementing the 3:1 calculation, largely based on its interpretation that the petitioners would include all traffic, whether "local" or "toll," in the calculation.[891] Verizon's approach, as noted earlier, is to exclude all traffic listed in section 251(g) from reciprocal compensation and, hence, the 3:1 calculation.[892] In addition to Verizon's concern about traffic types, Verizon also argues that AT&T and WorldCom's language, if adopted, should specifically note the rebuttable nature of the 3:1 presumption.[893]

(ii) Discussion

266. The petitioners' language implementing the 3:1 presumption is largely consistent with the *ISP Intercarrier Compensation Order*. We adopt their proposed contract language, modifying AT&T's and WorldCom's to clarify that the 3:1 presumption is rebuttable.[894] The petitioners have all asserted that exchange access traffic types, including traffic that has traditionally been rated as "toll," would not be included in the 3:1 calculation. We see nothing in the petitioners' proposed contracts that would suggest a contrary result. Having rejected in the preceding section Verizon's argument that all categories of section 251(g) traffic should be excluded from section 251(b)(5) reciprocal compensation, we decline to follow Verizon's

---

[886] WorldCom Reply at 67; Tr at 1689.

[887] WorldCom Brief at 76-77; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.4.1.

[888] WorldCom Brief at 76 n.39; WorldCom Reply at 67-68.

[889] Cox Brief at 33; Cox's November Proposed Agreement to Verizon, § 5.7.7.3(a).

[890] *See* Cox Reply at 22-23.

[891] Verizon IC Brief at 4; Verizon IC Reply at 1-2.

[892] Verizon IC Reply at 1-2.

[893] *Id.* at 2-3.

[894] *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.1; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, §§ 8.4, 8.4.2; Cox's November Proposed Agreement to Verizon, § 5.7.7.3(a). Further, we reject Verizon's competing language. *See* Verizon's November Proposed Agreement to AT&T, § 5.7.4; Verizon's November Proposed Agreement to Cox, § 5.7.4; Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.2.1.

approach of excluding that "universe" of traffic from the 3:1 calculation. The petitioners are not proposing to subject exchange access traffic to the 3:1 calculation, and their proposed contracts cannot be read to do so.

267. With regard to WorldCom's argument that both its originating interconnection trunk and UNE-platform traffic should be subject to the 3:1 calculation, we note that Verizon has agreed to include WorldCom's originating UNE-platform traffic.[895] We find that traffic originating on WorldCom's interconnection trunks should also be included in the 3:1 calculation.[896] The *ISP Intercarrier Compensation Order* does not distinguish between UNE-platform traffic and originating interconnection trunk traffic in its application of the 3:1 ratio. We conclude, therefore, that both categories of traffic should be included in this calculation. Verizon has offered no reason why we should reach a contrary conclusion.

268. Finally, we agree with Verizon that at least AT&T's proposal could be read as making the 3:1 presumption irrebuttable and is therefore inconsistent with the *ISP Intercarrier Compensation Order*. To make AT&T's proposal consistent with the *ISP Intercarrier Compensation Order*, we substitute the phrase "shall be presumed, subject to rebuttal, to be" for the phrase "shall be conclusively defined as" in both places where this phrase appears in AT&T's proposed section 5.7.5.2.1. We also direct WorldCom to modify its section 8.4 proposal explicitly to reflect the rebuttable nature of the 3:1 presumption, as it agreed to do.[897]

f. Audits and Billing Factors

269. The *ISP Intercarrier Compensation Order* does not set forth any specific billing or auditing measures to govern intercarrier compensation for ISP-bound traffic. AT&T proposes certain additional provisions that establish billing factors, blended rates and audits. Verizon opposes AT&T's language. Meanwhile, Verizon proposes auditing provisions to Cox that would allow it unilaterally to conduct audits of Cox's traffic at any time. We adopt AT&T's provisions that establish billing factors, while rejecting the additional issue-specific auditing provision that AT&T proposes to Verizon, and that Verizon proposes to Cox.

(i) Positions of the Parties

270. AT&T proposes quarterly billing in which the relative percentage of section 251(b)(5) traffic to ISP-bound traffic from the first two months of a calendar quarter establishes the appropriate compensation for the subsequent quarter.[898] AT&T proposes that Verizon must calculate quarterly factors that represent Verizon's assessment of the relative amounts of section

---

[895] *See* Tr. at 1853-54.

[896] Accordingly, we adopt WorldCom's proposed section 8.4.1 of Attachment I.

[897] *See* WorldCom Brief at 76 n 39; WorldCom Reply at 67-68.

[898] *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.4.2.

251(b)(5) and ISP-bound traffic between the carriers.[899] AT&T then proposes blended rates that incorporate these established factors so that the single applicable rate for all traffic consists of the section 251(b)(5) rate and the ISP-bound traffic rate weighted according to the proportion established by the quarterly billing factors.[900] Finally, AT&T proposes contract language that allows it specifically to audit these calendar quarter factors and their associated bills.[901]

271. Cox criticizes Verizon's proposal that would grant an unlimited, unilateral right for Verizon to audit the relative proportions of Cox's section 251(b)(5) and ISP-bound traffic to determine whether proper rates are being charged.[902] Cox argues that the audit right proposed by Verizon is unfairly unilateral in nature, and that Verizon could abuse it with burdensome audit requests.[903] Furthermore, Cox argues, Verizon does not need an auditing provision specifically for ISP-bound traffic because the *ISP Intercarrier Compensation Order* alone makes it possible for Verizon to raise a concern about traffic flow to the Virginia Commission at any time.[904] Additionally, the parties have agreed to a general auditing provision, giving either party the right to conduct an audit twice per year (or more, if discrepancies are found) which, Cox argues, offers Verizon sufficient protection.[905]

272. Verizon argues that AT&T's proposals for billing factors and blended rates go beyond the specific requirements of the *ISP Intercarrier Compensation Order* and therefore do not belong in this interconnection agreement.[906] Verizon also offers specific criticisms of each. With regard to AT&T's proposal to estimate a calendar quarter's compensation based on the first two months of the previous quarter, Verizon argues that the provision would fail to protect the parties against changes in relative volumes of traffic during the third month of the previous quarter.[907] Verizon states that it would agree to AT&T's language if it were modified to provide for a true-up, available for the subsequent quarter, based on the third month's actual balance of traffic.[908] Verizon opposes AT&T's proposal concerning the calculation of traffic factors,

---

[899] *See id.* § 5.7.5.2.4.3.

[900] *See id.* § 5.7.5.2.4.4.

[901] *See id.* § 5.7.5.2.4.5.

[902] Cox Brief at 34-35; Tr. at 1745, citing Verizon's November Proposed Agreement to Cox, § 5.7.8.

[903] Cox Brief at 35.

[904] Cox Brief at 34-35, citing *ISP Intercarrier Compensation Order*, 16 FCC Rcd. at 9187-88 para. 79. During the hearing, Verizon agreed with this assertion. *See* Tr. at 1752-53.

[905] Cox Brief at 34, citing Verizon's November Proposed Agreement to Cox, § 5.7.5.

[906] Verizon IC Brief at 11.

[907] *Id.*

[908] *Id.*

arguing that it is not in any better position than AT&T to assess them and, therefore, should not have the responsibility of calculating the factors that AT&T seeks to impose on it.[909] Finally, Verizon simply disagrees with a blended rate structure, contending that the *ISP Intercarrier Compensation Order* provides no support for such a provision.[910] Verizon adds that AT&T's auditing provision is unnecessary because there is already an agreed-to general auditing provision in its interconnection agreement with AT&T.[911]

273. Regarding the audit provision it proposes to Cox, Verizon argues that the additional provision is more focused on obtaining data to rebut the 3:1 presumption, while the general provision is meant to monitor minutes of use and the distinction between "local" and "toll" traffic.[912] Verizon concedes, however, that the general provision could indeed function to obtain the same data as the additional provision, yet it does not in Verizon's view go far enough.[913]

(ii) Discussion

274. We adopt AT&T's proposal to determine the split between ISP-bound and 251(b)(5) traffic in a particular quarter by looking to the split between these two categories of traffic in the first two months of the preceding calendar quarter. This should provide an objectively verifiable means to ensure prompt and accurate intercarrier compensation payments between the parties.[914] Additionally, in order to minimize any burden on Verizon, we modify AT&T's proposed language regarding the calculation of traffic factors to provide that AT&T is responsible for the calculations. We also agree with Verizon that the contract should provide for quarterly true-ups that account for changes in traffic proportions that may occur in the third month of a quarter.[915]

---

[909] *Id.*

[910] *Id.*

[911] *Id.*

[912] Tr. at 1751.

[913] Tr. at 1751-52.

[914] Accordingly, we adopt AT&T's November Proposed Agreement to Verizon, §§ 5.7.5.2.4, 5.7.5.2.4.1, 5.7.5.2.4.2.

[915] Accordingly, we adopt AT&T's proposed section 5.7.5.2.4.3 but revise it to read as follows:

> AT&T will calculate the factors to be used for the relative percentage of minutes of use of total combined Voice Traffic and ISP-bound Traffic represented by each type of traffic during periods referred to in section 5.7.5.2.4.2 above, and AT&T will notify Verizon of such factors in writing by no later than the first day of the period during which such factors will be used. Such factors will govern all billing during the applicable period, and, on a quarterly basis, the Parties will true up any billing for prior periods based on actual balance of traffic during such period.

275. We reject AT&T's proposal for blended rates based on the factors that each party will develop.[916] We agree with Verizon that, with the exception of the mirroring rule, the *ISP Intercarrier Compensation Order* does not contemplate a blended rate applicable to all traffic exchanged between carriers. We conclude that the proposal for traffic factors, which we have just adopted, will permit the parties adequately to determine the amounts of traffic compensable as ISP-bound and subject to section 251(b)(5), respectively. We also reject AT&T's proposed auditing provision,[917] and agree with Verizon that the availability of an agreed-to general auditing provision is sufficient for the parties to audit the traffic factors and associated bills.[918]

276. We also reject Verizon's proposed language that would give it extra auditing rights with respect to Cox.[919] Verizon can already accomplish the aim of its additional auditing provision through the agreed-to, general auditing provision.[920] Verizon has offered no justification for the unlimited, unilateral audit privilege that it seeks.

g. Rates, Not Just Caps

277. The *ISP Intercarrier Compensation Order* establishes an interim compensation regime by limiting the rate for ISP-bound traffic according to a cap that declines over a period of years.[921] The order does not, however, specify the exact rate for terminating ISP-bound traffic; it preserves the right of state commissions to set a rate below the applicable cap.[922] The parties disagree over whether their agreements should set the actual rates, or leave them to subsequent negotiations. We adopt the petitioners' proposals to include the rates.

(i) Positions of the Parties

278. The petitioners argue that the contracts must specify rates, rather than merely refer to caps.[923] They assert that the rates should be set at the caps that are established by the *ISP Intercarrier Compensation Order*.[924]

---

916 Accordingly, we reject AT&T's proposed section 5.7.5.2.4.4.

917 Accordingly, we reject AT&T's proposed section 5.7.5.2.4.5.

918 *See* Verizon's November Proposed Agreement to AT&T, § 28.10 (general auditing provisions).

919 Specifically, we reject Verizon's proposed section 5.7.8 made to Cox.

920 *See* Verizon's November Proposed Agreement to Cox, § 5.7.5 (general auditing provision).

921 *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9186-87, paras. 77-78.

922 *Id* at 9188, para. 80.

923 AT&T Brief at 82; WorldCom Brief at 76; Cox Brief at 33.

279. Verizon argues that its interconnection agreements need not set rates because the Virginia Commission could order rates below the caps at any time, in accordance with the *ISP Intercarrier Compensation Order*.[925] Verizon concedes, however, that the Virginia Commission has not yet set a rate for termination of ISP-bound traffic.[926] Verizon also agrees that the initial rate proposed by the petitioners is the same rate that Verizon proposed in its May 14, 2001 letter offers to all competitive carriers in Virginia.[927]

(ii) Discussion

280. We adopt the petitioners' proposed contracts regarding rates for termination of ISP-bound traffic.[928] If, before the adoption of the *ISP Intercarrier Compensation Order*, the Virginia Commission had adopted rates, applicable to the exchange of ISP-bound traffic, that were lower than the caps reflected in the *Order*, the Virginia Commission's rates would govern. Because the parties agree, however, that the Virginia Commission has not set a rate for termination of ISP-bound traffic, the rate caps in the *ISP Intercarrier Compensation Order* are the rates governing the exchange of ISP-bound traffic in Virginia. Furthermore, we note that the rates the petitioners propose to include in their interconnection agreements are the rates at which Verizon has already agreed to exchange traffic in Virginia. We earlier determined that it was not necessary to memorialize in the interconnection agreement Verizon's offer to comply with the mirroring rule[929]; however, it is insufficient for ISP-bound traffic rates to be established by mere reference to Verizon's letter offers issued to comply with the mirroring rule. Therefore, we find no reason to leave the rates out of these interconnection agreements.

h. Growth Caps

281. Apart from the rate caps discussed above, the *ISP Intercarrier Compensation Order* also imposes a cap, with a limited annual growth factor, on the volume of ISP-bound traffic minutes for which LECs are entitled to compensation.[930] This "growth cap" builds on the

(Continued from previous page)

[924] *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.2.2; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.3.2; Cox's November Proposed Agreement to Verizon, § 5.7.7.2(b)-(e).

[925] Tr. at 1761-64.

[926] Tr. at 1761-62.

[927] Tr. at 1865.

[928] Accordingly, we adopt AT&T's proposed section 5.7.5.2.2.2; WorldCom's proposed section 8.3.2 of its Attachment I; and Cox's proposed sections 5.7.7.2(b)-(e). We note that Cox's proposal establishes single rates for delivering ISP-bound traffic to either a tandem or an end office. Verizon conceded at the hearing that, as Cox argues, rates should be uniform whether tandem or end office interconnection applies. *See* Tr. at 1776-78; Cox Brief at 31-32.

[929] *See* subsection b. above, discussing the mirroring rule.

[930] *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9187, para. 78.

number of ISP-bound minutes for which carriers were entitled to compensation under a particular contract during a baseline period, the first quarter of 2001.[931] The petitioners propose language to establish this baseline amount, together with the growth cap calculation, in order to avoid future disputes.[932] Verizon opposes the inclusion of any such language or, at a minimum, argues that the growth cap calculation should include only those ISP-bound minutes for which a LEC is entitled to compensation. We adopt the petitioners' proposed language with certain modifications.

(i) Positions of the Parties

282. The petitioners incorporate the growth cap calculation methodology into their proposed contracts.[933] AT&T proposes that the growth cap baseline should be established by subjecting all traffic that it exchanged with Verizon in the first quarter of 2001 to the Commission's 3:1 presumption.[934] This means that the baseline amount would equal either party's minutes of terminating non-toll traffic that was equal to three times the minutes of the other party's terminating non-toll traffic during the first quarter of 2001. AT&T disagrees with Verizon's limitation on the calculation—to include only those minutes for which a LEC is entitled to compensation—because, it asserts, Verizon likely would apply to this limitation a unilateral determination that AT&T was not entitled to compensation for any of the ISP-bound traffic during the first quarter of 2001.[935] AT&T argues that its proposal would minimize disputes, in tandem with the Commission's 3:1 presumption.[936] WorldCom asserts that, in any case, Verizon did not object during the hearing to contract language that would establish, and therefore settle, the minutes of ISP-bound traffic for which WorldCom was eligible for compensation during the first quarter of 2001.[937] Cox proposes to include the actual baseline amount (rather than merely the calculation methodology) in its interconnection agreement with Verizon.[938] Cox also argues that its growth cap calculation for 2002 should be based on the previous year's calculated cap, rather than on the previous year's actual traffic.[939]

---

[931] *Id.*

[932] *See* AT&T's November Proposed Interconnection Agreement to Verizon, § 5.7.5.2.3; WorldCom's November Proposed Interconnection Agreement to Verizon, Part C, Attach. I, § 8.5; Cox's November Proposed Interconnection Agreement to Verizon, § 5.7.7.4.

[933] AT&T Brief at 83; WorldCom Brief at 77; Cox Reply at 22 n.80.

[934] AT&T Reply at 43.

[935] *Id.* at 41-42.

[936] *Id.* at 43.

[937] WorldCom Brief at 77, citing Tr. at 1869-71.

[938] Cox Brief at 33 n.130.

[939] Cox Reply at 22 n.80.

283. Verizon argues that the growth cap baseline calculation should be explicitly qualified to include only those ISP-bound minutes for which a LEC was entitled to compensation, in accordance with the *ISP Intercarrier Compensation Order*.[940] Verizon opposes AT&T and WorldCom's attempts to remove this qualifier from the calculation, because AT&T and WorldCom are continuing to dispute the amount of compensation to which they are entitled for ISP-bound traffic from the first quarter of 2001.[941] Verizon also disagrees with Cox's 2002 growth cap calculation in that it is strictly based on the 2001 growth cap, rather than on an independent calculation of the number of ISP-bound minutes for which Cox actually was entitled to compensation in 2001.[942]

(ii) Discussion

284. We agree with the petitioners that it is appropriate to include the *ISP Intercarrier Compensation Order*'s methodology for calculating growth caps in their interconnection agreements with Verizon. We agree with Verizon, however, that the order applies the growth caps only to those minutes for which the LECs were entitled to compensation. According to the order, the number of minutes for which a LEC was entitled to compensation is a question to be resolved pursuant to the particular interconnection agreement that governed the exchange of traffic during the first quarter of 2001.[943] Therefore, the number of minutes for which any petitioner was entitled to compensation during the first quarter of 2001 is beyond the scope of this arbitration. AT&T and Cox cannot establish the baseline here using either the 3:1 presumption or the record before us. Accordingly, we adopt the petitioners' proposals, while revising AT&T and WorldCom's language to reflect only those minutes for which they were

---

[940] Verizon IC Brief at 9, citing *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9187, para. 78. The order qualifies growth caps to include only those minutes for which a LEC was entitled to compensation:

> For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes *for which that LEC was entitled to compensation* under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the minutes *for which it was entitled to compensation* under that agreement in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the 2002 ceiling applicable to that agreement.

Id. (emphasis added).

[941] Verizon IC Brief at 9-10.

[942] *Id.* at 10 n.4.

[943] *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9187, para. 78.

entitled to compensation, and removing Cox's language establishing the numbers for the actual baseline, and subsequent growth cap, amounts.[944]

285. We disagree with Verizon's criticism of Cox's language implementing the growth cap for 2002.[945] Verizon asserts that "the number of ISP-bound minutes for which [Cox] is entitled to compensation in 2001 may be *less* than the 2001 cap itself."[946] While that may be true, the calculation of minutes to which Cox was entitled to compensation in 2002 is the product of the cap in 2001 and the 10 percent growth factor. The *ISP Intercarrier Compensation Order* established a baseline – the first quarter of 2001 – as a starting point for all subsequent calculations. The growth cap for 2002 does not reflect a calculation independent of the first quarter of 2001, based on actual traffic for the whole of 2001.

2. Issue I-6 (Toll Rating and Virtual Foreign Exchanges)

a. Introduction

286. The parties disagree over how to determine whether a call passing between their networks is subject to reciprocal compensation (traditionally referred to as "local") or access charges (traditionally referred to as "toll"). The petitioners advocate a continuation of the current regime, which relies on a comparison of the originating and terminating central office codes, or NPA-NXXs, associated with a call. Verizon objects to the petitioners' call rating regime because it allows them to provide a virtual foreign exchange ("virtual FX") service that obligates Verizon to pay reciprocal compensation, while denying it access revenues, for calls that go between Verizon's legacy rate centers. This virtual FX service also denies Verizon the toll revenues that it would have received if it had transported these calls entirely on its own

---

[944] Thus, we adopt AT&T's proposed section 5.7.5.2.3, but replace the second sentence with the following: "The parties shall first determine the total number of minutes of use of ISP-bound Traffic, for which they were entitled to compensation, terminated by one Party for the other Party for the three-month period commencing January 1, 2001 and ending March 31, 2001." We adopt WorldCom's proposed section 8.5 of Attachment I, but replace the first sentence with the following: "For ISP-bound Traffic exchanged during the year 2001, and to the extent this Agreement remains in effect during that year, the information access rates set out in Section 8.3.2 shall be billed by MCIm to Verizon on ISP-bound Traffic for MOU only up to a ceiling equal to, on an annualized basis, the number of ISP-bound Traffic minutes, for which MCIm was entitled to compensation, that originated on Verizon's network and was delivered by MCIm during the first quarter of 2001, plus a ten percent growth factor." Finally, we adopt Cox's proposed section 5.7.7.4(a), but replace the last two sentences with the following: "The cap for total Internet Traffic minutes for 2001, expressed on an annualized basis, is calculated by multiplying the first quarter total by four and increasing the result by ten percent."

[945] Accordingly, we also adopt Cox's proposed section 5.7.7.4(b), but revise it by replacing the last sentence with the following: "The cap for total Internet Traffic minutes for 2002 is calculated by increasing the cap for total Internet Traffic minutes for 2001 by ten percent." Finally, we adopt Cox's proposed sections 5.7.7.4(c)-(e) without revision

[946] *See* Verizon IC Brief at 10 n.4.

network as intraLATA toll traffic. Verizon argues simply that "toll" rating should be accomplished by comparing the geographical locations of the starting and ending points of a call.

287. Of particular importance to this issue is a comparison of the two sides' FX services. When Verizon provides FX service ("traditional FX"), it connects the subscribing customer, via a dedicated private line for which the subscriber pays, to the end office switch in the distant rate center from which the subscriber wishes callers to be able to reach him without incurring toll charges. Verizon then assigns the FX subscriber a number associated with the distant switch. By contrast, when the petitioners provide their virtual FX service, they rely on the larger serving areas of their switches to allow callers from a distant Verizon legacy rate center to reach the virtual FX subscriber without incurring toll charges. Thus, the petitioners simply assign the subscriber an NPA-NXX associated with the rate center the subscriber designates and rely on their switches' broad coverage, rather than a dedicated private line, to transport the calls between legacy rate centers.

288. We adopt the petitioners' proposed language for this issue. Verizon has failed to propose a workable method for rating calls based on their geographical end points, and it has alleged no abuse in Virginia of the process for assigning NPA-NXX codes.

b. Positions of the Parties

289. AT&T notes that Verizon itself compares originating and terminating NPA-NXXs when it decides whether to charge reciprocal compensation for completing calls from another carrier's customer to Verizon's FX subscribers.[947] If the two relevant NPA-NXXs are within the same rate center, Verizon charges reciprocal compensation for its completion of the call, regardless of where a caller is actually located.[948] AT&T argues that section 251(b)(5) similarly obligates Verizon to pay reciprocal compensation for calls to AT&T's virtual FX customers when the Verizon customer's NPA-NXX falls within the same rate center as the virtual FX subscriber's number does.[949]

290. AT&T disagrees with Verizon's argument that section 251(g) exempts virtual FX traffic from section 251(b)(5)'s reciprocal compensation obligation.[950] According to AT&T, section 251(g) merely grandfathered pre-existing rules governing exchange access and information access, and there were no such rules relating to the category of traffic at issue here.[951] AT&T further asserts that virtual FX traffic is not exchange access traffic, which

[947] AT&T Brief at 88-89.

[948] *Id.* at 89

[949] *Id.* at 92, citing 47 U.S.C. § 251(b)(5).

[950] *Id.* at 90-93.

[951] *Id.* at 92-93.

involves, by definition, the origination and termination of telephone toll calls.[952] AT&T notes that telephone toll service is defined as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service."[953] Because AT&T does not impose a separate charge for its virtual FX service, AT&T argues that it is not a toll service. Accordingly, AT&T argues, it falls within the section 251(b)(5) reciprocal compensation regime rather than being subject to Verizon's access tariffs.[954]

291. AT&T also argues that its proposal does not impose any additional costs upon Verizon, whether or not virtual FX is involved, because AT&T designates a single POI for an NPA-NXX and Verizon's responsibility for transporting a call ends there, regardless of the physical location of the AT&T customer.[955] AT&T argues that it would be redundant and inefficient for it to mimic Verizon's traditional FX service by purchasing a dedicated private line, as Verizon proposes. AT&T asserts that such an arrangement would leave it at a serious competitive disadvantage.[956]

292. AT&T defends the structure of its virtual FX service, noting that Verizon does not claim that the petitioners are receiving NPA-NXX code assignments in exchanges where they do not actually serve customers of their own.[957] AT&T distinguishes the Maine Commission decision upon which Verizon relies, noting that such numbering abuse is not at issue between AT&T and Verizon in Virginia.[958] AT&T further asserts that, under Verizon's proposal, AT&T would have to obtain NPA-NXX code assignments in every rate center where it has a customer, even though customers in some rate centers may be satisfied with numbers from another Verizon rate center.[959] AT&T argues that this itself would unnecessarily waste numbering resources.[960]

---

[952] *Id.* at 93, citing 47 U.S.C. § 153(16).

[953] *Id.*, citing 47 U.S.C. § 153(48).

[954] *Id.*

[955] *Id.* at 89-90.

[956] *Id.* at 96. AT&T notes that this interoffice transport is unnecessary according to AT&T's network architecture of a single switch with a single POI. *Id.* at 96 n.323, citing Tr. at 1908.

[957] *Id.* at 93-94, *id.* at 94 n.317, citing Tr. at 1909.

[958] AT&T Reply at 49, citing AT&T Ex. 8 at 56-57. The Maine Commission revoked NPA-NXX assignments when it found that a competitive LEC was receiving numbering assignments for exchanges where the competitive LEC served no customers. *See Investigation Into Use of Central Office Codes (NXXs) by New England Fiber Communications, Inc., LLC*, Dkt No. 98-78, Maine PUC (rel. June 30, 2000). AT&T notes that, in any case, this Maine decision was concerned with abuses related to ISP-bound traffic during the era before adoption of the Commission's *ISP Intercarrier Compensation Order*. AT&T Reply at 49.

[959] AT&T Brief at 94.

293. AT&T further notes that, if Verizon were to prevail in treating AT&T's virtual FX traffic as toll traffic, there would have to be some way to segregate the virtual FX traffic from section 251(b)(5) traffic.[961] AT&T asserts that there is currently no way to accomplish this by, as Verizon suggests, comparing the physical end points of a call.[962] Furthermore, AT&T argues that a traffic study to determine the relative percentages of virtual FX and section 251(b)(5) traffic would be costly and overly burdensome.[963]

294. WorldCom asserts that every carrier in the country, including Verizon, rates calls by comparing originating and terminating NPA-NXX codes and that no state has devised a different method to distinguish between "local" and toll traffic.[964] WorldCom asserts that the Commission has never held that the physical locations of the calling and called parties determine whether a call is "local"; it has left the determination of "local" calling areas to the states.[965] WorldCom also notes that Verizon's billing system cannot identify the physical location of a calling or called party, even though Verizon proposes to base its intercarrier compensation regime on that foundation.[966] WorldCom notes that Verizon's network is not the only one providing transport to and from virtual NPA-NXXs.[967] According to WorldCom, it often hauls traffic for much longer distances than does Verizon.[968] In any case, WorldCom notes, its virtual FX service does not change the average transport distance for Verizon because the incumbent LEC still must transport the traffic to WorldCom's POI.[969]

295. WorldCom takes issue with Verizon's assertion that it loses toll revenues because of virtual FX service. WorldCom notes that the basic enticement of a virtual FX is that it enables a calling party to call a business in a distant location without incurring a toll charge. Absent a virtual local number, WorldCom argues, the caller would typically find a similar

(Continued from previous page)

960 *Id.*

961 *Id.*

962 *Id.* at 95, citing Tr. at 1813, 1815, 1905.

963 AT&T Reply at 47, citing Verizon IC Brief at 19.

964 WorldCom Brief at 82.

965 WorldCom Reply at 76, citing *Local Competition Order*, 11 FCC Rcd. at 16013-14, para. 1035.

966 WorldCom Brief at 84.

967 *Id.* at 87.

968 *Id.* at 88.

969 *Id.*

vendor that has a local number.[970] Thus, according to WorldCom, without its virtual FX offering, the call to the distant location likely would not take place at all.[971]

296. WorldCom argues that it should not be required to purchase a dedicated private line from Verizon and provide traditional FX service. According to WorldCom, this would eliminate competitive pressure and freeze rates at their current levels because the competitive LEC would essentially replace all the private-line revenue that Verizon would otherwise have lost when it lost the FX customer.[972] WorldCom argues that Verizon's proposed requirement also would prevent WorldCom from exploiting the advantages of its unique network architecture: Verizon's traditional FX service transports calls between two switches, while WorldCom typically serves an equivalent area with one switch.[973]

297. Cox argues that Verizon is trying to force it to match Verizon's network architecture.[974] Cox further asserts that Verizon's end-to-end compensation regime is infeasible and that Verizon makes no workable proposal for determining the originating and terminating points of a call.[975] Cox argues that Verizon compares apples to oranges when it complains that it receives compensation for transporting calls to Verizon's FX customers, but not for transporting virtual FX calls to Cox's switch.[976] Cox asserts that Verizon's costs for delivering traffic to Cox have nothing to do with the nature of the underlying service, but rather with the distance to Cox's switch.[977] The difference in compensation, Cox notes, arises from the dedicated private line charge that Verizon imposes on its traditional FX customers—a charge that Verizon obviously cannot impose on Cox's customers.[978]

298. Finally, Cox notes that Verizon need not be concerned about NPA-NXX code assignment abuses, because state commissions have acted quickly to correct such abuses, and

---

[970] *Id.* at 89.

[971] *Id.*

[972] *Id.*

[973] *Id.*

[974] Cox Brief at 35. Verizon admits, Cox notes, that requiring a competitive LEC to duplicate Verizon's network architecture is inefficient and unnecessarily costly. *Id.* at 36-37, citing Tr. at 1822-23.

[975] Cox Brief at 39, citing Tr. at 1811-12; Cox Reply at 27-28, citing Tr. at 1812-14.

[976] Cox Brief at 37.

[977] *Id.* at 37. Notably, Cox asserts that Verizon does not split access revenues for traditional FX calls with Cox or other competitive LECs. Cox Reply at 26.

[978] Cox Brief at 37-38.

Verizon has not shown evidence of any abuse here.[979] According to Cox, this arbitration is not the appropriate forum to evaluate compliance with such regulatory requirements.[980]

299. Verizon argues that the petitioners are effectively trying to thwart Verizon's access regime by treating toll traffic as "local" traffic.[981] Verizon asserts that the *ISP Intercarrier Compensation Order* supports its position that a call's jurisdiction is based on its end points.[982] Accordingly, Verizon argues, there is no difference between a virtual FX call and a toll call.[983] In contrast to virtual FX, Verizon asserts that its traditional FX service is an alternative pricing structure for toll service, rather than a "local" service as claimed by the petitioners.[984] Verizon argues that the petitioners should assume financial responsibility for virtual FX traffic by paying Verizon for transport from the calling area of the Verizon caller to the petitioner's POI.[985]

300. Verizon acknowledges that virtual FX traffic cannot be distinguished from "local" traffic at Verizon's end office switches.[986] Verizon proposes, however, that the petitioners conduct a traffic study or develop a factor to identify the percentage of virtual FX traffic.[987] Verizon would then exchange the identified proportion of traffic either pursuant to the governing access tariff or on a bill and keep basis under its VGRIP proposal.[988] Finally, Verizon notes that several state commissions, including Maine, Connecticut, Missouri, Texas and Georgia, have found that virtual FX traffic is not subject to reciprocal compensation.[989]

c. Discussion

301. We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes. We therefore accept the petitioners' proposed language and reject Verizon's

---

[979] *Id.* at 40.

[980] *Id*

[981] Verizon IC Brief at 16.

[982] *Id.*, citing *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9159-60, 9163, paras. 14, 25.

[983] *Id.* at 17.

[984] *Id.* at 18.

[985] Verizon IC Reply at 11.

[986] Verizon IC Brief at 19.

[987] *Id.* at 19.

[988] *Id*

[989] *Id.* at 19-21.

language that would rate calls according to their geographical end points.[990] Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide.[991] The parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time.[992]

302. Verizon proposed, late in this proceeding, that the petitioners should conduct a traffic study to develop a factor to account for the virtual FX traffic that appears to be "local" traffic. However, Verizon's contract fails to lay out such a mechanism in any detail. Most importantly, Verizon concedes that currently there is no way to determine the physical end points of a communication, and offers no specific contract proposal to make that determination.[993]

303. Additionally, we note that state commissions, through their numbering authority, can correct abuses of NPA-NXX allocations. As discussed earlier, the Maine Commission found that a competitive LEC there was receiving NPA-NXXs for legacy rate centers throughout the state of Maine although it served no customers in most of those rate centers.[994] To the extent that Verizon sees equivalent abuses in Virginia, it can petition the Virginia Commission to review a competitive LEC's NPA-NXX allocations.

3. Issue III-5 (Tandem Switching Rate)

a. Introduction

304. In the *Local Competition First Report and Order*, the Commission found that the costs of transport and termination are likely to vary depending on whether traffic is routed through a tandem switch or routed directly to an end-office switch.[995] It concluded, therefore,

---

[990] Thus, we adopt WorldCom's November Proposed Agreement to Verizon, Attachment I, § 4.2.1.2 (subject to modifications accomplished below in connection with Issue IV-35); Cox's November Proposed Agreement to Verizon, §§ 5.7.1 and 5.7.4; and AT&T's November Proposed Agreement to Verizon, § 1.51. We have previously rejected the proposals that Verizon offers to AT&T with respect to this issue. *See supra* Issues I-1 and VII-4 (rejecting , Verizon's November Proposed Agreement to AT&T, § 5.7.3); Issue I-5, subsection (d) (rejecting Verizon's November Proposed Agreement to AT&T, §1.68a). We reject Verizon's November Proposed Agreement to WorldCom, Part B, § 2.81; we have previously rejected Verizon's Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.2. *See supra* Issue I-2. We reject the last sentence of Verizon's November Proposed Agreement to Cox, § 5.7.1; we have previously rejected Verizon's November Proposed Agreement to Cox, § 1.60a. *See supra* Issue I-5.

[991] *See* Tr. at 1889-1900.

[992] *See* AT&T Brief at 95; WorldCom Brief at 84; Cox Brief at 39; Tr. at 1812-13.

[993] *See* Tr. at 1812-13.

[994] *See Investigation Into Use of Central Office Codes (NXXs) by New England Fiber Communications, Inc., LLC d/b/a/ Brooks Fiber*, Docket No. 98-78, Maine PUC (rel. June 30, 2000).

[995] *Local Competition First Report and Order*, 11 FCC Rcd at 16042, para. 1090.

that states may establish different transport and termination rates for tandem-routed traffic that reflect the additional costs associated with tandem switching.[996] It also recognized, however, that new entrants might employ network architectures or technologies different than those employed by the incumbent LEC.[997] It thus adopted a rule stating that "[w]here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than the incumbent LEC is the incumbent LEC's tandem interconnection rate."[998] Recently, in the *Intercarrier Compensation NPRM*, the Commission clarified that in order to receive the tandem rate under section 51.711(a)(3), a competitive LEC need only demonstrate that it serves a geographic area comparable to that of the incumbent LEC; it need not establish functional equivalency.[999] AT&T, WorldCom, and Verizon disagree about the standard for establishing geographic comparability under section 51.711(a)(3). AT&T and WorldCom argue that they are entitled to Verizon's tandem rate when any of their switches is capable of serving a geographic area comparable to the area served by Verizon's tandem switch. Verizon argues that the tandem rate is only available when the competitive LEC's switch actually serves a comparable geographic area. We adopt the petitioners' language.

b. Positions of the Parties

305. AT&T argues that the geographic comparability test requires a demonstration by the competitive LEC that its switch is merely *capable* of serving, rather than actually serves, a geographic area comparable to that of the incumbent LEC tandem.[1000] AT&T asserts that there is no basis in the *Local Competition First Report and Order* or in the Commission's rules to require *actual service* to a comparable geographic area.[1001] Furthermore, AT&T notes, Commission precedent does not define the parameters of any such "actual service" standard.[1002] AT&T argues that its position is also consistent with state commission and federal court precedent.[1003] AT&T adds that, to the extent the tandem rate rule is meant as a proxy for the

---

[996] *Id.*

[997] *Id.*

[998] 47 C.F.R. § 51.711(a)(3).

[999] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9648, para. 105 (2001) (*Intercarrier Compensation NPRM*); *see also* Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC and Dorothy T. Attwood, Chief, Common Carrier Bureau, FCC to Charles McKee, Senior Attorney, Sprint PCS (May 9, 2001) (clarifying that geographic comparability alone is sufficient).

[1000] AT&T Brief at 98.

[1001] *Id.*

[1002] *Id.*

[1003] *Id* at 99. The Michigan Commission, AT&T notes, found that a competitive LEC met the geographic comparability test based on its capability to serve the same customers as the incumbent LEC, even though the (continued....)

costs incurred by the competitive LEC to terminate a call from an incumbent LEC, Verizon has offered no cost or other evidence demonstrating that it is inappropriate to use this proxy when the competitive LEC's switch is capable of serving an area comparable to the area served by the incumbent LEC's tandem.[1004] According to AT&T, Verizon has also failed to explain how its proposed "actually serves" standard would be defined and implemented.[1005]

306. AT&T also disagrees with Verizon's alternative proxy proposal, which would estimate the reciprocal compensation rate that AT&T would charge Verizon by using the average rate charged by Verizon to AT&T for call termination during the previous calendar quarter.[1006] This Verizon proposal would apply if AT&T demonstrates that its switches perform both tandem and end office functions.[1007] AT&T contends that this Verizon proposal has nothing to do with whether AT&T's switch serves a geographic area comparable to Verizon's tandem, and thus is inconsistent with the Commission's rule.[1008] AT&T also argues that Verizon's average termination costs are completely unrelated to AT&T's termination costs, since Verizon's costs depend upon AT&T's decisions whether to deliver traffic to a Verizon tandem or a Verizon end office.[1009] According to AT&T, such a proxy would punish the competitive LEC for trying to reduce Verizon's termination costs, since Verizon would pay a lower rate if the competitive LEC chose, over time, to terminate traffic at Verizon end offices rather than at tandems.[1010] Apart from these objections, AT&T asserts that, as a factual matter, all of its switches qualify for the tandem rate.[1011]

(Continued from previous page)
competitive LEC had fewer customers and locations. *Id.*, citing *Petition of MediaOne Telecommunications of Michigan, Inc. for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Michigan*, Michigan Public Service Commission, Case No. U-12198, Opinion and Order at 18 (issued by Michigan Comm'n Mar. 3, 2000). In addition, AT&T notes, a federal court found that a competitive LEC's capability to serve an equivalent geographic area was sufficient even though the competitive LEC was not actually providing service throughout the incumbent LEC's territory. AT&T Brief at 99, citing *US West Communications, Inc. v. Minnesota Public Utilities Commission*, 55 F. Supp. 2d 968 (D.Minn. 1999).

[1004] AT&T Brief at 100.

[1005] *Id.* at 100-101. In any case, AT&T argues, Verizon cannot assert that the *Intercarrier Compensation NPRM* requires an even distribution of customers across the geographic area. AT&T Reply at 52, citing Verizon Intercarrier Compensation (IC) Brief at 24-25.

[1006] AT&T Brief at 101.

[1007] *Id.* at 101.

[1008] *Id.* at 101-02.

[1009] *Id.* at 102.

[1010] AT&T Reply at 54.

[1011] AT&T Brief at 102

307. WorldCom asserts that its fiber-intensive network architecture allows a single switch to access a much larger geographic area than that served by the numerous switches of Verizon's copper-based, hierarchical network.[1012] WorldCom objects to Verizon's proposal that the tandem rate be available only if the competitive LEC has a geographically dispersed customer base.[1013] WorldCom argues that a competitive LEC's success in attracting a geographically dispersed customer base is not relevant, because the competitor has to make an investment in its network before it is even able to serve customers.[1014] In any case, WorldCom argues, Verizon fails to propose a methodology to demonstrate geographic dispersion, and Verizon's own witness conceded that he did not know how such a test would be administered.[1015] As a factual matter, WorldCom asserts that all of its switches qualify for the tandem rate.[1016]

308. As a general principle, Verizon argues that competitive LECs must demonstrate that their switches are actually serving, rather than merely capable of serving, a geographic area comparable to that of Verizon's tandem.[1017] Verizon argues that the *Local Competition First Report and Order*, section 51.711(a)(3), and the recent *Intercarrier Compensation NPRM* support its position that competitive LECs bear the burden of proof with respect to actual geographic comparability.[1018] Simply put, Verizon argues that if the Commission ever meant to describe capability to serve rather than actual service, it would have done so.[1019] Verizon adds that several state commission decisions support its position.[1020] According to Verizon, both

---

[1012] WorldCom Brief at 92. In fact, according to WorldCom, each one of its switches in the Washington, DC area serves an area that is comparable to, or greater than, the service area of any of Verizon's 12 tandem switches serving the same Virginia rate centers. WorldCom Brief at 93.

[1013] WorldCom Brief at 94.

[1014] *Id.* at 95.

[1015] WorldCom Reply at 80, citing Tr. at 1600-01, 1606.

[1016] WorldCom Brief at 90. WorldCom also contends that Verizon does not dispute that WorldCom's switches satisfy the geographic comparability test. *Id.* at n.53.

[1017] Verizon IC Brief at 24-25.

[1018] *Id.* at 24-25, citing *Local Competition First Report and Order*, 11 FCC Rcd at 16042, para. 1090; 47 C.F.R. § 51.711(a); *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9648, para. 105

[1019] Verizon IC Reply at 13.

[1020] Verizon IC Brief at 25. Verizon notes that the Texas Commission held that the competitive LEC must demonstrate it is actually serving, rather than merely capable of serving, the comparable geographic area in order to receive the tandem rate. *See Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Arbitration Award, at 28-29 (issued by Texas Comm'n July 2000). AT&T argues, however, that the Texas decision engaged in the kind of tandem functionality analysis that the Commission later rejected in the *Intercarrier Compensation NPRM*, and therefore it is irrelevant. AT&T Brief at 99. Verizon also cites to the California and Florida Commissions, which held that the ability to serve an area, or a plan for future customers, does not satisfy the tandem rate rule. *See Application by AT&T Communications of* (continued....)

AT&T and WorldCom have failed to offer evidence about the geographic scope of service, and have instead merely offered evidence purporting to show that their end office switches are capable of serving areas comparable to Verizon's tandems.[1021] Furthermore, Verizon argues that it would be unfair for AT&T and WorldCom to be able to pay either the tandem or end office rate, depending on how they choose to route their traffic, while Verizon must always pay the tandem rate for termination by AT&T and WorldCom.[1022] Verizon proposes that, as to AT&T, Verizon should pay an averaged rate according to Verizon's call termination charges to AT&T, based on Verizon's relative proportions of end office and tandem terminations during the previous calendar quarter.[1023]

c. Discussion

309. We adopt AT&T and WorldCom's proposals because we determine that they are consistent with the Commission's rule.[1024] As discussed earlier, the Commission clarified in its *Intercarrier Compensation NPRM* that, in order to qualify for the tandem rate, a competitive LEC need only demonstrate that its switch serves a geographic area comparable to that of the incumbent LEC's tandem switch.[1025] Although Verizon has conceded that the tandem rate rule does not have a functionality requirement,[1026] it continues to assert that the competitive LEC

(Continued from previous page)
California, Inc., et al. (U 5002 C) for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company (U 1001 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996, Decision No. 00-08-011 at 21-22 (issued by California Comm'n Aug. 3, 2000); *Petition by AT&T Communications of the Southern States, Inc. d/b/a AT&T for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. pursuant to 47 U.S.C. Section 252, Docket No. 000731-TP*, Order No. PSC-01-1402-FOF-TP, Final Order on Arbitration, at 79-80 (issued by Florida Comm'n June 28, 2001). Verizon cites to case law as well. Verizon IC Reply at 13 n.38, citing *MCI Telecommunications Corp. v. Michigan Bell Telephone Co.*, 79 F. Supp. 2d 768, 790-92 (E.D. Mich. 1999) (the "rule focuses on the area currently being served by the competing carrier, not the area the competing carrier may in the future serve").

[1021] Verizon IC Brief at 26-27

[1022] *Id.* at 27-28.

[1023] *Id.* at 28. Verizon notes that the Pennsylvania Commission adopted such a proposal. *Id.* at 28 n.14, citing *Application of MFS Intelenet of Pennsylvania, Inc. et al.*, Docket Nos. A-310203F0002, A310213F0002, A310236F0002 and A-310258F0002 (issued by Pennsylvania Comm'n Apr. 10, 1997).

[1024] Specifically, we adopt AT&T's November Proposed Agreement, § 5.7.4 and WorldCom's November Proposed Agreement, Attach I, § 4.2.1.4.2. We reject Verizon's November Proposed Agreement to AT&T, §§ 4.1.3 and 5.7.4 and Verizon's November Proposed Agreement to Worldcom, Part C, Interconnection Attach., § 7.1.1. Because we adopt WorldCom's proposal, we deny as moot its motion to strike Verizon's revised contract language for this issue *See* WorldCom Motion to Strike, Ex. F at 86-88.

[1025] *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9648, para. 105.

[1026] *See* Tr. at 1600 (Verizon agrees with AT&T "that the standard is geographic coverage as opposed to functionality"); *cf. US West Communications, Inc. v. Washington Utilities and Transportation Commission*, 255 F.3d 990 (2001).

switch must actually serve a geographically dispersed customer base in order qualify for the tandem rate. We agree, however, with AT&T and WorldCom that the determination whether a competitive LEC's switch "serves" a certain geographic area does not require an examination of the competitor's customer base. Indeed, Verizon has not proposed any specific standard for AT&T and WorldCom to prove that they are actually serving a geographically dispersed customer base.[1027] The tandem rate rule recognizes that new entrants may adopt network architecture different from those deployed by the incumbent; it does not depend upon how successful the competitive LEC has been in capturing a "geographically dispersed" share of the incumbent LEC's customers,[1028] a standard that would penalize new entrants. We agree with AT&T and WorldCom, therefore, that the requisite comparison under the tandem rate rule is whether the competitive LEC's switch is capable of serving a geographic area that is comparable to the architecture served by the incumbent LEC's tandem switch. We find, moreover, that Verizon appears to concede that the AT&T and WorldCom switches satisfy this standard. In its brief, Verizon states, "At best, [AT&T] has shown that its switches may be *capable of serving* customers in areas geographically comparable to the areas served by Verizon's tandems," and, "[a]s with AT&T, [WorldCom] offered only evidence relating to the capability of its switches."[1029] As we explain above, such evidence is sufficient under the tandem rate rule and Verizon fails to offer any evidence rebutting the evidence provided by the petitioners. Should there be any future dispute regarding the capability of the petitioners' switches to serve a geographical area comparable to Verizon's switches, we expect the parties to use their agreements' dispute resolution procedures to resolve them.

4. Issue IV-35 (Reciprocal Compensation for Local Traffic)

a. Introduction

310. The parties disagree over language describing the traffic eligible for reciprocal compensation. WorldCom proposes language that would govern the payment of reciprocal compensation for "local traffic" and defines that term to exclude traffic to Internet service providers (ISPs) but to include traffic to other information service providers reached through the dialing of an NPA/NXX within the caller's local calling area.[1030] This proposed language is separate from WorldCom's language governing intercarrier compensation for ISP-bound traffic,

---

[1027] *See* Tr. at 1600-01 (Verizon witness stating he did not know how the Commission should determine whether a competitive LEC's switch actually serves a geographic area comparable to that of Verizon's tandem).

[1028] Accordingly, we also reject Verizon's additional proposal to AT&T, involving rates averaged between tandem and end office terminations.

[1029] Verizon IC Brief at 27, citing Tr. at 1589-97 (emphasis in original).

[1030] *See* WorldCom's November Proposed Agreement, Part C, Attach. 1, § 4.2.

which is considered under Issue I-5. Verizon opposes the inclusion of WorldCom's language.[1031] We adopt WorldCom's language subject to certain modifications.

b. Positions of the Parties

311. First, WorldCom argues that, to implement the parties' legal obligation to provide reciprocal compensation for the exchange of certain traffic pursuant to sections 251(b)(5) and 252(d)(2), the agreement should contain language addressing reciprocal compensation for non-ISP-bound local traffic.[1032] Second, WorldCom contends that, notwithstanding its pronouncements on ISP-bound traffic, the Commission has not addressed the type of information service provider calls that are covered by WorldCom's proposed language.[1033] WorldCom argues its language is necessary to clarify which compensation mechanism will apply to traffic bound for non-ISP information service providers.[1034] WorldCom explains that information service

[1031] Verizon offers consolidated language, which would cover reciprocal compensation for both ISP and non-ISP-bound traffic. *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7. We note that the only language identified as at issue *solely* under Issue IV-35 (and under no other issue) is offered by WorldCom and provides that "Reciprocal Compensation for the exchange of Local Traffic is set forth in Table 1 of this Attachment and shall be assessed on a per minute-of-use basis for the transport and termination of such traffic." *See* WorldCom November Proposed Agreement to Verizon, Part C, Attach. I, § 4.2.1.1. Verizon contests this language in the context of its overall challenge to WorldCom's section 4.2. *See* Verizon Intercarrier Compensation (IC) Brief at 29-30. The remaining language proposed by each party under Issue IV-35 is also challenged under other issues. Verizon's proposed language is also considered under Issues I-1 (Single Point of Interconnection), I-2 (Transport of Verizon Traffic from the IP to the POI), I-5 (Intercarrier Compensation for ISP-bound traffic), I-6 (Intercarrier Compensation based on Originating and Terminating NXX Codes), and III-5 (Intercarrier Compensation at the Tandem Rate). WorldCom's proposed language is also considered under Issues I-6 (Intercarrier Compensation based on Originating and Terminating NXX Codes) and III-5 (Intercarrier Compensation at the Tandem Rate). Given our consideration of each of these issues, only a few points remain for discussion under Issue IV-35. We also note that, in November, Verizon modified its proposed language to WorldCom. *See* WorldCom Motion to Strike, Ex. F at 76-83, 86-97 (comparing Verizon's September JDPL with Verizon's November JDPL on language proposed for Issue IV-35 and cross-referencing language proposed for Issue I-5). In its motion to strike, WorldCom argues that Verizon introduced substantively new proposals, in violation of the Commission's procedural order, the requirements of the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment. *See* WorldCom Motion to Strike at 1-2, 5-8.

[1032] WorldCom Brief at 178; *see* 47 U.S.C. §§251(b)(5), 252(d)(2).

[1033] WorldCom Brief at 178, citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9171-73, paras. 44-46 (2001) (*ISP Intercarrier Compensation Order*), *remanded sub nom. WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). We note that although the United States Court of Appeals for the District of Columbia Circuit recently remanded the Commissions' *ISP Intercarrier Compensation Order*, finding that the Commission could not rely on section 251(g) as a basis to exempt ISP traffic from section 251(b)(5)'s reciprocal compensation obligations, it did not vacate that order because of the "non-trivial likelihood that the Commission has authority to elect" to order a bill-and-keep system for reciprocal compensation. *Id.*, 288 F.3d at 434.

[1034] WorldCom Brief at 178.

providers that would be covered by its language include time and temperature information providers, whose numbers are local as determined by the NPA/NXXs.[1035] WorldCom argues that, historically, this traffic has been defined as jurisdictionally local and hence subject to reciprocal compensation and, moreover, it is not subject to the special interim rates that the Commission has adopted for ISP-bound traffic.[1036] Accordingly, the agreement must establish a mechanism for the carriers to be compensated for the flow of such traffic.[1037]

312. Verizon claims that its language, which it also offers in support of its argument under Issue I-5, is consistent with the Commission's approach in the *ISP Intercarrier Compensation Order*, which excludes section 251(g) traffic from traffic subject to section 251(b)(5).[1038] Verizon argues that the Commission's revised rules require that traffic must meet two requirements in order to be eligible for reciprocal compensation: (1) it must not be excepted by section 251(g); and (2) it must originate on the network of one carrier and terminate on the network of another, pursuant to section 51.701(e) of the Commission's rules.[1039] Verizon advocates that we reject WorldCom's language as inconsistent with the *ISP Intercarrier Compensation Order* because, under the Commission's interpretation of section 251(g) in that order, a call to any information service provider is exempt from the reciprocal compensation requirements of section 251(b).[1040] Verizon also argues that WorldCom seeks to preserve the term "local traffic," but, under the Commission's *ISP Intercarrier Compensation Order*, eligibility for reciprocal compensation no longer turns on whether the traffic is "local."[1041]

c. Discussion

313. With respect to Issue IV-35, and consistent with our decisions on Issues I-1, I-2, I-5, I-6, and III-5, we adopt section 4.2 of WorldCom's proposed Price Schedule but order that the term "section 251(b)(5) traffic" be substituted for the term "Local Traffic" in section 4.2 and that the reference to "information service providers" in section 4.2.1.2 be stricken.[1042]

[1035] *Id.* citing WorldCom Ex. 8 (Direct Testimony of M. Argenbright), at 32, Tr. at 1729-30.

[1036] WorldCom Reply at 159, citing WorldCom Ex. 8, at 31-32; WorldCom Brief at 177-78.

[1037] WorldCom Reply at 159; WorldCom Brief at 177-78.

[1038] Verizon IC Brief at 29, citing Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.

[1039] Verizon IC Brief at 29, citing 47 U.S.C. § 251(g); 47 C.F.R. §51.701(e).

[1040] Verizon IC Reply at 15-16, citing 47 U.S.C. § 251(g); *ISP Intercarrier Compensation Order* 16 FCC Rcd at 9166-67, 9171, paras. 34, 44.

[1041] Verizon IC Brief at 29, citing WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 4.2.

[1042] Based upon our reasoning here and under each of these issues, we also reject section 7.2 of Verizon's proposed Interconnection Attachment. *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.2. Because we find in favor of WorldCom, we deny as moot its Motion to Strike on this issue.

314. The parties disagree as to whether the Commission's ruling in the *ISP Intercarrier Compensation Order* (which has been remanded but not vacated since the time the parties filed their briefs) dictates that non-ISP information service provider traffic is not subject to reciprocal compensation.[1043] We need not decide this issue because we find that reference to such traffic in this agreement is unnecessary. As we discuss *infra*, with respect to Issue IV-1-AA, the parties agree that this type of traffic does not currently exist in Virginia and that neither party intends to carry it absent a change in Virginia law.[1044] Accordingly, we order that the reference to "information service providers" in WorldCom's section 4.2.1.2 be stricken.[1045]

315. Verizon also objects to WorldCom's use of the term "Local Traffic" in section 4.2. It claims that the Commission rejected that term in the *ISP Intercarrier Compensation Order*, and argues that it should not be preserved in the agreement.[1046] Verizon is correct: the Commission did find that use of the phrase "local traffic" created unnecessary ambiguities.[1047] Instead, the Commission has used the term "section 251(b)(5) traffic" to refer to traffic subject to reciprocal compensation.[1048] When questioned, the WorldCom witness stated that the term "Local Traffic" in section 4.2 has the same meaning as the term "section 251(b)(5) local

---

[1043] WorldCom's proposed section 4.2 would make traffic directed to "local" information service providers subject to reciprocal compensation obligations. *See* Tr. at 1728-31. Specifically, proposed subsection 4.2.1.2, provides that section 4.2 "appl[ies] to reciprocal compensation for transport and termination of Local Traffic." *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. 1, § 4.2.1.2. With the exception noted here, we adopt subsection 4.2.1.2 under Issue I-6. *See* discussion of Issue I-6. "Local Traffic," in turn, is defined to be:

> traffic originated by one Party and directed to the NPA-NXX-XXXX of a LERG-registered end office of the other Party *within a Local Calling Area* and any extended service area, as defined by the Commission. Local Traffic *includes most traffic directed to information service providers, but does not include traffic to Internet Service Providers*.

See WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 4.2.1.2 (emphasis added). The WorldCom witness stated that, under this language, traffic directed to information service providers would be classified as "local" when, for example, a call was made to a time and temperature-type service "reached through the dialing of an NPA/NXX which is local to whatever the originating telephone number is." Tr. at 1729. Verizon, instead, would exclude all information service provider traffic from eligibility for reciprocal compensation. *See* Verizon IC Brief at 29. We address under Issue I-5 above Verizon's argument that all section 251(g) traffic is excepted from section 251 reciprocal compensation.

[1044] *See infra*, Issue IV-1-AA.

[1045] Specifically, the final sentence of section 4.2.1.2 should be amended to read: "section 251(b)(5) traffic does not include traffic to Internet Service Providers." *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, at § 4.2.1.2.

[1046] Verizon IC Brief at 29.

[1047] *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9173, para. 45 (use of term "local" could mean either traffic subject to local rates or traffic that is jurisdictionally intrastate).

[1048] *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9157, 9193-94, 9199, paras. 8, 89 & n.177, 98.

traffic."[1049] Accordingly, we direct the parties to substitute the term "section 251(b)(5) traffic" where the term "Local Traffic" appears in section 4.2. Based upon WorldCom's testimony, this is consistent with its intent and will avoid ambiguity surrounding the term "local traffic."

D. Unbundled Network Elements

1. Issue III-6 ("Currently Combines" versus "Ordinarily or Typically Combined" UNEs)

a. Introduction

316. The Commission articulated an incumbent LEC's obligations with respect to UNE combinations that are "ordinarily" and "currently" combined in its *Local Competition First Report and Order*, which promulgated rules 51.315(a)-(f).[1050] Although the Eighth Circuit set aside Rules 51.315(b)-(f),[1051] the Supreme Court has reversed the Court of Appeals and affirmed those rules.[1052] We recognize that these rules were not in effect when we held the hearing in this proceeding, and when the parties filed their final proposed language and briefs.[1053] We nonetheless have a sufficient record upon which to base our decision. We find that, of the contract language properly before us, Verizon's language proposed to AT&T best incorporates rules 51.315(a)-(f) and the Supreme Court's decision by simply referring to "Applicable Law." With one minor modification, we adopt this language for inclusion in both the Verizon-AT&T and Verizon-WorldCom contracts.

b. Positions of the Parties

317. WorldCom proposes two paragraphs of language governing UNE combinations. Verizon challenges three aspects of this proposal: WorldCom's language relating to (i) UNEs that are "ordinarily" and "currently" combined; (ii) the pricing of UNE combinations; and (iii) the effect of a change in applicable law. With respect to the first area of dispute, WorldCom proposes language stating that: "At MCI's request . . . Verizon shall provide Combinations of

---

[1049] Tr. at 1879; *see* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.2.

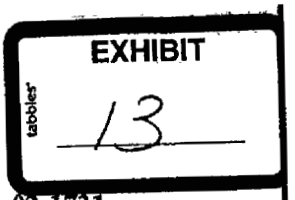
[1050] *Local Competition First Report and Order*, 11 FCC Rcd 16208.

[1051] *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000).

[1052] *See AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 395 (1999); *Verizon Telephone Cos. v. FCC*, 122 S.Ct. 1646 (2002) (*Verizon*).

[1053] We note that WorldCom and Verizon both filed letters in recent weeks, supplementing their arguments regarding this issue to reflect the Supreme Court's action. *See* Letter from Jodie L. Kelley, Counsel to WorldCom, to Jeffrey Dygert, Assistant Bureau Chief, Wireline Competition Bureau, Federal Communications Commission, May 17, 2002 (WorldCom May 2002 Letter); Letter from Kelly L. Faglioni, Counsel to Verizon, to Jeffrey Dygert, Assistant Bureau Chief, Common Carrier Bureau, Federal Communications Commission, July 10, 2002 (Verizon July 2002 Letter).

Pages 156 - the end are not included . . . . . .



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

In the Matter of	)	
	)	
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 No. 00-218
In the Matter of Petition of Cox Virginia Telcom, 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 Arbitration	)	CC Docket No. 00-249
In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc.	)	CC Docket No. 00-251

MEMORANDUM OPINION AND ORDER

Adopted: July 17, 2002 **Released: July 17, 2002**

By the Chief, Wireline Competition Bureau:

TABLE OF CONTENTS

PARAGRAPH

MEMORANDUM OPINION AND ORDER 1

I. INTRODUCTION 4

II. PROCEDURAL HISTORY 7

III. OUTSTANDING PROCEDURAL MOTIONS 10

A. VERIZON'S RENEWED MOTION TO DISMISS CONSIDERATION OF PERFORMANCE MEASURES AND ASSURANCE PLAN ISSUES 10
B. MISCELLANEOUS MOTIONS 11
1. *Verizon's Objection to AT&T Response to Record Requests* 11
2. *WorldCom's Objection and Response to Verizon's Corrections to WorldCom Responses to Record Requests* 12
3. *Cox's Objection and Request for Sanctions* 13
4. *WorldCom Motion to Strike* 13

IV. UNRESOLVED ISSUES 15

A. STANDARD OF REVIEW 15
B. NETWORK ARCHITECTURE 18
1. *Issues I-1/VII-1/VII-3/VII-4 (Single Point of Interconnection and Related Matters)* 18
2. *Issues I-2/VII-5 (Distance-Sensitive Rates and Transport of Verizon Traffic from the IP to the POI)* 30
3. *Issue I-3 (Reciprocal Collocation)* 39
4. *Issue I-4 (End Office Trunking)* 41
5. *Issues I-7/III-4 (Trunk Forecasting Issues)* 49
6. *Issues III-1/III-2/IV-1 (Tandem Transit Service)* 57
7. *Issues III-3, III-3-A (Mid-Span Fiber Meet-Point Interconnection)* 65
8. *Issue III-4-B (Disconnection of Underutilized Trunks)* 72
9. *Issue IV-2 (Mutual Agreement on Two-Way Trunks)* 75
10. *Issue IV-3 (Trunk and Facilities Augmentation)* 79
11. *Issue IV-4 (Interconnection Interval)* 83
12. *Issue IV-5 (Compensation for the Lease of Interconnection Facilities)* 86
13. *Issue IV-6 (Meet Point Trunking Arrangements)* 89
14. *Issue IV-8 (Trunking Arrangements for Operator Services and Directory Assistance)* 92
15. *Issue IV-11 (Usage Measurement)* 95
16. *Issue IV-37 (Meet-Point Billing Arrangements)* 97
17. *Issues V-1/V-8 (Competitive Access Service)* 100
18. *Issue V-2 (Interconnection Transport)* 106
19. *Issue V-16 (Reciprocal Transit Services)* 109
20. *Issue VI-1-A (Trunk Types)* 111
21. *Issues VI-1-B/VII-6 (Transmission and Routing of Telephone Exchange Access Traffic, and Intermediate Hub Locations in NECA Tariff 4)* 113
22. *Issue VI-1-C (Toll-Free Service Access Code Traffic)* 119
C. INTERCARRIER COMPENSATION ISSUES 121
1. *Issue I-5 (Intercarrier Compensation for ISP-Bound Traffic)* 121
2. *Issue I-6 (Toll Rating and Virtual Foreign Exchanges)* 140
3. *Issue III-5 (Tandem Switching Rate)* 146
4. *Issue IV-35 (Reciprocal Compensation for Local Traffic)* 151
D. UNBUNDLED NETWORK ELEMENTS 155
1. *Issue III-6 ("Currently Combines" versus "Ordinarily or Typically Combined" UNEs)* 155
2. *Issue III-7-A (Service Disruption and OSS Degradation)* 162
3. *Issues III-7-B/VII-11 (Bulk Ordering)* 166
4. *Issue III-7-C (Termination Liability)* 168
5. *Issue III-8 (Interconnection at any Technically Feasible Point)* 170
6 *Issue III-9 (Four-line Switching Exception)* 173
7. *Issue III-10 (Line Sharing and Line Splitting)* 184

8. *Issues III-11/IV-19 (Subloops and NID)* 203
9. *Issue III-12 (Dark Fiber)* 220
10. *Issue IV-14 (Certain Definitions and Operational Terms)* 237
11. *Issue IV-15 (Full Features, Functions, Combinations, Capabilities)* 240
12. *Issue IV-18 (Multiplexing/Concentrating Equipment)* 241
13. *Issue IV-21 (Unbundled Transport)* 244
14. *Issue IV-23 (Line Information Database)* 253
15. *Issue IV-24 (Directory Assistance Database)* 254
16. *Issue IV-25 (Calling Name Database)* 257
17. *Issue IV-28 (Collocation of Advanced Services Equipment)* 261
18. *Issues IV-80/IV-81 (Customized Routing for Directory Assistance and Operator Services)* 263
19. *Issues V-3/V-4-A (UNE-Platform Traffic with Other LECs)* 268
20. *Issue V-4 (LATA-Wide Reciprocal Compensation)* 270
21. *Issue V-7 (Specific Porting Intervals for Large Business Customers)* 272
22. *Issue V-12 (Off-Hours Number Porting)* 274
23. *Issue V-12-A (Three Calendar Day Porting Interval for Residential Orders)* 276
24. *Issue V-13 (Port Confirmation)* 277
25. *Issue VI-3-B (Technical Standards and Specifications)* 279
26. *Issue VII-10 (IDLC Intervals)* 282

E. PRICING TERMS AND CONDITIONS 286
1. *Issue I-9 (Price Caps for Competitive LEC Services)* 286
2. *Issues III-18/IV-85 (Tariffs v. Interconnection Agreements)* 291
3. *Issue IV-30 (Pricing Tables v. Tariffs)* 298
4. *Issue IV-32 (Exclusivity of Rates and Electronic Pricing Table Updates)* 302
5. *Issue IV-36 (Detailed Schedule of Itemized Charges)* 308
6. *Issue VII-12 (Reference to Industry Billing Forums)* 308

F. RESALE 310
1. *Issues V-9/IV-84 (Resale of Advanced Services)* 310
2. *Issue V-10 (Resale of Vertical Features)* 315

G. BUSINESS PROCESS REQUIREMENTS 317
1. *Issues I-8/IV-97 (Access to CPNI)* 317
2. *Issues IV-7/IV-79 (911 and E911)* 319
3. *Issue IV-56 (Subscriber Payment History)* 325
4. *Issue IV-74 (Billing Procedures)* 328

H. GENERAL TERMS AND CONDITIONS 330
1. *Issue I-11 (Termination of OSS Access)* 330
2. *Issue III-15 (Intellectual Property of Third Parties)* 334
3. *Issue IV-45 (Fraud Prevention)* 338
4. *Issue IV-95 (Costs of Compliance)* 341
5. *Issue IV-101 (Alternative Dispute Resolution)* 343
6. *Issue IV-106 (Indemnification)* 346
7. *Issue IV-107 (Intellectual Property of the Parties)* 348
8. *Issues IV-113/VI-1-E (Application of General Change of Law Provisions and UNE-Specific Change of Law Rules)* 350
9. *Issue IV-129 (Definitions)* 352
10. *Issue V-11 (Indemnification for Directory Listings)* 352
11. *Issue VI-1-N (Assurance of Payment)* 354
12. *Issue VI-1-O (Default)* 356
13. *Issue VI-1-P (Discontinuance of Service)* 358
14. *Issue VI-1-Q (Insurance)* 360
15. *Issue VI-1-R (References)* 363

I. MISCELLANEOUS AND RIGHTS OF WAY 365

1. *Issue VI-1-AA (Information Services Traffic)* 365
2. *Issues III-13 and III-13-H (Rights-of-Way)* 367

V. ORDERING CLAUSES 373

I. INTRODUCTION

1. In this order, we issue the first of two decisions that resolve questions presented by three petitions for arbitration of the terms and conditions of interconnection agreements with Verizon Virginia, Inc. (Verizon). Following the enactment of the Telecommunications Act of 1996 (1996 Act),[1] the Commission adopted various rules to implement the legislatively mandated, market-opening measures that Congress put in place.[2] Under the 1996 Act's design, it has been largely the job of the state commissions to interpret and apply those rules through arbitration proceedings. In this proceeding, the Wireline Competition Bureau, acting through authority expressly delegated from the Commission, stands in the stead of the Virginia State Corporation Commission. We expect that this order, and the second order to follow, will provide a workable framework to guide the commercial relationships between the interconnecting carriers before us in Virginia.

2. The three requesting carriers in this proceeding, AT&T Communications of Virginia, Inc. (AT&T), WorldCom, Inc. (WorldCom) and Cox Virginia Telcom, Inc. (Cox) (collectively "petitioners"), have presented a wide range of issues for decision. They include issues involving network architecture, the availability of unbundled network elements (UNEs), and inter-carrier compensation, as well as issues regarding the more general terms and conditions that will govern the interconnecting carriers' rights and responsibilities. As we discuss more fully below, after the filing of the initial pleadings in this matter, the parties conducted extensive discovery while they participated in lengthy staff-supervised mediation, which resulted in the settlement of a substantial portion of the issues that the parties initially presented. After the mediation, we conducted over a month of hearings at which both the petitioners and Verizon had full opportunity to present evidence and make argument in support of their position on the remaining issues. We base our decisions in this order on the analysis of the record of these hearings, the evidence presented therein, and the subsequent briefing materials filed by the parties.

---

[1] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). We refer to the Communications Act of 1934, as amended by the 1996 Act and other statutes, as the Communications Act, or the Act. *See* 47 U.S.C. §§ 151 *et seq.*

[2] *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition First Report and Order*) (subsequent history omitted); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*).

3. Many of the issues that the parties have presented raise significant questions of communications policy that are also currently pending before the Commission in other proceedings. For example, certain of the network architecture issues implicate questions that the Commission is addressing through its ongoing rulemaking relating to inter-carrier compensation.[3] The Commission's pending triennial review of UNEs also touches on many of the issues presented here.[4] While we act, in this proceeding, under authority delegated by the Commission,[5] the arbitration provisions of the 1996 Act require that we decide all issues fairly presented.[6] Accordingly, in addressing the issues that the parties have presented for arbitration – the only issues that we decide in this order – we apply current Commission rules and precedents, with the goal of providing the parties, to the fullest extent possible, with answers to the questions that they have raised.

4. In our review of each issue before us, we have been mindful of recent court decisions relating to the Commission's applicable rules and precedent. Most significantly, we recognize that the United States Court of Appeals for the District of Columbia Circuit recently issued an order reviewing two Commission decisions that set forth rules governing unbundled network elements (UNEs) and line sharing.[7] The court's order remanded the *UNE Remand Order* for further action by the Commission, and it vacated and remanded the *Line Sharing Order*. Because the court remanded the *UNE Remand Order* without vacating or otherwise modifying it, its rules governing the availability of UNEs remain in effect pending further action by the Commission in response to the court's order. Similarly, because the Commission has sought rehearing of the court's order, the effect of that order has been stayed, even with respect to the line sharing rules, until further action by the court.[8] Accordingly, to the extent they are

---

[3] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).

[4] *See Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Notice of Proposed Rulemaking, FCC 01-361, 16 FCC Rcd 22781 (2001) (*Triennial UNE Review NPRM*).

[5] *See* 47 U.S.C. § 155(c)(1); *see also Procedures for Arbitrations Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1934, as amended*, 16 FCC Rcd 6231, 6233, paras. 8-10 (2001) (*Arbitration Procedures Order*) (delegating authority to the Bureau to conduct and decide these arbitration proceedings).

[6] *See* 47 U.S.C. § 252(b)(4)(C) (state commission shall resolve each issue in petition and response); *id.* § 252(c) (state commission shall resolve by arbitration any open issue).

[7] *See United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA v. FCC*"). The court reviewed two Commission decisions: the *UNE Remand Order* and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

[8] *See* Petition of FCC and United States for Rehearing or Rehearing *En Banc*, D.C. Circuit Nos. 00-1012, *et al.* & 00-1015, *et al.*, filed July 8, 2002.

implicated in issues presented by the parties, we apply the Commission's existing UNE and line sharing rules. To the extent that these rules are modified in the future, the parties may rely on the change of law provisions in their respective agreements.

5. This order is the first of two that will decide the questions presented for arbitration. Below, we decide the "non-cost" issues that the parties have raised. Specifically, we resolve those issues that do not relate to the rates that Verizon may charge for the services and network elements that it will provide to the requesting carriers under this agreement. We have determined that it will best serve the interests of efficiency and prompt resolution of the parties' disputes to issue our decision on these non-cost issues in advance of the pricing decision, which will follow.

6. The requesting carriers in this proceeding, AT&T, WorldCom and Cox, originally brought their interconnection disputes with Verizon to the Virginia State Corporation Commission (Virginia Commission), as envisioned in section 252(b).[9] In the case of each requesting carrier, the Virginia Commission declined to arbitrate the terms and conditions of an interconnection agreement under federal standards, as required by section 252(c) of the Act.[10] The Virginia Commission explained that it had concluded it could not apply federal standards in interconnection arbitrations without potentially waiving its Eleventh Amendment sovereign immunity, which it did not have the authority to do.[11] The three requesting carriers then

---

[9] 47 U.S.C. § 252(b). WorldCom filed an arbitration petition with the Virginia Commission. *See Petition of MCI Metro Access Transmission Services of Virginia, Inc. and MCI WorldCom Communications of Virginia, Inc. for Arbitration of an Interconnection Agreement with Bell Atlantic-Virginia, Inc.*, Case No. PUC000225 (filed with Virginia Commission Aug. 10, 2000). Cox requested a declaratory ruling reconsidering the Virginia Commission's prior refusals to apply federal law in arbitrating interconnection disputes and, in the event the Virginia Commission granted that request, sought the arbitration of its interconnection dispute. *See Petition of Cox Virginia Telcom, Inc., for Declaratory Judgment and Conditional Petition for Arbitration*, Case No. PUC000212 (filed with Virginia Commission July 27, 2000). AT&T also requested a declaratory ruling that the Virginia Commission would arbitrate its interconnection dispute. *See Petition of AT&T Communications of Virginia, Inc., et al., for Declaratory Judgment*, Case No. PUC000261 (filed with Virginia Commission Sept. 25, 2000); AT&T subsequently sought arbitration of its interconnection dispute with Verizon. *See Application of AT&T Communications of Virginia, Inc., et al., for Arbitration*, Case No. PUC000282 (filed with Virginia Commission Oct. 20, 2000).

[10] 47 U.S.C. § 252(c). Section 252(c) requires that, in arbitrating an interconnection agreement, a state commission apply the "requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251" and apply the pricing standards of section 252(d). 47 U.S.C. § 252(c)(1) – (2). The Virginia Commission declined to follow section 252(c), offering instead to apply Virginia state law in its disposition of the three requesting carriers' disputes with Verizon. *See Petition of MCI Metro Access Transmission Services of Virginia, Inc. and MCI WorldCom Communications of Virginia, Inc., for Arbitration of an Interconnection Agreement with Bell Atlantic-Virginia, Inc.*, Case No. PUC000225, Order, at 3 (issued by Virginia Comm'n Sept. 13, 2000) (*WorldCom Virginia Order*); *Petition of Cox Virginia Telcom, Inc.*, Case No. PUC000212, Order of Dismissal, at 5 (issued by Virginia Comm'n Nov. 1, 2000); *Petition for Declaratory Judgment and Application for Arbitration of AT&T Communications of Virginia, Inc., et al.*, Case Nos. PUC000261 and PUC000282, Order, at 3 (issued by Virginia Comm'n Nov. 22, 2000).

[11] *See, e.g., WorldCom Virginia Order* at 2. *Cf. Petition of Cavalier Telephone, LLC*, Case No. PUC990191, Order, at 3-4 (issued by Virginia Comm'n June 15, 2000) ("We have concluded that there is substantial doubt (continued....)

petitioned the Commission to preempt the Virginia Commission pursuant to section 252(e)(5).[12] The Commission granted those petitions in January of 2001 and assumed jurisdiction to resolve the requests for arbitration.[13]

7. On January 19, 2001, the same date on which it granted WorldCom's preemption petition, the Commission issued an order governing the conduct of section 252(e)(5) proceedings in which it has preempted the arbitration authority of state commissions. The order delegates to the Chief of the Bureau the authority to serve as the Arbitrator.[14] As discussed at greater length below, the Commission also revised the interim rule that it had previously adopted and established a hybrid scheme of "final offer" arbitration for interconnection arbitrations. The revised standard grants the Arbitrator the "discretion to require the parties to submit new final offers, or adopt a result not submitted by any party, in circumstances where a final offer submitted by one or more of the parties fails to comply with the Act or the Commission's rules."[15]

II. PROCEDURAL HISTORY

(Continued from previous page)
whether we can take action in this matter solely pursuant to the Act, given that we have been advised by the United States District Court for the Eastern District of Virginia that our participation in the federal regulatory scheme constructed by the Act, with regard to the arbitration of interconnection agreements, effects a waiver of the sovereign immunity of the Commonwealth.").

[12] *Petition of WorldCom, Inc., Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-218, (filed Oct. 26, 2000); *Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-249 (filed Dec. 12, 2000); *Petition of AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-251 (filed Dec. 15, 2000).

[13] *Petition of WorldCom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-218, Memorandum Opinion and Order, 16 FCC Rcd 6224 (2001) (*WorldCom Preemption Order*); *Petition of Cox Virginia Telecom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-249, Memorandum Opinion and Order, 16 FCC Rcd 2321 (2001); *Petition of AT&T Communications of Virginia, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-251, Memorandum Opinion and Order, 16 FCC Rcd. 2326 (2001).

[14] *Arbitration Procedures Order*, 16 FCC Rcd 6233. The Commission's rules governing review of action taken on delegated authority are found at 47 C.F.R. § 1.115. At the time of the *Arbitration Procedures Order*, the Commission delegated its authority to the Chief of the Common Carrier Bureau. Since then, the Bureau has been renamed the Wireline Competition Bureau. *See In the Matter of Establishment of the Media Bureau, Wireline Competition Bureau and Consumer and Governmental Affairs Bureau*, Order, 17 FCC Rcd 4672 (2002).

[15] *See* 47 C.F.R. § 51.807(f)(3).

8. In March, 2001, as required by the *Procedural Public Notice*, the parties contacted the Arbitrator to schedule a pre-filing conference.[16] On March 22, 2001, the parties met with the Arbitrator and Bureau staff to discuss a list of issues identified in the *Procedural Public Notice*, including the status of negotiations, procedures to be followed in the arbitration proceeding, potential consolidation of the proceedings, and a procedural schedule. On March 27, we issued a letter ruling on several issues raised during the pre-filing conference. Among other rulings, we set a procedural schedule, under which the parties were to conduct discovery and file testimony throughout the summer. The evidentiary hearing was scheduled for September, 2001 and post-hearing briefs were to be due in October, 2001. At the request of the parties, we postponed until July 2, 2001, the due date for cost studies, which originally were to be filed with the petitions for arbitration. The parties preferred that they be permitted to file separate petitions, with the option of later seeking consolidation of the proceedings; however, we instructed them each to assign shared issues the same number, to facilitate staff's review.

9. On April 23, AT&T, Cox and WorldCom filed separate petitions for arbitration. Consistent with the *Procedural Public Notice*, each petition contained a Request for Arbitration, listing with specificity both the resolved and unresolved issues, along with the relevant contract language, and a Statement of Relevant Authority for each issue. On May 31, 2001, Verizon filed its Answer, responding to each issue raised by petitioners, and raising additional issues. On June 18, petitioners filed their responses to Verizon's additional issues. In all, petitioners identified approximately 180 issues in their initial petitions, some of them raised jointly, and Verizon raised an additional 68 issues in its Answer.

10. *Supervised Negotiations*. On July 10, 2001, the Arbitrator convened a status conference to discuss, among other things, parties' efforts to simplify or settle issues and the schedule for the remainder of the proceeding. At this meeting, the parties jointly requested that Bureau staff assist with the settlement of certain issues, through supervised negotiations or mediation, and agreed to identify a list of "mediation issues." The parties also requested a delay of several weeks in all aspects of the procedural schedule, to allow them to focus on settlement negotiations, and to accommodate their request for an additional "surrebuttal" round of written testimony on cost issues.

11. We convened ten days of supervised negotiations, pursuant to a schedule set by the parties and staff, on July 25 through August 9. With the help of questions and other input from staff and, in particular, all sides' willingness to work toward compromise, the parties were able to reach agreement on new language for many issues, and agreed to continue unsupervised discussions on many others.

[16] Procedures Established For Arbitration Of Interconnection Agreements Between Verizon and AT&T, Cox, and WorldCom, CC Docket Nos. 00-218, 00-249, 00-251, Public Notice, DA 01-270 (rel. Feb. 1, 2001) (*Procedural Public Notice*) (setting forth additional procedures, including requirements regarding contents of arbitration petition and response, discovery process and conduct of the evidentiary hearing).

12. *Written, Pre-Filed Testimony.* The procedural schedule that we set in March, 2001 originally envisioned the submission of pre-filed direct and rebuttal testimony on all issues according to the same schedule. In light of the parties' request for supervised negotiations, and for additional time to prepare their cost-related arguments, we extended the filing deadlines and split the schedule into several tracks. Accordingly, for the bulk of issues, the parties filed direct testimony on July 31, and rebuttal testimony on August 17; and for "mediated" issues, the parties filed direct testimony on August 17, and rebuttal testimony on September 5.[17]

13. *Discovery.* Our February 1, 2001 *Procedural Public Notice* established general guidelines governing the discovery process. Pursuant to the schedule set by the Arbitrator, discovery began on May 31, 2001 and, after various extension requests from the parties, concluded for non-cost issues on August 31, and for cost issues on September 26. The parties were permitted to obtain discovery through document requests, interrogatories, oral depositions, and requests for admissions.

14. *Evidentiary Hearing.* The non-cost evidentiary hearing, at which the parties submitted documentary evidence and examined witnesses, began on October 3 and concluded on October 18, 2001. Before the hearing, the parties had developed a detailed schedule with Bureau staff, under which the non-pricing issues would be addressed first, followed by the consideration of pricing-related issues. The hearing was transcribed, and a copy of the transcript was filed with the Secretary of the Commission for inclusion in the record.

15. *Joint Decision Point Lists and Revised Contract Language.* At three points in the proceeding, the staff requested that the parties submit a "Joint Decision Point List" (JDPL) – a list and summary of the disputed issues, positions and relevant contract language, intended as a tool to assist Bureau staff in navigating the considerable record. The first JDPL was submitted jointly by the parties on June 18, 2001. The parties submitted revised JDPLs separately in September, before the evidentiary hearing, with final JDPLs submitted in early November. Importantly, in addition to listing their proposed language on an issue-by-issue basis in the JDPL after the evidentiary hearing, parties also submitted their full, proposed contracts on November 13, 2001.[18]

16. *Post-Hearing Briefs.* The parties filed post-hearing briefs and reply briefs. As with many other aspects of this proceeding, the schedule was divided and postponed at the joint

[17] The parties marked their pre-filed direct and rebuttal testimony as exhibits and moved them into evidence at the hearing. Below, we refer to the pre-filed testimony by its exhibit number.

[18] Our review of these documents revealed that, in certain instances, the JDPLs and the proposed contracts did not match, and each contained certain inaccuracies. Reviewing the full contracts, the November JDPL, and the parties' briefs, we determined that there were fewer inaccuracies in the parties' complete contracts than in the earlier-filed November JDPLs. Consequently, unless expressly noted otherwise, the contract proposals that we refer to below are from the parties' full contracts; our citations to a party's "November Proposed Agreement" are to the full contracts.

request of all parties to allow additional time to address certain issues. Briefs for the non-pricing issues were submitted on November 16, 2001, with replies on December 11, 2001.

III. OUTSTANDING PROCEDURAL MOTIONS

A. Verizon's Renewed Motion to Dismiss Consideration of Performance Measures and Assurance Plan Issues

17. On November 9, 2001, Verizon submitted its renewed motion to dismiss several unresolved issues relating to performance measurements and remedies.[19] Verizon argues that the Virginia Commission has not failed to act in this context, pursuant to section 252 of the Act, because it has agreed to act on and determine exactly the same performance-related issues raised by the petitioners.[20] Verizon also contends that, as a matter of comity, the Commission should defer to the Virginia Commission, which has the expertise and is expending significant resources to resolve these performance-related issues.[21] According to Verizon, the Act does not impose a specific requirement that remedies be incorporated into an interconnection agreement and it argues that including a performance assurance plan (PAP) in a contract is unnecessary and administratively problematic.[22] AT&T and WorldCom argue that, despite having established a collaborative on performance measures, the Virginia Commission failed to act on the parties' petitions, which included performance-related issues.[23] Consequently, the petitioners' contend that these issues are appropriate for consideration and decision by the Arbitrator.

18. We grant Verizon's renewed motion to dismiss consideration of issues related to performance measures and assurance plans.[24] While we disagree with Verizon that we lack jurisdiction to decide the issues set forth in AT&T's and WorldCom's petitions, we agree that, as a practical matter and a matter of comity, we should defer to the Virginia Commission on performance issues. Subsequent to the parties' filings on this motion, the Virginia Commission issued an order adopting performance measurements and standards applicable to Verizon.[25]

---

[19] The issues that are the subject of this Verizon motion are: Issues III-14, IV-120, IV-121, and IV-30.

[20] Verizon's Renewed Motion to Dismiss Consideration of Issues Related to Performance Measures and Assurance Plans at 1-2 (Verizon Renewed Motion).

[21] Verizon Renewed Motion at 6.

[22] Verizon Reply 5, 6.

[23] WorldCom Response to Verizon Renewed Motion at 2 (arguing that it is "wholly irrelevant" that the Virginia Commission is addressing performance measures and remedies in generic proceedings); AT&T Opposition to Verizon Renewed Motion at 4-5 (asserting that the Commission's finding that the Virginia Commission failed to carry out its section 252 responsibilities encompassed all of the issues AT&T designated in its petition).

[24] Specifically, we dismiss Issues III-14, IV-120, IV-121, and IV-130.

[25] *See Establishment of Carrier Performance Standards for Verizon Virginia Inc.*, Case No. PUC010206, Order Establishing Carrier Performance Standards with Implementation Schedule and Ongoing Procedure to Change (continued....)

Moreover, the parties to a collaborative proceeding in Virginia have reached agreement on a remedy plan for Verizon.[26] Since the Virginia Commission appears close to issuing an order approving a remedy plan, which will include an effective date, we determine that it is appropriate for us to defer to the state commission on all performance matters, including remedies. As noted by AT&T in its opposition to Verizon's renewed motion, we find that there is no present need for us to "retrace the steps" of the Virginia Collaborative and Virginia Commission.[27] However, in recognition of the possibility that the Virginia Commission may decide that the effective date for Verizon's PAP should be some date after the interconnection agreements go into effect, we direct Verizon to make retroactive, if necessary, any payments due to AT&T or WorldCom under the Virginia Commission-approved remedy plan. Should any dispute arise about whether payment is due and for what amount, we expect the parties to follow the dispute resolution processes set forth in their respective contracts.

B. Miscellaneous Motions

19. Before discussing each remaining motion individually, we determine that it would be helpful to explain several guiding principles we will follow in deciding these motions. First, we recognize the importance of a full and robust record to decide the unresolved issues presented by the parties. To that end, we will generally rule on the side of allowing information presented by any party into the record and then according that material the appropriate evidentiary weight. Next we will consider whether the petitioning party was afforded a meaningful opportunity to examine and respond to the other party's submission (*e.g.*, revised contract language). In making that determination, we will look at whether the parties agreed to waive cross examination on a particular issue that is now the subject of one of these motions. Finally, we note that this is not a static process and we will not rule in a manner that deters parties from revising their proposals either to reflect agreement reached during the proceeding or to acknowledge and address the other party's stated concerns.

1. Verizon's Objection to AT&T Response to Record Requests

20. On December 10, 2001, Verizon filed an objection to AT&T's Response to Record Requests, which the Bureau received on November 8, 2001. According to Verizon, AT&T's filing is nothing more than an inappropriate attempt to supplement the record testimony of its witness on Issues V-3, V-4, and V-4-a.[28] Specifically, Verizon argues that Commission

(Continued from previous page)
Metrics (issued by Virginia Comm'n on Jan. 4, 2002) (*Virginia Commission Performance Metrics and Standards Order*).

[26] The remaining dispute among the parties to this collaborative, which includes AT&T and WorldCom, is the effective date of the remedy plan. *See Establishment of a Performance Assurance Plan for Verizon Virginia, Inc.*, Case No. PUC-2001-00226, Fourth Preliminary Order (Virginia Commission, April 17, 2002).

[27] AT&T Opposition at 6-7.

[28] Verizon's Objection to AT&T Response to Record Requests at 1.

staff did not request AT&T to supplement the record at a later date and that it would be inappropriate to admit AT&T's information to the record and unfair to Verizon. Consequently, Verizon urges us to strike AT&T's response to the "fictitious" "Record Request 1."[29] AT&T argues that the record is best served by the inclusion of complete information on the issues and, to that end, AT&T states that it understood that, as a consequence of its witness's statements made at the hearing, it owed the Commission the complete answer that its witness was unable to provide at the hearing.[30]

21. We deny Verizon's objection but admit its filing, and AT&T's response to "Record Request 1," as exhibits.[31] In this particular instance we do not rely on either party's response as a basis for our decision in Issues V-3, V-4, and V-4-a.[32] However, as stated above, we determine that our record would benefit by the inclusion of such additional information.[33]

2. WorldCom's Objection and Response to Verizon's Corrections to WorldCom Responses to Record Requests

22. On December 4, 2001, WorldCom filed its objection to Verizon's corrections to WorldCom's record request responses.[34] WorldCom argues that Verizon has no procedural right to "correct" WorldCom's responses to record requests, set forth in its exhibit 52.[35] Moreover, WorldCom contends that its responses are accurate and Verizon's "corrections" contained in its exhibit 83 are inaccurate.[36] Although WorldCom asks us to exclude Verizon exhibit 83 from the record, in the alternative, it requests that we include its objection and response as WorldCom exhibit 53.[37]

---

[29] *Id.* at 2. As an alternative, Verizon suggests that we accept its objection into the record as Verizon exhibit 84. *Id.* at 5.

[30] AT&T Reply at 2, 3. AT&T also states that it has no objection to admitting Verizon's December 10 filing as Verizon exhibit 84. *Id.* at 3.

[31] We mark and admit into the record AT&T's response as AT&T exhibit 40 and Verizon's objection as Verizon exhibit 84

[32] *See* Issues V-3/V-4-A and V-4 *infra*, for our discussion of these unresolved issues.

[33] We also note that since AT&T filed its response on November 8, Verizon had the opportunity to respond to AT&T's information in both its brief and reply.

[34] Verizon filed its corrections on November 28, 2001, arguing that since WorldCom's responses were submitted after the hearing, Verizon should be given the opportunity to correct the record and asks the Commission to admit its response as Verizon exhibit 83. Verizon's Corrections to WorldCom's Responses to Record Requests

[35] WorldCom's Objection and Response to Verizon's Corrections to WorldCom's Responses to Record Requests at 1-2.

[36] *Id.* at 2.

[37] *Id.* at 8.

23. Consistent with our holding above, we deny WorldCom's objection and, instead, mark as exhibits and admit both carriers' responses into the record.[38] Also, as is the case above, we do not rely on either party's newly-admitted exhibit as a basis for our decisions in Issues I-1 and IV-1.[39] Consequently, we find that neither party is prejudiced by supplementing the record in this fashion.

3. Cox's Objection and Request for Sanctions

24. On November 7, 2001, Cox filed an objection to new language proposed by Verizon and a request for sanctions. Cox argues that, in its November JDPL, Verizon filed new language that significantly changes its previous position on Issues I-1, I-2 and I-9.[40] Cox asserts that none of these proposals was made to Cox during negotiations or in any previous contract language filings made with the Commission.[41] Consequently, Cox contends that it has been deprived of the opportunity to prepare direct and rebuttal testimony on these proposals and of a fair opportunity to cross examine Verizon witnesses on this new language.[42] For these reasons, Cox argues that the Commission should reject Verizon's new language and require Verizon to return to its earlier positions stated in September. Additionally, Cox states that Verizon should be sanctioned for its ongoing disregard for the Commission's requirements in this proceeding.[43] On November 20, 2001, Verizon submitted its opposition to Cox's objection and request for sanctions.

25. As we discuss further below, we rule for Cox, and against Verizon, on the three issues for which Cox challenges Verizon's language as belatedly revised. Accordingly, we deny as moot Cox's objection and request for sanctions.

4. WorldCom Motion to Strike

a. Positions of the Parties

26. On November 27, 2001, WorldCom filed a motion to strike contract language proposed by Verizon in the November JDPL that was not contained in the September JDPL. WorldCom asserts that Verizon submitted new contract provisions on over 30 issues in this

---

[38] Verizon's November 28 filing will become Verizon exhibit 83 and WorldCom's objection and response will become WorldCom exhibit 53.

[39] *See* Issues I-1 and IV-1 *infra* for our discussion of these issues.

[40] Cox Objection and Request for Sanctions at 1.

[41] *Id.* at 2. For Cox's discussion of the three issues in dispute, *see id.* at 4-8, 10-11 for Issue I-1; *id.* at 11 for Issue I-2; and *id.* at 12 for Issue I-9.

[42] *Id.* at 3.

[43] *Id.*

November filing.[44] According to WorldCom, the Due Process Clause of the Fifth Amendment and the APA require that each party has the opportunity to respond to other parties' submissions.[45] WorldCom contends that permitting Verizon to introduce new proposals at such a late stage in the proceeding denies WorldCom the opportunity to present evidence refuting Verizon's positions and would be arbitrary and capricious.[46] WorldCom also asserts that the Commission's procedural orders make clear that the parties' proposals should have come to rest by the time the hearings began.[47]

27. Verizon filed its opposition to WorldCom's motion on December 14, 2001. Verizon argues that the nature of Verizon's edits to the November JDPL are consistent with the Commission's purpose in requesting a corrected and updated JDPL, which was to ensure that the JDPL included all contract language pertinent to an issue that was updated to reflect Verizon's most current substantive proposal on an issue.[48] Moreover, Verizon contends that the majority of what WorldCom terms "new contract provisions" are, in fact, edits derived from Verizon's previous JDPLs or its originally filed proposed contract with WorldCom.[49] The few remaining edits, Verizon argues, reflect Verizon's efforts to update its proposal based on testimony or to ensure consistency or correct mistakes.[50] Verizon asserts that updating its proposal to conform to testimony does not make the resulting contract language a "new proposal" when WorldCom was "fully informed of, and presented with a full and fair opportunity to explore" Verizon's position as set forth in testimony on the open issues.[51] Verizon also argues that due process requires the opportunity to be heard at a meaningful time in a meaningful manner and WorldCom had such an opportunity to rebut Verizon's substantive positions.[52]

b. Discussion

28. We deny, in whole, WorldCom's motion to strike. With respect to the substantial majority of the issues for which WorldCom alleges that Verizon submitted new language, WorldCom's motion is moot, either because we reject Verizon's proffered language, or because

---

[44] WorldCom Motion to Strike at 5.

[45] *Id.* at 5-6, citing 5 U.S.C. § 706(2)(A), (E).

[46] *Id.* at 7.

[47] *Id.* at 7-8.

[48] Verizon Opposition to WorldCom Motion to Strike at 3.

[49] *Id.* at 3, citing Ex. B.

[50] *Id.* at 4, citing Ex. C.

[51] *Id.* at 4.

[52] *Id.* at 6.

the parties had settled the issue by the end of the hearing.[53] For other issues that WorldCom identifies, the language Verizon proposed in November was more favorable to WorldCom than Verizon's previous proposals, and we therefore perceive no prejudice that WorldCom could have suffered arising from any inability to respond to the new proposals.[54] Additionally, we conclude that WorldCom had ample opportunity, during the initial and reply briefs, to respond to any changes in Verizon's November language.[55] Lastly, on one issue, Verizon's November language, while not identical to its earlier proposal, does not differ in any legally or operationally significant respect.[56]

IV. UNRESOLVED ISSUES

A. Standard of Review

29. Section 252(c) of the Act sets forth the standard of review to be used in arbitrations by the Commission and state commissions in resolving any open issue and imposing conditions upon the parties in the interconnection agreement.[57] This section states that any decision or condition must meet the requirements of section 251 and accompanying Commission regulations, establish rates in accordance with section 252(d), and provide an implementation schedule.[58] As mentioned earlier, section 252(e)(5) requires the Commission to issue an order preempting a state commission that fails to act to carry out is responsibilities under section 252, and to assume the responsibility of the state commission. In its *Local Competition First Report and Order*, the Commission promulgated rule 51.807 implementing section 252(e)(5).[59] Rule 51.807 provides, among other things, that (a) the Commission is not bound to apply state laws or standards that would have otherwise applied if the state commission were arbitrating the section 252 proceeding; (b) except as otherwise provided, the Commission's arbitrator shall use final

---

[53] *See, e.g.*, Network Architecture Issues I-1, III-2, III-4, IV-1, IV-8, IV-11; Intercarrier Compensation Issues I-6, III-5, IV-35; UNE Issues III-6, III-7, III-8, III-9, III-10, III-11/IV-19, IV-23, IV-24, IV-25, VI-3-B; Business Process Issue IV-56 (settled); Rights of Way Issue III-13-H (settled); General Terms and Conditions Issues I-11, IV-101, IV-110 (settled).

[54] *See, e.g.*, Intercarrier Compensation Issue I-5 (language regarding calling party number percentage requirement changes from 95 to 90); General Terms and Conditions Issue III-15 (Verizon agrees to provide WorldCom additional information regarding Verizon's inability to obtain intellectual property rights).

[55] *See, e.g.*, Intercarrier Compensation Issue I-5 (WorldCom fully briefed issues relating to compensation for ISP-bound traffic); UNE Issues III-12 (WorldCom counsel cross examined Verizon witness on language WorldCom now challenges as late-proposed), IV-18 (despite opportunity in two briefs, WorldCom failed to identify how Verizon's language conflicted with statute or regulations).

[56] *See infra*, Issue IV-45, n.2300.

[57] 47 U.S.C. § 252(c).

[58] 47 U.S.C. § 252(c)(1)-(3).

[59] *Local Competition First Report and Order*, 11 FCC Rcd at 16127-32, paras. 1283-95.

offer arbitration; and (c) absent mutual consent of the parties, the Arbitrator's decision shall be binding on the parties.[60]

30. Based on the states' experience arbitrating interconnection disputes since 1996, the Commission modified rule 51.807 last year to provide the Arbitrator additional flexibility to resolve interconnection issues.[61] Specifically, rule 51.807(f)(3) was amended so that, if a final offer submitted by one or more parties fails to comply with the other requirements of this rule, or if the Arbitrator determines in unique circumstances that another result would better implement the Act, the Arbitrator has discretion to direct the parties to submit new final offers or to adopt a result not submitted by any party that is consistent with section 252 of the Act and the Commission's rules adopted pursuant to that section.[62] In its order approving this modification, the Commission explained that it would not identify those unique circumstances under which the Arbitrator could conclude that another result is appropriate. Below, we attempt to summarize two main categories of those instances in which we have found it necessary to depart from the proposals of the parties.

31. *Modifying to Achieve Consistency with the Act and Commission Rules.* In certain instances, we have modified one party's proposal, rather than either adopt one party's proposal or reject both and direct the parties to submit new final offers.[63] In these instances, where modification of the language can bring the agreement into conformity with the Act and Commission rules, we find that it conserves administrative resources to direct the parties simply to submit a compliance filing containing the corrected language that we provide.[64] Furthermore, just as the Commission recognized that the Arbitrator may conduct issue-by-issue final offer arbitration (as opposed to selecting one entire proposed contract over another), so too we find that, for certain issues, it is appropriate *within* an issue to select language from both parties to resolve the dispute (*i.e.*, to choose one subsection from one party and another subsection from the other party) or to adopt some but not all of a party's proposal.[65] We reiterate that we base our

[60] *See* 47 C.F.R. § 51.807(b), (d), (h).

[61] *See Arbitration Procedures Order*, 16 FCC Rcd at 6232, paras. 4-6

[62] *See* 47 C.F.R. § 51.807(f)(3); *Arbitration Procedures Order*, 16 FCC Rcd at 6232, para. 5.

[63] *See, e.g.,* Issues III-3/III-3-A, III-11, and III-12.

[64] We note that, on a few occasions, we have directed a petitioner and Verizon to incorporate corrected language provided by a second petitioner or by Verizon to that second petitioner (after determining that neither the first petitioner's proposal nor Verizon's proposal to that first petitioner was consistent with our rules or the Act). *See* Issues III-1/III-2/IV-1 and III-3/III-3-A. Similarly, we have determined that, in at least one issue, the proposals offered by the parties are unnecessary and language adopted elsewhere in the contract addresses their concerns. *See, e.g.,* Issue III-8.

[65] *See, e.g.,* Issues IV-74 (finding that both parties had legitimate concerns that could be addressed harmoniously by adopting language from each proposal), V-12, and IV-45. In this regard, we note that the parties defined the content of each numbered issue without our involvement. *See also, e.g.,* Issues IV-4, III-9, and IV-32 (adopting part, but not all, of a carrier's proposal).

decisions on current Commission rules and precedent, and therefore reject or modify parties' proposals that extend beyond existing law.

32. *Modifying to Reflect Concessions Made at Hearing or on Other Issues.* During the course of the hearings, the parties made numerous concessions or compromises, some of which were incorporated into their most recent contract proposals[66] and several of which were not.[67] In those instances where one party clearly indicated that it supported or no longer opposed the other party's conceptual proposal or contract language[68] or indicated that it was willing to modify its own proposal to reflect the other party's concerns,[69] we determine that it is appropriate to direct the parties to submit language conforming to such statements.[70]

33. We also feel it necessary to comment on a theme running through many of the issues in this proceeding. In response to a petitioner's proposal that simply paraphrases or quotes a particular Commission rule, Verizon often indicates that its proposed language requires it to comply with the requirements of "applicable law," and argues that the petitioner's language is therefore unnecessary. We generally determine that Verizon should prevail on such issues. If there is no disagreement between the parties about what is the "applicable law" (*e.g.*, the relevant section of the Act, Commission rule or order) and the petitioner's proposed language is a mere recitation of that Commission rule or order, we typically conclude that the petitioner's proposal adds little to no value to the contract. Simply memorializing a Commission requirement in an interconnection agreement is unnecessary to ensure a carrier's rights or make clear a carrier's obligations with respect to that requirement. Indeed, we find it unlikely that quoting or paraphrasing a Commission rule in the parties' contract would reduce the likelihood of disputes over interpretation of that rule.

34. Including language that requires Verizon to comply with all applicable law affords a petitioner the same contractual remedies that would be available if the contract paraphrased the relevant Commission rule. Moreover, for those issues that we arbitrate, quoting a Commission rule will not "grandfather" or insulate it from the contract's change of law clause.

---

[66] *See, e.g.*, Issue III-10 (AT&T modifying its proposal by eliminating many "operational details" to address Verizon's concern about the level of detail in AT&T's earlier proposal).

[67] *See, e.g.*, Issues III-4-B (directing parties to file compliance language incorporating AT&T's agreement, expressed during hearing and in post-hearing briefs, to return a firm order confirmation within a certain number of days).

[68] *See, e g*, Issues I-7/III-4 (Verizon's witness testifying that WorldCom's 15 percent overhead proposal "sounds fine to us"). *See also* Tr. at 1501.

[69] *See, e.g*, Issue VI-3-B (WorldCom indicating that it is willing to delete one section of its proposal).

[70] *See, e.g.*, Issue IV-5. Also, in resolving one issue related to assurance of payment, we determine that it is appropriate to apply a compromise offered in another issue, concerning insurance. For these two issues (Issues VI-1-N and VI-1-P), we find that our rationale for adopting the compromise in one issue is equally applicable to the second.

To be clear, pursuant to section 252(a), and subject to the disclosure requirements of section 252(h), parties are permitted to negotiate terms and conditions without regard to subsections (b) and (c) of section 251. [71] In other words, if they so choose, the parties may memorialize in the contract a Commission rule or directive and exempt it from the agreement's change of law language. Similarly, they may agree to terms that are not compelled by, or are even inconsistent with, sections 251(b) and (c) of the Act. However, if the parties have not reached such an understanding and have asked the Commission to arbitrate their dispute, we will do so based on existing law and expect that any change in that law will be reflected in the contract. Notwithstanding this general approach towards use of the term "applicable law," we find that language clarifying a particular rule, or adding details of how the rule should operate in a commercial environment, may well be appropriate for adoption, if the proposed language is consistent with the Commission's rules and the Act.[72]

35. Finally, we note briefly that, in addressing the parties' disputes, we attempt to dispose fully of the substantive issue that the parties have presented and to provide adequate direction on how the parties should memorialize our decision in their respective interconnection agreements. As discussed above, our decision may take the form of adopting or rejecting proffered language, or adopting one side's language in modified form. We emphasize, however, that we have largely restricted ourselves to addressing the issues and the contract language that the parties have directly placed at issue through their presentations during the hearings we conducted and, most importantly, through their post-hearing briefs. There may be instances in which we have not specifically spoken to particular contract language because neither party addressed it in their advocacy, although it may have appeared in the contracts that the parties submitted after the hearings or even have appeared under a particular issue number in the JDPL. In those cases, we expect that the parties will generally be able to apply the analysis of the relevant portion of this order and the Commission precedents discussed therein to resolve any remaining disputes that they may have relating to contract language that the parties -- and therefore the Bureau – left unaddressed.

B. Network Architecture

1. Issues I-1/VII-1/VII-3/VII-4 (Single Point of Interconnection and Related Matters)[73]

---

[71] *See* 47 U.S.C. § 252(a), (h).

[72] *See, e.g.*, Issue VI-3-B, *infra*.

[73] Because these issues present interrelated sets of contract language and disputed matters, we address them together. Issue I-1 concerns the financial implications of establishing a "single point of interconnection" in a LATA, and the parties' proposals defining their respective obligations to compensate each other for delivering traffic. Issue VII-4 addresses Verizon's proposed terms to AT&T for lowering reciprocal compensation payments under its "VGRIPs" compensation proposal. Issues VII-1 and VII-3 both address Verizon's objection to AT&T not using the term "interconnection point" in its interconnection proposal presented for arbitration. Issue VII-1 also (continued....)

Pages 19 - 120 are not included . . . . . .

that, even assuming it could ascertain the identities of the relevant third-parties, Verizon does not explain how WorldCom could recoup Verizon's access charges from them when WorldCom's tariff does not include charges for third-party access.[816] WorldCom argues that there is no justification for placing on WorldCom Verizon's problems in collecting for access services.[817]

c. Discussion

243. We find that the language WorldCom seeks to add to Verizon's proposed section 10.2 is reasonable, and direct the parties to include this language in their final agreement.[818] Verizon has not provided sufficient explanation for why WorldCom should be assessed for exchange access services Verizon provides to toll-free service providers. Furthermore, Verizon fails to explain how an originating or terminating competitive LEC is in any better position than Verizon to know the identity of a toll-free service provider that does not provide a CIC code in the SMS database.[819] In the absence of such an explanation, Verizon's proposal to bill WorldCom for exchange access services Verizon provides to toll-free service providers amounts to little more than a transfer of Verizon's collection problems onto WorldCom. Indeed, Verizon's witness conceded that the appropriate party to be assessed for these services is the toll-free service provider, not WorldCom.[820]

C. Intercarrier Compensation Issues

1. Issue I-5 (Intercarrier Compensation for ISP-Bound Traffic)

a. Introduction

244. The *ISP Intercarrier Compensation Order*, which was issued after the filing of the arbitration petitions in this proceeding, sets forth an interim regime that establishes a gradually declining rate cap on the compensation that carriers may recover for terminating ISP-bound traffic, and a cap with a limited growth factor on the amount of traffic for which any such compensation is owed.[821] Generally speaking, the petitioners propose analogous, detailed

---

816 *See* WorldCom Reply at 63, citing Tr. at 2460.

817 *See* WorldCom Reply at 63.

818 We thus adopt WorldCom's November Proposed Agreement, Attach. IV, § 11.2, and reject Verizon's November Proposed Agreement to WorldCom, Intercon. Attach., § 10.2.

819 *See* Tr. at 2462-63, 2466.

820 *See* Tr. at 2514-15.

821 *See Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9161, 9155-56 para. 7 (2001) ("*ISP Intercarrier Compensation Order*"), *remanded sub nom. WorldCom, Inc v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). Before release of the order, the petitioners argued in their arbitration petitions that ISP-bound traffic is "local" traffic subject to reciprocal compensation. AT&T Petition, Ex. 1 at 75; WorldCom Petition at 40-41; Cox Petition at 14-15. The Commission later ruled in its *ISP Intercarrier* (continued....)

provisions to implement the Commission's order. They argue that, because the order lacks detail, the parties need a roadmap for implementation.[822] Verizon asserts that the order is largely self-executing and would be better implemented through business negotiations outside of this arbitration.[823]

245. We note that, after the parties briefed this issue, the U.S. Court of Appeals for the D.C. Circuit remanded the *ISP Intercarrier Compensation Order* to the Commission, holding that section 251(g) of the Act did not support the Commission's conclusion that ISP-bound traffic fell outside of the section 251(b)(5) reciprocal compensation obligation.[824] The court did not, however, vacate the compensation regime that the order established, nor did it reverse the Commission's conclusion that ISP-bound traffic is not subject to section 251(b)(5).[825] Consistent with the manner in which we have applied other rules affected by judicial remands, we resolve issues relating to compensation for ISP-bound traffic on the basis of existing law, which, in this instance, includes the applicable interim compensation mechanism.[826] To the extent that the Commission's rules change at a later date, the parties may implement those changes through their agreements' change of law procedures.

b. "Mirroring Rule" and Past-Due Payment

246. Under the "mirroring rule" in the *ISP Intercarrier Compensation Order*, incumbent LECs can only take advantage of the rate caps on compensation for ISP-bound traffic if they offer to exchange, at those same capped rates, all traffic subject to the reciprocal compensation provisions of section 251(b)(5).[827] The parties disagree about whether Verizon's existing offers to implement the mirroring rule must be memorialized in their agreements, and whether Verizon must pay reciprocal compensation that allegedly has accrued under existing agreements before it may take advantage of the capped rates. We reject the petitioners' proposed language on both of these points.

(Continued from previous page)
Compensation Order, however, that ISP-bound traffic is not eligible for reciprocal compensation under section 251(b)(5). *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9170-71, para. 42. In the wake of that order, the Bureau directed the parties to submit "agreed statements of the issues that must still be arbitrated" if the parties could not reach agreement on implementation of the order. Letter from Jeffrey H. Dygert to Scott Randolph, Robert Quinn, Lisa B. Smith and Alexandra Wilson (July 11, 2001).

822 AT&T Brief at 79; WorldCom Brief at 79; Cox Brief at 31.

823 Verizon IC Brief at 2; Tr. at 1766-67.

824 *See WorldCom v. FCC*, 288 F.3d at 433-34.

825 *See id.* at 434.

826 *Cf. supra* para. 4.

827 *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9193-94, para. 89.

(i) Positions of the Parties

247. AT&T and WorldCom propose language that would incorporate into their interconnection agreements Verizon's obligations under the mirroring rule.[828] They argue that Verizon's offer to carriers to implement the mirroring rule outside of this proceeding is insufficient. WorldCom contends that, if the offer is not memorialized in any other legally enforceable document, such as a filing with the Virginia Commission, it can be rescinded unilaterally at any time.[829] AT&T and WorldCom further argue that Verizon should not be permitted to take advantage of the rate caps until Verizon has paid them, at the rates that they claim were applicable, for their delivery of all ISP-bound traffic before the effective date of the *ISP Intercarrier Compensation Order*.[830] AT&T asserts that Verizon has unilaterally refused to pay millions of dollars in reciprocal compensation for ISP-bound traffic that accrued during the period before the *ISP Intercarrier Compensation Order* established a new compensation regime.[831] WorldCom adds that, according to the Virginia Commission, reciprocal compensation was the appropriate mechanism for ISP-bound traffic prior to the new regime.[832] Therefore, WorldCom asserts, there can be no dispute as to the amount that Verizon owes.[833] Furthermore, WorldCom argues, its proposed contract provision regarding past-due payment is an effective enforcement mechanism for future true-ups as necessary.[834]

248. In response, Verizon notes that on May 14, 2001, it sent a letter offer, pursuant to the mirroring rule, to every competitive LEC and commercial mobile radio service (CMRS)

---

[828] AT&T Brief at 84; WorldCom Brief at 74. Specifically, AT&T and WorldCom propose that the capped rates for ISP-bound traffic should be available to Verizon only if: "(a) Verizon requests that ISP-bound Traffic be treated at the rates specified in the ISP Remand Order; (b) Verizon offers to exchange all traffic subject to the reciprocal compensation provisions of section 251(b)(5) with LECs, CLECs, and CMRS providers, at these information access rates; and (c) Verizon has paid all past due amounts owed on WorldCom's delivery of ISP-bound Traffic prior to June 14, 2001." *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.2.3; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.3.

[829] WorldCom Brief at 74.

[830] AT&T Brief at 79; WorldCom Brief at 74-76.

[831] AT&T Brief at 79 n.264. AT&T estimates that, throughout the entire Verizon region, the past due amount is in excess of $10 to 20 million. Tr. at 1665.

[832] WorldCom Brief at 74-75, citing *Petition of Cox Virginia Telecom, Inc. for Enforcement of Interconnection Agreement with Bell Atlantic-Virginia, Inc.; Arbitration Award for Reciprocal Compensation for the Termination of Local Calls to Internet Service Providers*, Final Order, Case No. PUC970069 (issued by Virginia Comm'n on Oct. 24, 1997).

[833] WorldCom Brief at 75. WorldCom estimates that Verizon owes WorldCom over $100 million for termination of ISP-bound traffic. WorldCom Reply at 71, citing Tr. at 1834.

[834] WorldCom Brief at 75.

provider with which it interconnects in Virginia.[835] Verizon argues that it thereby satisfied the mirroring rule and may avail itself of the rate caps. It argues that the offer need not be included in each interconnection agreement.[836] Verizon also disagrees that it must pay disputed arrearages for ISP-bound traffic before it can avail itself of the rate caps.[837] Verizon notes that these disputes over past-due payments arise under Verizon's existing interconnection agreements with AT&T and WorldCom, and thus do not belong in this arbitration.[838] In any case, Verizon argues, there is no support for such a true-up in the *ISP Intercarrier Compensation Order*.[839] Furthermore, Verizon denies that it owes any past due reciprocal compensation to AT&T or WorldCom under their existing contracts.[840] In this regard, Verizon asserts that neither AT&T nor WorldCom has taken any action to collect past-due amounts under their existing interconnection agreements with Verizon.[841]

(ii) Discussion

249. We agree with Verizon that it has satisfied the mirroring rule through its letter offers, sent to interconnecting carriers in Virginia, to exchange all traffic subject to section 251(b)(5) at the capped rates.[842] The *ISP Intercarrier Compensation Order* does not specify the manner in which this offer must be made. We do not believe that contract language covering Verizon's commitment is necessary, particularly since neither AT&T nor WorldCom suggests that Verizon has not fulfilled the requirements of the mirroring rule. Given our decision below to memorialize in the contract the rates at which Verizon has offered to exchange this traffic, we are not concerned that Verizon will attempt to end its compliance with the mirroring rule in the absence of a change of law. Accordingly, we reject AT&T's and WorldCom's proposed language on the mirroring rule.[843]

---

[835] Verizon IC Brief at 7, citing Tr. at 1863-64.

[836] *Id.*

[837] *Id.* at 7-8.

[838] *Id.* at 8. Verizon notes that the existing interconnection agreements have dispute resolution mechanisms, through which AT&T and WorldCom can seek past-due compensation.

[839] *Id.*

[840] *Id.* n.3.

[841] Verizon IC Reply at 5-6 n.22.

[842] Verizon submitted an example letter offer as an exhibit to this arbitration. *See* Verizon Ex. 55.

[843] AT&T and WorldCom articulate the mirroring rule through two separate provisions in each of their proposed contracts. *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.2.3(a), (b); WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.3(a), (b). We reject each of these provisions for both parties.

250. We also decline to adopt AT&T and WorldCom's language requiring payment of disputed compensation amounts for ISP-bound traffic prior to June 14, 2001, the effective date of the *ISP Intercarrier Compensation Order*.[844] The order does not indicate that this type of dispute must be resolved before the incumbent LEC can avail itself of the capped rates. As Verizon correctly notes, these disputes arise under its existing interconnection agreements with AT&T and WorldCom. Accordingly, they should be resolved pursuant to the dispute resolution mechanisms or other enforcement options available under those agreements.[845]

c. Change of Law Provision

251. In the event that the *ISP Intercarrier Compensation Order* is successfully appealed or modified, the petitioners each propose a change of law provision establishing the appropriate intercarrier compensation regime for ISP-bound traffic, with a retroactive effect on amounts due.[846] The petitioners argue that such provisions are important because the order remains subject to further modification and review.[847] Verizon opposes inclusion of these provisions in the contracts. Because each party has agreed to a general change of law provision, we reject the petitioners' change of law provisions that are specific to this issue.

(i) Positions of the Parties

252. AT&T asserts that, because of the uncertainty created by the ongoing review of the controlling Commission order, the interconnection agreement should contain a change of law provision specific to the issue of compensation.[848] Under AT&T and WorldCom's specific change of law provisions, upon reversal or modification of the Commission's order, ISP-bound traffic would be deemed section 251(b)(5) traffic subject to reciprocal compensation.[849] They add that, in this situation, retroactive payment would be due for the period when, consistent with

---

[844] Accordingly, we reject AT&T's proposed section 5.7.5.2.2.3(c); and WorldCom's proposed Part C, Attachment I, section 8.3(c), and the remaining text in section 8.3.

[845] We express no opinion on the appropriate compensation mechanism for ISP-bound traffic before June 14, 2001, or on any amounts that may be due.

[846] *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.5; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6; Cox's November Proposed Agreement to Verizon, § 5.7.7.1(c).

[847] *See WorldCom, Inc. v. FCC*, 288 F.3d at 434-34 (remanding order to Commission, holding that section 251(g) does not support Commission's conclusion that ISP-bound traffic falls outside section 251(b)(5)). Although the court remanded the matter to the Commission, we expect that, because the court did not vacate the Commission's rules or decide what rate should apply to ISP-bound traffic, the petitioners' concerns persist.

[848] AT&T Brief at 85.

[849] AT&T's November Proposed Agreement to Verizon, § 2.5; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6. *See* Tr. at 1673; WorldCom Brief at 78-79. WorldCom conceded at the hearing, however, that the *ISP Intercarrier Compensation Order* does not assert at any point that reciprocal compensation for ISP-bound traffic was required by law prior to the order. Tr. at 1686.

the terms of the *ISP Intercarrier Compensation Order*, Verizon did not pay the higher reciprocal compensation rate for termination of ISP-bound traffic.[850] WorldCom asserts that interconnection agreements typically contain analogous provisions regarding replacement of agreed-to rates caused by an intervening change in law, and sometimes also give the new rates retroactive application.[851] WorldCom argues that the interconnection agreement's general change of law provision would not settle uncertainties regarding ISP intercarrier compensation, because the general provision requires negotiation of new contract terms and Verizon has no incentive to negotiate on this issue.[852] Moreover, WorldCom and Cox assert that the history between the carriers of disagreeing on the appropriate compensation for ISP-bound traffic compels a provision that specifies the proper compensation in the event that the *ISP Intercarrier Compensation Order* is successfully appealed.[853]

253. Verizon argues that the petitioners' issue-specific change of law provisions are unnecessary in light of the agreements' general change of law provisions, which would apply if the federal rules governing ISP-bound traffic are successfully appealed or modified.[854] Verizon further argues that AT&T and WorldCom's retroactivity provisions fail to offer an equivalent true-up for Verizon to account for the higher reciprocal compensation rates that Verizon paid for ISP-bound traffic before the *ISP Intercarrier Compensation Order* became effective.[855] Verizon argues that, under the petitioners' proposed change of law provisions, section 251(b)(5) reciprocal compensation for ISP-bound traffic would result from even the most nominal modification of the order, regardless of whether the Commission's interim rates were disturbed by the appeal.[856]

---

[850] AT&T's November Proposed Agreement to Verizon, § 2.5; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6.

[851] WorldCom Brief at 79 n.41, citing WorldCom Pet., Ex. D (Interconnection Agreement Governing Current Relations), Attach. I, Table 1.

[852] WorldCom Brief at 79 n.40; WorldCom Reply at 70.

[853] WorldCom Brief at 78; Cox Brief at 33-34; Cox Reply at 24. WorldCom notes that, because Verizon maintains that ISP-bound traffic is not subject to reciprocal compensation, a successful appeal would result in Verizon refusing to pay for delivery of ISP-bound traffic altogether. WorldCom Reply at 70 & n.27. Cox does not argue for retroactive payment of reciprocal compensation for ISP-bound traffic upon successful appeal of the order. Cox Brief at 34 n.134; Cox Reply at 23-24. Cox's proposal would apply, *inter alia*, if the *ISP Intercarrier Compensation Order* were "affected by any legislative or other legal action." Cox's November Proposed Agreement to Verizon, § 5.7.7.1(c).

[854] Verizon IC Brief at 12; Verizon IC Reply at 7.

[855] Verizon IC Brief at 12-13.

[856] *Id.* at 13; Verizon IC Reply at 7-8. WorldCom's change of law provision would apply "if any legislative, regulatory, or judicial action, rule, or regulation modifies, reverses, vacates, or remands the ISP Remand Order, in whole or in part." WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6. AT&T's change of law provision would apply section 251(b)(5) reciprocal compensation to ISP-bound traffic "at such time (continued....)

(ii) Discussion

254. We agree with Verizon that the general change of law provision in each interconnection agreement is sufficient to address any changes that may result from the ongoing proceedings relating to the *ISP Intercarrier Compensation Order*. None of the petitioners demonstrates that the general change of law provision would be inadequate to effectuate any court decision that reverses, remands or otherwise modifies the *ISP Intercarrier Compensation Order*. Verizon has asserted, as to Cox, that its general change of law provision's renegotiation terms would be activated by a reversal, other court decision, or remand of the *ISP Intercarrier Compensation Order*.[857] It appears that the same is true for the change of law provisions in the agreements with AT&T and WorldCom.[858] Additionally, the dispute resolution procedures incorporated into the parties' general change of law provisions are sufficient to address the petitioners' concerns that any change of law would trigger protracted negotiations when Verizon has no incentive to reach agreement.[859] Therefore, in light of the agreed-to general change of law provisions and related dispute resolution procedures, we reject the petitioners' proposed change of law provisions that are specific to this issue.[860]

255. We also find troubling those portions of AT&T and WorldCom's proposed change of law provisions that would retroactively increase the compensation due for delivery of ISP-bound traffic in the event of any stay, modification or (in the case of WorldCom) remand of the *ISP Intercarrier Compensation Order*.[861] These proposals sweep too broadly and could, as

(Continued from previous page)
as the ISP Remand Order is stayed, reversed or modified." AT&T's November Proposed Agreement to Verizon, § 2.5.

[857] Tr. at 1790-92. *See* Verizon's November Proposed Agreement to Cox, § 27.

[858] *See* Verizon's November Proposed Agreement to AT&T, § 27; *see also* Issues IV-113/VI-1-E *infra* (adopting WorldCom's proposed section 25.2 of Part A).

[859] For example, according to the agreed-to general change of law provisions between Cox and Verizon, the parties commit to two rounds of good-faith negotiations that cannot exceed 45 days each. If they still cannot reach agreement, either side may file a complaint with the Virginia Commission or take other appropriate regulatory or legal action. *See* Verizon's November Proposed Agreement to Cox, § 28.9. *See also* Verizon's November Proposed Agreement to AT&T, § 28.11; Verizon's November Proposed Agreement to WorldCom, Part A, § 14; WorldCom's November Proposed Agreement to Verizon, Part A § 13; Issue IV-101 (dispute resolution provisions).

[860] Accordingly, we reject AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.5; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6; and Cox's November Proposed Agreement to Verizon, § 5.7.7.1(c).

[861] AT&T proposes that upon a stay, reversal or modification of the order, "then (1) ISP-bound Traffic shall be deemed Local Traffic retroactive to the effective date of this Agreement; (2) any compensation that would have been due under this Agreement since its effective date for the exchange of ISP-bound traffic shall immediately be due and payable." AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.5. WorldCom proposes that certain contract provisions, including rates, "may be voided by either Party . . . if any legislative, regulatory, or judicial action, rule, or regulation modifies, reverses, vacates, or remands the ISP Remand Order, in whole or in (continued....)

Verizon argues, be triggered by a modification or remand that did not reject, or even address, the order's rate structure for ISP-bound traffic. Indeed, we note that the D.C. Circuit's recent remand of the *ISP Intercarrier Compensation Order* likely would have triggered at least WorldCom's proposed language, even though the court expressly declined to reach the issue of rates for ISP-bound traffic.

d. Definition of "Internet Traffic"

256. In the *ISP Intercarrier Compensation Order*, the Commission determined that ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5).[862] Generally speaking, the order focused on traffic bound for ISPs over the public switched telecommunications network, which the Commission referred to as "ISP-bound traffic." Because the order "carved out" ISP-bound traffic as one category of traffic not subject to section 251(b)(5) reciprocal compensation, the parties argue about precisely how to define the rest of the universe of traffic that is not subject to section 251(b)(5) reciprocal compensation. Verizon also proposes the term "Measured Internet Traffic" to define the traffic that is bound for an ISP and therefore not subject to reciprocal compensation under section 251(b)(5).

(i) Positions of the Parties

257. The petitioners assert that Verizon's proposed contract, which provides that reciprocal compensation does not apply to "interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access,"[863] is over-inclusive and could be read to exclude from reciprocal compensation not only ISP-bound traffic, but also other forms of information access traffic, or more broadly, all of the traffic types listed in section 251(g).[864] Cox argues that Verizon's proposed language improperly reverses the presumption in section 251(g), exempting the traffic types listed therein from reciprocal compensation, rather than, as the statute requires, leaving in place previous compensation regimes until they have been superseded by new rules.[865]

(Continued from previous page)
part," adding that ISP-bound traffic would be deemed section 251(b)(5) traffic, and retroactive payment would be due. WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.6.

[862] *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9166-74, paras. 34-47. As we note above, this order has been remanded to the Commission. *See WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

[863] *See, e.g.*, Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.1.

[864] WorldCom Brief at 80; Cox Reply at 22-23; *see* Verizon's November Proposed Agreement to AT&T, § 1.68(a); Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.1; Verizon's November Proposed Agreement to Cox, § 1.60a. According to WorldCom, exclusion of information access services could affect "traffic to other enhanced service providers that has traditionally been treated as local." WorldCom Brief at 80.

[865] Cox Reply at 23, citing 47 U.S.C. § 251(g).

258. WorldCom complains that Verizon's defined term, "Measured Internet Traffic," which incorporates another Verizon-defined term – "Internet Traffic" – defines ISP-bound traffic more broadly than does the *ISP Intercarrier Compensation Order* and therefore generates confusion.[866] AT&T complains that Verizon's proposed definition of "Measured Internet Traffic" includes not only traffic delivered to an ISP, but also any traffic that is delivered to a customer and that is "transmitted to or returned from the Internet at any point during the duration of the transmission."[867] AT&T argues that, through this definition, Verizon is attempting to expand the universe of traffic exempted from reciprocal compensation by including all traffic that traverses the Internet and is delivered to any customer, not just traffic delivered to an ISP.[868] AT&T argues that, for example, Verizon could seek to use this language to avoid paying compensation for packet-switched voice calls.[869]

259. Verizon argues that the petitioners' approaches are under-inclusive. Verizon claims that petitioners' language is inconsistent with the Commission's rules because petitioners fail to exclude certain types of traffic, especially toll traffic, from section 251(b)(5) reciprocal compensation.[870] The result, according to Verizon, is that access traffic and toll traffic in particular would be subject to reciprocal compensation by being grouped together with bona fide section 251(b)(5) traffic traditionally rated as "local."[871] In this context, Verizon argues that AT&T's use of the terms "local traffic" and "voice traffic" are problematic because they fail to account for certain distinctions that the Commission has recognized. Verizon says the correct

---

[866] *See* WorldCom Brief at 79. On August 7, 2001, Cox filed a motion to strike the term "Internet Traffic" that Verizon added through the filing of a revised JDPL, after the parties had previously agreed to a definition of ISP-bound traffic. Cox Motion to Strike Untimely Raised Issues Related to Issue I-5 at 4 (filed Aug. 7, 2001) (Cox Motion to Strike). Cox argued that Verizon's proposed definition of "Internet Traffic" is overbroad, and could be construed to extend beyond dial-up ISP-bound traffic into other advanced telecommunications services such as IP telephony. *Id.* at 5-6. In an August 17, 2001 letter, we granted Cox's motion in part, striking the term "Internet Traffic" from Verizon's proposed language to the extent that Verizon sought to use the term and definition to introduce an issue beyond the implementation of the Commission's Order. Letter from Jeffrey H. Dygert to Scott Randolph and Alexandra Wilson (Aug. 17, 2001) (*August 17 Letter Order*). In a September 18, 2001 revised JDPL, Verizon continued to use the term "Internet Traffic," prompting Cox to file a motion to enforce the *August 17 Letter Order*. Cox Motion to Enforce the August 17 Order (filed Sept. 21, 2001).

[867] AT&T Brief at 80-81. Verizon has agreed, with respect to Cox and WorldCom, to define "Measured Internet Traffic" to include only traffic delivered to an ISP, not this broader category of traffic delivered to any customer.

[868] *Id.*; *see also* Verizon's November Proposed Agreement to AT&T, § 1.52(a).

[869] AT&T Brief at 81.

[870] Verizon IC Brief at 4.

[871] *Id.* at 4.

approach focuses instead on traffic subject to section 251(b)(5) reciprocal compensation obligations, together with traffic excluded from those obligations by section 251(g).[872]

260. With regard to its definition of Measured Internet Traffic, Verizon asserts that when it describes traffic that is delivered to a customer *or* an ISP, there is no real distinction between the two terms within the definition.[873] In addition, as noted above, through its hearing testimony, Verizon agreed to replace the phrase "delivered to a customer or an ISP" with "delivered to an ISP" in Cox's contract.[874] It appears that Verizon has made the same change in its proposed contract to WorldCom.[875]

(ii) Discussion

261. We disagree with Verizon's assertion that every form of traffic listed in section 251(g) should be excluded from section 251(b)(5) reciprocal compensation. In remanding the *ISP Intercarrier Compensation Order* to the Commission, the D.C. Circuit recently rejected the Commission's earlier conclusion that section 251(g) supports the exclusion of ISP-bound traffic from section 251(b)(5)'s reciprocal compensation obligations.[876] Accordingly, we decline to adopt Verizon's contract proposals that appear to build on logic that the court has now rejected.[877] We address below Verizon's argument that exchange access (*e.g.*, toll traffic) should not be subject to reciprocal compensation under the Commission's rules.

262. Furthermore, we agree that use of Verizon's term "Measured Internet Traffic" rather than "ISP-bound traffic," which is the term used by the Commission in the *ISP Intercarrier Compensation Order*, may be confusing. Verizon's term does not appear in the

---

[872] *Id.* at 4-5. Verizon notes that the Pennsylvania and Maryland Commissions have rejected a "local traffic" definition, in favor of "reciprocal compensation traffic." *Id.* at 4, citing *Petition of Sprint Communication Co., L.P. for an Arbitration Award Pursuant to 47 U.S.C. § 252(b)*, Opinion and Order, A-310183F002, at 47 (issued by Pennsylvania Comm'n Oct. 14, 2001); *In re Arbitration of Sprint Communications Co., L.P. v. Verizon Maryland, Inc., Pursuant to Section 252(b)*, Order No. 77320, Case No. 8887, at 23-24 (issued by Maryland Comm'n Oct. 24, 2001).

[873] Tr. at 1740-41.

[874] *Id.* at 1784. We note that Verizon was referring to section 1.41(a) of Verizon's proposed agreement with Cox.

[875] *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.12.

[876] *WorldCom v. FCC*, 288 F.3d at 433-34.

[877] Therefore, we strike Verizon's November Proposed Agreement to AT&T, § 1.68(a); Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.1 and corresponding language in § 7.14; Verizon's November Proposed Agreement to Cox, § 1.60a.

petitioners' language that we adopt herein. Accordingly, we reject it and its companion term "Internet Traffic."[878]

e. Rebuttable Presumption of 3:1

263. Rather than requiring parties separately to identify ISP-bound traffic and section 251(b)(5) traffic for purposes of calculating intercarrier compensation, the *ISP Intercarrier Compensation Order* created a rebuttable presumption that "traffic delivered to a carrier, pursuant to a particular contract, that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic."[879] To rebut this presumption, a carrier must demonstrate to the relevant state commission that the 3:1 ratio fails accurately to reflect the traffic flow.[880] The parties offer competing language to implement the 3:1 ratio and procedures for rebutting it.[881] We adopt the petitioners' language.

(i) Positions of the Parties

264. AT&T describes the 3:1 calculation in terms of separating "local traffic" from ISP-bound traffic.[882] Specifically, AT&T defines "local traffic" as traffic that stays within a local calling area as determined by the NPA-NXX codes of the calling and called parties;[883] it does not consider any toll traffic qualifying for access payments to be subject to the 3:1 calculation.[884] AT&T contends that it defines "ISP-bound traffic" in the same manner as the *ISP Intercarrier Compensation Order* uses the term.[885] WorldCom also asserts that it would not include

---

[878] Accordingly, we reject Verizon's November Proposed Agreement to AT&T, § 1.52(a); Verizon's November Proposed Agreement to Cox, §§ 1.36, 1.41; and Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., §§ 7.10, 7.12.

[879] *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9187-88, para. 79.

[880] *Id*

[881] *See* Verizon's November Proposed Agreement to AT&T § 5.7.4; AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.1; Verizon's November Proposed Agreement to Cox § 5.7.4; Cox's November Proposed Agreement to Verizon, § 5.7.7.3(a); Verizon's November Proposed Agreement to WorldCom , Part C, Interconnection Attach., § 7.3.2.1; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. 1, § 8.4.

[882] AT&T Brief at 80; AT&T's November Proposed Agreement to Verizon, § 2.1.

[883] AT&T Brief at 80 n.269, citing AT&T's November Proposed Agreement to Verizon, § 1.51. The rating of calls based on the NPA-NXX codes of the calling and called parties is discussed in Issue I-6 below.

[884] Tr. at 1654.

[885] AT&T Brief at 80. Specifically, AT&T clarifies that the term ISP-bound traffic "shall have the same meaning, when used in this Agreement, as used in the [*ISP Intercarrier Compensation Order*]." AT&T's November Proposed Agreement to Verizon, § 1.46.

intraLATA toll calls in the 3:1 calculation.[886] However, WorldCom does seek to include within the 3:1 calculation its traffic originating over both interconnection trunks and UNE-platform arrangements.[887] WorldCom argues that nothing in its proposal precludes rebuttal of the 3:1 presumption; indeed, it offers to make explicit the rebuttable nature of the 3:1 presumption.[888] Cox also proposes contractual provisions to implement the 3:1 calculation.[889] Cox states that, according to its proposed language, toll traffic would not be subjected to the 3:1 calculation.[890]

265. Verizon disagrees with each petitioner's approach to implementing the 3:1 calculation, largely based on its interpretation that the petitioners would include all traffic, whether "local" or "toll," in the calculation.[891] Verizon's approach, as noted earlier, is to exclude all traffic listed in section 251(g) from reciprocal compensation and, hence, the 3:1 calculation.[892] In addition to Verizon's concern about traffic types, Verizon also argues that AT&T and WorldCom's language, if adopted, should specifically note the rebuttable nature of the 3:1 presumption.[893]

(ii) Discussion

266. The petitioners' language implementing the 3:1 presumption is largely consistent with the *ISP Intercarrier Compensation Order*. We adopt their proposed contract language, modifying AT&T's and WorldCom's to clarify that the 3:1 presumption is rebuttable.[894] The petitioners have all asserted that exchange access traffic types, including traffic that has traditionally been rated as "toll," would not be included in the 3:1 calculation. We see nothing in the petitioners' proposed contracts that would suggest a contrary result. Having rejected in the preceding section Verizon's argument that all categories of section 251(g) traffic should be excluded from section 251(b)(5) reciprocal compensation, we decline to follow Verizon's

---

[886] WorldCom Reply at 67; Tr. at 1689.

[887] WorldCom Brief at 76-77; WorldCom's November Proposed Agreement to Verizon, Part C, Attach I, § 8.4.1.

[888] WorldCom Brief at 76 n.39; WorldCom Reply at 67-68.

[889] Cox Brief at 33; Cox's November Proposed Agreement to Verizon, § 5.7.7.3(a).

[890] *See* Cox Reply at 22-23.

[891] Verizon IC Brief at 4; Verizon IC Reply at 1-2.

[892] Verizon IC Reply at 1-2.

[893] *Id.* at 2-3.

[894] *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.1; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, §§ 8.4, 8.4.2; Cox's November Proposed Agreement to Verizon, § 5.7.7.3(a). Further, we reject Verizon's competing language. *See* Verizon's November Proposed Agreement to AT&T, § 5.7.4; Verizon's November Proposed Agreement to Cox, § 5.7.4; Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.2.1.

approach of excluding that "universe" of traffic from the 3:1 calculation. The petitioners are not proposing to subject exchange access traffic to the 3:1 calculation, and their proposed contracts cannot be read to do so.

267. With regard to WorldCom's argument that both its originating interconnection trunk and UNE-platform traffic should be subject to the 3:1 calculation, we note that Verizon has agreed to include WorldCom's originating UNE-platform traffic.[895] We find that traffic originating on WorldCom's interconnection trunks should also be included in the 3:1 calculation.[896] The *ISP Intercarrier Compensation Order* does not distinguish between UNE-platform traffic and originating interconnection trunk traffic in its application of the 3:1 ratio. We conclude, therefore, that both categories of traffic should be included in this calculation. Verizon has offered no reason why we should reach a contrary conclusion.

268. Finally, we agree with Verizon that at least AT&T's proposal could be read as making the 3:1 presumption irrebuttable and is therefore inconsistent with the *ISP Intercarrier Compensation Order*. To make AT&T's proposal consistent with the *ISP Intercarrier Compensation Order*, we substitute the phrase "shall be presumed, subject to rebuttal, to be" for the phrase "shall be conclusively defined as" in both places where this phrase appears in AT&T's proposed section 5.7.5.2.1. We also direct WorldCom to modify its section 8.4 proposal explicitly to reflect the rebuttable nature of the 3:1 presumption, as it agreed to do.[897]

f. Audits and Billing Factors

269. The *ISP Intercarrier Compensation Order* does not set forth any specific billing or auditing measures to govern intercarrier compensation for ISP-bound traffic. AT&T proposes certain additional provisions that establish billing factors, blended rates and audits. Verizon opposes AT&T's language. Meanwhile, Verizon proposes auditing provisions to Cox that would allow it unilaterally to conduct audits of Cox's traffic at any time. We adopt AT&T's provisions that establish billing factors, while rejecting the additional issue-specific auditing provision that AT&T proposes to Verizon, and that Verizon proposes to Cox.

(i) Positions of the Parties

270. AT&T proposes quarterly billing in which the relative percentage of section 251(b)(5) traffic to ISP-bound traffic from the first two months of a calendar quarter establishes the appropriate compensation for the subsequent quarter.[898] AT&T proposes that Verizon must calculate quarterly factors that represent Verizon's assessment of the relative amounts of section

---

[895] *See* Tr. at 1853-54.

[896] Accordingly, we adopt WorldCom's proposed section 8.4.1 of Attachment I.

[897] *See* WorldCom Brief at 76 n.39; WorldCom Reply at 67-68.

[898] *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.4.2.

251(b)(5) and ISP-bound traffic between the carriers.[899] AT&T then proposes blended rates that incorporate these established factors so that the single applicable rate for all traffic consists of the section 251(b)(5) rate and the ISP-bound traffic rate weighted according to the proportion established by the quarterly billing factors.[900] Finally, AT&T proposes contract language that allows it specifically to audit these calendar quarter factors and their associated bills.[901]

271. Cox criticizes Verizon's proposal that would grant an unlimited, unilateral right for Verizon to audit the relative proportions of Cox's section 251(b)(5) and ISP-bound traffic to determine whether proper rates are being charged.[902] Cox argues that the audit right proposed by Verizon is unfairly unilateral in nature, and that Verizon could abuse it with burdensome audit requests.[903] Furthermore, Cox argues, Verizon does not need an auditing provision specifically for ISP-bound traffic because the *ISP Intercarrier Compensation Order* alone makes it possible for Verizon to raise a concern about traffic flow to the Virginia Commission at any time.[904] Additionally, the parties have agreed to a general auditing provision, giving either party the right to conduct an audit twice per year (or more, if discrepancies are found) which, Cox argues, offers Verizon sufficient protection.[905]

272. Verizon argues that AT&T's proposals for billing factors and blended rates go beyond the specific requirements of the *ISP Intercarrier Compensation Order* and therefore do not belong in this interconnection agreement.[906] Verizon also offers specific criticisms of each. With regard to AT&T's proposal to estimate a calendar quarter's compensation based on the first two months of the previous quarter, Verizon argues that the provision would fail to protect the parties against changes in relative volumes of traffic during the third month of the previous quarter.[907] Verizon states that it would agree to AT&T's language if it were modified to provide for a true-up, available for the subsequent quarter, based on the third month's actual balance of traffic.[908] Verizon opposes AT&T's proposal concerning the calculation of traffic factors,

---

[899] *See id.* § 5.7.5.2.4.3.

[900] *See id.* § 5.7.5.2.4.4.

[901] *See id.* § 5.7.5.2 4.5.

[902] Cox Brief at 34-35; Tr. at 1745, citing Verizon's November Proposed Agreement to Cox, § 5.7.8.

[903] Cox Brief at 35.

[904] Cox Brief at 34-35, citing *ISP Intercarrier Compensation Order*, 16 FCC Rcd. at 9187-88 para. 79. During the hearing, Verizon agreed with this assertion. *See* Tr. at 1752-53.

[905] Cox Brief at 34, citing Verizon's November Proposed Agreement to Cox, § 5.7.5.

[906] Verizon IC Brief at 11.

[907] *Id.*

[908] *Id.*

arguing that it is not in any better position than AT&T to assess them and, therefore, should not have the responsibility of calculating the factors that AT&T seeks to impose on it.[909] Finally, Verizon simply disagrees with a blended rate structure, contending that the *ISP Intercarrier Compensation Order* provides no support for such a provision.[910] Verizon adds that AT&T's auditing provision is unnecessary because there is already an agreed-to general auditing provision in its interconnection agreement with AT&T.[911]

273. Regarding the audit provision it proposes to Cox, Verizon argues that the additional provision is more focused on obtaining data to rebut the 3:1 presumption, while the general provision is meant to monitor minutes of use and the distinction between "local" and "toll" traffic.[912] Verizon concedes, however, that the general provision could indeed function to obtain the same data as the additional provision, yet it does not in Verizon's view go far enough.[913]

(ii) Discussion

274. We adopt AT&T's proposal to determine the split between ISP-bound and 251(b)(5) traffic in a particular quarter by looking to the split between these two categories of traffic in the first two months of the preceding calendar quarter. This should provide an objectively verifiable means to ensure prompt and accurate intercarrier compensation payments between the parties.[914] Additionally, in order to minimize any burden on Verizon, we modify AT&T's proposed language regarding the calculation of traffic factors to provide that AT&T is responsible for the calculations. We also agree with Verizon that the contract should provide for quarterly true-ups that account for changes in traffic proportions that may occur in the third month of a quarter.[915]

---

[909] *Id.*

[910] *Id.*

[911] *Id.*

[912] Tr. at 1751.

[913] Tr. at 1751-52.

[914] Accordingly, we adopt AT&T's November Proposed Agreement to Verizon, §§ 5.7.5.2.4, 5.7.5.2.4.1, 5.7.5.2.4.2.

[915] Accordingly, we adopt AT&T's proposed section 5.7.5.2.4.3 but revise it to read as follows:

> AT&T will calculate the factors to be used for the relative percentage of minutes of use of total combined Voice Traffic and ISP-bound Traffic represented by each type of traffic during periods referred to in section 5.7.5.2.4.2 above, and AT&T will notify Verizon of such factors in writing by no later than the first day of the period during which such factors will be used. Such factors will govern all billing during the applicable period, and, on a quarterly basis, the Parties will true up any billing for prior periods based on actual balance of traffic during such period.

275. We reject AT&T's proposal for blended rates based on the factors that each party will develop.[916] We agree with Verizon that, with the exception of the mirroring rule, the *ISP Intercarrier Compensation Order* does not contemplate a blended rate applicable to all traffic exchanged between carriers. We conclude that the proposal for traffic factors, which we have just adopted, will permit the parties adequately to determine the amounts of traffic compensable as ISP-bound and subject to section 251(b)(5), respectively. We also reject AT&T's proposed auditing provision,[917] and agree with Verizon that the availability of an agreed-to general auditing provision is sufficient for the parties to audit the traffic factors and associated bills.[918]

276. We also reject Verizon's proposed language that would give it extra auditing rights with respect to Cox.[919] Verizon can already accomplish the aim of its additional auditing provision through the agreed-to, general auditing provision.[920] Verizon has offered no justification for the unlimited, unilateral audit privilege that it seeks.

g. Rates, Not Just Caps

277. The *ISP Intercarrier Compensation Order* establishes an interim compensation regime by limiting the rate for ISP-bound traffic according to a cap that declines over a period of years.[921] The order does not, however, specify the exact rate for terminating ISP-bound traffic; it preserves the right of state commissions to set a rate below the applicable cap.[922] The parties disagree over whether their agreements should set the actual rates, or leave them to subsequent negotiations. We adopt the petitioners' proposals to include the rates.

(i) Positions of the Parties

278. The petitioners argue that the contracts must specify rates, rather than merely refer to caps.[923] They assert that the rates should be set at the caps that are established by the *ISP Intercarrier Compensation Order*.[924]

---

916 Accordingly, we reject AT&T's proposed section 5.7.5.2.4.4.

917 Accordingly, we reject AT&T's proposed section 5.7.5.2.4.5.

918 *See* Verizon's November Proposed Agreement to AT&T, § 28.10 (general auditing provisions).

919 Specifically, we reject Verizon's proposed section 5.7.8 made to Cox.

920 *See* Verizon's November Proposed Agreement to Cox, § 5.7.5 (general auditing provision).

921 *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9186-87, paras. 77-78.

922 *Id.* at 9188, para. 80.

923 AT&T Brief at 82; WorldCom Brief at 76; Cox Brief at 33.

279. Verizon argues that its interconnection agreements need not set rates because the Virginia Commission could order rates below the caps at any time, in accordance with the *ISP Intercarrier Compensation Order*.[925] Verizon concedes, however, that the Virginia Commission has not yet set a rate for termination of ISP-bound traffic.[926] Verizon also agrees that the initial rate proposed by the petitioners is the same rate that Verizon proposed in its May 14, 2001 letter offers to all competitive carriers in Virginia.[927]

(ii) Discussion

280. We adopt the petitioners' proposed contracts regarding rates for termination of ISP-bound traffic.[928] If, before the adoption of the *ISP Intercarrier Compensation Order*, the Virginia Commission had adopted rates, applicable to the exchange of ISP-bound traffic, that were lower than the caps reflected in the *Order*, the Virginia Commission's rates would govern. Because the parties agree, however, that the Virginia Commission has not set a rate for termination of ISP-bound traffic, the rate caps in the *ISP Intercarrier Compensation Order* are the rates governing the exchange of ISP-bound traffic in Virginia. Furthermore, we note that the rates the petitioners propose to include in their interconnection agreements are the rates at which Verizon has already agreed to exchange traffic in Virginia. We earlier determined that it was not necessary to memorialize in the interconnection agreement Verizon's offer to comply with the mirroring rule[929]; however, it is insufficient for ISP-bound traffic rates to be established by mere reference to Verizon's letter offers issued to comply with the mirroring rule. Therefore, we find no reason to leave the rates out of these interconnection agreements.

h. Growth Caps

281. Apart from the rate caps discussed above, the *ISP Intercarrier Compensation Order* also imposes a cap, with a limited annual growth factor, on the volume of ISP-bound traffic minutes for which LECs are entitled to compensation.[930] This "growth cap" builds on the

(Continued from previous page)

[924] *See* AT&T's November Proposed Agreement to Verizon, § 5.7.5.2.2.2; WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.3.2; Cox's November Proposed Agreement to Verizon, § 5.7.7.2(b)-(e).

[925] Tr. at 1761-64.

[926] Tr. at 1761-62.

[927] Tr. at 1865.

[928] Accordingly, we adopt AT&T's proposed section 5.7.5.2.2.2; WorldCom's proposed section 8.3.2 of its Attachment I; and Cox's proposed sections 5.7.7.2(b)-(e). We note that Cox's proposal establishes single rates for delivering ISP-bound traffic to either a tandem or an end office. Verizon conceded at the hearing that, as Cox argues, rates should be uniform whether tandem or end office interconnection applies. *See* Tr. at 1776-78; Cox Brief at 31-32.

[929] *See* subsection b. above, discussing the mirroring rule.

[930] *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9187, para. 78.

number of ISP-bound minutes for which carriers were entitled to compensation under a particular contract during a baseline period, the first quarter of 2001.[931] The petitioners propose language to establish this baseline amount, together with the growth cap calculation, in order to avoid future disputes.[932] Verizon opposes the inclusion of any such language or, at a minimum, argues that the growth cap calculation should include only those ISP-bound minutes for which a LEC is entitled to compensation. We adopt the petitioners' proposed language with certain modifications.

(i) Positions of the Parties

282. The petitioners incorporate the growth cap calculation methodology into their proposed contracts.[933] AT&T proposes that the growth cap baseline should be established by subjecting all traffic that it exchanged with Verizon in the first quarter of 2001 to the Commission's 3:1 presumption.[934] This means that the baseline amount would equal either party's minutes of terminating non-toll traffic that was equal to three times the minutes of the other party's terminating non-toll traffic during the first quarter of 2001. AT&T disagrees with Verizon's limitation on the calculation—to include only those minutes for which a LEC is entitled to compensation—because, it asserts, Verizon likely would apply to this limitation a unilateral determination that AT&T was not entitled to compensation for any of the ISP-bound traffic during the first quarter of 2001.[935] AT&T argues that its proposal would minimize disputes, in tandem with the Commission's 3:1 presumption.[936] WorldCom asserts that, in any case, Verizon did not object during the hearing to contract language that would establish, and therefore settle, the minutes of ISP-bound traffic for which WorldCom was eligible for compensation during the first quarter of 2001.[937] Cox proposes to include the actual baseline amount (rather than merely the calculation methodology) in its interconnection agreement with Verizon.[938] Cox also argues that its growth cap calculation for 2002 should be based on the previous year's calculated cap, rather than on the previous year's actual traffic.[939]

---

[931] *Id.*

[932] *See* AT&T's November Proposed Interconnection Agreement to Verizon, § 5.7.5.2.3; WorldCom's November Proposed Interconnection Agreement to Verizon, Part C, Attach. I, § 8.5; Cox's November Proposed Interconnection Agreement to Verizon, § 5.7.7.4.

[933] AT&T Brief at 83; WorldCom Brief at 77; Cox Reply at 22 n.80.

[934] AT&T Reply at 43.

[935] *Id.* at 41-42.

[936] *Id.* at 43.

[937] WorldCom Brief at 77, citing Tr. at 1869-71.

[938] Cox Brief at 33 n.130.

[939] Cox Reply at 22 n.80.

283. Verizon argues that the growth cap baseline calculation should be explicitly qualified to include only those ISP-bound minutes for which a LEC was entitled to compensation, in accordance with the *ISP Intercarrier Compensation Order*.[940] Verizon opposes AT&T and WorldCom's attempts to remove this qualifier from the calculation, because AT&T and WorldCom are continuing to dispute the amount of compensation to which they are entitled for ISP-bound traffic from the first quarter of 2001.[941] Verizon also disagrees with Cox's 2002 growth cap calculation in that it is strictly based on the 2001 growth cap, rather than on an independent calculation of the number of ISP-bound minutes for which Cox actually was entitled to compensation in 2001.[942]

(ii) Discussion

284. We agree with the petitioners that it is appropriate to include the *ISP Intercarrier Compensation Order*'s methodology for calculating growth caps in their interconnection agreements with Verizon. We agree with Verizon, however, that the order applies the growth caps only to those minutes for which the LECs were entitled to compensation. According to the order, the number of minutes for which a LEC was entitled to compensation is a question to be resolved pursuant to the particular interconnection agreement that governed the exchange of traffic during the first quarter of 2001.[943] Therefore, the number of minutes for which any petitioner was entitled to compensation during the first quarter of 2001 is beyond the scope of this arbitration. AT&T and Cox cannot establish the baseline here using either the 3:1 presumption or the record before us. Accordingly, we adopt the petitioners' proposals, while revising AT&T and WorldCom's language to reflect only those minutes for which they were

---

[940] Verizon IC Brief at 9, citing *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9187, para. 78. The order qualifies growth caps to include only those minutes for which a LEC was entitled to compensation:

> For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes *for which that LEC was entitled to compensation* under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the minutes *for which it was entitled to compensation* under that agreement in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the 2002 ceiling applicable to that agreement.

Id. (emphasis added).

[941] Verizon IC Brief at 9-10.

[942] *Id* at 10 n.4.

[943] *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9187, para. 78.

entitled to compensation, and removing Cox's language establishing the numbers for the actual baseline, and subsequent growth cap, amounts.[944]

285. We disagree with Verizon's criticism of Cox's language implementing the growth cap for 2002.[945] Verizon asserts that "the number of ISP-bound minutes for which [Cox] is entitled to compensation in 2001 may be *less* than the 2001 cap itself."[946] While that may be true, the calculation of minutes to which Cox was entitled to compensation in 2002 is the product of the cap in 2001 and the 10 percent growth factor. The *ISP Intercarrier Compensation Order* established a baseline – the first quarter of 2001 – as a starting point for all subsequent calculations. The growth cap for 2002 does not reflect a calculation independent of the first quarter of 2001, based on actual traffic for the whole of 2001.

2. Issue I-6 (Toll Rating and Virtual Foreign Exchanges)

a. Introduction

286. The parties disagree over how to determine whether a call passing between their networks is subject to reciprocal compensation (traditionally referred to as "local") or access charges (traditionally referred to as "toll"). The petitioners advocate a continuation of the current regime, which relies on a comparison of the originating and terminating central office codes, or NPA-NXXs, associated with a call. Verizon objects to the petitioners' call rating regime because it allows them to provide a virtual foreign exchange ("virtual FX") service that obligates Verizon to pay reciprocal compensation, while denying it access revenues, for calls that go between Verizon's legacy rate centers. This virtual FX service also denies Verizon the toll revenues that it would have received if it had transported these calls entirely on its own

---

[944] Thus, we adopt AT&T's proposed section 5.7.5.2.3, but replace the second sentence with the following: "The parties shall first determine the total number of minutes of use of ISP-bound Traffic, for which they were entitled to compensation, terminated by one Party for the other Party for the three-month period commencing January 1, 2001 and ending March 31, 2001." We adopt WorldCom's proposed section 8.5 of Attachment I, but replace the first sentence with the following: "For ISP-bound Traffic exchanged during the year 2001, and to the extent this Agreement remains in effect during that year, the information access rates set out in Section 8.3.2 shall be billed by MCIm to Verizon on ISP-bound Traffic for MOU only up to a ceiling equal to, on an annualized basis, the number of ISP-bound Traffic minutes, for which MCIm was entitled to compensation, that originated on Verizon's network and was delivered by MCIm during the first quarter of 2001, plus a ten percent growth factor." Finally, we adopt Cox's proposed section 5.7.7.4(a), but replace the last two sentences with the following: "The cap for total Internet Traffic minutes for 2001, expressed on an annualized basis, is calculated by multiplying the first quarter total by four and increasing the result by ten percent."

[945] Accordingly, we also adopt Cox's proposed section 5.7.7.4(b), but revise it by replacing the last sentence with the following: "The cap for total Internet Traffic minutes for 2002 is calculated by increasing the cap for total Internet Traffic minutes for 2001 by ten percent." Finally, we adopt Cox's proposed sections 5.7.7.4(c)-(e) without revision.

[946] *See* Verizon IC Brief at 10 n.4.

network as intraLATA toll traffic. Verizon argues simply that "toll" rating should be accomplished by comparing the geographical locations of the starting and ending points of a call.

287. Of particular importance to this issue is a comparison of the two sides' FX services. When Verizon provides FX service ("traditional FX"), it connects the subscribing customer, via a dedicated private line for which the subscriber pays, to the end office switch in the distant rate center from which the subscriber wishes callers to be able to reach him without incurring toll charges. Verizon then assigns the FX subscriber a number associated with the distant switch. By contrast, when the petitioners provide their virtual FX service, they rely on the larger serving areas of their switches to allow callers from a distant Verizon legacy rate center to reach the virtual FX subscriber without incurring toll charges. Thus, the petitioners simply assign the subscriber an NPA-NXX associated with the rate center the subscriber designates and rely on their switches' broad coverage, rather than a dedicated private line, to transport the calls between legacy rate centers.

288. We adopt the petitioners' proposed language for this issue. Verizon has failed to propose a workable method for rating calls based on their geographical end points, and it has alleged no abuse in Virginia of the process for assigning NPA-NXX codes.

b. Positions of the Parties

289. AT&T notes that Verizon itself compares originating and terminating NPA-NXXs when it decides whether to charge reciprocal compensation for completing calls from another carrier's customer to Verizon's FX subscribers.[947] If the two relevant NPA-NXXs are within the same rate center, Verizon charges reciprocal compensation for its completion of the call, regardless of where a caller is actually located.[948] AT&T argues that section 251(b)(5) similarly obligates Verizon to pay reciprocal compensation for calls to AT&T's virtual FX customers when the Verizon customer's NPA-NXX falls within the same rate center as the virtual FX subscriber's number does.[949]

290. AT&T disagrees with Verizon's argument that section 251(g) exempts virtual FX traffic from section 251(b)(5)'s reciprocal compensation obligation.[950] According to AT&T, section 251(g) merely grandfathered pre-existing rules governing exchange access and information access, and there were no such rules relating to the category of traffic at issue here.[951] AT&T further asserts that virtual FX traffic is not exchange access traffic, which

---

[947] AT&T Brief at 88-89.

[948] *Id.* at 89.

[949] *Id.* at 92, citing 47 U.S.C. § 251(b)(5).

[950] *Id.* at 90-93.

[951] *Id.* at 92-93.

involves, by definition, the origination and termination of telephone toll calls.[952] AT&T notes that telephone toll service is defined as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service."[953] Because AT&T does not impose a separate charge for its virtual FX service, AT&T argues that it is not a toll service. Accordingly, AT&T argues, it falls within the section 251(b)(5) reciprocal compensation regime rather than being subject to Verizon's access tariffs.[954]

291. AT&T also argues that its proposal does not impose any additional costs upon Verizon, whether or not virtual FX is involved, because AT&T designates a single POI for an NPA-NXX and Verizon's responsibility for transporting a call ends there, regardless of the physical location of the AT&T customer.[955] AT&T argues that it would be redundant and inefficient for it to mimic Verizon's traditional FX service by purchasing a dedicated private line, as Verizon proposes. AT&T asserts that such an arrangement would leave it at a serious competitive disadvantage.[956]

292. AT&T defends the structure of its virtual FX service, noting that Verizon does not claim that the petitioners are receiving NPA-NXX code assignments in exchanges where they do not actually serve customers of their own.[957] AT&T distinguishes the Maine Commission decision upon which Verizon relies, noting that such numbering abuse is not at issue between AT&T and Verizon in Virginia.[958] AT&T further asserts that, under Verizon's proposal, AT&T would have to obtain NPA-NXX code assignments in every rate center where it has a customer, even though customers in some rate centers may be satisfied with numbers from another Verizon rate center.[959] AT&T argues that this itself would unnecessarily waste numbering resources.[960]

---

952 *Id.* at 93, citing 47 U.S.C. § 153(16).

953 *Id.*, citing 47 U.S.C. § 153(48).

954 *Id.*

955 *Id.* at 89-90.

956 *Id.* at 96. AT&T notes that this interoffice transport is unnecessary according to AT&T's network architecture of a single switch with a single POI. *Id.* at 96 n.323, citing Tr. at 1908.

957 *Id.* at 93-94; *id.* at 94 n.317, citing Tr. at 1909.

958 AT&T Reply at 49, citing AT&T Ex. 8 at 56-57. The Maine Commission revoked NPA-NXX assignments when it found that a competitive LEC was receiving numbering assignments for exchanges where the competitive LEC served no customers. *See Investigation Into Use of Central Office Codes (NXXs) by New England Fiber Communications, Inc., LLC*, Dkt No. 98-78, Maine PUC (rel. June 30, 2000). AT&T notes that, in any case, this Maine decision was concerned with abuses related to ISP-bound traffic during the era before adoption of the Commission's *ISP Intercarrier Compensation Order*. AT&T Reply at 49.

959 AT&T Brief at 94.

293. AT&T further notes that, if Verizon were to prevail in treating AT&T's virtual FX traffic as toll traffic, there would have to be some way to segregate the virtual FX traffic from section 251(b)(5) traffic.[961] AT&T asserts that there is currently no way to accomplish this by, as Verizon suggests, comparing the physical end points of a call.[962] Furthermore, AT&T argues that a traffic study to determine the relative percentages of virtual FX and section 251(b)(5) traffic would be costly and overly burdensome.[963]

294. WorldCom asserts that every carrier in the country, including Verizon, rates calls by comparing originating and terminating NPA-NXX codes and that no state has devised a different method to distinguish between "local" and toll traffic.[964] WorldCom asserts that the Commission has never held that the physical locations of the calling and called parties determine whether a call is "local"; it has left the determination of "local" calling areas to the states.[965] WorldCom also notes that Verizon's billing system cannot identify the physical location of a calling or called party, even though Verizon proposes to base its intercarrier compensation regime on that foundation.[966] WorldCom notes that Verizon's network is not the only one providing transport to and from virtual NPA-NXXs.[967] According to WorldCom, it often hauls traffic for much longer distances than does Verizon.[968] In any case, WorldCom notes, its virtual FX service does not change the average transport distance for Verizon because the incumbent LEC still must transport the traffic to WorldCom's POI.[969]

295. WorldCom takes issue with Verizon's assertion that it loses toll revenues because of virtual FX service. WorldCom notes that the basic enticement of a virtual FX is that it enables a calling party to call a business in a distant location without incurring a toll charge. Absent a virtual local number, WorldCom argues, the caller would typically find a similar

(Continued from previous page)

960 *Id.*

961 *Id.*

962 *Id.* at 95, citing Tr. at 1813, 1815, 1905.

963 AT&T Reply at 47, citing Verizon IC Brief at 19.

964 WorldCom Brief at 82.

965 WorldCom Reply at 76, citing *Local Competition Order*, 11 FCC Rcd. at 16013-14, para. 1035.

966 WorldCom Brief at 84.

967 *Id.* at 87.

968 *Id.* at 88.

969 *Id.*

vendor that has a local number.[970] Thus, according to WorldCom, without its virtual FX offering, the call to the distant location likely would not take place at all.[971]

296. WorldCom argues that it should not be required to purchase a dedicated private line from Verizon and provide traditional FX service. According to WorldCom, this would eliminate competitive pressure and freeze rates at their current levels because the competitive LEC would essentially replace all the private-line revenue that Verizon would otherwise have lost when it lost the FX customer.[972] WorldCom argues that Verizon's proposed requirement also would prevent WorldCom from exploiting the advantages of its unique network architecture: Verizon's traditional FX service transports calls between two switches, while WorldCom typically serves an equivalent area with one switch.[973]

297. Cox argues that Verizon is trying to force it to match Verizon's network architecture.[974] Cox further asserts that Verizon's end-to-end compensation regime is infeasible and that Verizon makes no workable proposal for determining the originating and terminating points of a call.[975] Cox argues that Verizon compares apples to oranges when it complains that it receives compensation for transporting calls to Verizon's FX customers, but not for transporting virtual FX calls to Cox's switch.[976] Cox asserts that Verizon's costs for delivering traffic to Cox have nothing to do with the nature of the underlying service, but rather with the distance to Cox's switch.[977] The difference in compensation, Cox notes, arises from the dedicated private line charge that Verizon imposes on its traditional FX customers—a charge that Verizon obviously cannot impose on Cox's customers.[978]

298. Finally, Cox notes that Verizon need not be concerned about NPA-NXX code assignment abuses, because state commissions have acted quickly to correct such abuses, and

---

[970] *Id.* at 89.

[971] *Id.*

[972] *Id.*

[973] *Id.*

[974] Cox Brief at 35. Verizon admits, Cox notes, that requiring a competitive LEC to duplicate Verizon's network architecture is inefficient and unnecessarily costly. *Id.* at 36-37, citing Tr. at 1822-23.

[975] Cox Brief at 39, citing Tr. at 1811-12; Cox Reply at 27-28, citing Tr. at 1812-14.

[976] Cox Brief at 37.

[977] *Id.* at 37. Notably, Cox asserts that Verizon does not split access revenues for traditional FX calls with Cox or other competitive LECs. Cox Reply at 26.

[978] Cox Brief at 37-38.

Verizon has not shown evidence of any abuse here.[979] According to Cox, this arbitration is not the appropriate forum to evaluate compliance with such regulatory requirements.[980]

299. Verizon argues that the petitioners are effectively trying to thwart Verizon's access regime by treating toll traffic as "local" traffic.[981] Verizon asserts that the *ISP Intercarrier Compensation Order* supports its position that a call's jurisdiction is based on its end points.[982] Accordingly, Verizon argues, there is no difference between a virtual FX call and a toll call.[983] In contrast to virtual FX, Verizon asserts that its traditional FX service is an alternative pricing structure for toll service, rather than a "local" service as claimed by the petitioners.[984] Verizon argues that the petitioners should assume financial responsibility for virtual FX traffic by paying Verizon for transport from the calling area of the Verizon caller to the petitioner's POI.[985]

300. Verizon acknowledges that virtual FX traffic cannot be distinguished from "local" traffic at Verizon's end office switches.[986] Verizon proposes, however, that the petitioners conduct a traffic study or develop a factor to identify the percentage of virtual FX traffic.[987] Verizon would then exchange the identified proportion of traffic either pursuant to the governing access tariff or on a bill and keep basis under its VGRIP proposal.[988] Finally, Verizon notes that several state commissions, including Maine, Connecticut, Missouri, Texas and Georgia, have found that virtual FX traffic is not subject to reciprocal compensation.[989]

c. Discussion

301. We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes. We therefore accept the petitioners' proposed language and reject Verizon's

---

[979] *Id.* at 40.

[980] *Id.*

[981] Verizon IC Brief at 16.

[982] *Id.*, citing *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9159-60, 9163, paras. 14, 25.

[983] *Id.* at 17.

[984] *Id.* at 18.

[985] Verizon IC Reply at 11.

[986] Verizon IC Brief at 19.

[987] *Id.* at 19.

[988] *Id.*

[989] *Id.* at 19-21.

language that would rate calls according to their geographical end points.[990] Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide.[991] The parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time.[992]

302. Verizon proposed, late in this proceeding, that the petitioners should conduct a traffic study to develop a factor to account for the virtual FX traffic that appears to be "local" traffic. However, Verizon's contract fails to lay out such a mechanism in any detail. Most importantly, Verizon concedes that currently there is no way to determine the physical end points of a communication, and offers no specific contract proposal to make that determination.[993]

303. Additionally, we note that state commissions, through their numbering authority, can correct abuses of NPA-NXX allocations. As discussed earlier, the Maine Commission found that a competitive LEC there was receiving NPA-NXXs for legacy rate centers throughout the state of Maine although it served no customers in most of those rate centers.[994] To the extent that Verizon sees equivalent abuses in Virginia, it can petition the Virginia Commission to review a competitive LEC's NPA-NXX allocations.

3. Issue III-5 (Tandem Switching Rate)

a. Introduction

304. In the *Local Competition First Report and Order*, the Commission found that the costs of transport and termination are likely to vary depending on whether traffic is routed through a tandem switch or routed directly to an end-office switch.[995] It concluded, therefore,

---

[990] Thus, we adopt WorldCom's November Proposed Agreement to Verizon, Attachment I, § 4.2.1.2 (subject to modifications accomplished below in connection with Issue IV-35); Cox's November Proposed Agreement to Verizon, §§ 5.7.1 and 5.7.4; and AT&T's November Proposed Agreement to Verizon, § 1.51. We have previously rejected the proposals that Verizon offers to AT&T with respect to this issue. *See supra* Issues I-1 and VII-4 (rejecting , Verizon's November Proposed Agreement to AT&T, § 5.7.3); Issue I-5, subsection (d) (rejecting Verizon's November Proposed Agreement to AT&T, §1.68a). We reject Verizon's November Proposed Agreement to WorldCom, Part B, § 2.81; we have previously rejected Verizon's Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.2. *See supra* Issue I-2. We reject the last sentence of Verizon's November Proposed Agreement to Cox, § 5.7.1; we have previously rejected Verizon's November Proposed Agreement to Cox, § 1.60a. *See supra* Issue I-5.

[991] *See* Tr. at 1889-1900.

[992] *See* AT&T Brief at 95; WorldCom Brief at 84; Cox Brief at 39; Tr. at 1812-13.

[993] *See* Tr. at 1812-13.

[994] *See Investigation Into Use of Central Office Codes (NXXs) by New England Fiber Communications, Inc., LLC d/b/a/ Brooks Fiber*, Docket No. 98-78, Maine PUC (rel. June 30, 2000).

[995] *Local Competition First Report and Order*, 11 FCC Rcd at 16042, para. 1090.

that states may establish different transport and termination rates for tandem-routed traffic that reflect the additional costs associated with tandem switching.[996] It also recognized, however, that new entrants might employ network architectures or technologies different than those employed by the incumbent LEC.[997] It thus adopted a rule stating that "[w]here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than the incumbent LEC is the incumbent LEC's tandem interconnection rate."[998] Recently, in the *Intercarrier Compensation NPRM*, the Commission clarified that in order to receive the tandem rate under section 51.711(a)(3), a competitive LEC need only demonstrate that it serves a geographic area comparable to that of the incumbent LEC; it need not establish functional equivalency.[999] AT&T, WorldCom, and Verizon disagree about the standard for establishing geographic comparability under section 51.711(a)(3). AT&T and WorldCom argue that they are entitled to Verizon's tandem rate when any of their switches is capable of serving a geographic area comparable to the area served by Verizon's tandem switch. Verizon argues that the tandem rate is only available when the competitive LEC's switch actually serves a comparable geographic area. We adopt the petitioners' language.

b. Positions of the Parties

305. AT&T argues that the geographic comparability test requires a demonstration by the competitive LEC that its switch is merely *capable* of serving, rather than actually serves, a geographic area comparable to that of the incumbent LEC tandem.[1000] AT&T asserts that there is no basis in the *Local Competition First Report and Order* or in the Commission's rules to require *actual service* to a comparable geographic area.[1001] Furthermore, AT&T notes, Commission precedent does not define the parameters of any such "actual service" standard.[1002] AT&T argues that its position is also consistent with state commission and federal court precedent.[1003] AT&T adds that, to the extent the tandem rate rule is meant as a proxy for the

---

[996] *Id.*

[997] *Id.*

[998] 47 C.F.R. § 51.711(a)(3).

[999] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9648, para. 105 (2001) (*Intercarrier Compensation NPRM*); *see also* Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC and Dorothy T. Attwood, Chief, Common Carrier Bureau, FCC to Charles McKee, Senior Attorney, Sprint PCS (May 9, 2001) (clarifying that geographic comparability alone is sufficient).

[1000] AT&T Brief at 98.

[1001] *Id.*

[1002] *Id.*

[1003] *Id.* at 99. The Michigan Commission, AT&T notes, found that a competitive LEC met the geographic comparability test based on its capability to serve the same customers as the incumbent LEC, even though the (continued....)

costs incurred by the competitive LEC to terminate a call from an incumbent LEC, Verizon has offered no cost or other evidence demonstrating that it is inappropriate to use this proxy when the competitive LEC's switch is capable of serving an area comparable to the area served by the incumbent LEC's tandem.[1004] According to AT&T, Verizon has also failed to explain how its proposed "actually serves" standard would be defined and implemented.[1005]

306. AT&T also disagrees with Verizon's alternative proxy proposal, which would estimate the reciprocal compensation rate that AT&T would charge Verizon by using the average rate charged by Verizon to AT&T for call termination during the previous calendar quarter.[1006] This Verizon proposal would apply if AT&T demonstrates that its switches perform both tandem and end office functions.[1007] AT&T contends that this Verizon proposal has nothing to do with whether AT&T's switch serves a geographic area comparable to Verizon's tandem, and thus is inconsistent with the Commission's rule.[1008] AT&T also argues that Verizon's average termination costs are completely unrelated to AT&T's termination costs, since Verizon's costs depend upon AT&T's decisions whether to deliver traffic to a Verizon tandem or a Verizon end office.[1009] According to AT&T, such a proxy would punish the competitive LEC for trying to reduce Verizon's termination costs, since Verizon would pay a lower rate if the competitive LEC chose, over time, to terminate traffic at Verizon end offices rather than at tandems.[1010] Apart from these objections, AT&T asserts that, as a factual matter, all of its switches qualify for the tandem rate.[1011]

(Continued from previous page)
competitive LEC had fewer customers and locations. *Id.*, citing *Petition of MediaOne Telecommunications of Michigan, Inc. for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Michigan*, Michigan Public Service Commission, Case No. U-12198, Opinion and Order at 18 (issued by Michigan Comm'n Mar. 3, 2000). In addition, AT&T notes, a federal court found that a competitive LEC's capability to serve an equivalent geographic area was sufficient even though the competitive LEC was not actually providing service throughout the incumbent LEC's territory. AT&T Brief at 99, citing *US West Communications, Inc. v. Minnesota Public Utilities Commission*, 55 F. Supp. 2d 968 (D.Minn. 1999).

[1004] AT&T Brief at 100.

[1005] *Id.* at 100-101. In any case, AT&T argues, Verizon cannot assert that the *Intercarrier Compensation NPRM* requires an even distribution of customers across the geographic area. AT&T Reply at 52, citing Verizon Intercarrier Compensation (IC) Brief at 24-25.

[1006] AT&T Brief at 101.

[1007] *Id.* at 101.

[1008] *Id.* at 101-02.

[1009] *Id* at 102.

[1010] AT&T Reply at 54.

[1011] AT&T Brief at 102.

307. WorldCom asserts that its fiber-intensive network architecture allows a single switch to access a much larger geographic area than that served by the numerous switches of Verizon's copper-based, hierarchical network.[1012] WorldCom objects to Verizon's proposal that the tandem rate be available only if the competitive LEC has a geographically dispersed customer base.[1013] WorldCom argues that a competitive LEC's success in attracting a geographically dispersed customer base is not relevant, because the competitor has to make an investment in its network before it is even able to serve customers.[1014] In any case, WorldCom argues, Verizon fails to propose a methodology to demonstrate geographic dispersion, and Verizon's own witness conceded that he did not know how such a test would be administered.[1015] As a factual matter, WorldCom asserts that all of its switches qualify for the tandem rate.[1016]

308. As a general principle, Verizon argues that competitive LECs must demonstrate that their switches are actually serving, rather than merely capable of serving, a geographic area comparable to that of Verizon's tandem.[1017] Verizon argues that the *Local Competition First Report and Order*, section 51.711(a)(3), and the recent *Intercarrier Compensation NPRM* support its position that competitive LECs bear the burden of proof with respect to actual geographic comparability.[1018] Simply put, Verizon argues that if the Commission ever meant to describe capability to serve rather than actual service, it would have done so.[1019] Verizon adds that several state commission decisions support its position.[1020] According to Verizon, both

---

[1012] WorldCom Brief at 92. In fact, according to WorldCom, each one of its switches in the Washington, DC area serves an area that is comparable to, or greater than, the service area of any of Verizon's 12 tandem switches serving the same Virginia rate centers. WorldCom Brief at 93.

[1013] WorldCom Brief at 94.

[1014] *Id.* at 95.

[1015] WorldCom Reply at 80, citing Tr. at 1600-01, 1606.

[1016] WorldCom Brief at 90. WorldCom also contends that Verizon does not dispute that WorldCom's switches satisfy the geographic comparability test. *Id.* at n.53.

[1017] Verizon IC Brief at 24-25.

[1018] *Id.* at 24-25, citing *Local Competition First Report and Order*, 11 FCC Rcd at 16042, para. 1090; 47 C.F.R. § 51.711(a); *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9648, para. 105.

[1019] Verizon IC Reply at 13.

[1020] Verizon IC Brief at 25. Verizon notes that the Texas Commission held that the competitive LEC must demonstrate it is actually serving, rather than merely capable of serving, the comparable geographic area in order to receive the tandem rate. *See Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Arbitration Award, at 28-29 (issued by Texas Comm'n July 2000). AT&T argues, however, that the Texas decision engaged in the kind of tandem functionality analysis that the Commission later rejected in the *Intercarrier Compensation NPRM*, and therefore it is irrelevant. AT&T Brief at 99. Verizon also cites to the California and Florida Commissions, which held that the ability to serve an area, or a plan for future customers, does not satisfy the tandem rate rule. *See Application by AT&T Communications of* (continued....)

AT&T and WorldCom have failed to offer evidence about the geographic scope of service, and have instead merely offered evidence purporting to show that their end office switches are capable of serving areas comparable to Verizon's tandems.[1021] Furthermore, Verizon argues that it would be unfair for AT&T and WorldCom to be able to pay either the tandem or end office rate, depending on how they choose to route their traffic, while Verizon must always pay the tandem rate for termination by AT&T and WorldCom.[1022] Verizon proposes that, as to AT&T, Verizon should pay an averaged rate according to Verizon's call termination charges to AT&T, based on Verizon's relative proportions of end office and tandem terminations during the previous calendar quarter.[1023]

c. Discussion

309. We adopt AT&T and WorldCom's proposals because we determine that they are consistent with the Commission's rule.[1024] As discussed earlier, the Commission clarified in its *Intercarrier Compensation NPRM* that, in order to qualify for the tandem rate, a competitive LEC need only demonstrate that its switch serves a geographic area comparable to that of the incumbent LEC's tandem switch.[1025] Although Verizon has conceded that the tandem rate rule does not have a functionality requirement,[1026] it continues to assert that the competitive LEC

(Continued from previous page)
California, Inc., et al. (U 5002 C) for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company (U 1001 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996, Decision No. 00-08-011 at 21-22 (issued by California Comm'n Aug. 3, 2000); *Petition by AT&T Communications of the Southern States, Inc. d/b/a AT&T for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. pursuant to 47 U.S.C. Section 252, Docket No. 000731-TP*, Order No. PSC-01-1402-FOF-TP, Final Order on Arbitration, at 79-80 (issued by Florida Comm'n June 28, 2001). Verizon cites to case law as well. Verizon IC Reply at 13 n.38, citing *MCI Telecommunications Corp. v. Michigan Bell Telephone Co.*, 79 F. Supp. 2d 768, 790-92 (E.D. Mich. 1999) (the "rule focuses on the area currently being served by the competing carrier, not the area the competing carrier may in the future serve").

[1021] Verizon IC Brief at 26-27.

[1022] *Id.* at 27-28.

[1023] *Id.* at 28. Verizon notes that the Pennsylvania Commission adopted such a proposal. *Id.* at 28 n.14, citing *Application of MFS Intelenet of Pennsylvania, Inc. et al.*, Docket Nos. A-310203F0002, A310213F0002, A310236F0002 and A-310258F0002 (issued by Pennsylvania Comm'n Apr. 10, 1997).

[1024] Specifically, we adopt AT&T's November Proposed Agreement, § 5.7.4 and WorldCom's November Proposed Agreement, Attach I, § 4.2.1.4.2. We reject Verizon's November Proposed Agreement to AT&T, §§ 4.1.3 and 5.7.4 and Verizon's November Proposed Agreement to Worldcom, Part C, Interconnection Attach., § 7.1.1. Because we adopt WorldCom's proposal, we deny as moot its motion to strike Verizon's revised contract language for this issue. *See* WorldCom Motion to Strike, Ex. F at 86-88.

[1025] *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9648, para. 105.

[1026] *See* Tr. at 1600 (Verizon agrees with AT&T "that the standard is geographic coverage as opposed to functionality"); *cf. US West Communications, Inc. v. Washington Utilities and Transportation Commission*, 255 F.3d 990 (2001)

switch must actually serve a geographically dispersed customer base in order qualify for the tandem rate. We agree, however, with AT&T and WorldCom that the determination whether a competitive LEC's switch "serves" a certain geographic area does not require an examination of the competitor's customer base. Indeed, Verizon has not proposed any specific standard for AT&T and WorldCom to prove that they are actually serving a geographically dispersed customer base.[1027] The tandem rate rule recognizes that new entrants may adopt network architecture different from those deployed by the incumbent; it does not depend upon how successful the competitive LEC has been in capturing a "geographically dispersed" share of the incumbent LEC's customers,[1028] a standard that would penalize new entrants. We agree with AT&T and WorldCom, therefore, that the requisite comparison under the tandem rate rule is whether the competitive LEC's switch is capable of serving a geographic area that is comparable to the architecture served by the incumbent LEC's tandem switch. We find, moreover, that Verizon appears to concede that the AT&T and WorldCom switches satisfy this standard. In its brief, Verizon states, "At best, [AT&T] has shown that its switches may be *capable of serving* customers in areas geographically comparable to the areas served by Verizon's tandems," and, "[a]s with AT&T, [WorldCom] offered only evidence relating to the capability of its switches."[1029] As we explain above, such evidence is sufficient under the tandem rate rule and Verizon fails to offer any evidence rebutting the evidence provided by the petitioners. Should there be any future dispute regarding the capability of the petitioners' switches to serve a geographical area comparable to Verizon's switches, we expect the parties to use their agreements' dispute resolution procedures to resolve them.

4. Issue IV-35 (Reciprocal Compensation for Local Traffic)

a. Introduction

310. The parties disagree over language describing the traffic eligible for reciprocal compensation. WorldCom proposes language that would govern the payment of reciprocal compensation for "local traffic" and defines that term to exclude traffic to Internet service providers (ISPs) but to include traffic to other information service providers reached through the dialing of an NPA/NXX within the caller's local calling area.[1030] This proposed language is separate from WorldCom's language governing intercarrier compensation for ISP-bound traffic,

[1027] *See* Tr. at 1600-01 (Verizon witness stating he did not know how the Commission should determine whether a competitive LEC's switch actually serves a geographic area comparable to that of Verizon's tandem).

[1028] Accordingly, we also reject Verizon's additional proposal to AT&T, involving rates averaged between tandem and end office terminations.

[1029] Verizon IC Brief at 27, citing Tr. at 1589-97 (emphasis in original).

[1030] *See* WorldCom's November Proposed Agreement, Part C, Attach. 1, § 4.2.

which is considered under Issue I-5. Verizon opposes the inclusion of WorldCom's language.[1031] We adopt WorldCom's language subject to certain modifications.

b. Positions of the Parties

311. First, WorldCom argues that, to implement the parties' legal obligation to provide reciprocal compensation for the exchange of certain traffic pursuant to sections 251(b)(5) and 252(d)(2), the agreement should contain language addressing reciprocal compensation for non-ISP-bound local traffic.[1032] Second, WorldCom contends that, notwithstanding its pronouncements on ISP-bound traffic, the Commission has not addressed the type of information service provider calls that are covered by WorldCom's proposed language.[1033] WorldCom argues its language is necessary to clarify which compensation mechanism will apply to traffic bound for non-ISP information service providers.[1034] WorldCom explains that information service

[1031] Verizon offers consolidated language, which would cover reciprocal compensation for both ISP and non-ISP-bound traffic. *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7. We note that the only language identified as at issue *solely* under Issue IV-35 (and under no other issue) is offered by WorldCom and provides that "Reciprocal Compensation for the exchange of Local Traffic is set forth in Table 1 of this Attachment and shall be assessed on a per minute-of-use basis for the transport and termination of such traffic." *See* WorldCom November Proposed Agreement to Verizon, Part C, Attach. I, § 4.2.1.1. Verizon contests this language in the context of its overall challenge to WorldCom's section 4.2. *See* Verizon Intercarrier Compensation (IC) Brief at 29-30. The remaining language proposed by each party under Issue IV-35 is also challenged under other issues. Verizon's proposed language is also considered under Issues I-1 (Single Point of Interconnection), I-2 (Transport of Verizon Traffic from the IP to the POI), I-5 (Intercarrier Compensation for ISP-bound traffic), I-6 (Intercarrier Compensation based on Originating and Terminating NXX Codes), and III-5 (Intercarrier Compensation at the Tandem Rate). WorldCom's proposed language is also considered under Issues I-6 (Intercarrier Compensation based on Originating and Terminating NXX Codes) and III-5 (Intercarrier Compensation at the Tandem Rate). Given our consideration of each of these issues, only a few points remain for discussion under Issue IV-35. We also note that, in November, Verizon modified its proposed language to WorldCom. *See* WorldCom Motion to Strike, Ex. F at 76-83, 86-97 (comparing Verizon's September JDPL with Verizon's November JDPL on language proposed for Issue IV-35 and cross-referencing language proposed for Issue I-5). In its motion to strike, WorldCom argues that Verizon introduced substantively new proposals, in violation of the Commission's procedural order, the requirements of the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment. *See* WorldCom Motion to Strike at 1-2, 5-8.

[1032] WorldCom Brief at 178; *see* 47 U.S.C. §§251(b)(5), 252(d)(2).

[1033] WorldCom Brief at 178, citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9171-73, paras. 44-46 (2001) (*ISP Intercarrier Compensation Order*), *remanded sub nom. WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). We note that although the United States Court of Appeals for the District of Columbia Circuit recently remanded the Commissions' *ISP Intercarrier Compensation Order*, finding that the Commission could not rely on section 251(g) as a basis to exempt ISP traffic from section 251(b)(5)'s reciprocal compensation obligations, it did not vacate that order because of the "non-trivial likelihood that the Commission has authority to elect" to order a bill-and-keep system for reciprocal compensation. *Id.*, 288 F.3d at 434.

[1034] WorldCom Brief at 178.

providers that would be covered by its language include time and temperature information providers, whose numbers are local as determined by the NPA/NXXs.[1035] WorldCom argues that, historically, this traffic has been defined as jurisdictionally local and hence subject to reciprocal compensation and, moreover, it is not subject to the special interim rates that the Commission has adopted for ISP-bound traffic.[1036] Accordingly, the agreement must establish a mechanism for the carriers to be compensated for the flow of such traffic.[1037]

312. Verizon claims that its language, which it also offers in support of its argument under Issue I-5, is consistent with the Commission's approach in the *ISP Intercarrier Compensation Order*, which excludes section 251(g) traffic from traffic subject to section 251(b)(5).[1038] Verizon argues that the Commission's revised rules require that traffic must meet two requirements in order to be eligible for reciprocal compensation: (1) it must not be excepted by section 251(g); and (2) it must originate on the network of one carrier and terminate on the network of another, pursuant to section 51.701(e) of the Commission's rules.[1039] Verizon advocates that we reject WorldCom's language as inconsistent with the *ISP Intercarrier Compensation Order* because, under the Commission's interpretation of section 251(g) in that order, a call to any information service provider is exempt from the reciprocal compensation requirements of section 251(b).[1040] Verizon also argues that WorldCom seeks to preserve the term "local traffic," but, under the Commission's *ISP Intercarrier Compensation Order*, eligibility for reciprocal compensation no longer turns on whether the traffic is "local."[1041]

c. Discussion

313. With respect to Issue IV-35, and consistent with our decisions on Issues I-1, I-2, I-5, I-6, and III-5, we adopt section 4.2 of WorldCom's proposed Price Schedule but order that the term "section 251(b)(5) traffic" be substituted for the term "Local Traffic" in section 4.2 and that the reference to "information service providers" in section 4.2.1.2 be stricken.[1042]

[1035] *Id.* citing WorldCom Ex. 8 (Direct Testimony of M. Argenbright), at 32; Tr. at 1729-30.

[1036] WorldCom Reply at 159, citing WorldCom Ex. 8, at 31-32; WorldCom Brief at 177-78.

[1037] WorldCom Reply at 159; WorldCom Brief at 177-78.

[1038] Verizon IC Brief at 29, citing Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.

[1039] Verizon IC Brief at 29, citing 47 U.S.C. § 251(g); 47 C.F.R. §51.701(e).

[1040] Verizon IC Reply at 15-16, citing 47 U.S.C. § 251(g); *ISP Intercarrier Compensation Order* 16 FCC Rcd at 9166-67, 9171, paras. 34, 44.

[1041] Verizon IC Brief at 29, citing WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 4.2.

[1042] Based upon our reasoning here and under each of these issues, we also reject section 7.2 of Verizon's proposed Interconnection Attachment. *See* Verizon's November Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.2. Because we find in favor of WorldCom, we deny as moot its Motion to Strike on this issue.

314. The parties disagree as to whether the Commission's ruling in the *ISP Intercarrier Compensation Order* (which has been remanded but not vacated since the time the parties filed their briefs) dictates that non-ISP information service provider traffic is not subject to reciprocal compensation.[1043] We need not decide this issue because we find that reference to such traffic in this agreement is unnecessary. As we discuss *infra*, with respect to Issue IV-1-AA, the parties agree that this type of traffic does not currently exist in Virginia and that neither party intends to carry it absent a change in Virginia law.[1044] Accordingly, we order that the reference to "information service providers" in WorldCom's section 4.2.1.2 be stricken.[1045]

315. Verizon also objects to WorldCom's use of the term "Local Traffic" in section 4.2. It claims that the Commission rejected that term in the *ISP Intercarrier Compensation Order*, and argues that it should not be preserved in the agreement.[1046] Verizon is correct: the Commission did find that use of the phrase "local traffic" created unnecessary ambiguities.[1047] Instead, the Commission has used the term "section 251(b)(5) traffic" to refer to traffic subject to reciprocal compensation.[1048] When questioned, the WorldCom witness stated that the term "Local Traffic" in section 4.2 has the same meaning as the term "section 251(b)(5) local

---

[1043] WorldCom's proposed section 4.2 would make traffic directed to "local" information service providers subject to reciprocal compensation obligations. *See* Tr. at 1728-31. Specifically, proposed subsection 4.2.1.2, provides that section 4.2 "appl[ies] to reciprocal compensation for transport and termination of Local Traffic." *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. 1, § 4.2.1.2. With the exception noted here, we adopt subsection 4.2.1.2 under Issue I-6. *See* discussion of Issue I-6. "Local Traffic," in turn, is defined to be:

> traffic originated by one Party and directed to the NPA-NXX-XXXX of a LERG-registered end office of the other Party *within a Local Calling Area* and any extended service area, as defined by the Commission. Local Traffic *includes most traffic directed to information service providers, but does not include traffic to Internet Service Providers.*

See WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 4.2.1.2 (emphasis added). The WorldCom witness stated that, under this language, traffic directed to information service providers would be classified as "local" when, for example, a call was made to a time and temperature-type service "reached through the dialing of an NPA/NXX which is local to whatever the originating telephone number is." Tr. at 1729. Verizon, instead, would exclude all information service provider traffic from eligibility for reciprocal compensation. *See* Verizon IC Brief at 29. We address under Issue I-5 above Verizon's argument that all section 251(g) traffic is excepted from section 251 reciprocal compensation.

[1044] *See infra*, Issue IV-1-AA.

[1045] Specifically, the final sentence of section 4.2.1.2 should be amended to read: "section 251(b)(5) traffic does not include traffic to Internet Service Providers." *See* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, at § 4.2.1.2.

[1046] Verizon IC Brief at 29.

[1047] *ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9173, para. 45 (use of term "local" could mean either traffic subject to local rates or traffic that is jurisdictionally intrastate).

[1048] *See ISP Intercarrier Compensation Order*, 16 FCC Rcd at 9157, 9193-94, 9199, paras. 8, 89 & n.177, 98.

traffic."[1049] Accordingly, we direct the parties to substitute the term "section 251(b)(5) traffic" where the term "Local Traffic" appears in section 4.2. Based upon WorldCom's testimony, this is consistent with its intent and will avoid ambiguity surrounding the term "local traffic."

D. Unbundled Network Elements

1. Issue III-6 ("Currently Combines" versus "Ordinarily or Typically Combined" UNEs)

a. Introduction

316. The Commission articulated an incumbent LEC's obligations with respect to UNE combinations that are "ordinarily" and "currently" combined in its *Local Competition First Report and Order*, which promulgated rules 51.315(a)-(f).[1050] Although the Eighth Circuit set aside Rules 51.315(b)-(f),[1051] the Supreme Court has reversed the Court of Appeals and affirmed those rules.[1052] We recognize that these rules were not in effect when we held the hearing in this proceeding, and when the parties filed their final proposed language and briefs.[1053] We nonetheless have a sufficient record upon which to base our decision. We find that, of the contract language properly before us, Verizon's language proposed to AT&T best incorporates rules 51.315(a)-(f) and the Supreme Court's decision by simply referring to "Applicable Law." With one minor modification, we adopt this language for inclusion in both the Verizon-AT&T and Verizon-WorldCom contracts.

b. Positions of the Parties

317. WorldCom proposes two paragraphs of language governing UNE combinations. Verizon challenges three aspects of this proposal: WorldCom's language relating to (i) UNEs that are "ordinarily" and "currently" combined; (ii) the pricing of UNE combinations; and (iii) the effect of a change in applicable law. With respect to the first area of dispute, WorldCom proposes language stating that: "At MCI's request . . . Verizon shall provide Combinations of

---

[1049] Tr. at 1879; *see* WorldCom's November Proposed Agreement to Verizon, Part C, Attach. I, § 8.2.

[1050] *Local Competition First Report and Order*, 11 FCC Rcd 16208.

[1051] *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000).

[1052] *See AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 395 (1999); *Verizon Telephone Cos. v. FCC*, 122 S.Ct. 1646 (2002) (*Verizon*).

[1053] We note that WorldCom and Verizon both filed letters in recent weeks, supplementing their arguments regarding this issue to reflect the Supreme Court's action. *See* Letter from Jodie L. Kelley, Counsel to WorldCom, to Jeffrey Dygert, Assistant Bureau Chief, Wireline Competition Bureau, Federal Communications Commission, May 17, 2002 (WorldCom May 2002 Letter); Letter from Kelly L. Faglioni, Counsel to Verizon, to Jeffrey Dygert, Assistant Bureau Chief, Common Carrier Bureau, Federal Communications Commission, July 10, 2002 (Verizon July 2002 Letter).

Pages 156 - the end are not included . . . . . .

PUBLIC VERSION – CONFIDENTIAL MATERIAL REDACTED

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	
Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida, for review of a decision by The American Arbitration Association in accordance with Attachment 1 Section 11.2(a) of the Interconnection Agreement between GTE Florida Inc. and TCG South Florida	)	Docket No. 030643-TP Filed: September 5, 2003

EXHIBIT N TO

PETITION OF VERIZON FLORIDA, INC.

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
APR 23 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Service Providers	)	CC Docket No. 96-263

REPLY COMMENTS OF AT&T CORP.

Mark C. Rosenblum
Ava B. Kleinman

Room 3252J1
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8312

April 23, 1997

TABLE OF CONTENTS

Page

SUMMARY ii

INTRODUCTION 2

I. THE COMMENTS UNDERSCORE THE IMPORTANCE OF RATIONAL, COST-BASED ACCESS CHARGES TO ACHIEVE THE COMMISSION'S GOALS OF FACILITATING THE DEVELOPMENT OF HIGH BANDWIDTH NETWORKS AND PRESERVING INCENTIVES TO INVEST IN THE EXISTING VOICE NETWORK 8

II. THE COMMENTS CONFIRM THAT THE COMMISSION HAS AMPLE AUTHORITY TO CLASSIFY TRAFFIC GENERATED BY ESPs AS INTERSTATE TRAFFIC SUBJECT TO THE COMMISSION'S JURISDICTION 17

CONCLUSION 19

APPENDIX A

SUMMARY

AT&T demonstrated in its Comments that removal of the existing enhanced service provider ("ESP") exemption is fundamental to the Commission's statutory mandates to reform interstate access charges and implement competition in the local exchange and exchange access markets. In order to achieve meaningful access reform and establish an economically rational predicate for the entry of competitive local exchange carriers ("LECs"), monopoly LECs must set their access charges at actual (TELRIC) cost and assess such cost-based charges on all users of access. AT&T's (and others') Comments also confirm that the ESP industry has achieved enviable growth in the years during which the access charge exemption has been in effect, and it is now capable of sustaining the modest increases in cost that elimination of the exemption would entail.

Although the incumbent LECs apparently support imposition of "cost-based" access charges on ESPs, they do not support TELRIC prices, and thus in effect urge the Commission to impose "market-based" access charges on ESPs. This proposal -- premised on extension of above-cost access charges to all access customers -- is entirely unacceptable for the reasons explained by AT&T (and others) in detail in the access reform proceeding. On the other hand, the ESPs oppose imposition of any access charges on them, and urge the Commission instead to ensure competitive local entry as the means to spur the deployment of new, packet-based services that would more efficiently meet their needs. However, while their support of vigorous enforcement of the local entry rules is most welcome, the ESPs ignore the fact that opening the doors to competition does not

guarantee that competitors will enter, as long as the competitive market is inhabited by incumbent carriers that provide access services at below-cost rates.

The Comments thus confirm that maintaining the status quo will stifle, rather than advance, the Commission's statutory goals. Although discussed from different perspectives, the marketplace distortions described by each of the commenting parties illustrate the economic harms that irrational pricing of a monopoly input has created. In particular, under the existing access charge regime the incumbent LECs have failed to deploy the new high-bandwidth services that the ESPs demand; the public switched local network is being used inefficiently and has the potential of becoming significantly congested; traffic is being migrated to Internet and other services that do not contribute to legitimate access cost recovery or universal service fund support; and all market participants are receiving inappropriate pricing signals that will discourage rational business decisions for years to come.

These diverse Comments underscore that the only way for the Commission to further its goals of "facilitat[ing] the development of the high-bandwidth data networks of the future, while preserving efficient incentives for investment and innovation in the underlying network" is to assess cost-based access charges on all access customers. At bottom, the ESPs' long-term interest in reasonably priced packet-switched local access services, and the interests of the incumbent LECs and their potential competitors in fair pricing of existing access services are convergent, and can be achieved by adoption of a rational, fair pricing scheme for monopoly access services. The record in this NOI thus compels the institution of a Notice of Proposed Rulemaking to assess TELRIC-based access charges on ESPs.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Service Providers	)	CC Docket No. 96-263

REPLY COMMENTS OF AT&T CORP.

Pursuant to the Commission's December 24, 1996 Notice of Inquiry ("NOI")[1] and its subsequent January 24, 1997 Order,[2] AT&T Corp. ("AT&T") hereby submits these Reply Comments concerning usage of the public switched network by information service and Internet service providers.[3]

---

1 Usage of the Public Switched Network by Information Service and Internet Service Providers, CC Docket No. 96-263, Notice of Proposed Rulemaking, Third Report and Order and Notice of Inquiry (released December 24, 1996).

2 Usage of the Public Switched Network by Information Service and Internet Service Providers, CC Docket No. 96-263, Order (released January 24, 1997).

3 A list of commenters, along with the abbreviations of their names used in these Reply Comments, appears in Appendix A.

INTRODUCTION

The Comments filed in this proceeding present the Commission with what has now become a false choice between two important goals -- facilitating the development of a robust information services industry and establishing cost-based and nondiscriminatory pricing of monopoly exchange access services. The Commission has grappled in the past with this question by creating and maintaining an exemption, for one class of users of the public switched local network -- enhanced services providers ("ESPs") -- from payment of access charges, which were initially set well above cost and laden with subsidies.[4] Today, however, as AT&T showed in its Comments, any tension between these two goals can be resolved by requiring all users of interstate access services to pay cost-based access charges.

Indeed, the favored regulatory treatment of ESPs has contributed to the growth and development of an active information services industry, with over 1,500 ESPs in the U.S. market today, many of which are well-established, well-funded companies. As AT&T's Comments showed in detail, this is an industry that can well afford to pay cost-based access charges.[5] However, especially in recent years, the existing uneven access

---

[4] MTS and WATS Market Structure, Memorandum Report and Order, 97 F.C.C. 2d 682, 715 (1983) ("MTS Market Structure Order"); MTS and WATS-Related and Other Amendments of Part 69 of the Commission's Rules, CC Docket No. 86-1, Second Report and Order, 60 Rad. Reg. 2d 1542 (rel. Aug. 26, 1986); Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture and Policy and Rules Concerning Rates for Dominant Carriers, CC Docket Nos. 89-79 and 87-313, Report and Order and Order on Further Reconsideration and Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524 (1991) ("ONA Order").

[5] AT&T at 10-12. See also Bell Atlantic at 4; GTE at 29.

charge treatment has created severe economic distortions, in the form of inefficient utilization of the circuit-switched local network and inappropriate investment decisions. In addition, as the technology has developed to provide "traditional" telephony services, such as voice and fax, over the Internet, the service offerings of interexchange carriers ("IXCs") and ESPs have converged, and the significant pricing disparity occasioned by the payment of vastly overpriced access charges by IXCs, on the one hand, and the ESPs' relief from payment of local network charges, on the other hand, has fueled a large -- and growing -- migration of traffic from the IXCs' services (which contribute to local network cost recovery and universal service fund ("USF") support) to the services of the ESPs (which contribute to neither).

The instant NOI reflects the Commission's attention to these critical issues; indeed, as an outgrowth of the access charge reform docket the Commission is clearly mindful that the underpinning of this proceeding is adoption of TELRIC-based local network charges for all users of access. As to the specific focus of this proceeding, however, which is not only to preserve the viability of the public switched network but also to encourage the development of needed new packet-switched technologies, unfortunately, the majority of the Comments are strikingly similar to those filed with the Commission in similar contexts over the past fourteen years. The incumbent local exchange carriers ("ILECs") recommend the imposition of "reformed" access charges on ESPs, even as they argue that such reform should be limited to setting "market-based"

charges, which do not translate to cost-based (TELRIC) rates.[6] The ESP community, on the other hand, presses for continuation of the exemption, to ensure the continued viability of the enhanced services industry.[7] Avoiding any discussion of the declining health of the public switched network -- and dismissing any notion of network congestion as BOC "rhetoric" to increase revenues[8] -- the ESPs insist that the costs of their usage of the existing networks that exceed the prices that they currently pay continue to be borne by IXCs,[9] through end user revenues from second phone lines,[10] or by requiring the ILECs themselves to absorb those costs[11] -- in effect recommending that all other industry participants pay for their use of the local network.

Two critical changes have occurred since the last time that the Commission examined the implications of the ESP exemption which render these two static positions obsolete -- passage of the 1996 Telecom Act with its statutory mandate of competition in the local exchange and exchange access markets; and initiation of the access charge and USF reform proceedings. The Commission has recognized that the statutory imperative to open the monopoly local markets to competitive providers requires nondiscriminatory and

---

6 See, e.g., Bell Atlantic at 2, 13; GTE at 27-28; PacTel at 6; SWBT at 3; US West at 28-29.

7 See, e.g., IAC at 57; IUC at 10-12; Juno at 6-8.

8 IAC at 3.

9 See, e.g., id. at 57; IUC at 15; USIPA at 15.

10 IAC at 7-8 (citing ETI Study appended to IAC at 24-25).

11 See IUC at 15.

cost-based pricing of access by the incumbent monopoly providers. Otherwise, the appropriate economic foundation will not be established to provide incentives for competitive providers to develop networks that compete with the existing networks of the ILECs and that offer desired new services.[12] In order to accomplish this goal, the Commission has likewise acknowledged the critical importance of achieving its long-standing objective of reforming the current subsidy-laden access charge structure, and has committed to complying with what is now its statutory obligation to remove implicit subsidies from access charges and create a new environment of explicit subsidies to support the Commission's and Congress' goal of maintaining universal service (and doing so in a focused and competitively-neutral manner).[13]

Achievement of these objectives is simply not possible when implicit subsidies to one class of user are maintained. As AT&T demonstrated in its Comments, continuation of such subsidies -- and the concomitant pricing of non-cost-based charges to ESPs -- provides disincentives to ILECs to maintain their existing networks to meet the needs of these users, discourages the development of alternative technologies by incumbent carriers (because they are unable to implement competitive prices for their existing services, and thus ESPs have no financial incentive to utilize the new

---

[12] Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket Nos. 96-262, 94-1, 91-213, 96-263, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, FCC 96-488 (rel. Dec. 24, 1966), ¶¶5-13.

[13] Id. at ¶36-40; 47 U.S.C. § 254.

technologies), and dissuades competitive access providers from investing in these new networks, because they are understandably reluctant to risk such investments when existing ILEC services are offered on a subsidized basis to their targeted customers.

The unwanted behaviors described above -- logical reactions to the existing access charge pricing structure -- are reflected in the Comments of the ILECs and their potential competitors.[14] On the other hand, the ESPs argue that it is the imposition of today's subsidy-laden access charges on ESPs that will discourage ILECs from deploying new data services (because, according to these ESPs, the ILECs will then realize adequate compensation for ESP usage of the existing circuit-switched network).[15] The ESPs support instead vigorous implementation of the competitive local entry rules, pursuant to which competitive local exchange carriers ("CLECs") will have nondiscriminatory access to unbundled access elements at cost-based rates, meaningful collocation opportunities and equal access and interconnection.[16]

AT&T agrees with the ESPs that strenuous enforcement of the local entry rules is a necessary and critical predicate to competitive provision of local exchange and exchange access services by CLECs, and welcomes the ESPs' strong support for zealous enforcement of ILEC compliance with the Local Competition Order. However, this is only half of the solution. The remaining prerequisite to meaningful competitive entry into

---

[14] See, e.g., AT&T at 8; Bell Atlantic at 12-13; MCI at 3-6; PacTel at 35.

[15] See, e.g., AOL at 8.

[16] See, e.g., IAC at 2-4; CompuServe at 9-10; USIPA at 18-21. See also WorldCom at 21 n. 35.

the local markets for both circuit-switched and new packet-switched local services is the cost-based pricing of the existing services offered by the ILECs to all users of the ILECs' local networks. Without rational pricing of, and nondiscriminatory assessment of charges for, those services, regardless of the fair application of the local entry rules, the CLECs will lack the incentive to introduce competitive offerings.

The Commission has before it ample evidence that the status quo is affirmatively preventing achievement of its policy and statutory goals. First, under the current scheme, there is little actual deployment of new high-bandwidth services such as ISDN, even though the technology has been available for years. Second, network congestion is becoming a concern, and may cause significant problems for users of the public switched network in the future if incentives continue to be lacking for redirection of packet traffic off of that network. Third, ESPs are continuing to invest heavily in infrastructure (such as modems) to be utilized with the existing local network, further entrenching them as ILEC customers, and creating economic disincentives for them to migrate to new packet networks as they become available.

AT&T has proposed a realistic, practical alternative which will send the appropriate signals to all players in the market, and thus mitigate each of the harms that are being encouraged under the current regime. The single most important step that the Commission can take for the advancement of its goals is to mandate the pricing of ILECs' monopoly services -- the last bastion of non-market-based pricing in the industry -- at cost, and to ensure that all users of those services pay their fair share of those costs. But even if the Commission does not immediately require, in the access charge reform docket,

TELRIC pricing for IXCs, it can and should require the assessment of TELRIC-based charges on ESPs during the transition to cost-based charges to all users. During this historic period of transformation in the telecommunications industry, the Commission must not turn its back on this most fundamental element of achieving competitive goals -- one that was embraced by the Commission over fourteen years ago[17] and is now a matter of statutory mandate.

I. THE COMMENTS UNDERSCORE THE IMPORTANCE OF RATIONAL, COST-BASED ACCESS CHARGES TO ACHIEVE THE COMMISSION'S GOALS OF FACILITATING THE DEVELOPMENT OF HIGH BANDWIDTH NETWORKS AND PRESERVING INCENTIVES TO INVEST IN THE EXISTING VOICE NETWORK.

The Comments confirm that rational access pricing will not only encourage the ILECs to maintain their networks and build new services,[18] but will also offer the additional benefit of providing the proper incentive to prospective CLECs to develop and deploy their own competitive services, because they will then be competing against services that are priced fairly at their actual cost.[19] However, the ILECs undercut their sound economic arguments by raising overstated claims of "network congestion" and resulting "unanticipated" expenses,[20] while at the same time failing to use their billions of

---

17 See MTS Market Structure Order, 97 F.C.C. 2d 682 (1983).

18 See PacTel at 16; US West at 26.

19 See AT&T at 8; MCI at 4.

20 See, e.g., Bell Atlantic at 4-9; GTE at 20-22; PacTel at 27-33; SNET at 12-19.

dollars in existing monopoly profits to alleviate these self-proclaimed network problems.[21] It is therefore not surprising that the ESPs view with great skepticism the ILECs' claims that they need additional revenues from ESPs to perform the maintenance and upgrades occasioned by high packet-based usage of their networks.[22]

The first and most important step that the Commission can take to address this concern is to reduce access charges to TELRIC and to assess such truly "reformed" charges on all users of the network, including ESPs. The benefits of such action are numerous. First, it will eliminate the disincentives of the ILECs to perform the necessary upgrades to accommodate the increased ESP traffic on their local networks. Second, it will encourage more efficient usage of the local network by ESPs and their customers, and thus deter any future, more serious threat of "network congestion."[23] Third, it will send the proper pricing signals to CLECs to make rational business decisions to enter the local

---

[21] See MCI at 6 ("The lack of competition in the local market has enabled monopoly LECs to avoid optimal design of their networks").

[22] See, e.g., IAC at 8; Pa.ISP at 11-14. Indeed, the Commission has before it ample evidence that the ILECs have undertaken significant planned investment to position themselves strategically in the market for advanced and broadband digital services. See Comments of AT&T Corp., CC Docket No. 96-262, filed January 29, 1997, Appendix B (Kravtin/Selwyn study); Reply Comments of AT&T Corp., CC Docket No. 96-262, filed February 14, 1997, Appendix B). See also MCI at 18 ("the amount of overbuilt plant and excess capacity belies BOC claims of congestion problems"); WorldCom at 19 n. 34 (citing a presentation of the CEO of Bell Atlantic in which he remarked that even though sales of second lines surged by more than 50 percent, Bell Atlantic generated substantial profit from those lines because "we were able to provision new lines and services from idle capacity in an existing plant").

[23] See, e.g., Bell Atlantic at 12; PacTel at 16; US West at 6-7.

market with competing services.[24] Fourth, it will create a sound cost basis for the pricing of IXC and ESP services, and thus stem any artificially induced migration of voice and fax traffic to the Internet, retaining traffic on the public switched network for USF contribution.[25]

Moreover, the Commission has the authority to ensure that such access reform be achieved without increasing access revenues to the ILECs, which is a major concern not only of the ESPs, but also of the ILECs' potential competitors.[26] To the extent that access charges remain above TELRIC levels for the IXCs, a revenue-neutral restructure can be accomplished by reinitializing the ILECs' price caps, which would have the effect of lowering access charges to the IXCs to make up for the additional revenue collected by the LECs from the ESPs.[27]

---

[24] See AT&T at 8; PacTel at 14-15.

[25] The ESPs have been relatively silent in their claims that they are "end users" and thus should not be subject to "carrier" access charges -- a mantra that has been prevalent in prior pleadings on this issue. But see IUC at 27-28; Juno at 8-10; WorldCom at 12-13. This argument, of course, is not only factually inaccurate -- AT&T and others have convincingly demonstrated that ESPs behave more like IXCs than like business customers, see, e.g., ACTA at 4-5; AT&T at 28-30; Bell Atlantic at 14-15; CompTel at 3; SWBT at 6; US West at 5, 16-17 -- it is also irrelevant, because the Commission's policy goal and objective is not to assess access charges on "carriers," but on all "users of access." ONA Order, 6 FCC Rcd 4524, 4534 (1991); see also Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Notice of Proposed Rulemaking, CC Docket No. 87-215, 2 FCC Rcd 4305 (1987) ("ESP NPRM"); MTS Market Structure Order, 97 F.C.C. 2d 682, 711, 715 (1983).

[26] AT&T at 25-26; MCI at 3.

[27] As MCI (at 6) confirms, however, if the ILECs charge all users TELRIC-based prices, there would be no double-recovery of costs by the ILECs.

The Comments also universally confirm that there is no need for the Commission to pick and choose among new technologies. The ILECs described in detail in their Comments a vast array of new services that they are preparing to bring to market,[28] and the ESPs have also described the many new packet services and facilities that may provide more efficient and cost-effective services for their particular needs.[29] Equipment manufacturers have also specified in their Comments new solutions to carry high-bandwidth data traffic more efficiently.[30] There is simply no basis -- nor does the Commission have the prescience or the expertise -- to select specific technologies, facilities, or services for preferences in their development and deployment. Any such selection would be entirely arbitrary. Rather, the potential customers of those new services -- the ESPs -- overwhelmingly urge the Commission to enforce the local competition rules to enable CLECs to provide new services.[31] Such action, along with cost-based pricing of the existing local services, will assure the development of new, desired services without the need for pervasive regulatory controls.

Although many of the LEC commenters extol the new technologies that they are bringing to market, their track record in deploying new data-friendly technologies

---

[28] See, e.g., Bell Atlantic at Attachment E; BellSouth at 4-6; PacTel at 36-38; SNET at 19-23.

[29] See, e.g., AOL at 17-23; CompuServe at 14; IAC at 17-22. See also AT&T at 19-21; MCI at 22.

[30] See, e.g., DSC at 3-7; Motorola at 5-9; Nortel at 10-11.

[31] See, e.g., IAC at 2-4; IUC at 8-9; CompuServe at 9-10; Pa.ISP at 14-15. See also MCI at 10.

has been dismal.[32] And the ESPs are understandably reluctant to subscribe to these new services if doing so would require them to turn their customer lists over to their ILEC competitors,[33] or abandon their own modems and rely instead on ILEC network-based modem pools.[34] For these reasons, encouragement of competitive providers is the best market-based incentive to ensure that ESPs have a choice of providers for new services, and that such services are brought to market more quickly and at competitive prices.

The Commission should not, however, heed the requests of some ILECs that propose increased pricing flexibility for new services.[35] The Commission already has in place a framework for the provision of new services by monopoly local carriers that guards against cross-subsidization from the carrier's other services. As long as the ILECs maintain monopoly control over the local exchange, there is no basis whatsoever to retreat

---

[32] For example, IAC (at 23-25) describes the 20-year delay in implementation of ISDN for residential customers, which is still not available on a ubiquitous basis. Moreover, it is subject to cumbersome ordering processes and is expensive. Thus, IAC concludes (at 38) that "in the absence of meaningful competition in the data services market, the ILECs have either ignored, sporadically deployed, or overpriced these technologies despite years of steadily increasing consumer demand for faster, more efficient data services." See also USIPA at 12.

[33] See Pa.ISP at 5 (Bell Atlantic's Internet Protocol Routing Service "requires an independent ISP to turn over its customer lists and customer passwords to the LEC, at the same time that the LEC has an affiliate that is competing with the independent ISPs").

[34] See AOL at 41 ("by deploying modem concentrators and packet-based trunk connectors in each central office, the ILECs' packet network links may indeed promote faster and more efficient delivery of broadband services, but they could also cement the ILECs as data transmission gatekeepers") (citation omitted); see also CIX at 14.

[35] See, e.g., PacTel at 7; SWBT at 3.

from the rules that ensure reasonable and nondiscriminatory rates for access services, not only for the benefit of their access customers, but also to maintain a pro-competitive market for emerging CLECs. Moreover, the ILECs are readily capable of successfully introducing new services and technologies under the existing rules. In December 1995, AT&T calculated that the LECs had introduced over 400 new services in the three years in which the price cap rules had been in effect as of that date.[36] In the intervening period, the LECs have continued to introduce new services under the existing price cap rules, including new SONET and frame relay services. Clearly there is no basis for the Commission to depart from those rules in the context of the instant NOI, and the Commission should not include such a proposal in its NPRM in this proceeding.[37]

The economic harms occasioned by the existence of the access charge exemption have become more acute for yet another reason: the convergence of services using both circuit-switched and packet-switched technologies has enabled customers to migrate their traditional telephony services to packet-based services offered at prices significantly lower than IXCs' offerings, which must be priced to recover today's exorbitant access charges. This circumstance is leading to increasing migration of traffic not off of the local public switched network, but off of the IXCs' networks. Thus, even as

---

[36] Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Comments of AT&T Corp., filed December 11, 1995, pp. 22-26.

[37] BellSouth (at 6-7) proposes that the Commission amend its Computer Inquiry rules to enable it to provide a new data service as a "basic" service, despite the existence of protocol conversion in the service. This request should be examined in the context of a petition for waiver, and has no place in the instant proceeding.

traffic increases over the local ILEC networks, compensation for the costs of such traffic is declining, reducing revenues not only for legitimate cost recovery, but also for universal service fund support. The Comments reflect the concern that artificially induced migration of traffic from the public switched local network to the Internet will create even more upward pressure on access (and toll) charges and will shrink the contribution base for universal service support.[38] Bell Atlantic (at 9) predicts that "at their present growth rates, Internet minutes could overtake IXC minutes in just a few years." PacTel (at 10) forecasts that by the year 2001, Internet traffic will overtake residential voice traffic.[39] Unless these minutes are eligible for access charge payments, the establishment of "have-not" users of high-priced PSN services and "have" users of lower priced Internet offerings will be inevitable.[40] It will also force the issue of the proper scope of USF contribution.[41]

In this regard, the Comments confirm that, as ESP traffic volumes have increased, the ESP industry itself is now mature, with large companies that are

---

[38] See ACTA at 5-7; AT&T at 23-24; TRA at 14-18.

[39] See also USTA at 15-20.

[40] See CompTel at 4 ("[i]n the NOI (at ¶ 285), the Commission noted that some ILECs have predicted that Internet traffic could represent 25-30% of all local exchange traffic within three years. The Commission cannot keep such a huge traffic stream out of the access charge system without completely undermining the economic efficiency of that system").

[41] Although they did not address the implications to customers of the decline in the contribution base for USF support, GTE (at 2) and PacTel (at 20-21) incredibly suggest that the ILECs receive USF support for the "shortfalls in LEC cost recovery" resulting from the ESP exemption. Of course, such a maneuver would only exacerbate the inefficiencies of the current system that encourages ESPs to use facilities without bearing their fair share of the cost.

well-positioned economically to pay cost-based prices for the access services that they use.[42] Moreover, while the Internet Service Provider ("ISP") industry is still in a high growth and more volatile stage, the establishment of large players such as AOL, CompuServe and Prodigy, and the entry of IXCs and RBOCs into the market, belie claims that the industry is too fragile to sustain the modest average increases in price that imposition of cost-based access charges may create.[43] Consequently, when faced with the possibility of a modest average increase in monthly Internet charges resulting from TELRIC- based access charges[44] or a massive artificially induced migration of telephony/fax minutes from the public switched network that would otherwise contribute to USF support, the Commission's choice should be clear.[45]

---

[42] AT&T at 10-12; Bell Atlantic at 4; GTE at 29.

[43] AT&T (at 26-27) calculated a 56 cent average increase in consumers' monthly Internet access prices if the increased costs to ESPs were reflected in consumer rates, based on data provided by CompuServe. PacTel (at 6) estimated that 80 percent of end users would be impacted by less than $5.00 per month, assuming that a charge of one cent per minute were assessed on ESPs (which is more than twice the TELRIC rate used in AT&T's analysis). PacTel provides no basis for its calculation. Even applying PacTel's one cent per minute rate to the actual data provided by CompuServe, that would increase AT&T's estimate to approximately $1.20 per month for an average customer. Such small increases, moreover, would affect only heavier Internet users.

[44] It is far from clear that the ISPs would realize an overall cost increase as a result of the imposition of cost-based access charges. The ISP industry has responded to the current skewed pricing regime by building inefficient networks, consisting of multiple "local" points of presence ("POPs") around the country, instead of more efficient regional POPs. The deployment of such regional POPs would lower their network costs.

[45] There is much discussion about whether second phone lines to the home generate additional revenue for the ILECs to cover the increased costs to the network of ESP traffic. The ILECs claim that they do not receive excess revenues from subscription

(footnote continued on following page)

The Commission has the tools to redirect this course now, with imposition of TELRIC charges on ESPs.[46] Indeed, with the massive investment currently being made by ESPs to support their service over the existing ILEC networks,[47] such action must be taken as quickly as possible, so that ESPs do not continue to tether themselves to the circuit-switched network via these large financial commitments, and thus make their migration to packet networks less economically feasible.

(footnote continued from previous page)

to these second lines, because those lines do not generate the toll traffic and demand for vertical services that contribute to their cost recovery. See, e.g., GTE at 24-25; PacTel at 30-33; SWBT at 11. ESPs, on the other hand, argue that the sale of second phone lines generates revenues well in excess of their cost. See, e.g., IAC at 8 (citing to its ETI Study at 25-26); WorldCom at 19 n. 34. Adding to the confusion, it is far from clear that second phone lines are being used exclusively for Internet access, and no data have been provided to support that conclusion. Second (and third) lines have become increasingly common in recent years, for use by children in the home, telecommuters and other home businesses. There is no reason to believe that even if subscription to additional lines is increasing for Internet applications, those lines are not also being used for these more traditional purposes, and thus generating revenues for vertical and toll services. In any event, as with all other network components, the price for second phone lines should be set to recover their cost and should be charged to the end user, who is the cost causer. Second phone revenues should not be used to subsidize ESP usage of the local public switched network to access the Internet.

[46] AT&T suggested (at 24-25) that even if the Commission declines to adopt TELRIC charges for IXCs in the access reform docket, it can and should assess TELRIC charges on ESPs as an interim step until all access charges are brought down to cost. PacTel (at 7, 17) endorses this proposal, by recommending that ESPs may be exempt from the subsidy elements of access charges; i.e., the CCLC and TIC.

[47] See, e.g., AOL at 9, n. 11; CIX at 14

II. THE COMMENTS CONFIRM THAT THE COMMISSION HAS AMPLE AUTHORITY TO CLASSIFY TRAFFIC GENERATED BY ESPs AS INTERSTATE TRAFFIC SUBJECT TO THE COMMISSION'S JURISDICTION.

In its Comments (at 28-33), AT&T demonstrated not only that the services provided by ESPs are overwhelmingly interstate in nature, but also that to the extent that there is intrastate communication, it is for the most part inseverable and indistinguishable from the interstate traffic that is generated by the customer. On this basis, such service is properly considered interstate. AT&T further showed that sound policy considerations justify the exercise of federal jurisdiction over all ESP traffic, in order to achieve the important policy and statutory goals discussed above.[48] No commenter disputes that the vast majority of enhanced communications provided by ESPs is interstate, the most prevalent use being Internet communications.[49] IAC confirms that during a single "session," a transmission can travel to multiple and, in most cases, interstate, destinations.[50] Indeed, the Commission itself recognized the predominantly interstate

---

[48] AT&T also noted (at 33) that to the extent that a particular enhanced service is completely (or almost completely) intrastate in character (such as certain voice mail services), the ESP could properly purchase intrastate or local access services upon such a showing.

[49] See, e.g., GTE at 31-32; US West at 7-8.

[50] IAC at 7 n. 10 ("During the course of a single on-line session, a subscriber may obtain data from servers in multiple locations within the ESP's network or the Internet. For example, on the Internet, hypertext navigation is used to provide users with links to related information contained in other servers. By clicking on a hypertext link, a user can jump from one server to another server in a different location").

nature of ESP traffic as early as 1983, when it adopted the current access charge regime -- well before the advent of the worldwide Internet as a commercial network.[51]

Finally, any concerns on the part of the Commission that charging users for access to their Internet offerings amounts to forbidden "regulation of the Internet" should be alleviated upon review of the Comments. Although members of the public, in isolated comments, assert that any charges imposed on Internet providers is contrary to public policy, none of the ESPs has seriously suggested that requiring them to pay for the local services that they use constitutes "regulation" of the rates, terms and conditions of their end user offerings. Indeed, no commenter has advocated that ESPs not pay for the switches, buildings, power, employees, or other infrastructure that they utilize in providing their Internet access services; to continue to exempt them from paying for use of the local network is no different than excusing them from paying for these other inputs.[52]

---

[51] MTS Market Structure Order, 97 F.C.C. 2d 682, 715 (1983) ("[o]ther users who employ exchange service for jurisdictionally interstate communications, including . . . enhanced service providers, . . ."); see also ESP NPRM, 2 FCC Rcd 4305, 4306 (1987) ("Enhanced service providers, like facilities-based interexchange carriers and resellers, use the local network to provide interstate services. To the extent that they are exempt from access charges, the other users of exchange access pay a disproportionate share of the costs of the local exchange that access charges are designed to recover"); ONA Order, 6 FCC Rcd 4524, 4534 (1991).

[52] Moreover, assessment of cost-based access charges on ESPs for their use of the local network would avoid the pitfalls of attempting to differentiate among different categories of enhanced services -- a problem on which the ESPs rely as a basis to exempt their services entirely from access charges. See, e.g., IAC at 57-59.

CONCLUSION

The Commission has before it ample and compelling evidence that the most rational and efficient means to ensure the viability of the existing public switched network while encouraging the development of new competitive packet-switched services is to implement the cost-based pricing of the local network and to assess those cost-based prices on all users of the network, including the fastest-growing segment of that user group -- the ESPs. This long overdue access reform -- coupled with zealous enforcement of the Commission's local entry rules -- will set the correct economic and regulatory framework for continued investment in both the incumbent LEC networks and in the networks of the future. The Commission can no longer extend the status quo under the guise of protecting an infant industry; rather, for the long-term benefit of that industry, the preservation of the public switched network for those that rely on it, and the achievement of universal service, the Commission must act now to remove the ESP exemption.

WHEREFORE, for the reasons stated above and in AT&T's Comments, AT&T respectfully urges the Commission to institute a Notice of Proposed Rulemaking to eliminate the exemption from Part 69 access charges for enhanced service providers, establish TELRIC pricing for those providers, and adopt a presumption that all enhanced services are interstate in nature.

Respectfully submitted,

AT&T CORP.

By /s/ Ava B. Kleinman
Mark C. Rosenblum
Ava B. Kleinman

Room 3252J1
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8312

April 23, 1997

List of Commenters

Alliance for Public Technology
America Online ("AOL")
America's Carriers Telecommunications Association ("ACTA")
Association of Online Professionals
AT&T Corp.
Bell Atlantic & NYNEX ("Bell Atlantic")
Bellsouth Corp. & Bellsouth Telecommunications, Inc. ("BellSouth")
CAIS, Inc.
Caves, Douglas, et al.
Cincinnati Bell Telephone Company
Clark Development Company, Inc.
Commercial Internet Exchange Association ("CIX")
Competitive Telecommunications Association ("CompTel")
CompuServe Incorporated and Prodigy Services Corporation ("CompuServe")
DSC Communications Corporation
Edgewood Sr. High School Student Council
General Communication, Inc.
General Services Administration ("GSA")
GTE Service Corporation ("GTE")
Hayes Microcomputer Products, Inc.
Hardy & Ellison, P.C.
Information Industry Association
Internet Access Coalition ("IAC")
Internet User Coalition ("IUC")
Juno Online Services, L.P. ("Juno")
Lee, Sheila Jackson
MCI Communications Corp. ("MCI")
Moss, Gloria
Motorola, Inc. ("Motorola")
National Cable Television Association
NetAction, Utility Consumers Action Network, CPSR and CTCNet
Northern Telecom ("Nortel")
NYSERNet Inc.
Pacific Telesis Group ("PacTel")
Pennsylvania Internet Service Providers ("Pa.ISP")
Rural Telephone Coalition ("RTC")
Southern New England Telephone Company ("SNET")
Southwestern Bell Telephone Company ("SWBT")
Special Libraries Association
Sprint Corporation

TCA, Inc.
Telecommunications Resellers Association ("TRA")
Teleport Communications Group ("TCG")
Topp, Linda A. Legier
United States Internet Providers Association ("USIPA")
University of California, Berkeley
U. S. Telephone Association ("USTA")
U S West, Inc. ("US West")
UTC
Worldcom, Inc. ("WorldCom")

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 23rd day of April, 1997, a copy of the foregoing "Reply Comments of AT&T Corp." was mailed by U.S. first class mail, postage prepaid, to the parties on the attached Service List.

/s/ Rena Martens
Rena Martens

SERVICE LIST

Mary E. Newmeyer
Federal Affairs Advisor
Alabama Public Service Commission
P.O. Box 991
Montgomery, AL 36101

James Rowe
Executive Director
Alaska Telephone Association
4341 B St. - Suite 304
Anchorage, AK 99503

Gerald Depo, President
Alliance for Public Technology
901 15th St., NW - Suite 230
Washington, DC 20005

Carolyn C. Hill
ALLTEL Telephone Services Corporation
655 Fifteenth Street, NW - Suite 220
Washington, DC 20005

Donna Lampert
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo
701 Pennsylvania Ave., NW - Suite 900
Washington, DC 20004

John Rother, Esq.
Director, Legislation & Public Policy
American Association of Retired Persons
601 E. St., NW
Washington, DC 20049

Carol C. Henderson, Executive Director
American Library Association
1301 Pennsylvania Ave., NW - Suite 403
Washington, DC 20004

America's Carriers Telecommunication Association
c/o Charles H. Helein, General Counsel
Helein & Associates, P.C.
8180 Greensboro Drive - Suite 700
McLean, VA 22102

Michael S. Pabian
Ameritech
Rm. 4H82
2000 W. Ameritech Center Dr.
Hoffman Estates, IL 60196-1025

Edward Shakin
1320 North Court House Road - 8th Floor
Arlington, VA 22201
Attorney for Bell Atlantic Telephone Companies

Joseph Di Bella
1300 I Street, NW - Suite 400 West
Washington, DC 20005
Attorney for NYNEX Telephone Companies

Richard M. Sbaratta
BellSouth Corporation
BellSouth Telecommunications, Inc.
1155 Peachtree St., NE - Suite 1700
Atlanta, GA 30309-3610

Christopher J. Wilson
Frost & Jacobs
2500 PNC Center
201 E. Fifth St.
Cincinnati, OH 45202
Attorney for Cincinnati Bell Telephone Co.

Richard M. Tettelbaum
Associate General Counsel
Citizens Utilities Company
1400 16th St., NW - Suite 500
Washington, DC 20036

Diane Smith
ALLTEL Corporate Services, Inc.
655 15th Street, NW - Suite 220
Washington, DC 20005-5701
Attorney for Independent Telephone & Telecommunications Alliance

Thomas K. Crowe, P.C.
2300 M St., NW - Suite 800
Washington, DC 20037
Attorney for Commonwealth of the Northern Marianas Islands

Ronald J. Binz, President
Competition Policy Institute
1156 15th Street, NW - Suite 310
Washington, DC 20005

Randolph J. May
Sutherland, Asbill & Brennan
1275 Pennsylvania Ave., NW
Washington, DC 20004-2404
Attorney for CompuServe Incorporated

Kent Larsen
Cathey, Hutton & Associates
2711 LBJ Freeway, Suite 560
Dallas, TX 75234

Mary Mack Adu
People of the State of California and Public Utilities Commission of the State of California
505 Van Ness Ave.
San Francisco, CA 94102

Henry D. Levine
Levine, Blaszak, Block & Boothby
1300 Connecticut Ave., NW - Suite 500
Washington, DC 20036
Attorney for Bankers Clearinghouse, Mastercard, and Visa

Ronald L. Plesser
Piper & Marbury L.L.P.
1200 19th St., NW, 7th Floor
Washington, DC 20036
Attorney for Commercial Internet Exchange Association

Morton Bahr, President
Communications Workers of America
501 Third St., NW
Washington, DC 20001-2797

Genevieve Morelli
Executive V.P. and General Counsel
Competitive Telecommunications Association
1900 M Street, NW - Suite 800
Washington, DC 20036

Danny E. Adams
Kelley Drye & Warren, LLP
1200 19th Street, NW - Suite 500
Washington, DC 20036-2423
Attorney for Competition Policy Institute

Wayne V. Black
Keller and Heckman, LLP
1001 G Street, NW - Suite 500 West
Washington, DC 20001
Attorney for American Petroleum Institute

Christopher W. Savage
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Ave., NW - Suite 200
Washington, DC 20006
Attorney for Centennial Cellular Corporation

James Love
Director
Consumer Project On Technology
P.O. Box 19367
Washington, DC 20036

Dana Frix
Swidler & Berlin
3000 K Street, NW - Suite 300
Washington, DC 20007
Attorney for ACC Long Distance, Excel Telecomm., and Telco Telecomm.

Robert A. Mazer
Vinson & Elkins
1455 Pennsylvania Ave., NW
Washington, DC 20004-1008
Attorney for Aliant Communications Co.

Cynthia B. Miller
Florida Public Service Commission
Gerald Gunter Bldg.
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Clint Frederick
Frederick & Warriner, LLC
10901 West 84th Terrace - Suite 101
Lenexa, Kansas 66214-1631

Michael J. Shortley, III
Frontier Corporation
180 South Clinton Ave.
Rochester, NY 14646

Kathy L. Shobert
Director, Federal Affairs
General Communication, Inc.
901 15th St., NW - Suite 900
Washington, DC 20005

Charles A. Acquard
Executive Director
National Ass'n of State Utility Consumer Advocates
1133 15th Street, NW - Suite 550
Washington, DC 20005

Gail L. Polivy 5214
GTE Service Corporation
1850 M St., NW - Suite 1200
Washington, DC 20036

Ronald Dunn, President
Information Industry Association
1625 Massachusetts Ave., NW - Suite 700
Washington, DC 20036

ITCs, Inc.
c/o David A. Irwin
Irwin, Campbell & Tannewald, P.C.
1730 Rhode Island Ave., NW
Washington, DC 20036

Gary L. Mann, Director, Regulatory Affairs
IXC Long Distance, Inc.
98 San Jacinto - Suite 700
Austin, TX 78701

Michael S. Fox
Director, Regulatory Affairs
John Staurulakis, Inc.
6315 Seabrook Rd.
Seabrook, MD 20706

Gregory Casey
LCI International Telecom Corp.
8180 Greenboro Drive - Suite 800
McLean, VA 22102

Mary Sisak
Senior Regulatory Analyst
MCI Telecommunications Corporation
1801 Pennsylvania Ave., NW
Washington, DC 20006

Joseph S. Paykel
Media Access Project
2000 M St., NW
Washington, DC 20036

Richard J. Johnson
Moss & Barnett
4800 Norwest Center
90 S. Seventh St.
Minneapolis, MN 55402-4129
Attorney for MN Independent Coalition

James Bradford Ramsay
National Assn. of Regulatory Utility Commissioners
1201 Constitution Ave. - Suite 1102
P.O. Box 684
Washington, DC 20044

Joanne Salvatore Bochis
National Exchange Carrier Association, Inc.
100 South Jefferson Rd.
Whippany, NJ 07981

Mary E. Burgess
Assistant Counsel
Office of General Counsel
New York State Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Robert S. Tongren
Ohio Consumers' Counsel
77 S. High St. - 15th Floor
Columbus, OH 43266-0550

Edwin N. Lavergne
Ginsburg, Feldman & Bress, Chartered
1250 Connecticut Ave., NW
Washington, DC 20036
Attorney for Interactive Services Association

Dr. Norman K. Myers
Ozarks Technical Community College
P.O. Box 5958
Springfield, MO 65801

Stephen G. Kraskin
Kraskin & Lesse
2120 L Street, NW - Suite 520
Washington, DC 20037

Martha S. Hogerty
Public Counsel for the State of Missouri
P.O. Box 7800
Jefferson City, MO 65102
Attorney for the Group of State Consumer Advocates

Richard Johnson
4800 Northwest Center
90 South Seventh Street
Minneapolis, MN 55402-4129
Attorney for Minnesota Independent Coalition

Brian Moir
Moir & Hardman
2000 L Street, NW - Suite 512
Washington, DC 20036-4907
Attorney for International Communications Association

Stanley M. Gorinson
Preston, Gates, Ellis & Rouvelas Meeds
1735 New York Ave., NW
Washington, DC 20006
Attorney for Microsoft Corp.

Albert H. Kramer
Dickstein, Shapiro, Morin & Oshinsky, LLP
2101 L Street, NW
Washington, DC 20037-1526
Attorney for ICG Telecom Group, Inc.

Daniel L. Brenner
1724 Massachusetts Ave., NW
Washington, DC 20036
Attorney for the National Cable Television Association

Michael J. Ettner
General Services Administration
18th & F Streets, NW - Room 4002
Washington, DC 20405

Office of the Judge Advocate General
U.S. Army Litigation Center
c/o Robert N. Kittel
901 N. Stuart Street - Suite 713
Arlington, VA 22202-1837

David J. Newburger
Newburger & Vossmeyer
One Metropolitan Square - Suite 2400
St. Louis, MO 63102
Attorneys for American Association for Adult and Continuing Education; Association for Gerontology and Human Development at Historically Black Colleges and Universities; Connect/Missouri; Missouri Center on Minority Health and Aging; National Association of Commissions for Women; National Association of Development Organizations; National Farmers Union; National Hispanic Council on Aging; The National Trust; National Latino Telecommunications Task Force; Barbara O'Connor, CoConvenor of the Consumer Summit and Professor of Communications, California State University, Sacramento; President's Club for Telecommunications Justice; United Seniors Health Cooperative; United Homeowners Association, Virginia Public Interest Coalition; and the Universal Service Alliance

Margaret E. Garber
1275 Pennsylvania Ave., NW
Washington, DC 20004
Attorney for Pacific Telesis Group

Mark J. Golden
Vice President - Industry Affairs
Personal Communications Industry Association
500 Montgomery St. - Suite 700
Alexandria, VA 22314-1561

Pat Wood, III, Chairman
Public Utility Commission of Texas
7800 Shoal Creek Blvd.
Austin, TX 78757

Roger Hamilton, Chairman
Oregon Public Utility Commission
550 Capitol St., NE
Salem, OR 97310-1380

Lawrence D. Crocker, III
Public Service Commission of the District of Columbia
717 14th Street, NW
Washington, DC 20005

Steven T. Nourse
Assistant Attorney General
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

Joe D. Edge
Drinker Biddle & Reath
901 Fifteenth St., NW
Washington, DC 20005
Attorney for Puerto Rico Telephone Company

George Petrutsas
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street - Suite 1100
Rosslyn, VA 22209
Attorney for Roseville Telephone Company

John J. List
Senior Vice President, Member Services
Rural Telephone Finance Cooperative
2201 Cooperative Way
Herndon, VA 20171

Lisa M. Zaina
21 Dupont Circle, NW - Suite 700
Washington, DC 20036
Attorney for Rural Telephone Coalition (OPASTCO)

David Cosson
2626 Pennsylvania Ave., NW
Washington, DC 20037
Attorney for Rural Telephone Coalition (NTCA)

Margot Smiley Humphrey
Koteen & Naftalin, LLP
1150 Connecticut Ave., NW - Suite 1000
Washington, DC 20036
Attorney for Rural Telephone Coalition (NRTA) and TDS Telecomm. Corp.

Wally Beyer, Administrator
United States Department of Agriculture
14th and Independence Streets
Washington, DC 20250

Pam Nelson
South Dakota Public Utilities Commission
State Capitol, 500 E. Capitol St.
Pierre, SD 57501-5070

Anne U. MacClintock
Vice President - Regulatory Affairs & Public Policy
Southern New England Telephone Company
227 Church St.
New Haven, CT 06510

Robert M. Lynch
One Bell Center - Suite 3520
St. Louis, MO 63101
Attorney for Southwestern Bell Telephone

Jay C. Keithley
Sprint Corporation
1850 M St., NW - Suite 1110
Washington, DC 20036

Randy Zach
TCA, Inc.
3617 Betty Dr. - Suite I
Colorado Springs, CO 80917

Margot Smiley Humphrey
Koteen & Naftalin, L.L.P
1150 Connecticut Ave., NW - Suite 1000
Washington, DC 20036
Attorney for TDS Telecommunications Corporation

Randall B. Lowe
Piper & Marbury, LLP
1200 19th Street, NW
Washington, DC 20036
Attorney for Tele-Communications, Inc.

J. Manning Lee
Vice President, Regulatory Affairs
Teleport Communications Group, Inc.
Two Teleport Dr. - Suite 300
Staten Island, NY 10311

Laurie Pappas
Deputy Public Counsel
Texas Office of Public Utility Counsel
1701 N. Congress Ave., 9-180
P.O. Box 12397
Austin, TX 78711-2397

Brian Conboy
Wilkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036
Attorney for Time Warner

Charles C. Hunter
Hunter & Mow, P.C.
1620 I St., NW - Suite 701
Washington, DC 20006
Attorney for
Telecommunications Resellers Association

Richard A. Finnegan
2405 Evergreen Park Drive, SW - Suite B-1
Olympia, WA 98502
Attorney for Oregon Independent Telephone
Association and Washington Independent

Robert M. Berger
Winstar Communications, Inc.
1146 19th St., NW
Washington, DC 20036

Kathleen Q. Abernathy
Airtouch Communications, Inc.
1818 N St., NW
Washington, DC 20036

Glenn B. Manishin
Blumenfeld & Cohen - Technology Law Group
1615 M Street, NW - Suite 700
Washington, DC 20036
Attorney for Spectranet International, Inc.

Bradley Stillman
MCI Communications Corporation
1801 Pennsylvania Ave., NW
Washington, DC 20006

Scott J. Rubin, Esq.
3 Lost Creek Drive
Selinsgrove, PA 17870-9357
Attorney for Pennsylvania Internet Service
Providers

Robert B. McKenna
1020 19th St., NW
Washington, DC 20036
Attorney for U S West, Inc.

Benjamin H. Dickens, Jr.
Blooston, Modkofsky, Jackson & Dickens
2120 L Street, NW - Suite 300
Washington, DC 20037
Attorney for the Western Alliance

Richard S. Whitt
Worldcom, Inc.
1120 Connecticut Ave., NW - Suite 400
Washington, DC 20036

Jeffrey F. Beck
Beck & Ackerman
Four Embarcadero Center - Suite 760
San Francisco, CA 94111
Attorney for Small Western LECs

Colleen Boothby
Levine Blaszak Block & Boothby
1300 Connecticut Ave., NW - Suite 500
Washington, DC 20036-1703
Attorney for Internet Access Coalition and
Ad Hoc Telecomm. Users Committee

Mary McDermott
1401 H Street, NW - Suite 600
Washington, DC 20005
Attorney for the United States Telephone
Association

W. Fred Seigneur, President
SONETECH, Inc.
109 Kale Ave.
Sterling, VA 20164

Kenneth T. Burchett, Vice President
GVNW Inc.
P.O. Box 230399
Portland, Oregon 97281-0399

Reginald R. Bernard, President
SDN Users Association, Inc.
P.O. Box 4014
Bridgewater, NJ 08807

Steven G. Sanders, President
Northern Arkansas Telephone Company, Inc.
301 East Main Street
Flippin, AR 72634

Gerald Depo, President
Alliance for Public Technology
901 15th Street, NW
Washington, DC 20005

Wayne Leighton, PhD
Senior Economist
Citizens for a Sound Economy Foundation
1250 H Street, NW - Suite 700
Washington, DC 20005

Lyman C. Welch
190 S. LaSalle St. - #3100
Chicago, IL 60603

Penny Baker
Deputy General Counsel
Missouri Public Service Commission
P.O. Box 360
J efferson City, Missouri 65102

Christopher Klein, Chief
Utility Rate Division
Tennessee Regulatory Staff
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Jon Radoff
1630 Worcester Road #421
Framingham., MA 01701

Myra L. Karegianes
General Counsel
Illinois Commerce Commission
160 N. LaSalle St. - Suite C-800
Chicago, IL 60601

Curtis T. White
Managing Partner
Allied Associated Partners, LP
4201 Connecticut Ave., NW - Suite 402
Washington, DC 20008-1158

Eva Powers
Assistant Attorney General
Kansas Corporation Commission
1500 Southwest Arrowhead Rd.
Topeka, Kansas 66604

Ramsey L. Woodworth
Robert M. Gurss
Rudolph J. Geist
Wilkes, Artis, Hedrick & Lane, Chartered
1666 K Street, N.W., #1100
Washington, D.C.
Attorneys for United States Internet Providers Association

Linda A. Legier Topp
13806 Farmstead Way
Chester, VA 23831

James P. Brennan
Assistant Director Government Services
NYSERNet Inc.
385 Jordan Road
Troy, NY 12180

William W. Burrington
Jill A. Lesser
America Online, Inc.
1101 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

Donna N. Lampert
Christopher J. Harvie
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Attorneys for America Online, Inc.

David P. McClure
Association of Online Professionals
6096 Franconia Road, Suite D
Alexandria, VA 22310

Dennis C. Hayes
Hayes Microcomputer Products, Inc.
5953 Peachtree Industrial Blvd.
Norcross, GA 30092

Steven P. Klingler
Clark Development Company, Inc.
3950 South 700 East, Suite 303
Murray, UT 84107

Glenn B. Manishin
Michael D. Specht
Blumenfeld & Cohen -
Technology Law Group
1615 M Street, N.W., Suite 700
Washington, D.C. 20036
Counsel for CAIS, Inc.

Hal R. Varian, Dean
University of California, Berkeley
School of Information Management and Systems
102 South Hall #4600
Berkeley, CA 94720-4600

Thomas E. Taylor
Sr. Vice President-General Counsel
Cincinnati Bell Telephone Company
201 East Fourth Street, 6th Floor
Cincinnati, OH 45202

Robert J. Aamoth
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
Attorneys for Competitive Telecommunications Association

Randall B. Lowe
John E. Benedict
Piper & Marbury, L.L.P.
1200 19th Street, N.W.
Washington, D.C. 20036
Attorneys for DSC Communications Corporation

Daniel J. Weitzner
Center for Democracy and Technology
1634 Eye Street, N. W.
Suite 1100
Washington, D.C. 20036
Counsel for Internet User Coalition

Leslie A. Harris
Leslie Harris & Associates
1146 19th Street, N.W.
Seventh Floor
Washington, D.C. 20036
Counsel for Internet User Coalition

Joseph S. Paykel
Andrew Jay Schwartzman
Gigi B. Sohn
Media Access Project
1707 L Street, N.W.
Suite 400
Washington, D.C. 20036
Counsel for Internet User Coalition

Diane Iglesias
Regulatory Affairs and Public Policy
Southern New England
Telephone Company
227 Church Street
New Haven, CT 06510

Durward D. Dupre
Mary W. Marks
Thomas A. Pajda
Southwestern Bell Telephone Company
One Bell Center, Room 3536
St. Louis, MO 63101

Robert E. Jones, III
G. Todd Hardy
Nathaniel J. Hardy
Hardy & Ellison, P.C.
9306 Old Keene Mill Road, Suite 100
Burke, VA 22015

Glenn B. Manishin
Michael D. Specht
Blumenfeld & Cohen
Technology Law Group
1615 M Street, N.W., Suite 700
Washington, D.C. 20036
Counsel for Juno Online Services, L.P.

Sheila Jackson Lee
410 Cannon House Office Building
Washington, D.C. 20515

Gloria Moss
1620 Palmae Way
Las Vegas, NV 89128

Mary E. Brooner
Motorola, Inc.
1350 I Street, N.W., Suite 400
Washington, D.C. 20005

Glenn B. Manishin
Christine A. Mailloux
Blumenfeld & Cohen
Technology Law Group
1615 M Street, N.W., Suite 700
Washington, D.C. 20036
Counsel for NetAction, UCAN, CPSR
and CTCNet

John G. Lamb, Jr.
Northern Telecom Inc.
2100 Lakeside Boulevard
Richardson, TX 75081-1599

Stephen L. Goodman
David E. Colton
Halprin, Temple, Goodman & Sugrue
1100 New York Avenue, N.W.
Suite 650, East Tower
Washington, D.C. 20005
Counsel for Northern Telecom Inc.

David Cosson
L. Marie Guillory
National Telephone Cooperative
Association
2626 Pennsylvania Ave., N.W.
Washington, D.C. 20037

David R. Bender, Ph.D.
John H. Crosby IV
Special Libraries Association
1700 18th Street, N.W.
Washington, D.C. 20009-2514

Randall R. Zach
TCA, Inc. -
Telecommunications Consultants
3617 Betty Drive, Suite I
Colorado Springs, CO 80917

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W., Suite 701
Washington, D.C. 20006
Attorneys for Telecommunications
Resellers Association

Jeffrey L. Sheldon
Thomas E. Goode
UTC
1140 Connecticut Ave., N.W., Suite 1140
Washington, D.C. 20036

Edgewood Sr. High School Student Council
Student Council Internet Committee
2428 Blake Rd.
Ashtabula, OH 44004

R. Michael Senkowski
R. Paul Margie
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Attorneys for GTE Service Corporation

Lawrence W. Katz
Edward D. Young, III
Betsy L. Anderson
Bell Atlantic Telephone Companies
1320 North Court House Road
8th Floor
Arlington, VA 22201

Marlin D. Ard
Jeffrey B. Thomas
Pacific Telesis Group
140 New Montgomery Street, Rm. 1529
San Francisco, CA 94105

David N. Porter
Catherine R. Sloan
Richard L. Fruchterman
Richard S. Whitt
Worldcom, Inc.
1120 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

Robert B. McKenna
Dan L. Poole
U S WEST, INC.
1020 19th Street, N.W., Suite 700
Washington, D.C. 20036

Jonathan Jacob Nadler
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W.
Box 407
Washington, D.C. 20044
Attorney for Internet Access Coalition

John G. Williams, Ph.D.
Telecommunications Consulting Group, Inc.
1201 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20044
Consultant for Internet Access Coalition

Carl Wayne Smith
Defense Information Systems Agency
701 Court House Road
Arlington, VA 22204

Snavely King Majoros O'Connor & Lee, Inc.
1220 L Street, N.W.
Washington, D.C. 20005
Economic Consultant to the GSA and the U.S. Dept. of Defense

Douglas W. Caves
Laurits R. Christensen
Mark E. Meitzen
Rajesh Rajaraman
Thomas J. Rutkowski
Christensen Associates
[Unable to serve - no address provided]

RECEIVED
MAR 24 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket. No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Service Providers	)	CC Docket No. 96-263

EXHIBIT
B

COMMENTS OF AT&T CORP.

Mark C. Rosenblum
Ava B. Kleinman

Room 3252J1
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8312

Gene C. Schaerr
James P. Young

1722 Eye Street N.W.
Washington, D.C. 20006
(202) 736-8141

March 24, 1997

TABLE OF CONTENTS

SUMMARY i

INTRODUCTION 1

I. PACKET-SWITCHED DATA SERVICES CARRIED OVER THE PUBLIC SWITCHED NETWORK ARE GROWING RAPIDLY, BUT THE EXISTING ACCESS NETWORKS ARE NEITHER DESIGNED NOR PRICED TO ACCOMMODATE THIS GROWTH. 9

A. The Enhanced Services Market Has Grown Rapidly In Recent Years. 10

B. Packet-Switched Technologies Are Already Beginning To Compete With Traditional Telephony. 12

II. REQUIRING ESPs TO PAY COST-BASED CHARGES FOR NETWORK USAGE IS NECESSARY TO ACHIEVE THE COMMISSION'S TWIN OBJECTIVES OF FACILITATING THE DEVELOPMENT OF HIGH-BANDWIDTH NETWORKS AND PRESERVING EFFICIENT INCENTIVES FOR INVESTMENT AND INNOVATION IN THE EXISTING VOICE NETWORK. 17

A. Cost-Based Network Charges Are Necessary To Encourage Prudent Investment In Building The Packet-Switched, Higher-Speed Networks Of The Future. 17

B. Cost-Based Network Charges Are Also Necessary To Encourage Efficient Utilization Of Existing Networks. 21

III. RATIONALIZATION OF NETWORK PRICING WILL NOT ADVERSELY AFFECT THE HEALTH OF THE INFORMATION SERVICES INDUSTRY OR GIVE THE LECS A WINDFALL. 25

IV. TRAFFIC GENERATED BY ESPS SHOULD BE CLASSIFIED AS INTERSTATE TRAFFIC SUBJECT TO THE COMMISSION'S JURISDICTION. 28

CONCLUSION 35

SUMMARY

As the Commission notes in the Notice of Inquiry, the proliferation of new packet-switched services offered by information service and Internet service providers now warrants reexamination of existing regulations regarding information services. The demand for packet-switched data services is growing rapidly, and the information services industry is growing rapidly to meet that demand. But information and other enhanced service providers (collectively, "ESPs") today still use the public local switched network to deliver dial-up services to their customers.

The public switched local network, however, is neither designed nor priced to carry data traffic efficiently. And, as demand continues to grow, packet-switched access networks will be necessary to carry this data traffic. The Commission's current policies have not facilitated the deployment of such networks and have, in fact, created artificial incentives to use existing, circuit-switched networks inefficiently. These failures are due in part to the ESPs' exemption from the obligation to pay federal access charges, even though ESPs clearly use interstate exchange access just as interexchange carriers do.

Contrary to the arguments of some local exchange carriers (LECs), however, the solution is *not* to subject ESPs to the same inflated and subsidy-laden access charges currently paid by IXCs. For reasons explained by AT&T in its comments in the Commission's access charge proceeding, those charges should be set at a level equal to the LECs' total element long-run incremental cost of service (TELRIC) -- for everyone,

including the IXCs. But even if the Commission forces some carriers to pay access charges in excess of TELRIC, it should not force the ESPs to do so.

On the other hand, the ESPs' blanket exemption from access charges no longer produces benefits that exceed its costs to the public. The Commission granted ESPs this exemption in 1983, but only as a transitional measure, and only because imposition of subsidy-laden access charges on ESPs would have likely resulted in severe rate impacts. Fourteen years later, however, ESPs have grown dramatically and can afford to pay *TELRIC-based* charges for their use of the local network.

Imposition of TELRIC-based access charges on ESPs will not require significant rate increases to consumers, but will remove most of the inefficiencies and perverse effects of the current system. First, under that system, access services provided to ESPs are not priced efficiently. In particular, ESPs typically buy access as a flat-rate business line from state tariffs. This provides an artificial incentive to continue loading data traffic onto the existing public switched network, even though public switched networks cannot handle such traffic efficiently. Second, the current system blunts the incentive to build more efficient packet-switched access networks, because the exemption keeps access through the public switched network priced artificially below-cost. And third, ending the blanket exemption will facilitate consideration of whether and how ESPs should participate in fostering the goal of universal service.

By contrast, pricing the existing network at cost will give both the incumbents and competitors the incentive to build more efficient packet-switched access networks.

Moreover, although network congestion is clearly not a problem today, TELRIC-based, traffic-sensitive pricing will send appropriate economic signals and thereby help deter any potential network congestion. And cost-based pricing will protect the universal service contribution base, by stanching the flow of *artificially induced* migration of traffic from the public switched network to the Internet.

Cost-based access charges will not harm the enhanced service industry. Analysis of information provided by CompuServe in the access reform proceeding shows that the transition from state-regulated business lines to TELRIC-based interstate access charges would increase CompuServe's costs by only 56 cents per customer per month. Such an increase will not materially affect overall demand for ESPs' services (assuming the increase is passed on to customers) and, in all events, would not impose significant financial harm upon ESPs operating in competitive environments. Requiring the ESPs to pay cost-based access rates also will not provide a windfall to the incumbent LECs because the Commission can (and should) adjust their price caps to reflect this exogenous increase in revenue.

Finally, there can be little doubt that most ESP services fall squarely within the Commission's jurisdiction. Particularly with respect to the Internet and online services, ESPs and LECs are incapable of dividing the traffic into interstate and intrastate communications, and therefore such services are "inseverably" interstate. Such traffic is therefore fully subject to the Commission's jurisdiction.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket. No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Service Providers	)	CC Docket No. 96-263

COMMENTS OF AT&T CORP.

Pursuant to the Commission's December 24 Notice of Inquiry ("NOI"),[1] and its subsequent January 24 Order,[2] AT&T Corp. ("AT&T") hereby submits these comments concerning usage of the public switched network by information service and Internet service providers ("ISPs").

INTRODUCTION

AT&T welcomes the Commission's effort to determine whether "additional actions relating to interstate information services and the Internet" are warranted in view of the sweeping changes that have occurred in the information services industry in recent years,

---

[1] *Usage of the Public Switched Network by Information Service and Internet Service Providers*, CC Docket No. 96-263, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry (released December 24, 1996).

[2] *Usage of the Public Switched Network by Information Service and Internet Service Providers*, CC Docket No. 96-263, Order (released January 24, 1997).

and in light of the Commission's ongoing access reform and universal service proceedings. NOI at ¶ 312. AT&T agrees that the time has come to examine the extent to which advances in technology, and the proliferation of new digital services accessed through the circuit-switched networks of the LECs, warrant changes to the regulation of local exchange and exchange access services.

Recent technological and market developments make such an examination both timely and necessary. New information services based on packet-switched technology are becoming increasingly available to American consumers and businesses on a dial-up basis over their residential and business narrow-band phone lines, creating enormous demand for packet-switched higher-speed data services. The information services industry is growing exponentially to meet this growing demand.

Nevertheless, the packet-switched local networks that would be capable of providing those services efficiently have not yet emerged. As a result, these packet-switched services continue to utilize the local public circuit-switched network, which has not been expanded to accommodate, and in all events is not designed or priced to provide, efficient data services. Accordingly, it is becoming increasingly clear that existing regulatory policies neither "facilitate the development of the high-bandwidth data networks of the future" nor "preserv[e] efficient incentives for investment and innovation in the underlying voice network." NOI at ¶ 311.

The tremendous growth of packet-switched services -- and the lack of a market-based response to the demand for new networks to accommodate that growth -- exacerbate

the economic inefficiencies of the current access pricing scheme. These inefficiencies can be traced, in part, to the exemption from access charges that the Commission granted to enhanced service providers ("ESPs") in 1983.[3] At that time, the exemption was a reasonable accommodation to the then-fledgling ESP industry. ESPs had been paying for use of the local network by purchasing business lines under state-tariffed rates, in the same manner as MCI and other common carriers that could not obtain full-feature access services from the LECs. The Commission recognized that the newly created interstate access charge structure it developed in 1983 had many uneconomic subsidies built into it, and that access charges would therefore be considerably higher than the business rates the ESPs were accustomed to paying.[4] Thus, even though the Commission acknowledged that ESPs "employ exchange access for jurisdictionally interstate communications," the Commission found that ESPs would "experience severe rate impacts were we immediately to assess carrier access charges upon them," and classified them under its rules as "end users," thereby removing them from carrier access charges.

In granting this exemption, the Commission explained that it would apply only during a "transition" period.[5] The ESP exemption, however, has now been in place nearly fourteen years, even though the Commission has eliminated a similar exemption for data

---

[3] In these comments, AT&T generally uses the term ESP to refer to all categories of enhanced services providers, including Internet service providers ("ISPs"), online service providers, and electronic business information service providers.

[4] *MTS and WATS Market Structure*, Memorandum Report and Order, 97 F.C.C. 2d 682, 715 (1983) ("*MTS Market Structure Order*").

[5] *Id.*

and telex carriers.[6] Like those carriers, ESPs are now capable of paying *cost-based* local network charges, which would represent only a modest increase in the rates ESPs currently pay.

Moreover, it is increasingly clear that perpetuation of the access charge exemption to ESPs causes greater public harm -- in the form of market distortions that send the wrong economic signals to network suppliers, network customers, and end users -- than benefit. For example, new technologies have made it possible for ESPs to provide services that were unimaginable in 1983, such as allowing subscribers to make traditional phone calls over the Internet. As a result, enhanced services are beginning to compete directly with traditional telephony -- to the point that an estimated 16 percent of all U.S. long distance traffic will have migrated to the Internet by 2000.[7] And the ability to provide voice and data services over the same packet-switched networks is leading to a rapid convergence in *all* communications markets.

---

[6] *MTS and WATS-Related and Other Amendments of Part 69 of the Commission's Rules*, CC Docket No. 86-1, Second Report and Order, 60 Rad. Reg. 2d 1542 (¶ 11) (rel. Aug. 26, 1986) ("As we indicated in the Supplemental Notice, telex and data carriers, like carriers offering MTS/WATS-type services, use ordinary subscriber lines and end office facilities through their dial-up connections, and should therefore pay the same charges as those assessed on other interexchange carriers for their use of these local switched access facilities. We believe that the non-MTS/WATS nature of these services is irrelevant in determining whether these carriers should pay access charges. Our intention in adopting the exemption in question . . . was not to exempt carriers who provide non-MTS/WATS-type services permanently from carrier access charges, but only to grant them some transitional relief.").

[7] John W. Verity, "Calling All Net Surfers," Business Week, August 5, 1996, p. 27.

The growth of these services presents two distinct and important problems. First, the ESPs' use of the LEC networks is not priced efficiently. ESPs use interstate exchange access from the LECs that is the same as to that provided to the interexchange carriers. Yet ESPs still purchase that access by buying flat-rate business lines, because they remain exempt from paying interstate access charges. This irrational pricing system encourages usage patterns by ESPs that may be efficient when occurring over a totally packet-switched network, but are extremely inefficient over the public switched network. The existing system also maintains powerful incentives to continue loading data traffic onto the existing local circuit-switched networks that are not adequate for that purpose.

Second, to carry traffic between the end-user and the ESP's network, the ESPs that provide packet-switched data services must rely on the incumbent LECs' existing circuit-switched networks, which were not designed for data traffic and are not efficient for that purpose. To best accommodate the continued rapid growth of enhanced services, new packet-switched access networks are already necessary. Yet the access charge exemption, in the Commission's words, "hinder[s] the development of emerging packet-switched data networks" by blunting the incentives to build them. NOI at ¶ 311.

To address these concerns, parties have proposed a range of options. At one extreme are the incumbent local exchange carriers ("ILECs"), who have made grossly exaggerated claims that the growth of packet-switched services is causing severe network congestion that threatens the public switched network. Although access charges paid by IXCs already provide the ILECs with billions of dollars every year in uneconomic and unwarranted

subsidies, the ILECs nonetheless ask for additional revenues to respond to what is still only a limited congestion "problem." The Commission should resist the ILECs' efforts to subject ESPs to the same inflated and inefficient access charges that the ILECs currently impose on IXCs.

At the same time, however, the Commission should not simply perpetuate the status quo. If the status quo is maintained, circuit-switched networks will continue to be used inefficiently, thereby creating a risk of greater congestion, and adequate incentives will not be in place to build alternative packet-switched access networks that are more effective for the delivery of packet-switched data services. In particular, prospective new providers will have little incentive to invest in new networks that will compete against the incumbents' artificially inexpensive circuit-switched access. And the migration of long-distance traffic to the Internet based on these distorted pricing advantages will threaten the funding for the Commission's and Congress' universal service priorities.

The Commission should therefore heed the mandate of Congress in the 1996 Telecommunications Act by removing implicit subsidies from access charges and by pricing access elements under a total element long-run incremental cost (TELRIC) standard. When prices for the local network components provided by incumbent LECs are brought down to their true costs, sound economic and regulatory principles will require that *all* users of those services pay the same prices for those access services, regardless of the nature of the communications being transmitted.

But even if the Commission initially maintains the IXCs' access charges above TELRIC levels for other (and, in AT&T's view, flawed) reasons, the Commission should require the ESPs to pay that TELRIC-based amount. This would help reduce the marketplace distortions and unfair advantages that the current system fosters, even while the Commission moves toward a fully cost-based regime. And the tools for calculating TELRIC costs are readily available; indeed, many states have adopted those costing tools today.

In considering these changes, moreover, the Commission should not be deterred by concerns that such a policy would somehow mire the Commission in "regulating the Internet." As a provider of Internet and other online services, AT&T staunchly opposes unnecessary regulation of truly competitive markets, including the enhanced services market.[8] However, the Commission already regulates (through the ESP exemption) the prices of the basic telecommunications services that ESPs currently use as an input in their own services. The substitution of access charges for the flat-rate business lines ESP purchase today will simply replace the current pricing system with one that more accurately reflects the costs imposed by the ESPs and the manner in which those costs are incurred. Requiring ESPs to pay the true economic cost of the telecommunications services they employ thus does not constitute "regulation of the Internet" any more than price regulation

[8] The enhanced services industry is already demonstrating that it can regulate itself in content-related areas, such as individual privacy, primarily through technology solutions that enable customer empowerment and customer choice.

of electricity used at an automobile factory can be said to "regulate" the automobile industry.

In short, AT&T supports cost-based pricing for all users of the network as the most rational, pro-competitive, and efficient means of achieving the Commission's twin objectives in this proceeding, namely, "facilitat[ing] the development of the high-bandwidth data networks of the future, while preserving efficient incentives for investment and innovation in the underlying network." NOI at ¶ 311. As an Internet and online service provider (through its AT&T WorldNet℠ service), AT&T supports the imposition of cost-based rates on all network users because such reform would give both incumbent and prospective local exchange carriers the proper incentives to build the packet-switched networks that AT&T wants for the delivery of its information services. As a potential entrant into the local and exchange access market, AT&T supports that policy because it would eliminate the distortions that currently allow ESPs to obtain circuit-switched access at below-market prices, and thus make investments in newer, competing technologies less attractive than they otherwise would be. And, as an exchange access customer, AT&T supports that policy because it is the only way to eliminate the uneconomic subsidies that inflate the price of access (and therefore toll) services and artificially drives traffic from the public switched network to the Internet.

The remainder of these Comments is organized as follows. Section I describes the rapid transformation of and growth in the information services market, and explains why existing circuit-switched networks are neither designed nor priced to accommodate this

growth. Section II explains why cost-based pricing for access services would provide the proper incentives for the deployment of packet-switched networks and the efficient pricing of all information services. Section III explains why such a policy would not threaten the viability of ESPs, or give the LECs a windfall. And Section IV explains why the Commission has statutory authority to impose cost-based access charges on these entities.

I. PACKET-SWITCHED DATA SERVICES CARRIED OVER THE PUBLIC SWITCHED NETWORK ARE GROWING RAPIDLY, BUT THE EXISTING ACCESS NETWORKS ARE NEITHER DESIGNED NOR PRICED TO ACCOMMODATE THIS GROWTH.

The Commission first seeks comment on "the effects of the current system on network usage, incumbent LEC cost-recovery, and the development of the information services marketplace." NOI at ¶ 315. In fact, a broad array of new information services based on packet-switched technology are becoming increasingly available on a dial-up basis over residential and business narrow-band phone lines. The rapid growth of these new packet-switched services is most welcome, because of the innovative new features and functions that they provide. Their emergence, however, is also profoundly important because they are becoming directly competitive with traditional telephony. Thus, as the Commission notes, the growth of these services and the subsidies they enjoy presents questions that "concern no less than the future of the public switched telephone network in a world of digitalization and growing importance of data technologies." NOI at ¶ 311.

A. The Enhanced Services Market Has Grown Rapidly In Recent Years.

The recent growth rates of packet-switched data services have been dramatic. For example, Internet service revenue in the United States was expected to grow more than 200 percent from 1995 to 1996 (from $956 million to $3.1 billion).[9] Consumer online services revenues are also anticipated to grow 120 percent over the same period,[10] outpacing the expected increase in the number of subscribers to consumer online services during that same period.[11] It is estimated that there are currently more than 18 million Internet and consumer online subscribers,[12] and that there will be 23.3 million by year-end.[13]

These astonishing growth rates are expected to continue. Internet service revenue in the U.S. is expected to grow at a compound average growth rate of 76 percent from 1995 through 2000, which would lead to nearly $16.2 billion in revenue in 2000.[14] Revenues from U.S. consumer online services are predicted to grow at a compound average growth rate of 64 percent from 1995 to 2000, from $384 million to $4.6 billion.[15]

---

[9] International Data Corporation (IDC), "U.S.-Based Worldwide ISP Market Overview 1996-2000" (IDC No. 12373), November 1996, p. 6.

[10] The Yankee Group, "Internet Service Provider Market Analysis," July 1996, ch. 1, p. 2.

[11] Consumer online services subscribers increased from 10.3 million in 1995 to 14.7 million in mid-1996 -- a 42 percent increase. *Id.*

[12] Information and Interactive Services Report, January 31, 1997, p. 1.

[13] IDC, "Interactive Services Bulletin, US Consumer Online Services Forecast 1997-2001," March 1997, Table 2.

[14] IDC, "U.S.-Based Worldwide ISP Market Overview 1996-2000," p. 6.

[15] Yankee Group, ch. 1, p. 2.

Consistent with recent historical trends, moreover, this huge revenue growth is expected to surpass the growth in subscribers. The number of Internet and consumer online subscribers is expected to grow to 43.2 million households by 2000 (a compound average growth rate of 33 percent).[16] Others have estimated that 40 percent of U.S. households will be online by 2000.[17] And the number of Internet users is almost doubling every year: it will grow from about 35 million worldwide today to 160 million in 2000.[18]

Another sign of the emerging stability in the Internet and on-line services market is the consolidation of Internet providers from 1525 in 1995 to 1310 in 1996. Analysts predict that there will be 95 such providers in the year 2000.[19] Moreover, all of the major interexchange carriers now provide consumer Internet and online services. The RBOCs, too, have begun or are about to begin providing such services.[20]

While the Internet and consumer online services providers have been achieving increased growth and approaching stability, other ESPs have already grown into mature,

---

[16] *Id.* at ch. 1, p. 1.

[17] IDC, Interactive Services Bulletin, at 5. Most consumers already own or have access to the equipment necessary for Internet use. For example, more than two-thirds (71%) of all Americans have access to a computer at home or at work. Moreover, 45 percent have access to commercial or Internet-based online services at home or at work. Odyssey Report, Taking Off: The State of Electronic Commerce in America, Fall 1996, p. 7.

[18] Kevin Maney, "Online Community grapples with gridlock on info highway," USA Today, January 20, 1997, p. B1.

[19] Yankee Group, "Internet Service Provider Market Analysis," Executive Summary, p. i.

[20] Veronis, Suhler & Associates, "The Veronis, Suhler and Associates Communications Industry Forecast," August 1996, Ch. 14, Interactive Digital Media, p. 319.

highly profitable industries. For example, electronic business information service, which includes electronic messaging services, is already a multi-billion dollar business that is expected to grow at a compound average rate of 10 percent annually from 1996 to 2000.[21] Well-established companies such as Dow Jones & Co., Dun & Bradstreet, Equifax, Knight-Ridder and McGraw-Hill enjoy healthy revenue growth from such activities and generate millions of dollars in profits.[22] Remote dial-up access to corporate networks and databases is also a well-established business. Such services have been provided for years by such major companies as IBM and GEIS.

B. Packet-Switched Technologies Are Already Beginning To Compete With Traditional Telephony.

Moreover, packet-switched technology, and the equipment used with such technology, is quickly evolving to enable ESPs to offer telecommunications over their networks. Packet-switched networks carry digitized information -- *i.e.*, information converted into a common language of 0s and 1s. Virtually *any* form of information, however, can be converted into digital form. Thus, the same packet-switched communications network can deliver voice, data, or video to a customer; customers can use the same information appliance to receive voice, data and video, even in the same session; and the same information resource may create, distribute, and store information content. For example, with new product and service platforms that support multiple functions during

---

[21] IDC/Link, "Business Information Services Forecast, 1996 to 2000," November 1996, p. 1.

[22] SIMBA Information, Inc., Electronic Information Report, December 20, 1996, p. 3.

a single "session," a consumer can simultaneously send and receive electronic mail, browse the World Wide Web, and complete a phone call by clicking on an icon on a computer screen.

For these reasons, packet-switched networks are rapidly leading to a convergence in all communications markets. Packet-switched technology is already making substantial inroads into traditional telecommunications markets. A good example is the international fax business. ESPs have a significant cost advantage in that market, both because of the access charge exemption, and because of their ability to bypass international settlements. As a result, businesses are quickly moving their fax traffic to the Internet. One analyst has noted that "five months ago, no one was talking about it. Now all of a sudden, there are 40 or 50 companies with new services for faxing over the Internet."[23] Analysts estimate that the Internet fax server and router market will grow to $38 million by 1998,[24] and AT&T

---

[23] Brett Mendel, "Net Faxing Awaits Its Day," LAN Times, December 19, 1996, at 25 (quoting Peter Davidson, president of Davidson Consulting).

[24] Barbara DePompa, "New Life for the Fax Machine," Information Week, October 14, 1996, at 62, 64. This projected growth is already being realized. For example, FaxSav offers international fax service, with nodes in England, Hong Kong, France, Germany, South Korea, and the U.S. Rates are quoted at a 90 percent savings over the telephone network. Charlotte Dunlap, "Beating Ma Bell at own game; Internet Faxing aims to replace long-distance calls," Computer Reseller News, June 6, 1996. PSINet Inc. is building Internet fax software into its network, which will allow for centralized management of transmissions. The company claims savings of at least 40 percent over the "high cost of sending faxes over standard phone lines." Wall Street Journal Technology Brief, "PSINet Inc.: Internet Provider to Install Fax Software in Network," December 12, 1996.

estimates that 20-40 percent of U.S. originated international fax traffic will migrate to the Internet before 2000.

Similarly significant migration of basic telephony may be just around the corner. Numerous companies -- including Microsoft, Netscape, Intel, VocalTec, and NetSpeak -- have already placed Internet telephony products on the market. These products have been broadly publicized in articles in the New York Times,[25] Newsweek,[26] Business Week,[27] and other similar publications. These companies may have shipped as many as 1.5 million Internet telephony software packages.[28] Indeed, Microsoft and Netscape are beginning to embed such telephony options into their standard Web browsers; other companies provide the software for free on the Internet.[29]

Although Internet telephony has some limitations, they are being quickly overcome by technological innovation. For example, Internet telephony today usually requires both parties to be online, using a computer. But that is already changing. Voice gateways between the Internet and the Public Switched Network are being deployed that allow telephony over the Internet using regular telephones, without the assistance of a personal

---

[25] Peter H. Lewis, "Free Long-Distance Phone Calls," New York Times, Aug. 5, 1996, p. D1; John H. Cushman, Jr., "Calling Long Distance, on a PC and the Internet," New York Times, May 19, 1996, p. 8.

[26] Steven Levy, "Calling All Computers," Newsweek, p. 43 (May 13, 1996).

[27] "Try Beating These Long Distance Rates," Business Week, p. 43 (April 22, 1996).

[28] *Id.*

[29] "Toll Free Net Calls," PC Computing, February 1997, pp. 130-32.

computer. Such technology includes signaling capability so that a call carried over the Internet can "ring" the called party's phone (or personal computer).

Once such technology becomes broadly available, large-scale migration of traffic from the public switched network to the Internet will be facilitated. While such migration may be the logical result of technological innovation, it is also being artificially stimulated by the large disparity in prices resulting largely from the access charge exemption. ISPs typically charge a flat fee of $19.95 per month to users. Using a conservative estimate of ten hours of usage per month per customer,[30] the customer effectively pays a retail price of $0.032 per minute, compared to the charges for "traditional" long distance calls, of which the switched access alone is about $0.05. (On a purely incremental basis, the retail price of such telephony services over the Internet is zero.) These prices are likely to induce many "traditional" long distance customers to switch even where the Internet is not the most efficient option. Thus, it is predicted that today's estimated 400,000 Internet telephony users could swell to 16 million by the end of 1999.[31] Indeed, Probe Research estimates that 16 percent of U.S. long distance traffic will migrate to the Internet by 2000.[32] And as many

---

[30] In 1996, the average time online was 12.1 hours per month. Newsweek, September 23, 1996, p. 14.

[31] PC Week, December 12, 1996.

[32] John W. Verity, "Calling All Net Surfers," Business Week, August 5, 1996, p. 27.

as 12.5 billion long distance minutes of use will be carried over packet-switched networks by 2001 -- a compound average growth rate of 137.9 percent over current levels.[33]

Such large-scale migration of traffic raises many issues. Although the demand for high speed data services is growing by leaps and bounds, the local networks capable of supporting such services have not emerged. Therefore, ESPs and their customers continue to use the public switched network inefficiently, and ESPs continue to invest heavily in infrastructure (*e.g.*, modems) to support more traffic over the public switched network. Moreover, flat-rate pricing has given ESPs an artificial economic advantage that only reinforces their incentives to use the network in an inefficient manner. So long as traffic-sensitive local switching and transport costs are being recovered through flat-rate business line charges, the incentive to load the maximum amount of usage onto the network will continue, even as flat-rate pricing provides no incentive to the incumbent LECs to upgrade their networks to accommodate additional traffic.

The 1996 Act has made these concerns especially urgent. As the local exchange and exchange access markets are opened to competition, new entrants can be expected -- and should be encouraged -- to deploy alternative facilities-based networks. The current irrational pricing system, however, sends incorrect signals, not only to ILECs, but also to competitive local exchange carriers ("CLECs"), that discourages the deployment of data networks, which must compete with the below-cost access the ESPs currently receive.

---

[33] IDC/LINK, "Residential Broadband Services, Internet Telephony: An Alternative Dialtone?," January 1997, p. 1.

II. REQUIRING ESPs TO PAY COST-BASED CHARGES FOR NETWORK USAGE IS NECESSARY TO ACHIEVE THE COMMISSION'S TWIN OBJECTIVES OF FACILITATING THE DEVELOPMENT OF HIGH-BANDWIDTH NETWORKS AND PRESERVING EFFICIENT INCENTIVES FOR INVESTMENT AND INNOVATION IN THE EXISTING VOICE NETWORK.

The solution to these anomalies, and a necessary condition to ensure the proper incentives for the efficient development of both the information services market and the networks of the future to support that market, is to require *all* users of the local network, including ESPs, to bear their fair share of their costs of using the local network. Such a policy is essential if the Commission is to achieve its stated objectives in this proceeding, namely, "facilitat[ing] the development of the high-bandwidth data networks of the future, while preserving efficient incentives for investment and innovation in the underlying voice network." NOI at ¶ 311.

A. Cost-Based Network Charges Are Necessary To Encourage Prudent Investment In Building The Packet-Switched, Higher-Speed Networks Of The Future.

First, cost-based pricing is necessary to provide the correct incentives for investment in the packet-switched local networks that are efficient for the delivery of packet-switched services. The ILECs' existing networks are circuit-switched networks that were designed primarily for voice traffic. Although these networks can carry data traffic, they are not the most efficient networks for those purposes. For example, during an Internet session, the circuit-switched connection must remain open for the entirety of the session, even though data are being transmitted only a small fraction of that time. *Cf.* NOI at ¶ 313.

A more appropriate solution -- and one that would facilitate the broader availability of packet-switched services -- would be the deployment of high-speed, packet-switched local networks. Such networks could efficiently route data packets from many users without the need to tie up individual switching and transport facilities, as is required in circuit-switched networks.

The access charge exemption, however, creates powerful *disincentives* to build or use such alternative packet-switched networks. Because of the exemption, ESPs today are using traffic-sensitive network facilities but paying for them on a flat-rate basis. As a result, neither the incumbent LECs nor prospective competitive LECs are receiving accurate economic signals that would encourage them to upgrade their existing networks -- or to engineer their planned networks -- to handle traffic more efficiently.[34]

In light of the Commission's (and Congress') overarching goals of opening up the local exchange and exchange access markets to competitive entry,[35] it is particularly important for the Commission to establish market-based rules that send the appropriate signals to potential competitors. Continued below-cost pricing of ILEC network facilities for some users subsidized by higher prices for others will make it *less* likely -- not more likely -- that the efficient packet-switched networks of the future will be built.

---

[34] Moreover, to the extent the LECs perceive that they are not being compensated for ESP traffic, that simply increases their incentives to keep access charges above cost as a source of cross-subsidies for the costs imposed by the ESPs.

[35] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 11 FCC Rcd. 14171, 14172-73 (1996).

A LEC's incentive to build an alternative network depends largely upon the demand a LEC expects for service on that network. But because the existing network is a substitute for the new network -- albeit an imperfect one -- demand for services on the new network necessarily depends upon the price being charged for service on the old network. And if that price is artificially low -- as it undoubtedly is because of the access charge exemption -- this will artificially suppress demand for service on the new network, thereby reducing both the ILECs' and CLECs' incentives to build a new network.

This is why the Commission should require ESPs to pay cost-based local network charges. The Commission, moreover, should do so promptly because the deployment of alternate networks will take years, and the sooner the pricing system is rationalized, the sooner companies can make rational business decisions to build such networks. Such action is by far the most effective means of encouraging the LECs to "install [] new high-bandwidth access technologies." NOI at ¶ 313. It would be far more effective and defensible than establishing any kind of mandated subsidy scheme in which non-ESPs subsidize the construction of "data-friendly" networks to be used for ESPs' packet-switched services. The Commission should not adopt such a scheme. The proper course is to establish all rates for exchange access at cost-based levels, and allow the marketplace to find and construct the most efficient networks.

Nor should the Commission pick and choose among possible technologies, or mandate the construction of particular networks based on particular technologies. Several data-friendly technologies already exist today. However, there will be a need for multiple

network solutions involving loop, switching, and transport, because of the inherent limitations of each technology. These technologies vary greatly in terms of speed, cost, technical maturity, availability for implementation, reliability, and limits on growth. For example, turning to new generation loop technologies, Integrated Services Digital Network ("ISDN") offers up to 128 Kbps speeds to the home or office over existing narrow-band local loop, and therefore could be widely deployed. Coverage is not universal, however, because of limitations of plant layout and physical loop distances. By contrast, Local Multipoint Distribution Service (LMDS) offers significant two-way voice, data and video delivery, but it is expensive and its coverage is highly limited by physical terrain. Another technology, Digital Subscriber Lines ("DSL"), offers digital communications over existing copper loops, and in one of its three formats (High bit-rate, or "HDSL") it operates at speeds of 2 Mbps. DSL technology is very expensive to deploy (*i.e.*, estimates are $1500 to $3000 per customer), and it suffers from the same limitations as ISDN in that load coils and bridged-taps must be removed from the local loop in order to maximize its capabilities.[36] Similar advantages and disadvantages exist for packet switching and transport as well.

Each of these technologies has advantages and limitations, and indeed, future networks will likely require some combination of a number of these technologies. Similarly, each technology makes possible a different set of features, and therefore which technology wins out will depend on what features customers will want and their willingness

[36] A table comparing the various alternative access technologies is appended as Attachment 1.

to pay. The Commission has no basis for predicting that one or another of these technologies will emerge as the superior technology, and it should not try. Rather, the soundest approach the Commission could take to ensure the development of new, needed higher-speed technologies is to create a pro-competitive environment in which such new services can emerge -- primarily through the establishment of cost-based pricing and enforcement of the local competition rules. Such a technology-neutral approach is consistent with the pro-competitive dictates of the 1996 Act.

B. Cost-Based Network Charges Are Also Necessary To Encourage Efficient Utilization Of Existing Networks.

The Commission also seeks comment on whether its current rules are encouraging inefficient use of the existing network and whether it should change its rules in response to the rise of Internet telephony. NOI at ¶¶ 315-16. The answer to both questions is "yes," but not for the reasons advanced by some RBOCs.

Those RBOCs claim that packet-switched services are causing serious network congestion. Those claims, however, are greatly exaggerated.[37] To be sure, virtually all of ESPs' traffic today is carried over incumbent LECs' facilities to ESP switching centers. Also, the ILECs' facilities were concededly designed to carry voice traffic of relatively

---

[37] "Report of Bell Atlantic on Internet Traffic," June 28, 1996; "Pacific Bell ESP Impact Study," July 2, 1996; Letter from NYNEX to James Schlichting, Chief, Competitive Pricing Division, FCC, dated July 10, 1996; "US West Communications ESP Network Study -- Final Results," October 1, 1996; Amir Atai, Ph.D., and James Gordon, Ph.D., "Impacts of Internet Traffic on LEC Networks and Switching Systems," Red Bank, New Jersey, Bellcore, 1996.

short duration, yet users of information services often stay online for significantly longer periods of time, tying up their phone lines when they do so.

ESPs, however, have convincingly shown that the RBOCs' studies purporting to show network congestion are seriously flawed.[38] Those studies are based on a very small set of selectively chosen exchanges where congestion was abnormally high.[39] Therefore, based on careful examination of the data provided in the RBOCs' own studies, it appears that network congestion is not a significant problem today outside of a very small handful of exchanges.[40]

There is nevertheless a significant risk of congestion in the future if the Commission's policies are not reformed. This risk arises from the fact that switching and transport costs are significantly traffic-sensitive,[41] and that the ESPs' use of those network elements therefore generates additional costs. Yet because the ESPs do not *pay* for access on a traffic-sensitive basis, they have an incentive to use it inefficiently.

For the same reasons, the ILECs do not receive the proper economic signals concerning this increased usage because this class of user is exempt from paying traffic-sensitive charges. The existing ESP exemption thus undermines the incentives that the

---

[38] Lee Selwyn and Joseph Laszlo, "The Effect of Internet Use on the Nation's Telephone Network," Economics and Technology, Inc. (January 22, 1997) ("ETI Study").

[39] *See id.*, pp. 19-22.

[40] AT&T agrees with the ETI Study (p. 13) that the overpricing of more efficient trunk-side connections has contributed to the proliferation of business line usage by ESPs.

[41] Comments of AT&T Corp. at 55-60 (January 29, 1997); Reply Comments of AT&T Corp. at 29-33 (February 14, 1997).

ILECs would otherwise have to perform the necessary upgrades to accommodate this increased usage. Both of these effects tend to exacerbate congestion. Thus, although there appears to be little network congestion today, network congestion is *potentially* a problem if uncompensated (or under compensated) usage continues to increase at the rate it has been increasing in recent years.

Moreover, as noted above, the access charge exemption and the resulting artificial cost advantages to ESPs are driving forces behind the rapid migration of traffic from the public switched network to the Internet. Such large-scale migration of traffic to services that are exempt from access charges will put enormous pressure on the remaining users of the public switched network to cross-subsidize this growing use of the network by ESPs. Today, interexchange carriers pay above-cost access charges that are used in part to subsidize the ESPs' use of the network. As traffic continues to migrate to the ESPs -- and it is migrating at a rapid rate -- the minutes of use that generate the revenue to pay for that usage will decline. Under the current access charge regime, that will put upward pressure on access charges, and thus on long distance rates.[42] This in turn will encourage all carriers to promote their Internet offerings and to induce more users to migrate to the networks that do not bear those costs.[43]

---

[42] This will result from artificially reducing (1) the growth ("G") factor in the common line formula; (2) the LECs' sharing obligations (to the extent that they have selected a sharing option); and/or (3) measured productivity growth and the "X" factor at subsequent price cap review proceedings.

[43] Indeed, the proliferation of Internet-based services is already blurring the distinction between basic and enhanced services, indicating that the exemption will be increasingly (continued...)

This will inevitably lead to two serious, adverse effects. First, it will separate the market into "haves" and "have-nots" -- *i.e.*, "haves" who have access to ESPs' services and thus can obtain telecommunications and enhanced services at low, subsidized rates, and "have-nots" who remain on the public switched network and pay higher rates.

More ominously, the artificially induced migration of traffic to the Internet will shrink the contribution base for universal service support. Ironically, the growth and popularity of ESPs' packet-switched data services may *increase* the demand for and usage of the public switched network, and yet the costs of carrying out the Commission's universal service priorities would have to be recovered from an ever smaller contribution base.

For all of these reasons, the Commission should require ESPs to pay their fair share, and should no longer exempt them from access charges based solely on the basis of technology they use to provide service.[44] Thus, even if the Commission determines, in the access charge reform docket, not to require TELRIC-based charges (and even if the Commission adopts -- improperly, in AT&T's view -- a flat charge per presubscribed line),

---

[43] (...continued)
difficult to administer.

[44] The Commission recognized in 1988 that the exemption given to ESPs constitutes discriminatory treatment vis-a-vis those carriers that must pay access charges, but concluded that "it remains, for the present, not an unreasonable discrimination within the meaning of Section 202(s) of the Communications Act." *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd. 2631, 2633 (1988). As demonstrated above, the events of the last nine years -- and especially of the last two years -- confirm that maintaining the exemption is indeed "unreasonable discrimination." Moreover, ending the exemption will facilitate consideration of whether and how ESPs should participate in fostering the goal of universal service.

the Commission can and should still address the imbalances created by the current ESP exemption in order to avert the adverse consequences its continuation will create. At a minimum, the Commission can assess TELRIC-based charges on ESPs, as a transitional step until network charges for all access customers are brought down to actual cost.[45]

III. RATIONALIZATION OF NETWORK PRICING WILL NOT ADVERSELY AFFECT THE HEALTH OF THE INFORMATION SERVICES INDUSTRY OR GIVE THE LECS A WINDFALL.

Rationalizing network pricing and assessing cost-based rates on ESPs and ISPs, moreover, will not adversely affect the health of the information services industry as long as the Commission proceeds in a sensible way. As AT&T and others have explained in the access reform docket, the mechanism the Commission should use to set access charges at cost is an immediate reinitialization of price caps so that the access charges paid by all users are based on TELRIC.[46] Significantly, under the TELRIC methodology, access charges would not include nontraffic-sensitive ("NTS") costs like the Common Carrier Line Charge ("CCLC"). Nor would it include non-cost-based charges like the Transport Interconnection Charge ("TIC"). Consistent with TELRIC, therefore, ESPs should pay only for local switching (about 0.21 cents per minute) and for transport (which would vary according to the nature of the facilities used but would be around 0.17 cents per minute) --

---

[45] Obviously, the long term viability of this approach would depend on the Commission rapidly moving all access charges to a TELRIC cost basis. Any long term disparity between access prices based on the technology utilized would only give rise to distortions and inefficiencies similar to those of the current access charge structure.

[46] *See* Comments of AT&T Corp., pp. 49-61 (January 29, 1997); Reply Comments of AT&T Corp., pp. 24-34 (February 14, 1997).

a total of approximately 0.38 cents per minute.[47] Whether or not the Commission adopts the proposal to establish TELRIC-based access charges in the access reform docket, the Commission can and should require ESPs to pay these TELRIC-based access charges now.

In the past, the Commission has been understandably reluctant to require ESPs to pay the inflated access charges that the Commission currently permits the LECs to charge to interexchange carriers, on the grounds that such high access charges might radically alter ESPs' rates.[48] That the imposition of TELRIC-based rates will not have this effect is made clear from an examination of data provided in CompuServe's Comments in the access reform proceeding.[49] Based on CompuServe's data, CompuServe is today effectively paying $0.24 cents per minute to the LECs.[50] AT&T estimates that TELRIC-based access charges would increase CompuServe's per minute charges by approximately 0.14 cents per minute -- from 0.24 cents to about 0.38 cents.[51] This increase would translate into an increase in

---

[47] *See* Attachment 2 for an illustration of access elements and costs.

[48] *MTS Market Structure Order*, 97 F.C.C. 2d at 715 ("it would be unreasonable immediately to increase as much as tenfold the charges paid by customers who do not presently come under the coverage of the current ENFIA tariffs").

[49] *See* Comments of CompuServe, pp. 10-11 (January 29, 1997). CompuServe is the second largest provider of on-line services in the country, with some 3 million users.

[50] CompuServe indicates that it spends $35,700,000 per year to purchase 85,000 business lines from the LECs; it also indicates that it uses those local lines "in the range of 240 hours per month." Id., p. 11 n.25. Multiplying that out, CompuServe pays 0.24306 cents per minute.

[51] *See* Attachment 2 for a comparison of current charges compared with TELRIC-based charges.

CompuServe's costs of 56 cents per month per customer.[52] Even if CompuServe chose to pass on that cost to its customers, the price increase resulting from cost-based access rates would not be very large.[53] Thus, the change to market-based pricing of access -- and the resulting economic benefits of such access pricing reform -- can be achieved with little if any adverse consumer impact.

This change, moreover, can and should be implemented in a way that does not create a windfall for the ILECs. To that end, as long as IXCs are required to pay access charges in excess of cost, the Commission should mandate an adjustment to the ILECs' price caps to ensure that the addition of ESP access revenues is revenue neutral to the ILECs. Today's access charges are grossly inflated and provide the ILECs with billions of dollars in pure uneconomic subsidy. The flaw in the current system is not that the LECs are under recovering -- far from it. Rather, the flaw in that system is that it results in a rate structure that does not reflect the way the costs are actually incurred. The ILECs should not be allowed to recover a windfall from the correction of that flaw.

---

[52] According to CompuServe, it uses about 1,224,000,000 minutes per month (240 hours x 60 minutes x. 85,000 lines). Since it has 3,000,000 subscribers (*see* Compuserve Comments at 10), an additional 0.13694 cents per minute x 1,224,000,000 minutes per month divided by 3,000,000 subscribers comes to 56 cents per month per customer.

[53] According to the Graphic, Visualization, and Usability Center's (GVU) WWW User Survey, the average household income of all Internet subscribers is $59,000. Nearly three-fourths of the respondents are from the U.S. *See* GVU's WWW Users Survey, www.cc.gatech.edu/gvu/user, April 1996. This modest increase in the monthly price is not likely to repress demand significantly among users at this income level.

IV. TRAFFIC GENERATED BY ESPs SHOULD BE CLASSIFIED AS INTERSTATE TRAFFIC SUBJECT TO THE COMMISSION'S JURISDICTION.

The Commission also seeks comment on the scope of its jurisdiction over access charges paid by ESPs, especially in light of "the difficulty of applying jurisdictional divisions . . . to packet-switched networks such as the Internet." NOI at ¶ 315. The answer is that, in part because of that very difficulty, the Commission should adopt a rebuttable presumption that access services provided to an ESP are entirely subject to the Commission's jurisdiction because of their interstate character, but allow that presumption to be rebutted on a showing that the enhanced service for which access is provided is itself intrastate in nature.

Settled case law establishes that when a service or facility (1) has a significant interstate use or character but (2) cannot readily be broken down into distinct interstate and intrastate components, the service or facility can be treated as subject in its entirety to the Commission's jurisdiction under the Communications Act.[54] Both of these conditions are amply satisfied by most enhanced services, in particular Internet and online services.

First, access services provided to most ESPs are not only substantially interstate in character -- as the Commission expressly recognized in finding that ESPs "employ exchange access for jurisdictionally interstate communications"[55] -- but overwhelmingly so.

---

[54] *E.g.*, *Louisiana Pub. Serv. Comm'n* v. *FCC*, 476 U.S. 355, 375-79 (1986); *Public Utility Comm'n of Texas* v. *FCC*, 886 F.2d 1325, 1331-34 (D.C. Cir. 1989); *California* v. *FCC*, 39 F.3d 919, 931-933 (9th Cir. 1994), *cert. denied*, 115 S. Ct. 1427 (1995).

[55] *MTS Market Structure Order*, 97 F.C.C. 2d 682, 715 (1983).

For the provision of Internet and online services, for example, the ESP typically routes calls from its POP along a dedicated line to its data center or web server, which is where its "home page" resides. ESPs generally have only a few data centers in the entire country, however, and therefore the caller and the data center are almost always in different states.

For example, AT&T WorldNet has two data centers in the United States, which means that simply accessing WorldNet's home page already involves interstate transmission for virtually all callers. Indeed, when a dial-up customer accesses AT&T's home page, AT&T does not necessarily route that call to the data center that is geographically nearer to the customer.[56]

But even in the small fraction of cases in which a call can reach the ESP's network or home page without crossing state boundaries, during most sessions a customer will still access *applications* and databases that require interstate transmission. For example, when a customer wants to use the Internet to access the home page of a retail business down the street, it is not unusual for that home page to be housed in a server thousands of miles away. Moreover, during a typical session, a customer accesses multiple applications and databases, a large fraction of which are likely to involve interstate transmission. Even a cursory review of the home pages of both large and small Internet service providers reveals literally a "world" of information available at the click of the mouse.[57] Therefore, it cannot

---

[56] Attachment 3 provides an illustrative diagram of AT&T WorldNet℠ Service's network, which is representative of how ESPs provide consumer mass market service.

[57] *See, e.g.*, the home pages for ISPs: America Online (www.aol.com); Prodigy (www.prodigy.com); Erol's Internet Service (www.erols.com); and SpectraNet (continued...)

be seriously questioned that the vast majority of ESPs' Internet and online services overwhelmingly involve interstate traffic which falls squarely within the Commission's jurisdiction.

For the same reasons, access services provided for the vast majority of enhanced services applications are just as "interstate" in character as access services provided to interexchange carriers. To be sure, under the Commission's current rules, ESPs benefit from their artificial classification as "end-users," and thus are allowed to buy state-tariffed business lines just like true business users. But the ESPs generally use the LEC's local switching and transport as part of a much more extensive transmission path, just as IXCs do. As already noted, calls to an ESP are typically routed over the local network to the ESP's node, or POP, and from there to a distant data center or Internet site. Thus, such calls made to an ESP do not *terminate* at the ESP's POP, as they would if the ESP were truly a business user. Like an IXC's POP, the ESP's node or POP merely collects traffic for interstate transmission. In fact, the ESPs today use business lines in precisely the same manner that MCI used business lines in providing its Execunet service, prior to the establishment of the current access charge regime.[58]

---

[57] (...continued)
(www.spectra.com).

[58] Prior to that time, carriers such as MCI obtained switched access for use in providing long distance service by purchasing line-side service, just as the ESPs do today. *See, e.g., Exchange Network Facilities for Interstate Access*, Memorandum Opinion and Order, 1 FCC Rcd. 618, 619 (1986); 71 F.C.C. 2d 440, 445 (1979). The Commission permitted this arrangement because, at that time, full-feature access services designed for use by competitive interexchange carriers were not available. The Commission mandated the (continued...)

Second, for Internet and online service applications, there is no way to separately identify (much less meter and bill) interstate and intrastate traffic for jurisdictional purposes. *A fortiori*, the LECs providing access to the ESPs likewise cannot possibly determine which calls being made to an ESP are wholly intrastate in character, or interstate.[59] The advent of new product and service platforms that allow customers to perform many different functions at once, coupled with the inability to track which of these applications involve interstate or intrastate communications, means that access services provided to the ESPs for their interstate communications are "inseverable" from access services provided to the ESPs for use in any "intrastate" services.

---

[58] (...continued)
development of switched access, however, and in the interim the Commission oversaw a series of transitional access charge arrangements (first the ENFIA tariffs, followed by Feature Group A access and other arrangements, and culminating in today's Feature Group D). In so doing, the Commission considered "the effect of sudden rate increases upon competition and concluded that the phase-in of [the ENFIA tariffs] as OCC revenues increased provided adequate time for OCCs to absorb the increased payments for exchange services." The Commission also found "that the practice of connecting the OCCs to local exchange facilities pursuant to local business exchange tariffs could not continue because the OCCs did not make a contribution to the interstate costs of local exchange service." *See* id. at 620; *see also* id. at 618-24; *Exchange Network Facilities for Interstate Access*, Memorandum Opinion and Order, 71 F.C.C. 2d 440 (1979); *MTS and WATS Market Structure*, Memorandum Opinion and Order, 97 F.C.C. 2d 834, 858-63 (1984) ("OCCs that receive equal access will pay the same per minute charges that are assessed for MTS or WATS usage as equal access becomes available in each end office"); *Investigation of Access and Divestiture Related Tariffs*, Memorandum Opinion and Order, 97 F.C.C. 2d 1082 (1984). In short, the Commission recognized that, as the interexchange market matured and as equal access became available, the interexchange carriers should move to a system in which they paid for the access they used.

[59] *See PUC of Texas* v. *FCC*, 886 F.2d at 1331 (recognizing this inability as key factor in determining that inseparability doctrine applied in that case).

In other contexts, the Commission has recognized that services involving both intrastate and interstate elements -- such as mixed-use special access -- are properly considered interstate in nature for precisely this reason. Most pertinently, the Commission found special access to be an interstate service in large part because attempting to separate the intrastate and interstate traffic "would involve substantial difficulties since . . . the LECs cannot readily measure state and interstate special access traffic . . .," and neither could their customers.[60] The Commission also noted that introducing divided federal-state jurisdiction into an area that has not been jurisdictionally divided in the past would "necessitate significant changes in the LECs' present billing systems," and "would greatly complicate customer bills since both state and interstate charges would apply to each mixed use special access line."[61] Similarly here, for the most prevalent ESP services, it is impossible to separate interstate and intrastate traffic--indeed, both types of communication often take place during the very same "call." Because of this inseverability, *all* access services provided in connection with such services should be presumed to be interstate in character and subject to the Commission's jurisdiction.

Such a presumption, moreover, is supported by sound policy considerations. As explained above, federally imposed, cost-based access charges will remove the existing disincentive for the construction of modern, packet-switched networks; reduce the risk of

---

[60] *MTS and WATS Market Structure*, Recommended Decision and Order, 4 FCC Rcd. at 1356; *see also PUC of Texas* v. *FCC*, 886 F.2d at 1331.

[61] *MTS and WATS Market Structure*, Recommended Decision and Order, 4 FCC Rcd. at 1356

future congestion on existing circuit-switched networks; and help protect the revenue base for the universal service fund. Imposition of such charges at the federal level, moreover, will discourage the states from imposing a patchwork of their own access charges on ESPs -- a result that could not only undermine each of these goals, but also hamper the full development and utilization of the Internet.[62]

To be sure, some enhanced services may be completely or almost completely intrastate in character, or their intrastate aspects may be capable of easy identification and separation from their interstate aspects.[63] For example, voice mail could be jurisdictionally intrastate, depending on its network configuration. For these services, and upon a proper showing, the ESP could properly purchase intrastate access (or local network) services, which would not be subject to the Commission's jurisdiction.[64]

---

[62] Although the Commission might have authority to preempt such state regulation under the court decisions cited above, AT&T is not requesting such action and, indeed, does not believe there is any need or basis to consider such action here.

[63] *Cf. MTS and WATS Market Structure*, CC Docket Nos. 78-72, 80-286, Recommended Decision and Order, 4 FCC Rcd. 1352 (1989); *MTS and WATS Market Structure*, CC Docket Nos. 78-72, 80-286, Decision and Order, 4 FCC Rcd. 5660 (1989); *Petition of New York Telephone Co. for a Declaratory Ruling with Respect to the Physically Intrastate Private Line and Special Access Channels Utilized for Sales Agents to Computer New York Lottery Communications*, Memorandum Opinion and Order, 5 FCC Rcd. 1080 (Feb. 21, 1990).

[64] The Commission also seeks comment (¶ 315) on metering and billing issues, "given the difficulty of applying jurisdictional divisions or time-sensitive rates to packet-switched networks such as the Internet." With respect to the feasibility of requiring ESPs to pay access charges, metering and billing issues are red herrings. The only issue is how to measure local switching and transport, and the LECs have a system in place for measuring such usage. Indeed, ESPs would receive bills just as the IXCs do today. ESPs, in turn, are certainly capable of billing their customers on a usage-sensitive basis if they choose, as (continued...)

Finally, although the Commission clearly should regulate the prices ESPs pay for network access services, there is no need for the Commission to consider here whether to exercise jurisdiction over any of the services ESPs provide.[65] Indeed, if the Commission adopts cost-based pricing for all users of exchange access -- or at a minimum requires ESPs to pay TELRIC-based access charges -- there will be no need to explore substantive regulation of any services provided on non-traditional networks. The market incentives that cost-based pricing will generate for deployment of new high-speed technologies (provided meaningful local competition is permitted to develop) should send the appropriate signals to suppliers and customers. It would be especially premature for the Commission either to forbear from regulation of new services that constitute "basic" services under the Commission's current rules, or to impose traditional common carrier regulation on them.[66]

---

[64] (...continued)
many have done in the past. Even today, many ESPs offer tiered usage plans. For example, America Online offers a Light-Usage Program that allows three hours a month for $9.95, and $2.95 for each additional hour. Prodigy, CompuServe and other providers have similar pricing plans.

[65] *See* NOI ¶ 316 (seeking comment on how new services such as Internet telephony (which appears to be a basic service), as well as real-time streaming of audio and video services over the Internet, "should affect its [the Commission's] analysis")

[66] The Commission also seeks comment (¶ 315) on whether it should distinguish different categories of enhanced and information services for differing regulatory treatment. The answer is no. ESPs use local switching and transport today, and therefore should pay the TELRIC cost of using those services, regardless how their services are classified. Indeed, it has become difficult, if not impossible, to distinguish between the existing regulatory classifications of "basic" and "enhanced" services in today's world of converging communications services.

CONCLUSION

The Commission has before it, in several related dockets, overwhelming evidence that the rational pricing of monopoly LEC network components will create the proper incentives to meet the requirements of the 1996 Act to promote competition in the local exchange and exchange access markets. This docket illustrates the wisdom of that mandate. By pricing the elements of the local network at their actual cost, all entities in the market will receive the proper incentives to upgrade existing networks, develop and deploy new networks and technologies, and build innovative new services to meet customer needs.

For the reasons discussed above, AT&T urges the Commission to issue a Notice of Proposed Rulemaking to eliminate the exemption from Part 69 access charges for enhanced service providers, establish TELRIC pricing for those providers, and adopt a presumption

that all enhanced communications are interstate in nature. AT&T neither recommends nor supports any "regulation" of Internet or online services at this time, and further recommends that the Commission not seek at this time to distinguish between different categories of information or enhanced services for different regulatory treatment.

Respectfully submitted,

/s/ Mark C. Rosenblum
Mark C. Rosenblum
Ava B. Kleinman

Room 3252J1
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8312

Gene C. Schaerr
James P. Young

1722 Eye Street N.W.
Washington, D.C. 20006
(202) 736-8141

March 24, 1997

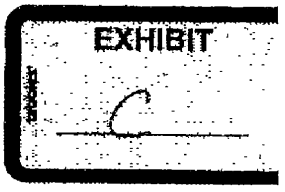
DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
APR 23 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:	)	
	)	
Usage of the Public Switched	)	CC Docket No. 96-263
Network by Information Service	)	
and Internet Access Providers	)	



REPLY COMMENTS OF GTE

GTE SERVICE CORPORATION,
on behalf of its affiliated companies

Ward W. Wueste
Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, DC 20036

R. Michael Senkowski
Richard T. Pfohl
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, DC 20006

Its Attorneys

April 23, 1997

No. of Copies rec'd 0+12
List A B C D E

TABLE OF CONTENTS

Page

I. INTRODUCTION AND SUMMARY 1

II. THE RECORD DEMONSTRATES THAT A DRAMATIC INCREASE IN INTERNET TRAFFIC HAS REQUIRED EXTRAORDINARY EFFORTS TO PREVENT DETERIORATION OF NETWORK PERFORMANCE 3

A. Additional Data Collected By GTE Demonstrate That Traffic Levels Have Increased Dramatically Due To A Substantial Rise In Usage Levels On Internet-Related Lines 4

B. LECs Face Significant Increases In Expenditures For Network Upgrades In Order To Accommodate The Increase In Internet-Related Traffic 9

III. SUB-LOOP UNBUNDLING FOR THE USE OF ISPs SHOULD NOT BE MANDATED 11

A. A General Requirement For Sub-Loop Unbundling Would Impair Service Quality And Raise Grave Risks To Network Reliability 12

B. Sub-Loop Unbundling For ISPs Is Particularly Unwarranted 13

IV. GTE CONCURS IN AT&T'S SHOWING THAT INTERNET ACCESS TRAFFIC IS PRESUMPTIVELY INTERSTATE AND SUBJECT TO THE COMMISSION'S JURISDICTION 14

A. The Presumption That Internet Access Traffic Is Interstate In Character Accurately Reflects The Nature Of The Internet 15

B. Mutual Compensation Should Not Apply To Internet Access Traffic In Order To Prevent Gaming Of The System 16

V. THE CURRENT SYSTEM DOES NOT PROVIDE FOR SUFFICIENT RECOVERY OF ACTUAL COSTS BY LECS 17

A. Business Line Rates And Flat-Rated Residential Charges Do Not Provide Sufficient Revenues To Recover ILECs' Actual Costs. 17

B. TELRIC Does Not Provide An Effective Measure Of ILEC Costs For Compensation Purposes 18

C. Failure To Allow Full Recovery Of Costs Will Create A Massive Disincentive To Investment In Data-Friendly Networks. 20

VI. CONCLUSION 23

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of:	)	
	)	
Usage of the Public Switched	)	**CC Docket No. 96-263**
Network by Information Services	)	
and Internet Access Providers	)	

REPLY COMMENTS OF GTE

GTE Service Corporation ("GTE"), on behalf of its affiliated companies,[1] hereby submits its reply to comments received in response to the above-captioned Notice of Inquiry ("NOI").[2]

I. INTRODUCTION AND SUMMARY

Broad record support exists for the positions articulated in GTE's Comments. As the empirical data of GTE and other LEC commenters make clear, Internet access usage is creating the need for unscheduled network upgrades that result in unrecovered costs for ILECs. Additional data recently compiled by GTE confirms GTE's earlier showing that

---

[1] GTE is a world leader in the provision of wireline, wireless, Internet and directory services.

[2] *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; Usage of the Public Switched Network by Information Service and Internet Access Providers*, FCC 96-488 (Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry), 1996 FCC LEXIS 7105, 5 Comm. Reg. (P & F) 604 (Dec. 24, 1996).

Internet access-related traffic presents an increasing threat of congestion for ILECs, necessitating dedication of increasing amounts of network capacity. Specifically, a study just completed by GTE indicates that ISP-related traffic constitutes a substantial portion of all terminating interoffice Public Switched Telephone Network ("PSTN") traffic, including a large percentage of such traffic during busy hours. Recovery of costs for this Internet use is both required by the Telecommunications Act and necessary from a public policy standpoint in order to establish proper market-based price signals that will spur deployment of data-friendly networks that the FCC and all commenters agree are desirable.

In contrast, no persuasive arguments have been presented for continuing to require LECs to effectively subsidize Internet access usage. Both the Telecommunications Act and longstanding Commission policy favor recovery of costs from the cost causer, with any necessary subsidies made specific and predictable, not implicit and uncontrollable as here. Moreover, as numerous commenters point out, the current system, which renders much Internet access usage essentially free, is the largest existing regulatory impediment to deployment and use of data-friendly services.

Arguments that the Commission should require sub-loop unbundling for the use of ISPs are similarly misplaced. The severe technical and other constraints on such unbundling render it impracticable to offer, if at all, on anything but an individual case basis. Moreover, even if available, sub-loop unbundling would likely not be an economically viable alternative for ISPs because of the substantial attendant costs. Further, the risk to network reliability from such unbundling would be even greater given the involvement of ISPs, which are not subject to regulatory oversight.

GTE also agrees with AT&T that Internet access usage should be presumptively classified as jurisdictionally interstate. Such a presumption comports with the overwhelmingly interstate character of Internet traffic, but would be rebuttable in order to protect legitimate state interests. Most importantly, the interstate classification of Internet traffic will prevent CLECs from "gaming the system" by signing up ISP customers in order to inflate their receipts of mutual compensation revenues.

Finally, the record establishes that ILECs are currently being denied full recovery of the network costs attributable to increased Internet usage. Neither business line rates nor second line revenues are sufficient to recover these costs. Moreover, application of the FCC's TELRIC standard to Internet access pricing would exacerbate current shortfalls by guaranteeing a systematic under-recovery of costs. Noncompensatory pricing of existing analog services is a principal impediment to the deployment of new data-friendly technologies.

II. THE RECORD DEMONSTRATES THAT A DRAMATIC INCREASE IN INTERNET TRAFFIC HAS REQUIRED EXTRAORDINARY EFFORTS TO PREVENT DETERIORATION OF NETWORK PERFORMANCE

Virtually the only record support relied upon by ISPs for their contention that increases in Internet access usage do not pose a serious risk to the PSTN is the Selwyn/Laszlo Study,[3] which was financed by and appended to the Comments of the Internet Access Coalition. As GTE pointed out in its Comments, that study suffers from numerous fatal shortcomings and misconceptions that render its conclusions fundamentally flawed.[4] Contrary to the suggestions

---

[3] Lee L. Selwyn and Joseph W. Laszlo, "The Effect of Internet Use on the Nation's Telephone Network," Comments of the Internet Access Coalition, Append. C.

[4] *See* Comments of GTE at 14-20.

of Selwyn, *et al.*, traffic congestion created by burgeoning levels of Internet access traffic now poses an unprecedented threat to network performance. The dearth of examples of Internet-related network breakdowns to date does not undermine this fact. Rather, serious service disruptions have been avoided only due to ILECs' efforts to implement massive, uncompensated emergency capital upgrades as stopgaps against network overload.

Network congestion caused by increasing Internet use cannot be "simpl[y]" or "easily" addressed through techniques such as load balancing, switch deloading, and use of trunk-side terminations, as certain commenters claim.[5] As GTE explained in detail in its Comments, such contentions misunderstand telephone network architecture and ignore the significant costs of the technology required to implement network capacity augmentation techniques.[6] Both additional data collected by GTE and the experiences of other ILECs confirm GTE's earlier showings in this regard.

A. Additional Data Collected By GTE Demonstrate That Traffic Levels Have Increased Dramatically Due To A Substantial Rise In Usage Levels On Internet-Related Lines

A study commissioned by GTE confirms the conclusions of preliminary data set forth in GTE's Comments: Internet-related traffic constitutes an increasing proportion of PSTN traffic, and such traffic is contributing to PSTN congestion problems during both busy and off-peak hours. The study, performed using a commercially available link monitoring system, measured the traffic on the SS7 ("Signaling System 7") links into the three central offices in

---

[5] *See, e.g.*, Comments of Internet Access Coalition at 10-14.

[6] Comments of GTE at 14-22.

the Tampa, Florida metropolitan region during one full week in April, 1997.[7] All traffic routed to these three central offices was measured to determine the traffic load destined for the ISPs served by these offices as well as non-ISP traffic load.[8] The study measured the load of calls measured in CCS,[9] a product of the number and duration of calls.[10]

The study illustrates the contribution of Internet access related traffic to terminating interoffice PSTN traffic congestion in the metropolitan area studied, both in peak and off-peak hours. As the following table demonstrates, during the five consecutive weekdays studied, ISP traffic constituted fully ***40.75%*** of total terminating interoffice PSTN traffic. (*See* Table 1).[11]

---

[7] The study measured the traffic destined for these central offices 24 hours a day for the seven day period from April 13, 1997 through April 19, 1997.

[8] The study did not measure intra-office traffic, *i.e.*, traffic originating and terminating within the office studied.

[9] As explained in GTE's Comments, CCS, or "centum or hundred call seconds," measures actual traffic loads, by measuring the volume *and* duration of calls. Comments of GTE at 11 n.13. This measure is most important, because it determines the load on the network.

[10] The study data shows the hour in the day that calls were connected and the average holding time for all calls that were connected during that hour regardless of the actual release time. It also shows the CCS load to each of the ISP numbers during the hour as well as the CCS load to all other numbers served by the studied offices. Traffic measured includes all of the traffic originated from all of the offices in the surrounding local calling area, traffic terminating in these offices from offices that generate 1+7D Intra-LATA toll calls into these offices, and traffic terminating in these offices from points outside the LATA.

[11] Table 1 replicates the Table presented on the basis of preliminary data in GTE's Comments, and validates the conclusions drawn from that table. *See* Comments of GTE at 13.

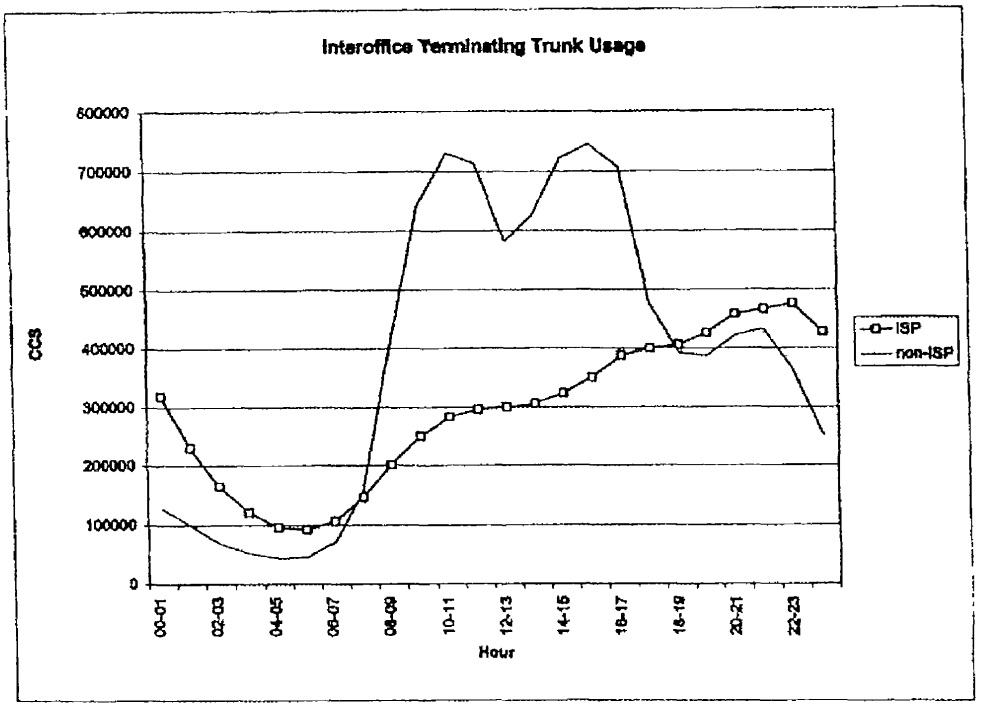
Table 1
March 1997 Study
Five Weekdays Studied

	Completed Calls	Duration in Minutes	Average Holding Time in Minutes	Non-Completed Calls	Percent Completed Calls	Percent of Total Traffic Minutes
ISP Traffic	347,280	8,629,908	24.85	155,988	69.00%	40.75%
Non-ISP Traffic	4,958,065	12,543,904	2.53	1,881,457	72.50%	59.25%
Total Traffic	5,305,345	21,173,812	3.99	2,037,445	72.25%	100%

Furthermore, contrary to the unsupported contentions of a number of ISP commenters,[12] Internet access-related traffic was significant not only during off-peak hours, but during PSTN busy hours as well. During the peak busy hour, ISP traffic constituted nearly *33%* of total terminating interoffice PSTN traffic. (*See* Chart 1).

[12] *See, e.g.*, Comments of WorldCom at 19-20; Comments of General Services Administration ("GSA") at 13-15; Comments of The Association of Online Professionals at 4; Comments of Internet Access Coalition at 8-9.

Chart 1



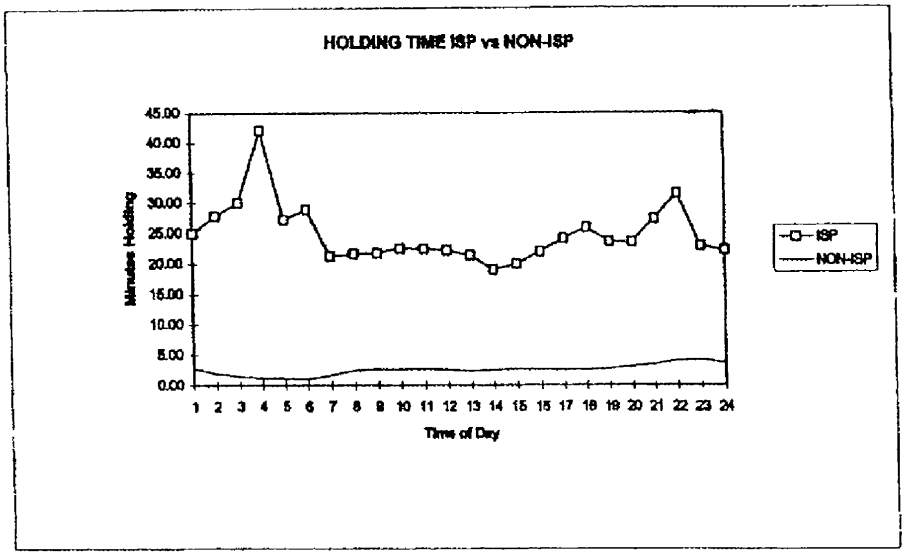
As Chart 1 demonstrates, ISP traffic load increases steadily during the day from 5:00 A.M. until 11:00 P.M (with a slight flattening at noon). ISP traffic load during the busy hour (3:00 - 4:00 P.M.) is equivalent to approximately 73% of ISP traffic load during the ISP busy hour (10:00 - 11:00 P.M.).

Furthermore, the study data demonstrates that ISP contentions regarding total number/volume of calls during the busy hour are, in and of themselves, incorrect. As Chart 2 illustrates, average holding time during busy hours on calls to ISPs is nearly ***nine times*** longer than average holding time on non-ISP traffic in this metropolitan network. (*See* Chart 2).[13]

---

13 *See also* Table 1; Affidavit of H. Lee Jones, attached as Append. A, at 2.

Chart 2



Holding times are relevant, because it is both the number and the duration of calls that determine call load, network congestion, and switch and trunk line capacity needed.[14] For example, GTE's data demonstrates that ISP calls during the busy hour constituted nearly 33% of total terminating interoffice traffic load, despite constituting only 4.35 percent of the total number of completed terminating interoffice calls during that hour. Therefore, it is clear that the long average holding time of ISP traffic is largely responsible for causing the need for

---

[14] *See* Affidavit of H. Lee Jones, attached as Append. 1, at 3; *see also* Comments of WorldCom at 19 (admitting that "the ILECs' local switches typically are engineered based on the number of lines, expected call attempts per busy hour, and call holding time.")

Contrary to the contention of the GSA, Comments of GSA at 12-13, volume and duration of calls, rather than amount of information transmitted, are the relevant factors in determining burden on the PSTN. The circuit switched nature of the PSTN requires occupation of a circuit during the entire connection time, unlike in a packet switched environment.

additional facilities in the network. Thus, ISP data that relates solely the volume of calls and fails to address call duration or total call load presents a one-dimensional slice that is, at best, irrelevant and, at worst, misleading.

B. LECs Face Significant Increases In Expenditures For Network Upgrades In Order To Accommodate The Increase In Internet-Related Traffic

The additional data collected by GTE are consistent with the findings described in the comments of GTE and other LECs, which demonstrate that ILECs have been forced to incur significant, uncompensated increases in expenditures for network upgrades in order to accommodate the rise in Internet access traffic. As GTE noted in its comments, its operating companies have already committed between $50 million and $85 million, due solely to increased Internet access traffic, in order to avoid a potentially crippling overload of its network.[15]

The Comments of other ILECs confirm GTE's experience. For example, Pacific Telesis found that at the end of 1996, Internet usage accounted for approximately 27 percent of Pacific Bell's total residential traffic, or 30 billion minutes of use.[16] If the exemption is not removed, Pacific Telesis forecasts that by 2001, there will be almost as much residential dial-up Internet traffic as residential voice traffic.[17] Moreover, Pacific Telesis expects that Pacific Bell will generate about $150 million in incremental revenue from ISPs but spend over *$300*

---

15 Comments of GTE at 22.

16 Comments of Pacific Telesis Group at 10.

17 *Id.*

million to support Internet-related traffic over the next five years.[18] As Pacific Telesis notes, because of the disincentives to recovery of costs invested in data networks, these funds will be misdirected to investment in voice public switched networks rather than development of advanced data services.[19]

Similarly, Bell Atlantic alone spent nearly $200 million above its planned network construction budget in 1996 to avoid failures that would impair service to all customers.[20] Bell Atlantic expenditures in 1997 are expected to exceed $300 million, including installation of a large number of new line units and ISDN terminations in central office switches to accommodate additional traffic volumes, and interoffice trunks to carry the traffic between offices.[21] Sprint likewise has experienced Internet-related congestion problems that have required hundreds of thousands of dollars in network expansions to resolve.[22]

Furthermore, new Internet technologies now being implemented are expected to exacerbate the congestion problem. For example, "push" technology will require that the end-user remain connected to the Internet program source during the entire time that the customer's computer is turned on.[23] This technology is likely to increase holding times

---

18 *Id.* at 31.

19 *Id.*

20 Jt. Comments of Bell Atlantic and NYNEX at 6.

21 *Id.*

22 *See* Comments of Sprint Corp. at 5 (Sprint LECs have been required to spend between $350,000 and $400,000 to add additional trunks to address spikes in traffic levels each time a major Internet access provider has offered flat-rate service to the Internet).

23 Jt. Comments of Bell Atlantic and NYNEX at 8-9. "Push" technology sends

(Continued...)

dramatically, as well as require far higher emergency investment in existing networks to prevent congestion.[24]

As the data provided by GTE and by other commenters make clear, ample evidence of the increase in network traffic and congestion problems exists to warrant FCC action. Calls for the collection of additional information or other deferrals of FCC action[25] are simply delay tactics to maintain preferential treatment of ISPs and should not be credited.[26] Instead, the Commission should move expeditiously to address this real and growing concern.

III. SUB-LOOP UNBUNDLING FOR THE USE OF ISPs SHOULD NOT BE MANDATED

A number of ISPs and other commenters have suggested that ILECs should be required to provide them with unbundled access to various parts of the local loop such as feeder and distribution facilities.[27] However, as the Commission has previously found, it is not possible to provide sub-loop unbundling on a generic basis due to serious network reliability

---

(...Continued)
predetermined types of information to the end user's computer without the end user having to retrieve it. It requires that the end user remain connected to the Internet during the entire time the end user's computer is turned on, in order for the information to be "pushed" to that computer as soon as it is available -- with consequential dramatic increases in holding times. *Id.*

24 *Id.*

25 *See, e.g.*, Comments of Internet Access Coalition at 61; Comments of Association of Online Professionals at 4.

26 *See* Comments of AT&T at 19.

27 *See, e.g.*, Comments of America Online at 24-25; Comments of Internet Access Coalition at 41-42; Comments of WorldCom at 23-24.

concerns.[28] Nor is it likely to be an economically viable distribution option for ISPs. Accordingly, sub-loop unbundling should not be required herein.

A. A General Requirement For Sub-Loop Unbundling Would Impair Service Quality And Raise Grave Risks To Network Reliability

The FCC properly declined to require sub-loop unbundling in its First Interconnection Order on the grounds that proponents of sub-loop unbundling could not adequately respond to the network reliability concerns raised by various ILECs.[29] As GTE explained in its Comments in that proceeding, it is impossible to establish a uniform national requirement for sub-loop unbundling for a number of reasons:

- There are literally dozens of different loop provisioning configurations, each engineered for network integrity purposes as an end-to-end transmission path and frequently lacking any cross-connect box or other demarcation between the feeder and distribution portions of the plant at which a generic unbundling requirement could be implemented.
- There are no industry standards governing what combinations of network elements are used to create a local loop or even the appropriate delineation between feeder and distribution plant.
- Existing ILEC operations support systems are not designed or configured to support the separate provisioning of sub-loop facilities.
- The cost of making available a sub-loop facility for provisioning will vary widely depending upon the network configuration.
- Because there is a lack of compatibility between the different types of analog and digital transmission services that may be provided via local loops, there is a severe

---

[28] Thus, to the extent that sub-loop unbundling is proposed as a precondition to addressing the issue of usage of the PSTN by ISPs, it is a mere delaying tactic and should be dismissed out of hand.

[29] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (Aug. 8, 1996)("First Interconnection Order"), ¶ 391.

risk of inter-service interference from uncoordinated usage of sub-loop facilities due to lack of spectrum management.

- Because of the complexity of feeder-distribution interfaces resulting from the thousands of cross-connects required at each box, the introduction of new or additional installation and maintenance personnel into such sites for provisioning purposes will increase the potential for service degradation or failure and, thereby, undermine network reliability.

As a result of these factors, the viability of providing any unbundled sub-loop facilities must be considered on a specific, individual case basis. Only where: (i) the necessary facilities exist, (ii) procedures for provisioning and coordinated use can be established, and (iii) the requester agrees to pay all associated costs, can the availability of a sub-loop product even be considered. GTE's experience suggests that these situations will be exceedingly few in number.[30] Although the Commission has indicated that it will further review the question of sub-loop unbundling in 1997,[31] the record here is clearly inadequate to support a reversal of the agency's earlier determinations in this regard.

B. Sub-Loop Unbundling For ISPs Is Particularly Unwarranted

In the Telecommunications Act, Congress established the rights of regulated *carriers* to acquire unbundled network elements from ILECs for the purpose of creating new competitive alternatives for users. The limitation to carriers is clearly reasonable given the inherent risks to service to the public associated with permitting entities to piece out the ILECs'

---

[30] The FCC has required CLECs to bear the cost of any higher than normal quality network elements they request. Thus, if the Commission were to grant the Internet Access Coalition's related request for authority to acquire digitally conditioned loop facilities (Comments at 45-46), the ISP would be required to pay the cost of such conditioning, equipment removal or other reconfiguration in that circumstance as well.

[31] First Interconnection Order, ¶ 391.

communications networks in order to integrate their own facilities. For obvious reasons, providing such a right to ISPs, which are not subject to governmental oversight, would present an even greater risk to the network and the services provided to others without offering any such pro-competitive justification. The risks would be particularly great in the context of sub-loop unbundling.

Absent the imposition of similar regulatory responsibilities upon both parties to a sub-loop provisioning arrangement, it will be impossible to obtain the necessary level of assurance that the risks identified above can be avoided or that, if problems occur, they will be promptly remedied. The burden of enforcement would fall solely on the ILEC, and its customers would bear the costs. This would be both manifestly unfair and ill-advised as a matter of public policy.

IV. GTE CONCURS IN AT&T'S SHOWING THAT INTERNET ACCESS TRAFFIC IS PRESUMPTIVELY INTERSTATE AND SUBJECT TO THE COMMISSION'S JURISDICTION

GTE concurs in the Comments of AT&T that the Commission should adopt a rebuttable presumption that Internet access services are subject to the Commission's jurisdiction due to their overwhelmingly interstate character.[32] Such a presumption comports with the characteristics of Internet traffic and with settled case law for regulating services that, like Internet traffic, have a significant interstate use or character but cannot readily be broken down into distinct interstate and intrastate components.[33]

---

[32] *See* Comments of AT&T at 28.

[33] *See, e.g., Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 375-79 (1986); *Cal. v. FCC*, 39 F.3d 919, 931-33 (9th Cir. 1994), *cert. Denied*, 115 S. Ct. 1427 (1995); *Pub. Utility*

(Continued...)

A. The Presumption That Internet Access Traffic Is Interstate In Character Accurately Reflects The Nature Of The Internet

Internet access traffic is overwhelmingly interstate in character, and even where this is not the case, customers will almost inevitably access multiple applications and databases during a typical session, a large fraction of which are likely to involve interstate transmission.[34] The use of new "push" technologies will further reinforce the interstate character of Internet transmissions. In any event, the predominant interstate and, indeed, international scope of the Internet clearly warrants treatment of Internet access arrangements under uniform policies established *and administered* at the federal level.

As pointed out by U S WEST, the current regime results in a massive allocation of costs to the intrastate jurisdiction,[35] but states are limited in their flexibility to recover those costs from the cost causers. This jurisdictional mismatch of costs and cost recovery has fostered the current noncompensatory predicament facing ILECs and presents a major disincentive to the deployment of new data-friendly technologies.[36] Given the Commission's and the nation's interest in promoting the Internet and related offerings, it would clearly be reasonable for the agency to assert an appropriate level of federal jurisdiction in this context.

(...Continued)
Comm'n of Texas v. FCC, 886 F.2d 1325, 1331-34 (D.C. Cir. 1989).

[34] *See* Comments of AT&T at 28-30.

[35] *See* Comments of U S WEST at 22.

[36] Furthermore, this creates, in effect, a reverse subsidy in which costs of predominantly interstate service are recovered in intrastate rates. Such an outcome is wholly inconsistent with the historical policy of subsidizing local service through interstate rates.

Nonetheless, GTE also agrees with AT&T that the presumption that particular Internet access traffic is jurisdictionally interstate could be rebutted by a convincing showing that the traffic is, in fact, intrastate in character. Such a showing could be based on traffic studies, network design, server locations, or other factors analogous to those used to dispute classification of dedicated line services under the Joint Board's jurisdictional allocation regime.[37] In this manner, legitimate state prerogatives would not be trampled.

B. Mutual Compensation Should Not Apply To Internet Access Traffic In Order To Prevent Gaming Of The System

As GTE noted in its Comments, competitive LECs are currently marketing their offerings to Internet access providers and other ISPs for the sole purpose of capturing those entities' overwhelmingly terminating traffic in order to obtain transport and termination charges from LECs under reciprocal local compensation arrangements.[38] Other commenters confirm the existence of such practices.[39] If CLECs are successful in this attempt, ILECS will remain responsible for the vast majority of the network cost increases caused by Internet access usage, incur a new cost burden in terminating payments to CLECs, and lose all revenues from ISPs themselves.

CLECs should not be permitted to game the system in this manner or otherwise allowed to take advantage of arbitrage possibilities that lack any reasonable technological or

---

[37] *See* Jt. Comments of Bell Atlantic and NYNEX at 14 n.25 (similarly arguing that the FCC should follow its "10 percent rule").

[38] Comments of GTE at 32-33.

[39] *See* Comments of Pacific Telesis Group at 21; Jt. Comments of Bell Atlantic and NYNEX at 9.

economic basis. Rather, costs should be recovered from those who cause them to be incurred. When public policy determines that end users are entitled to below cost services, appropriate mechanisms should be established that explicitly recover the costs associated with the subsidized services. Classification of Internet traffic as interstate, interexchange usage will further this goal by ensuring that this traffic is not subject to mutual compensation arrangements.[40]

V. THE CURRENT SYSTEM DOES NOT PROVIDE FOR SUFFICIENT RECOVERY OF ACTUAL COSTS BY LECS

A. Business Line Rates And Flat-Rated Residential Charges Do Not Provide Sufficient Revenues To Recover ILECs' Actual Costs.

The ISP access charge exemption effectively precludes ILECs from recouping their substantial costs in network investments, thereby creating an implicit subsidy system in contravention of sound economic and regulatory policy, as well as applicable legal requirements.[41] GTE explained in its comments that current rates business and residential telephone do not adequately compensate ILECs for services provided to ISPs. Other

---

[40] *See* First Interconnection Order, ¶ 1034.

[41] As the Commission observed in another proceeding:

> Carriers under the Commission's jurisdiction must be allowed to recover the reasonable costs of providing service to ratepayers, including reasonable and prudent expenses and a fair return on investment. This fundamental requirement is unchanged by the Telecommunications Act of 1996.

Accounting for Judgments and Other Costs Associated with Litigation, CC Docket No. 93-240, FCC 97-80, ¶ 2 (rel. Mar. 13, 1997)(citation omitted).

commenters agree that second-line revenues and business line rates are insufficient to recover ILEC costs.[42]

In any event, no statistical support exists for the ISPs' claim that the demand for second lines is primarily caused by Internet use or that second line revenues should be credited to Internet traffic.[43] The proliferation of facsimile technology, telecommunicating, children's lines, and a host of other uses all contribute to the increase in use of residential second lines. As GTE has explained, where Internet traffic is involved, the additional revenue is insufficient to compensate for the increased usage, particularly given the lack of vertical services purchased on such lines.

B. TELRIC Does Not Provide An Effective Measure Of ILEC Costs For Compensation Purposes

Contrary to the suggestions of a number of ISPs and other commenters who have an interest in perpetuating ILECs' subsidization of ISPs,[44] TELRIC, or "total element long-run incremental costs," does not provide an appropriate measure of the actual costs of the communications services utilized by ISPs. Under the Commission's TELRIC standard, prices would be set based solely on the incremental forward-looking costs of a hypothetical, ideally

---

[42] *See* Comments of Southwestern Bell at 11 (revenues received from second lines used to access the Internet do not recover their costs); Comments of GTE at 24-25; Jt. Comments of Bell Atlantic and NYNEX at 10 n.19 (although some customers may pay message units for originating calls, there is no usage charge for terminating traffic, and message unit charges fall far short of compensating for delivering Internet access traffic). *See generally* Comments of GTE, CC Docket No. 96-98 ("GTE Interconnection Comments").

[43] *See* Jt. Comments of Bell Atlantic & NYNEX at 10-11.

[44] *See, e.g.*, Comments of CompuServe & Prodigy at 12; Comments of AT&T at 25-26; Comments of MCI at 6.

efficient, state-of-the-art network.[45] It would, thus, preclude recovery of the actual costs of ILEC operations.[46] For these reasons, the U.S. Court of Appeals for the Eighth Circuit has tentatively concluded that TELRIC pricing is unlawfully non-compensatory.[47]

Application of TELRIC would also provide a disincentive to development of state-of-the-art data-friendly networks, contrary to the professed goals of the FCC and all commenters. It would be irrational for any competitor to build its own facilities when the FCC has guaranteed it a right to use the incumbent's facilities at the incremental cost of the best up-to-the-moment technologies. No entrant can hope to be more efficient - and to achieve lower cost - than the hypothetical, ideally-efficient network contemplated by TELRIC. As a consequence, no new entrant will incur the expense or take the risk of building facilities of its own.[48]

Application of a TELRIC-based Internet pricing methodology to access services would likewise discourage incumbent LECs from investing in their own networks. On any given

---

[45] First Interconnection Order, ¶¶ 685, 690.

[46] *See id.* ¶¶ 672, 204-07.

[47] *Iowa Utilities Bd. V. FCC*, No. 96-3321, 1996 WL 589204 (8th Cir. Oct. 15, 1996). For similar reasons, the assertion by the Commercial Internet Exchange Association ("CIX") that business line rates must be compensatory because they exceed the FCC's prescribed TELRIC-based proxy prices for comparable functionality is wholly without foundation. *See* Comments of CIX at 12.

[48] MFS, for example, announced plans last fall to "re-orient []its network build-out focus away from building to end-users . . . connect []customer via incumbent local exchange carrier (ILEC) unbundled loops." *MFS Communications*, Merrill Lynch Capital Markets, Nov. 7, 1996, at 2. *See also*, *London On The Line*, The Washington Post (Nov. 10, 1996) (British Telecom has no plans to build facilities of its own here but instead will "purchase bulk capacity from local telephone carriers" and thereby "leverage other people's infrastructure").

day, regulators would always be able to hypothesize technology that is more efficient than what an incumbent LEC was able to purchase yesterday.[49] TELRIC pricing would, thus, guarantee a systematic under-recovery of costs for incumbent LECs and, thereby, simply perpetuate the current cost recovery crisis.[50]

C. Failure To Allow Full Recovery Of Costs Will Create A Massive Disincentive To Investment In Data-Friendly Networks.

GTE submits that the principle of payment of actual costs should apply equally to ISPs as it does to other carriers and service providers. The current contrary practice creates a direct *disincentive* to development of data-friendly, packet-switched networks that can adequately accommodate increased Internet usage.[51] As GTE noted in its Comments, Internet access usage of local business lines is effectively subsidized, because such lines generate few outgoing calls, instead receiving calls from ISP customers and paying only the basic flat rate portion of the business line charges.[52] This subsidy, which results in the provision of

---

[49] *See* Declaration of Alfred E. Kahn and Timothy J. Tardiff, ¶ 8(a), filed with the Reply Comments of Bell Atlantic, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 96-328 (May 30, 1996) (Appendix at 63).

[50] *See* Affidavit of Jerry Hausman, ¶¶ 5-8, filed with the Reply Comments of the United States Telephone Ass'n, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 96-328 (May 30, 1996) (Appendix at 81).

[51] *See* Comments of AT&T at 5, 16, 18-19. The Commercial Internet Exchange Association is simply wrong in arguing that ISP affiliates of LECs are, unlike their ISP competitors, unaffected by access charges, because such charges are "a mere accounting entry between affiliated companies." Comments of CIX at 19. LECs are precluded by their Cost Allocation Manuals, *i.e.*, the Docket 86-111 rules, from cross subsidizing between regulated and nonregulated services.

[52] *See* Comments of GTE 23. The vast majority of ISPs' largely residential customers, in turn, also use flat-rated local services to access their Internet offerings. Id.

(Continued...)

effectively "free" incremental service to ISPs, retards the development of data-friendly networks,[53] contrary to what the FCC[54] and *all* commenters agree is the preferable means for supporting Internet-related traffic.

This conclusion is confirmed by the experience of Bell Atlantic. Since Bell Atlantic has begun offering its new packet-based Internet access service, no ISPs have subscribed.[55] Thus, the FCC's current practice provides ISPs with a direct and massive economic incentive to continue to rely upon local business lines using voice-based PSTN, rather than supporting investment in data-based packet-switching networks. Such a result directly undermines

---

(...Continued)

ISPs' one-way directionality, together with their call volumes and holding times -- which, as the experience of LECs to date illustrates, *see supra*, Section II, makes them a particularly heavy burden upon LECs without a proportional increase in revenue -- distinguish ISPs from other business users. Thus, WorldCom's contention that because local business rates include a universal service subsidy, ESPs must be paying more than their fair share of costs, Comments of WorldCom at 15, fails entirely to recognize the unique characteristics of ISP use. Although average business customers do subsidize residential customers, since LECs realize no margin above cost when serving ISPs, no such subsidy exists. In any event, any universal service subsidy is directed to universal service, and is therefore not available to LECs to defray ISP use.

GSA's claim that ISPs and business user customers of local exchange services pay local message charges for all voice and data messages that transit local networks, Comments of GSA at 16, is incorrect. Businesses do not pay message charges to terminate traffic. Similarly, GSA's assertions that local usage is "almost invariably" priced "far in excess of incremental cost," and that the incremental costs of furnishing additional lines to residential users are "extremely low," are unsupported.

[53] Comments of AT&T at 19; Comments of Pacific Telesis Group at 35; Comments of US WEST at 26.

[54] NOI, ¶ 313.

[55] Jt. Comments of Bell Atlantic & NYNEX at 13. Other ILEC-offered packet access services have similarly failed to attract significant interest from unaffiliated ISPs. Comments of MCI at 10.

Congress' express intention in passing the 1996 Act to "accelerate rapidly private sector deployment of advanced telecommunications [ ] and information technologies,"[56] as well as the FCC's goal to "create incentives for the deployment of services and facilities to allow more efficient transport of data traffic to and from end users."[57]

GTE agrees with commenters that the Commission's rules and policies should "encourage service providers to take business risks and make capital investments in data communications technologies that respond to consumer demand,"[58] and that investments should be based on the anticipation of future revenues generated by new or improved services.[59] GTE notes however, that: i) risk is always related to pricing, but ILECs have been denied the opportunity to adjust prices to reflect risk; and ii) ILECs are unable to realize any further revenues as long as the access service charge exemption is in place. Current FCC rules provide a disincentive to invest in long-term facilities that have no potential to produce future revenues.[60] Only by allowing prices to reflect underlying costs, making subsidies explicit, eliminating unreimbursed subsidies, and giving ILECs necessary pricing flexibility can the FCC encourage ILECs to assume the appropriate risks of building new networks for Internet-related traffic..

---

56 H.R. Conf. Rep. No. 104-458, at 113 (1996).

57 NOI, ¶ 313.

58 Comments of Internet Access Coalition at 4.

59 Comments of General Services Administration at 10.

60 *Cf.* Jt. Comments of Bell Atlantic and NYNEX at 5.

VI. CONCLUSION

GTE again urges the Commission to promulgate a consistent and comprehensive pricing policy to govern all jurisdictionally interstate services. Such a pricing policy should permit LECs to recover their actual costs from cost causers and ensure that all users, service applications, and technologies are subject to correct, cost-based economic signals, so that rational investment choices can be made that will best promote the development of an efficient, economical, and technologically advanced network.

Respectfully submitted,

GTE SERVICE CORPORATION,
on behalf of its affiliated companies

Ward W. Wueste
Gail L. Polivy
1850 M Street, N.W
Suite 1200
Washington, DC 20036

R. Michael Senkowski
Richard T. Pfohl
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, DC 20006

April 23, 1997

APPENDIX A

Affidavit of H. Lee Jones

AFFIDAVIT OF H. LEE JONES

STATE OF TEXAS |
|
COUNTY OF DALLAS |

I, H. Lee Jones, being duly sworn state as follows regarding Supervision and Coordination of the Internet Service Provider Terminating call study:

1. I am Group Product Manager-Network Access Services, Carrier Markets Product Management, for GTE Telephone Operations. My principal duties and responsibilities are the management of products and services sold to the Internet Service Provider wholesale market segment. I coordinated and supervised the Signaling System 7 (SS7) link study outlined below.

2. Earlier this year, GTE commissioned a study that monitored SS7 traffic. With this study capability GTE can specifically identify Internet traffic on its interoffice trunk network. The study gave GTE the ability to study local exchange (non-toll) calling on a call detail basis similar to toll calling detail without the rating or billing data. The study recorded the "from" and "to" telephone numbers from the initial address message created for SS7 routing and call control processes. The study also monitored all calls for holding time. Normally, such information is not recorded.

3. For this study, equipment polled the SS7 Signal Control Point for all calls to a group of end offices in the Tampa, Florida, metropolitan region in which Internet Service Providers (ISPs) were served. Over the seven day period of the study, 7.3 million calls were polled. The study package stored these records for further inquiry such as sorting calls between ISPs and other calls.

4. The study recorded all interoffice terminating traffic to Tampa Main, Tampa East and Ybor City offices. The recorded traffic included the terminating local calling, the terminating 1+ seven digit terminating toll as well as the terminating 1+ ten digit interLATA access traffic to IXC points of presence served by these three offices. Thus, the study shows the total terminating interoffice trunk capacities utilized in one week for a major metropolitan area. By collecting "to" telephone numbers, the study distinguished ISP from non-ISP traffic. Although the study focused on traffic in the Tampa metropolitan region, the study could be replicated in any region served by GTE.

5. The conclusions of this study are threefold:

   a. The Internet access usage on the interoffice terminating trunk load during the business day (8:00 A.M. to 5:00 P.M.) busy hour (3:00 P.M. to 4:00 P.M.) was approximately one-third of the total terminating trunk usage. See Chart #1 where hour 15-16 (3:00 P.M. to 4:00 P.M.) showed 750,000 CCS (Centum Call Seconds - a unit of 100 seconds of PSTN usage) for non-ISP and 350,000 CCS for ISP. The total of 1.1 million (750,000+350,000) CCS was the design parameter used for sizing the interoffice terminating trunk capacity. Thus, the ISP calls were almost one-third of the facility requirements.
   b. The holding time for ISP calls was approximately 22 minutes in the 15-16 busy hour; non-ISP calls in that hour, approximately 2.5 minutes. Thus, each ISP call contributed on average nearly nine times as much usage as non-ISP calls to total network usage.
   c. The call volume of ISP traffic at the busy hour is represented on Chart #2. This data shows 4.3% of the call volume as ISP. Despite the relatively low volume of ISP calls, as Chart #1 demonstrates, due to the relatively long holding time of

ISP calls, ISP calls constituted approximately one-third of terminating trunk capacity. This demonstrates relatively small call volumes with long holding times can yield a substantial level terminating trunk capacity in the busy hour.

In the study volume of 89,000 daily busy hour calls, the four percent (4%) of calls (approximately 4,000) making up the internet access calls had an identifiable terminating interoffice trunk requirement of approximately 1,800 trunks. If the internet access calls had had a holding time of 2.57 (the time of non-ISP) minutes, the identifiable terminating trunk requirement would have been 200 trunks. Thus, 1,600 trunks is the additional requirement attributable to the net increase in holding time for the internet access calls. As mentioned previously, the busy hour proportion of terminating interoffice trunk quantities consumed by internet access usage was approximately one-third of total terminating trunks.

This study, to the best of my ability and judgment, clearly shows that Internet access call characteristics such as holding time and call volume create additional interoffice terminating trunk requirements for additions to the public switched network.

H. Lee Jones

H. Lee Jones, Affiant

Subscribed and sworn to before me on this 23rd day of April 1997.

Michele Slaboda

Michele Slaboda, Notary Public
Commission Expires: 06/09/98
County of Dallas, State of Texas

Chart 1

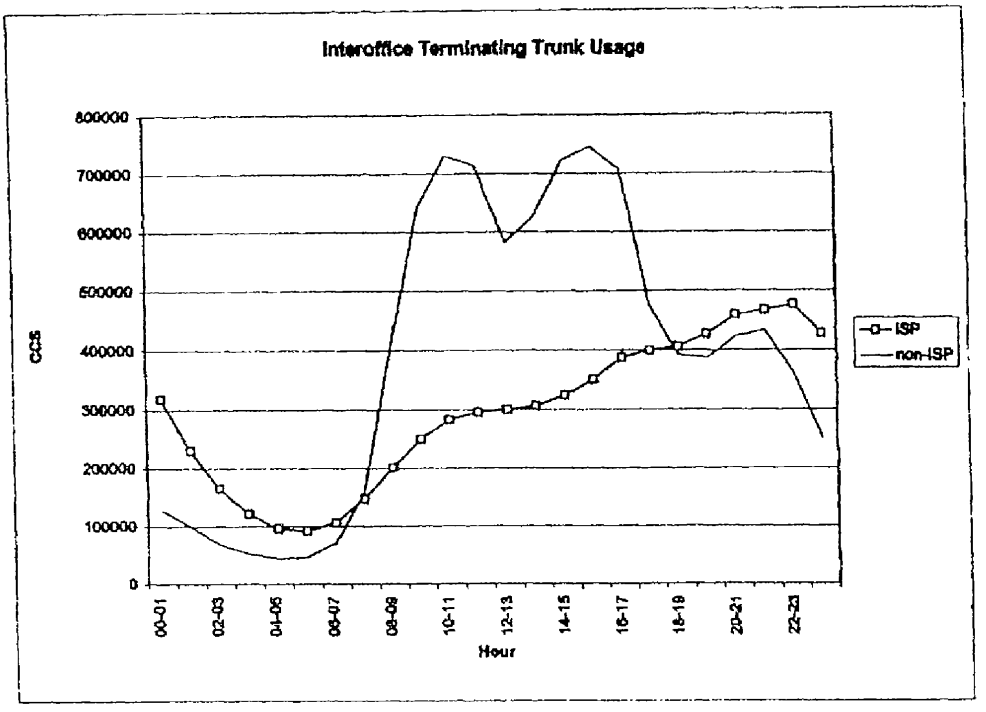

Interoffice Terminating Trunk Usage
800000
700000
600000
500000
400000
300000
200000
100000
0
CCS
00-01
02-03
04-05
06-07
08-09
10-11
12-13
14-15
16-17
18-19
20-21
22-23
Hour
ISP
non-ISP

CHART 2
COMPLETED CALLS AND AVERAGE HOLDING TIME PER CALL
FOR FIVE WEEKDAYS STUDIED
ISP TRAFFIC vs NON-ISP TRAFFIC

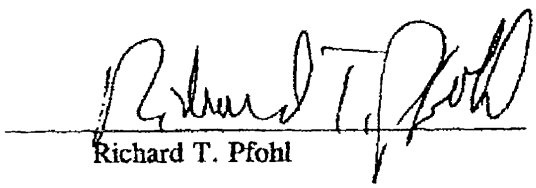
HOUR	ISP COMPLETED	NON-ISP COMPLETED	ISP HOLDING TIME	NON-ISP HOLDING TIME
00-01	1660	10158	25.01	2.76
01-02	876	8358	27.81	1.96
02-03	528	7784	30.00	1.47
03-04	359	7497	42.14	1.26
04-05	341	7440	27.24	1.16
05-06	595	8554	28.91	1.09
06-07	1183	12591	21.26	1.70
07-08	2003	24849	21.66	2.45
08-09	2659	56047	21.79	2.68
09-10	2738	76963	22.55	2.62
10-11	2772	82506	22.45	2.65
11-12	2792	81427	22.20	2.52
12-13	3121	68977	21.39	2.33
13-14	2915	73934	19.03	2.52
14-15	3147	81457	19.92	2.60
15-16	3865	84898	22.04	2.57
16-17	4670	80574	24.11	2.54
17-18	4625	52498	25.89	2.44
18-19	4680	39171	23.57	2.70
19-20	4590	33015	23.53	3.09
20-21	5244	31180	27.35	3.52
21-22	6264	26684	31.50	4.10
22-23	4695	20586	22.89	4.23
23-24	3133	14463	22.24	3.68

CERTIFICATE OF SERVICE

I, Richard T. Pfohl hereby certify that on this 23rd day of April, 1997, I caused true copies of the foregoing to be hand delivered to the following persons:

* Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

International Transcription Service
2100 M Street, N.W.
Room 140
Washington, D.C. 20554



Richard T. Pfohl

* Two copies delivered

DOCKET FILE COPY ORIGINAL

RECEIVED

APR 23 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange	)	CC Docket No. 94-1
	)	
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

EXHIBIT D

JOINT REPLY COMMENTS OF BELL ATLANTIC AND NYNEX ON NOTICE OF INQUIRY

Edward D. Young, III
Betsy L. Anderson
Of Counsel

Lawrence W. Katz

1320 North Court House Road
8th Floor
Arlington, Virginia 22201
(703) 974-4862

Attorney for the Bell Atlantic
Telephone Companies

Joseph Di Bella

1300 I Street, N.W., Suite 400 West
Washington, D.C. 20005
(202) 336-7894

Attorney for the NYNEX
Telephone Companies

April 23, 1997

TABLE OF CONTENTS

		PAGE
I.	Introduction and Summary	1
II.	Eliminating the ESP Exemption Will Encourage Diversion of Internet Traffic From the Public Switched Telephone Network	2
III.	Only Massive Investment Has Prevented Local Service Degradation	5
IV.	ISPs Are Not End Users and Internet Traffic Is Not Local Traffic	9
V.	Claims of Anticompetitive Conduct Are Undocumented and Untrue	11
VI.	Conclusion	14

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

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

JOINT REPLY COMMENTS OF BELL ATLANTIC[1] AND NYNEX[2] ON NOTICE OF INQUIRY

I. Introduction and Summary

There is near-unanimous consensus in the comments that the Commission's policies should encourage Internet traffic to migrate from the circuit-switched public switched telephone network to new services, such as packet-switched services, which are better suited to the transport of data. Most parties agree that the best way to achieve this result is by eliminating the enhanced service provider ("ESP") "exemption."

---

[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

[2] The NYNEX telephone companies ("NYNEX") are New York Telephone Company and New England Telephone and Telegraph Company.

Like interexchange carriers, Internet Service Providers ("ISPs") use the local network to originate interexchange telecommunications. The rapidly increasing level of ISP traffic on the local exchange network has required local exchange carriers ("LECs") to make emergency investments of hundreds of millions of dollars to prevent service degradation to all telephone customers, and expected future Internet growth will cause these figures to multiply many times.

Over the long-term, ISPs that continue to use the public circuit-switched telephone network should be required to pay usage-based rates that cover the traffic-sensitive costs that they impose on that network. In the interim, the Commission should allow the local exchange carriers to charge rates that more closely reflect the cost of providing service than the below-cost rates the ISPs currently pay. This will require ISPs to compensate the LECs for the costs they are imposing on the network and give them an incentive to embrace more appropriate data services, such as packet-switched services. This, in turn, will provide an incentive to the LECs to invest in these new more efficient means of carrying Internet data traffic.

II. Eliminating the ESP Exemption Will Encourage Diversion of Internet Traffic From the Public Switched Telephone Network.

Nearly all of the parties appear to agree on one key issue, that the public switched telephone network ("PSTN"), as presently engineered, is an inefficient and inferior way of providing ISPs with access into the Internet. There is a consensus that new packet-switched and other data-oriented services, some currently available and some still under development, can better serve the interests of the ISPs, their customers, and the LECs. Bell Atlantic's analysis

shows that use of data networks for Internet traffic will reduce additional expenditures to accommodate the Internet by 60% as opposed to continued use of the public switched network.

The principal dispute is what change in Commission policies is needed to facilitate deployment of these new networks. The overwhelming majority of commenters recognize that current policies undermine that goal. The LECs, the interexchange carriers, and many ISPs alike agree that the Commission should require the ISPs to pay cost-based charges for Internet access.[3] By eliminating the fourteen-year-old "temporary" ESP exemption and requiring the ISPs to pay their own way, the Commission would remove the current disincentive for ISPs to embrace more efficient technologies and services.[4] As the Alliance for Public Technology ("APT") sums it up, "the imposition of interim ISP access charges or fees will provide incentives to move ISP traffic off of the voice network and on to data networks."[5]

In the rulemaking portion of this proceeding, the Commission is considering various proposals for revised interstate access charges. Once those new rates are in place, ISPs should pay rates for the *traffic-sensitive* portion of the local network when they use circuit-switched service options, plus charges for the local transport services they use. These rates would not include the non-traffic sensitive port costs that are currently included in local

---

[3] *See, e.g.*, Comments of CompuServe Incorporated and Prodigy Services Corporation at 12-13, Comments of AT&T Corp. at 24-27 ("AT&T"), Comments of MCI Communications Corporation at 4-5.

[4] The exemption allows the ISPs to use local business lines that are flat-rated at the terminating end. Those lines are in almost constant use as end users use the ISPs for Internet access, yet the ISPs pay no usage charge for what is essentially interstate access service.

[5] Comments of the Alliance for Public Technology at 8.

switching rates, as the Commission has proposed in the access proceeding.[6] They will require ISPs to compensate the LECs for the costs they are imposing on the network and give them an incentive to embrace more appropriate data services, such as packet-switched services. This, in turn, will provide an incentive to the LECs to invest in these new more efficient means of carrying Internet data traffic.

Until those new rates become effective, however, there is no justification for retaining the existing below-cost charges for ISP access. Instead, the LECs should be permitted to propose appropriate interim interstate rates to help defray their costs. While the Commission should give LECs some discretion to propose reasonable interim rates, it could reasonably give some guidance. First, it should state that it would not allow LECs to apply current access rates to the ISPs, as the Commission already tentatively concluded in this docket.[7] It could find that other approaches that are shown to be designed just to cover the traffic-sensitive costs of providing service would be reasonable. These may take the form of a usage-based charge for terminating traffic, a monthly surcharge to cover the increased network costs from ISP traffic volumes, or a combination of fixed and variable charges. Such an interim rate would replace the current below-cost charges and, therefore, provide an immediate incentive for ISPs to embrace newer technologies that would provide a more efficient means of transporting data traffic than the PSTN. Allowing flexibility in rate design would accommodate the significant differences

---

[6] ***Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry***, FCC 96-488, ¶¶ 56, 72-73 (rel. Dec. 24, 1996).

[7] *Id.* at ¶ 283

that exist among LECs regarding the capabilities of their billing systems and allow them to offer a price structure that best meets individual ISP needs.

III. Only Massive Investment Has Prevented Local Service Degradation.

The Internet Access Coalition ("IAC") agrees that packet-switched networks are far more efficient for Internet-type data traffic than the circuit-switched PSTN.[8] While not denying that Internet use has sharply increased network traffic, IAC argues that this increase has not contributed appreciably to network congestion, and that any congestion that has occurred can be "easily" corrected.[9]

If by "congestion" IAC means degradation of local telephone service, the only reason the public has not seen very much congestion is that the LECs have already spent hundreds of millions of dollars in emergency investment to maintain high-quality telephone service to *all* of their local exchange customers in the wake of the sudden increases in Internet traffic. During 1996 and 1997, Bell Atlantic alone will have spent nearly a half-billion dollars in unanticipated investment to expand network capacity.[10] In New York, NYNEX has installed an entire central office switch and new trunks, exclusively for the use of ISPs, to prevent excessive

---

[8] Comments of the Internet Access Coalition at 14-15.

[9] *Id.* at 10-14.

[10] Bell Atlantic invested nearly $200 million in 1996 and expects to spend more than $300 million this year in unanticipated emergency expansion.

ISP traffic demands from harming other customers' service.[11] Therefore, even though the ISPs, which receive below-cost service, are the cause of the increased investment, Bell Atlantic and NYNEX have not been willing to allow service to their local telephone customers to suffer. This does not mean, however, that Internet traffic is not burdening the network, and it does not justify retaining the ESP exemption. The current below-cost rates that ISPs pay cause them to saturate a network that was designed for voice conversations and is inefficient for data communications. Of necessity, LECs must adopt remedies which divert investment resources from more cost-effective methods of dealing with Internet traffic.

The IAC, however, claims that any congestion in the PSTN can "easily" be alleviated.[12] Most of IAC's "solutions" consist of expanding the capacity to the PSTN to accommodate the increased traffic. This "fix" is what is now happening, with the investment of hundreds of millions of dollars of circuit-switched facilities to accommodate Internet data traffic when the resources should be devoted to deploying new, more efficient packet-switched data networks.

Another proposed "fix" is through "load balancing" or "deloading" traffic from overloaded concentration units to those which have spare capacity.[13] Load balancing or deloading can be accomplished only on an individual customer line basis; that is, all of a customer's traffic would be moved from one concentrator to another to balance the load. This

---

[11] ***See*** Joint Comments of Bell Atlantic and NYNEX on Notice of Inquiry at 6-7 ("Bell Atlantic/NYNEX Comments").

[12] IAC at 9-17.

[13] ***Id.*** at 12-14.

requires that the traffic volumes over each customer line be manually evaluated in order to decide which lines should be moved to a different unit. Such a manual effort is economically infeasible for the millions of customer lines that may potentially access the Internet. Even if such a wholesale evaluation of individual line traffic were practical, which it is not, it would need to be performed all over again each time a particular customer's traffic pattern changes, as happens frequently as customers increase or decrease their Internet use. IAC's "solution" will not reduce costs or prevent congestion, as it claims.

Instead, as Bell Atlantic and NYNEX have discovered, the only way to avoid congestion is through massive new network investment to expand facilities to accommodate the increased traffic. This is because congestion caused by increased Internet traffic impacts the PSTN at so many points in the network -- at the egress switches where traffic is terminated to ISPs, at widely distributed ingress switches where end users originate traffic, and in the connecting facilities and intermediate points where aggregation occurs. Because Internet traffic differs significantly from historical trends, it is almost impossible to forecast with any accuracy. The very fact that Bell Atlantic and NYNEX have had to react to this demand through emergency means bears evidence of this impact. The cost, both in dollars and diversion of human resources, is significant.

Nor is it either necessary or appropriate to undermine the Commission's entire interconnection and access charge structure to meet the needs of ISPs, as several commenters urge.[14] Adoption of the access changes that parties want -- sub-loop unbundling, ESP

[14] *See, e.g. id.* at 42-54, Comments of WorldCom at 23-24 ("WorldCom"), Comments of America Online, Inc. at 25.

collocation, unbundling of Part 69 elements, or repricing of collocation services -- would, in fact, further exacerbate the problem by requiring the LECs to make even greater investments in the PSTN just to accommodate the ISPs, rather than giving the ISPs an incentive to migrate to more data-friendly services, such as packet-switched services. Repricing of access to induce them to use these alternative networks, not reconsideration of numerous regulatory decisions, is all that is needed to serve ISPs' needs efficiently.

The Internet User Coalition ("IUC") argues that the only way to induce LECs to invest in new network technologies is to require the LECs to absorb the costs of providing Internet access services over the PSTN.[15] The IUC argues that retaining below-cost rates to ISPs for the PSTN will give the LECs an incentive to invest in new technologies and to build new data networks, rather than investing in additional PSTN facilities.[16] According to the IUC, once the new data networks are built, the ISPs will use them.[17]

This "Field of Dreams" scenario ignores reality. First, as discussed above, even though they cannot recover all their costs, the LECs *are* investing in the local network just to maintain quality service to their telephone customers. Second, the LECs *are* building new data-only networks, but the ISPs have little incentive to use them under the current rate structure. For example, Bell Atlantic offers its packet-switched Internet Protocol Routing Service ("IPRS") in most areas where it offers local telephone service, and NYNEX will soon offer a similar service

[15] Comments of the Internet User Coalition at 10-12.

[16] *Id.*

[17] *Id.* at 12-13.

called Information Provider Access Service. Few ISPs have subscribed to Bell Atlantic's service, and none of the large ISPs have done so, because they currently pay below-cost rates for access to the PSTN and because they have already invested in modem equipment to send data over the PSTN. Actual experience, therefore, disproves IUC's theories. Unless the Commission removes the ESP exemption for ISPs, the LECs will need to continue to implement inefficient means of handling Internet traffic.

IV. ISPs Are Not End Users and Internet Traffic Is Not Local Traffic.

Several parties assert that the ISPs should continue to pay local business rates because they are "just like" end users.[18] They argue that, because the ESP exemption currently permits the ISPs to use end user services for their interstate access, they should be allowed to subscribe to end user services in perpetuity.[19] Unlike end users, however, the ISPs do not take communications services for their own use. Instead, as the Commission has previously found, they behave like interexchange carriers, and almost exactly like resellers, because they use the local network to provide interstate services to their end users.[20] The simple fact is that Internet traffic is inherently interstate, interexchange traffic, not local traffic, just as is access traffic sent to interexchange carriers. ISPs purchase access to the Internet from facilities-based Internet

---

[18] *See* Comments of Juno Online Services, L.P. at 8-11 ("Juno"); Comments of NetAction, et al. at 13-15 ("NetAction"); Comments of CAIS, Inc. at 5-7 ("CAIS").

[19] Juno at 10.

[20] ***See Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers***, 2 FCC Rcd 4305, ¶ 7 (1987) ("Enhanced service providers, like facilities-based interexchange carriers and resellers, use the local network to provide interstate services.")

carriers and use the local network to transmit end user communications through the Internet to locations throughout the world.

Nor are their traffic patterns similar to those of end users. Within Bell Atlantic's network alone, the ISPs are expected to generate some 25 billion minutes of use during 1997, an amount equivalent to 30% of the total of all interexchange carrier traffic. At the present rate of growth, by the turn of the century, the ISPs will generate nearly as many minutes of use as interexchange carriers.[21] No end user segment of comparable size comes close to generating traffic of this magnitude.

Internet traffic is so pervasive that it has completely changed the network peak periods. Non-Internet end user traffic generally peaks during mid-morning and mid-afternoon of the weekday for businesses and late afternoon for residences. In many areas, Internet traffic has moved peak network usage to the evening, it has sharply increased the peak traffic volume, and it has maintained these volumes for hours at a time. No end user segment exhibits these traffic patterns or characteristics.

Moreover, the traffic sent to the ISPs is used to access databases located around the world. Neither the customer nor the ISP knows or cares the location of that database, so that any attempt to try to calculate the percentage of interstate or interexchange use must fail. Instead, the Commission should find, as its staff has after extensive analysis, that Internet access is *not* local traffic, but instead "should be treated as inherently interstate"[22] and interexchange,

---

[21] ***See*** Bell Atlantic/NYNEX Comments at 9.

[22] Kevin Werbach, ***Digital Tornado: The Internet and Telecommunications Policy***, FCC OPP Working Paper Series 29 (March 1997) at 40. ***See also*** AT&T at 28, CAIS at 13, NetAction at 15, WorldCom at 1-2.

subject to the Commission's sole jurisdiction.[23] It should determine that ISPs exhibit traffic characteristics which are very like those of interexchange carriers and which place similar demands on the local network.

Given those characteristics, no public policy is served by allowing ISPs to continue to pay rates for network access that fail to cover their costs. As part of access reform, the Commission should require the ISPs to pay access charges that recover the usage-sensitive costs they impose on the network, as discussed above. Until the Commission develops a permanent rate structure for ISP access, it should entertain LEC proposals, in the form of tariff filings, for interim rates that will approach the traffic-sensitive cost of providing service.

V. Claims of Anticompetitive Conduct Are Undocumented and Untrue.

The Pennsylvania Internet Service Providers ("PaISPs") make a number of allegations regarding Bell Atlantic's conduct in Pennsylvania, including delayed installations,[24] service unavailability,[25] and requirements to turn over sensitive information.[26] All of these allegations are stated vaguely, with no indication of the ISP involved, the date, or the place

---

[23] For this reason, Internet traffic is not subject to reciprocal compensation, and the Commission should so find. ***See*** Bell Atlantic/NYNEX Comments at 13-15. Some competing local exchange carriers claim otherwise and are attempting to charge the LECs for this traffic under reciprocal compensation agreements. Under their theory, the LECs would not just lose money on the access services, but they would also pay their competitors to deliver the traffic to the ISP.

[24] Comments of the Pennsylvania Internet Service Providers on Notice of Inquiry at 5-6.

[25] ***Id.*** at 5.

[26] ***Id.***

where the alleged problem took place. There is no documentation for any of the allegations. However, Bell Atlantic will attempt to respond.

First, the PaISPs claim that they are not using Bell Atlantic's packet-switched IPRS network because "the price of the service is extremely high and is not a cost-effective solution for most independent ISPs."[27] However, when the IPRS tariff was filed, no party objected to the rate levels or to any other aspect of the tariff and, until now, no party has claimed that the rates are excessive. In fact, when adjusted for the increased modem and network management costs that an ISP incurs when it uses business lines, but which are not needed for IPRS, the IPRS prices are only about 1/3 higher than circuit-switched business line rates and are lower than most other available services. If the business line rates were adjusted to cover the costs the ISPs place on the network, they would be comparable to the IPRS rates, and many ISPs would find IPRS a cost-effective solution that also gives them improved performance.

Second, there is no truth to the PaISPs' undocumented claim that IPRS is unavailable to unaffiliated ISPs or that installation has been unreasonably delayed.[28] All requests for the tariffed IPRS service in the locations specified in the tariff have been met promptly. Moreover, the PaISPs' claim that the ISP must turn over customer lists and passwords in order to obtain service is absolutely false. Bell Atlantic neither requests nor would accept end user lists or passwords from ISPs. It requires that the ISP provide only the minimum information (such as premises location) needed to install and test the service, and that does not include end user lists or passwords.

---

[27] *Id.*

[28] *Id.*

Finally, the PaISPs falsely claim that the LECs have not invested adequately in their regulated networks.[29] Their analysis is based upon false assumptions and is invalid. They base their claim on figures showing that the increase in plant in service by all LECs over a four-year period was less than the depreciation expense taken in the same period.[30] There is no correlation between these figures. First, depreciation expense is the allocation over time of the cost of plant that is still in service and has no relationship to the amount of new investment. Second, the figure used as the increase in plant in service is the change in the value of all plant and takes into account retirements as well as additions. If, for example, one million dollars of plant is retired in a given year and two million dollars of new plant is added, the net plant in service amount will increase by one million dollars, even though the LEC will have invested two million dollars in new plant, but the figures the PaISPs cite do not reflect that reality.

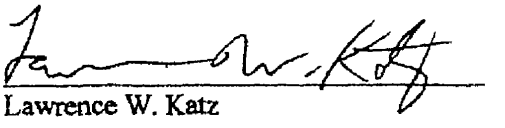
[29] *Id.* at 11-14.

[30] *Id.* at 11-12.

VI. Conclusion

The Commission should immediately terminate the ESP exemption. Once new access charges are adopted, ISPs should be charged the traffic-sensitive rate element, plus local transport. In the interim, LECs should be able to propose a cost-based rate that helps to defray the costs that ISP access is imposing on the public switched network.

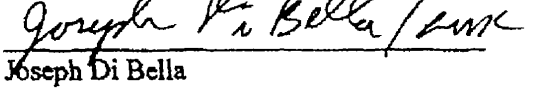
Respectfully Submitted,



Lawrence W. Katz

1320 North Court House Road
8th Floor
Arlington, Virginia 22201
(703) 974-4862

Attorney for the Bell Atlantic
Telephone Companies



Joseph Di Bella

1300 I Street, N.W., Suite 400 West
Washington, D.C. 20005
(202) 336-7894

Attorney for the NYNEX
Telephone Companies

Edward D. Young, III
Betsy L. Anderson
Of Counsel

April 23, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April, 1997 a copy of the foregoing "Joint Reply Comments of Bell Atlantic and NYNEX on Notice of Inquiry" was served by hand on the parties on the attached list.

Tracey M. DeVaux

Tracey M. DeVaux

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

(16 paper copies and 1 diskette copy)

ITS, Inc.
1919 M Street, NW
Room 246
Washington, DC 20554

Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, DC 20554

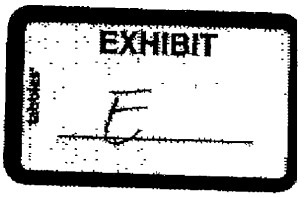
(2 copies)

DOCKET FILE COPY ORIGINAL

RECEIVED
APR 23 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263
	)	



REPLY COMMENTS OF U S WEST, INC.

Robert B. McKenna
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2861

Attorney for

U S WEST, INC.

Of Counsel,
Dan L. Poole

April 23, 1997

TABLE OF CONTENTS

Page

SUMMARY ii

I. THE "PROBLEM" POSED BY ENHANCED SERVICE PROVIDERS' ("ESP") USE OF LOCAL EXCHANGE- SWITCHING FACILITIES MUST BE PROPERLY DEFINED 1

II. THE SELWYN STUDY IS FATALLY FLAWED 7

III. AT&T APPEARS TO BE CORRECT IN ITS JURISDICTIONAL ANALYSIS 15

IV. PRICING OF ESP LOCAL EXCHANGE ACCESS OUGHT TO REFLECT ECONOMIC REALITY 16

V. TECHNOLOGICAL SOLUTIONS TO OPTIMAL ESP ACCESS MUST COME FROM THE MARKET, NOT THE REGULATOR 18

VI. CARE MUST BE TAKEN THAT CARRIER/NON-CARRIER DISTINCTIONS ARE NOT MANIPULATED TO THE DETRIMENT OF COMPETITION 22

SUMMARY

In this docket, the FCC seeks comment on the future regulatory structure to govern the provision of interstate enhanced services. This issue has become critical because entities which provide access to the international Internet are classified as enhanced service providers, and Internet usage is expanding exponentially. In the context of this proceeding (and U S WEST's comments), it is key that Internet Service Providers use local exchange switching facilities in the same manner as interstate carriers, but do not pay the same access rates as are paid by those carriers. In these reply comments, several points.

First, many commentors in the initial round of comments misperceive the nature of the so-called "ESP exemption." The ESP exemption is entirely a function of regulatory classification of ESPs as end users, based not on their actual service configurations and offerings but on the technology they employ. This dislocation creates problems because ESP usage of local exchange networks results in very heavy usage of LEC switches and trunks — which incur costs based on usage. Because ESPs and their customers pay flat-rate prices for this usage, important diseconomies are created. It is necessary to eliminate these diseconomies as part of overall access reform. U S WEST suggests that such elimination of the ESP exemption be accomplished on a transitional basis.

Second, a document called the Selwyn Study has appeared on the record in this proceeding, purporting to demonstrate that ESPs really do not make heavy use of local exchange switching facilities. This document is so riddled with error that it

ought to be ignored completely. In this regard, U S WEST submits additional documentation to the effect that Internet usage is significantly increasing holding times and switch usage in its local exchanges.

Third, U S WEST agrees with a contention put forth by AT&T in its comments to the effect that Internet access can legally be declared interstate in its entirety.

Fourth, U S WEST points out that the pricing of local exchange services to Internet Service Providers and other ESPs must be permitted to reflect economic reality. The current structure is contrary to what would happen in a competitive marketplace, and operates to retard investment and market creativity. In this same vein, the FCC should refrain from seeking to impose a technological solution on incumbent LECs. Not only would such an imposition carry with it serious legal risks, but it would risk mandating the wrong technological solution. Proper pricing of ESP access will permit all parties to utilize accurate market signals to guide technological development.

Finally, U S WEST comments briefly on the issue of whether Internet Service Providers or others involved in Internet services ought to be classified as common carriers. As a general matter, U S WEST opposes expansion of the universe of common carriers, subject to one caveat. That is, in order to obtain the benefits available to carriers under the 1996 Telecommunications Act, an entity must agree to assume the obligations of carriers under that Act (and other provisions of the Communications Act). Attempts by some commentors to obtain carrier benefits without assuming carrier obligations should be rejected.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

REPLY COMMENTS Of U S WEST, INC.

U S WEST, Inc. ("U S WEST") hereby submits its reply comments in the above-captioned Notice of Inquiry proceeding.[1]

I. THE "PROBLEM" POSED BY ENHANCED SERVICE PROVIDERS' ("ESP") USE OF LOCAL EXCHANGE-SWITCHING FACILITIES MUST BE PROPERLY DEFINED

Many of the comments filed in response to the Federal Communications Commission's ("Commission" or "FCC") Notice of Inquiry in this docket are

[1] In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket Nos. 96-262, 94-1, 91-213 and 96-263, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, 5 Comm. Reg. (P&F) 604 (1996). U S WEST herein replies to Mar. 24, 1997 comments to the Notice of Inquiry portion in this proceeding.

symptomatic of the reason the FCC has had so much difficulty dealing with the so-called ESP exemption from switched access charges over the years — the "problem" facing the FCC is stated in so many disparate ways that the FCC must often feel itself at a loss to determine just what it is being called on to solve. Thus, comments on one side often make it seem that ESPs are bordering on larceny when they use local exchange carrier ("LEC") networks without paying interstate carriers' carrier access charges, while comments from ESPs often seem to contemplate a right to flat-rate exchange access which is almost theological in nature. While the problem which arises when ESPs are billed on a flat-rate basis for usage of local exchange networks is complex indeed, misdefining the nature of the problem makes resolution well nigh impossible.

The ESP exemption problem is caused by a confluence of technological, market, economic and regulatory forces which are themselves readily identifiable. From a technological perspective, the problem is caused by the fact that data networks are not time sensitive — packet switches utilize resources only when data is being sent or received. On the other hand, circuit switched networks are time sensitive — circuits, once established, consume switching and trunking resources whether data is being sent or not. From a market perspective, most local exchange calls are flat rated, which means that the price of a circuit-switched connection to a packet-switched network is not based on the time of connection.

From an economic perspective, the flat rating of this circuit connection has two results: 1) consumers using the local exchange network for this connection are motivated to keep the local exchange connections up for protracted periods; and

2) ESPs and LECs alike are disincented from developing more efficient serving vehicles to meet their mutual needs. The problem is ultimately a regulatory one because regulatory agencies have created the structure in which this fundamental disconnect can flourish.

In a competitive, non-regulated marketplace, the market would react fairly quickly along the following lines to the technological disconnect which defines the ESP exemption. Once users who connected data networks to circuit networks discovered that very long holding times on the circuit network were essentially cost free (that is, no more expensive than short holding times), the holding times of these users would begin to increase (precisely what has happened). When the circuit network providers noticed these increased holding times and identified that they were attributable to a particular class of users, those providers would be motivated to seek a manner of provisioning to this class of users which either captured a reasonable proportion of the usage-sensitive costs being incurred on account of the data network usage or provided the economic incentive for data network users to utilize alternative circuit network solutions more compatible with the usage characteristics of a data network.

Obviously, the competitive market would not motivate circuit network providers to seek to drive data network users to leave the networks of the circuit providers — unless the usage characteristics of the two types of networks were so completely incompatible that it did not make sense commercially for the two groups to do business with each other. Likewise, the competitive marketplace would not motivate circuit network providers to seek to raise the prices of data network users

above market levels to subsidize below-cost rates of other customers. By the same token, it would be utterly unrealistic to expect circuit network providers to simply watch their pricing become distorted by the fact that the technology of a particular class of customers had made their own pricing structure outmoded (at least as to that class of customer). Market forces would ultimately demand that some form of usage-sensitive recovery be devised for data network interconnection to circuit networks — at least to the extent that data network subscribers had significantly greater holding times than those of other users.

This fairly simple market scenario turns into a serious problem with the intervention of regulation. The FCC has ruled that ESPs are to be treated as end users, which means that they pay no usage-sensitive rates for interstate access (i.e., the subscriber line charge, and, when applicable, special access charges and special access surcharges are all priced at non-usage-sensitive rates). Usage-sensitive rates are available at the interstate level for the type of service utilized by ESPs, but are not assessed on ESPs because of the ESP exemption. The situation is especially compounding because of the myriad growth of the Internet and the fact that Internet Service Providers are classified as ESPs. This scenario normally would result in development of rates which are usage sensitive at the state and local level, but U S WEST is not authorized to charge mandatory measured rates in any of its 14 state jurisdictions. Thus, despite the fact that proper market and economic analysis would naturally lead U S WEST and other incumbent LECs to price local exchange access for ESPs in a manner which properly reflected the fact that holding times for ESPs' customers (and ESPs) are considerably longer than for other

customers, governmental *force majeur* has prevented this normal and salutary operation of market forces.

In this context, it is possible to evaluate what U S WEST considers to be several of the chief obstacles to reasoned analysis of what is clearly one of the key issues facing telecommunications regulation in the near future.

- ESPs often claim that the ESP exemption is warranted because ESPs do not purchase, use, or need the same services purchased by interexchange carriers ("IXC").[2] A number of commentors contend that ESPs should not pay interstate switched access prices because their use of the local exchange network is different than the use of the same network by interexchange carriers.[3] Whether factually true or not (U S WEST sees little difference between the line-side services purchased by many ESPs and interstate Feature Group A)[4], this argument is simply irrelevant. The ESP exemption is a distinction based on what subsidies interstate carriers, but not ESPs, must support. These subsidies have nothing to do with what services or functions ESPs purchase. As has been pointed out forcefully in this proceeding and elsewhere,[5] much of the price which interstate carriers

[2] See, e.g., Teleport at 3; Juno Online at 10; WorldCom at 13.

[3] See, e.g., Juno Online at 10; WorldCom at 12-13; TCG at 2-3.

[4] In fact, as demonstrated in U S WEST's initial comments, ESP usage closely resembles carrier usage. U S WEST at 4-8.

[5] See U S WEST at 10-12.

pay for access today is subsidy driven, not cost driven. For example, the carrier common line charge, which ESPs avoid paying today, has nothing to do with service differentiations between ESPs and interexchange carriers, but is a regulatory device to artificially lower residential rates. By arguing that they are entitled to pay less for access than do IXCs because the service they purchase is different (even if such really is the case), ESPs miss the mark because the price differential caused by the ESP exemption has nothing to do with service. The real problem is the subsidies inherent in access, which must be replaced with rebalanced rates and universal service support.

- A number of ESPs seem to assume that LECs argue that the elimination of the ESP exemption should result in dramatic increases in LEC revenues, and nothing more.[6] Such is not U S WEST's position. U S WEST has long viewed elimination of the ESP exemption as part of overall access reform, not as a profit generator for LECs. For that reason, U S WEST has recommended that the ESP exemption be eliminated as part of access restructure so that ESPs pay rates reflective of costs and market conditions, not subsidy-based rates.
- A number of ESPs contend that LECs have been remiss in not constructing facilities and services which would serve the needs of data

[6] USIPA at 14-15; IIA at 3; CAIS at 9; PaISP at 13.

transmission better than do existing circuit-switched networks.[7] To at least some extent these commentors are correct — in a properly functioning marketplace, both LECs and ESPs would have the economic incentives which would drive them toward additional technological innovation. But this is precisely our point. The ESP exemption robs both ESPs and LECs alike of the necessary economic incentives to innovate and improve service and technology because it creates a false set of economic signals.

- The real problem with the ESP exemption is simple — services which cause costs to be incurred on a usage-sensitive basis are being priced (per governmental fiat) at rates which are not sensitive to usage. This type of government-imposed pricing structure is a ticket to disaster and failure in a competitive market and must be changed.

II. THE SELWYN STUDY IS FATALLY FLAWED

The Internet Access Coalition attached to its comments a document prepared by Lee Selwyn and Joseph Laszlo called "The Effect of Internet Use on the Nation's Telephone Network."[8] The Selwyn Study basically concludes that the ESP exemption is not creating any problems for LECs because ESPs use LEC networks

[7] See, e.g., PaISP at 11-14; IUS at 12-13; CAIS at 10-11; WorldCom at 21-22.

[8] The Effect Of Internet Use On The Nation's Telephone Network, by Lee L. Selwyn and Joseph W. Laszlo, Economics and Technology, Inc., prepared for the Internet Access Coalition, Jan. 22, 1997 ("Selwyn Study").

just like any other end users. The Selwyn Study specifically rejects the notion that ESP usage is putting disproportionate strains on LEC networks.[9]

While not without its good points, the Selwyn Study is fatally flawed, and its main premises cannot be relied on for any purpose. This is because those premises are either palpably wrong or based entirely on "secret" information known only to Selwyn, or both. Some examples are illustrative and dispositive.

- Selwyn contends that, contrary to the detailed studies conducted by LECs (and the logic of simple economics discussed above), ESP customers do not use LEC networks in a manner which creates holding times any longer than those of the average user. Selwyn asserts that "the majority of ESP users fall into the range of 0 to 10 hours per month."[10] Selwyn elaborates: ". . .a reasonable assumption is that, on average, each of the roughly 10 million on-line service users (as of the end of 1995) accounted for 15 hours per month of local calling to an ISP/ESP."[11] This is a critical assumption, because all other research indicates that many customers of ESPs keep the local connection between their premises and the ESP open for 15 hours per day, not per month.[12] Unfortunately, there is no way to test Selwyn's assumptions, as they are based entirely on "proprietary 1996 usage data for several

[9] Id. at 3, 19-21, 51-53.

[10] Id. at 26.

[11] Id. at 29.

ESPs made available to the authors of this study, which indicate an average usage of between ten and fifteen hours per month per ESP subscriber."[13]

- Another important assertion made in the Selwyn Study is that ESPs generate massive sums of money for LECs by increasing demand for second lines.[14] Second lines are also priced on a flat-rate basis -- and, in the case of residential lines, are priced below cost. The increase in the use of second lines to support the computer connections, if true (and the notion that six million such lines are dedicated to computer use is extemely suspect) would indicate that problems cuased by the ESP exemption were getting worse, not better.
- Various commentors have pointed out that serious Internet congestion has already occurred, and that this congestion can be attributed directly to the market incentives which flat-rate pricing can give consumers.[15] The Selwyn Study essentially dismisses the congestion problems Internet usage can cause for circuit switching providers by claiming that "congestion in the Internet or in a particular ISP's network pose no cause for concern by the BOCs, since these problems

---

[12] See U S WEST Mar. 24, 1997 Comments at 17-20 and Exhibit A.

[13] Selwyn Study at 29, n.57. See also id. at 26, which claims that Selwyn's conclusions are based on "an analysis of proprietary 1996 ESP usage data. . ."

[14] Id. at vii, 25-29.

[15] See, e.g., SWB at 10; BellSouth at 3; SNET at 6-8; Pactel at 27-29.

do not significantly affect users of the PSTN."[16] This allegation is wrong as a matter of network engineering as well as a matter of Internet Service Provider marketing.

- First, in response to Internet congestion, Internet Service Providers have introduced a software device which guaranties that circuit-switched-network congestion will be maximized. America Online ("AOL"), for example, has introduced software which will continuously tie up a local exchange network facility until one of AOL's lines becomes free. Attached hereto as Exhibit A is an AOL Internet message which proudly proclaims:

> Our phone company has created a software program that can connect you to America Online with ease — and we're giving it away for free. If you're tired of listening to busy signals, this program can help.
>
> Simply run our program before you try to connect to AOL, and the software will persistently attempt to log on to AOL until it succeeds.
>
> This is one tough piece of software. It will not let up until it gets you connected. The moment a free line becomes available, the program will sign you in.

This activity will impact significantly local exchange network usage and congestion.

Second, as an engineering matter, congestion encountered in the

[16] Selwyn Study at vi.

Internet Service Provider infrastructure backs up across the circuit network in the form of circuit and control processor congestion whether the Internet Service Provider itself rings busy or not. Even in an SS7 environment, calls which are answered with a busy signal consume network resources — and calls which are continuously redialing a busy number consume significant network resources.

Third, the Selwyn Study's contention that local network congestion does not really occur because end users accessing the Internet are scattered throughout a local exchange[17] is likewise off the mark because this traffic is ultimately concentrated in the ESPs' serving wire center.

- Selwyn assumes that an entire local telephone exchange is engineered around a homogenous busy hour, and that, as ESP calls are made at times other than the engineered busy hour, increased traffic and holding times are actually good for network efficiency.[18] Thus, claims Selwyn, LECs ought not to be able to charge usage-sensitive prices to ESPs for network connections. Selwyn's assumption about how a network is engineered is completely wrong. Each switch is engineered based on its own busy hour assumptions — the entire network is not, as Selwyn seems to assume, based on the largest busy hour of any single switch. Even when off-peak, ESP traffic is often redirected,

[17] Id. at 5-9.

[18] Id. at 11, 40.

sometimes overnight, to different switches which have not been engineered to accommodate the ESP's increased call volume and long hold times.

- The local exchange busy hour deserves some additional consideration. Time slot (or its equivalent, depending on the switch manufacturer) capacity in a local switch has been engineered based on peak or busy-hour volumes for the voice network. Each local switch has been engineered for a unique busy hour based on its location and the types of subscribers served. The rapid proliferation in Internet/data traffic has altered these busy hour characteristics and the times when they occur. Peak-usage periods now cover a percentage of the day rather than any given hour. Existing time slot capacities engineered for normal voice network busy hours have become inadequate in many areas. During the new busy hour (or, more accurately, the busy five or six hours), a major portion of the time slots in the local switch are being used to complete Internet calls of long duration, leaving fewer time slots available for normal voice calling. The remaining time slots must now be competed for by the remaining customers needing to make a call. These customers now face an increased chance of blockage and a busy signal. If they, like AOL's customers, have software which continuously engages the local switch until a connection is made, the network congestion problem becomes self compounding.

- To verify these conclusions, U S WEST conducted a peg count usage-and-line-busy study of five existing Internet Service Providers. This study documented the following:

  - Internet Service Providers make heavy usage of local exchange networks during what are perceived to be "normal" busy hours.
  - Internet Service Providers generate considerably more traffic than they are able to terminate (one originate-to-terminate ratio exceeded 3000 percent).
  - Redials caused by Internet Service Providers' inability to terminate generated traffics ties up common equipment with non-productive calls.
  - Considerable switch rebalancing has been necessary to accommodate Internet Service Providers because of long holding times.
  - Call volumes (associated with Internet usage) have increased dramatically.

  A copy of this study is attached as Exhibit B.

- The Selwyn Study argues that LECs have misconstrued the scope of the ESP exemption by failing to recognize that the LECs are paid for calls to ESPs by end users originating such calls.[19] The same analysis, of course, would apply to calls from end users to an interexchange

[19] Id. at 21.

carrier point of presence. But Selwyn is correct in observing that a LEC can be fully compensated for use of its network by properly charging either the originating or the terminating customer. In a competitive market it is not clear just who would pay the usage-sensitive price for the connection between an end-user customer and an ESP. But, in U S WEST's case at least, no one is paying the proper usage-sensitive price for this connection. As carriers today pay this usage-sensitive rate, it seems logical that ESPs pay it as well. However, it clearly is not appropriate to deny LECs any right to recover these usage-sensitive costs on the basis that someone else might possibly pay such a charge, when that second entity does not now pay this amount.

- In the end, the Selwyn Study is reduced to leading a hunt for red herrings. The Selwyn Study is determined to prove that ESPs should not pay interstate switched access charges. As such, it bends and twists the facts in an effort to buttress its predetermined conclusion. But the Selwyn Study's conclusion, when reduced to essentials, is really no more than that — in a market which was really competitive, no one would pay the subsidy-driven rates which currently represent the interstate access charge structure. On this matter we can all agree, but only after access charges have been rationalized — either by market forces or by regulatory directive.

III. AT&T APPEARS TO BE CORRECT IN ITS JURISDICTIONAL ANALYSIS

In our initial comments, U S WEST observed that a typical Internet access call would be a mixture of interstate and intrastate communications — to a large extent because the call would be entirely intrastate except for brief time periods when data were actually being transmitted.[20] AT&T, on the other hand, contends that an Internet connection can properly be classified as interstate in its entirety because the connection between the end user and the Internet Service Provider, whether actually functioning as part of an interstate connection at any given time, is nevertheless established for purposes which have a sufficient interstate nexus to permit the entirety of the call to be classified as interstate.[21] On reflection, AT&T seems to support a reasonable position on the extent of FCC jurisdiction. When a local exchange circuit/transmission is utilized for purposes which are mixed interstate and intrastate, and the relative proportions cannot be determined, the FCC may assert interstate jurisdiction over the entire transmission.[22] In other words, because a connection between an end user and an Internet Service Provider is both interstate in nature (in part) and generally established for the purpose of interstate communications, the fact that all of the connect time is not actually devoted to interstate transmission is irrelevant.

---

[20] U S WEST at 22-26.

[21] AT&T at 28-32.

[22] Georgia Public Service Comm'n v. FCC, 5 F.3d 1499 (11th Cir. 1993).

IV. PRICING OF ESP LOCAL EXCHANGE ACCESS OUGHT TO REFLECT ECONOMIC REALITY

With the exception of a handful of ESPs,[23] commentors seem in pretty wide agreement on the conclusion that the current rules regarding the pricing of local exchange access services to ESPs cannot stand. This is a matter of particular interest to existing IXCs, many of whose services compete directly with those provided by ESPs (something which will be more and more important as voice on the Internet becomes a reality).[24] There really does not seem to be a good and sustainable reason to treat two competitors differently in the access charge arena based entirely on the technology they employ — especially when the use of local exchange switching facilities made by each seems to be highly comparable, if not identical.

The problem, as IXCs such as AT&T and MCI recognize,[25] is that current access prices do not reflect economic costing principles. Thus, simply having ESPs pay existing switched access prices would not necessarily be beneficial because those prices represent the results of a series of regulatory decisions which currently price interstate switched access services well in excess of economic costs in order to

---

[23] See, e.g., Juno Online at 5; CAIS at 3; Assc. Of Online Professionals at 8.

[24] See, e.g., GCI at 2-3; AT&T at 2-4; MCI at 4-5; ACTA at 2-3, 8-9; TRA at 1-2, 5-6, 14-18.

[25] AT&T at ii, 6-8, 23-25; MCI at 4, 22. Much of MCI's comments present thoughtful ideas. To get to these ideas, however, one must wade through a welter of anti-LEC vituperation, which is unfortunate.

subsidize other services.[26] While increasing the number of subsidy payers would have the effect of spreading out the subsidy payments among customers, it does not seem necessarily prudent to dump ESPs into this subsidy structure at this time (so long as we do not get another 14-year transition period such as happened with the supposedly transitional ESP exemption in the first place).

U S WEST's proposal for dealing with the ESP exemption is to have the FCC either assume ownership of the entire problem or leave it to state regulators to fix. Once ESPs are no longer automatically exempt from carriers' carrier charge payments solely on account of their ESP status, the market can at least try to work out some reasonable accommodation between LECs and ESPs until such time as access reform has been completed.

AT&T has a somewhat different suggestion for a transition mechanism, which seems like it has some merit. AT&T suggests that during the transition to cost-based switched access prices, ESPs (or at least Internet Service Providers) be required to pay a TELRIC-based price for local switching, but none of the subsidies which will otherwise be distributed throughout the access structure pending full reform.[27] As a transitional mechanism, something akin to AT&T's suggestion might work. We assume that the FCC will establish an access reform plan which, at least initially, permits charging of a traffic-sensitive element in the neighborhood of $.012 per minute of use for interstate switched access. It would make sense for

[26] AT&T at 25; MCI at 4. MCI implies that these subsidies go into the coffers of LECs, rather than to support other policy objectives. MCI at 3. MCI is wrong here.
[27] AT&T at 25.

Internet Service Providers to pay this amount — and this amount only — for interstate switched access during a transition to full and necessary access reform.

V. TECHNOLOGICAL SOLUTIONS TO OPTIMAL ESP ACCESS MUST COME FROM THE MARKET, NOT THE REGULATOR

A number of commentors have suggested ways in which the existing LEC networks can be reconfigured to better accommodate the needs of data network suppliers. Chief among these suggestions is deployment of Digital Subscriber Loop (xDSL) technology to increase dramatically the capacity of subscriber loops and permit development of a more friendly relationship between data providers and LECs.[21] U S WEST completely agrees that modern technology has much to offer in this area, and is actively pursuing a number of options to deploy technology along the lines suggested by some commentors. However, as a regulatory matter, there are several key realities which these commentors (who often seem to take the position that only LEC sloth stands between them and a bright technological future) tend to minimize.

- In the first place, the existing ESP exemption stands as a serious barrier to implementation and development of technological solutions to the problems posed by the interconnection of packet networks and circuit networks. While the extra burdens packet networks place on

[21] See, e.g., MCI at 11; AT&T at 19-20; Motorola at 5-9; CBT at 6.

circuit network suppliers normally would tend to work themselves out in the market, the ESP exemption discourages operation of market forces. Hence, it is misleading to blame LECs for failing to construct facilities under regulatory circumstances which could make such construction uneconomical, which is what the ESP exemption really does.

- Second, the consequences of the FCC's unbundling, pricing, and resale rules on new LEC investment cannot be underestimated. Under the FCC's rules in this area, any new investment is subject to unbundling at the whimsy of an interconnecting carrier with absolutely no showing of economic necessity.[29] Frankly, under these circumstances, extensive new investment by LECs may itself prove a chancy proposition because of the FCC's rules demanding that no new investment can result in a competitive advantage to a LEC.
- In a competitive marketplace, governmental construction obligations imposed on one market player have immense legal and constitutional

[29] See the Commission's unbundling rules in In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, 11 FCC Rcd. 15499 (1996), on appeal, sub nom. 96-3321 (8th Cir.). Use of the word "whimsy" is not overstating the case. AT&T, for example, has contended in various state arbitration proceedings that it has the right to demand complete revamping of LEC networks, at a fraction of the cost of such revamping. See, e.g., AT&T's Reply to Exceptions of U S WEST and MCI, In the Matter of the Interconnection Contract Negotiations between AT&T Communications of the Midwest, Inc. and U S WEST Communications, Inc. Pursuant to 47 U.S.C. Section 252, Docket Nos. ARB-96-1, ARB-96-2 (Iowa Department of Commerce Utilities Board), filed Nov. 4, 1996 at 10-12.

consequences. While the instant proceeding clearly is not the proper place to resolve these issues, it is important always to keep in mind that when the sovereign uses legal compulsion to force a company to construct facilities for another company's benefit, a concomitant obligation to ensure payment for such construction also arises. Here the technological difficulties which have been identified appear to arise primarily from governmentally mandated pricing structures which themselves skew the marketplace. This seems to be a particularly inappropriate problem for the government to seek to remedy through a different type of compulsion. Hence, we submit that it would not be a reasonable solution for the FCC or other regulatory agency to seek to compel LECs to construct networks along the lines suggested by various commentors — even though these same technologies may ultimately be deployed in response to correct market signals.

- Finally, it should be remembered that many of the technological solutions now under consideration are themselves enhanced services, or contain enhanced functionalities or elements. xDSL technology, for example, can generally be offered as an enhanced service over common carrier lines. If the FCC attempted to impose a particular technology on the marketplace, its selected technology would undoubtedly look toward a common carrier solution to existing anomalies between circuit and packet switching, the source of the ESP exemption. In so doing, the FCC would necessarily be disfavoring deployment of

deregulated technologies and services which could serve far better the interests of the various providers and the public – possibly even discouraging deployment of xDSL technology itself.

- The issue of LEC investment is the focus the PaISP. PaISP contends that network problems cited by LECs are the result of decreased network investment, not the result of ESP usage.[30] Pennsylvania relies on some very suspect statistics to support its claim, ultimately concluding that from December 1990 until December 1994, LECs had collected more than $80 billion in depreciation and amortization expense from their customers but had only "increased their investment in plant by approximately $35 billion."[31]

In fact, because of additions, retirements and other items, the change in total gross plant cannot be equated with investments made by carriers. In U S WEST's case, for the period 1992 through 1996, total investment exceeded MR depreciation expense by almost $2.2 billion.

Year	Capital Expenditures	MR Depreciation Expense	Excess Capital Over Depreciation
1996	$2.806 billion	$2.501 billion	$305 million
1995	$2.739 billion	$2.300 billion	$439 million
1994	$2.477 billion	$2.151 billion	$326 million
1993	$2.226 billion	$1.826 billion	$400 million
1992	$2.385 billion	$1.681 billion	$704 million

[30] PaISP at 11-14.

[31] Id. at 12.

VI. CARE MUST BE TAKEN THAT CARRIER/NON-CARRIER DISTINCTIONS ARE NOT MANIPULATED TO THE DETRIMENT OF COMPETITION

The fact that ESPs are characterized as end users for FCC regulatory purposes caused some interesting comments to be filed which illustrate the continuing dangers of permitting important segments of the telecommunications industry to grow up around regulatory anomalies, rather than around market and technological forces. On the one hand, a number of commentors suggest that ESPs should be classified as carriers and be regulated in the same manner as are common carriers today.[32] This is particularly the case for those Internet Service Providers which will be providing voice connections in the near future — thus competing directly with common carriers providing the identical service via circuit-switched technologies.[33] ESPs, on the other hand, point out that Internet voice connectivity will be a function generally of the customer premises equipment ("CPE") employed by the customer, and that it would make very little sense to make an ESP's carrier status depend on the type of CPE employed by the customer. At the same time, however, ESPs find themselves arguing that they should be entitled to the full panoply of network benefits set forth in the Telecommunications Act of 1996 without assuming any of the duties assigned to carriers under the Act. And, of course, if classified as carriers, Internet Service Providers would be responsible for payment of carriers' carrier charges under the current rules.

---

[32] See, e.g., TRA at 13; ACTA at 4; CompTel at 2-3.

[33] See GCI at 2-3; TRA at 14-18.

U S WEST submits that the dispute over the carrier/non-carrier distinction says far more about the fact that the industry has outgrown the regulatory structure than it does about any real differences between Internet Service Providers and common carriers as currently defined and classified. The comments reflect one absolute agreement — being designated as a common carrier carries regulatory baggage which is seriously burdensome and unnecessary. There is no good reason why Internet services should not be able to grow into full competitors of existing carriers. By the same token, there is no reason why such growth should be supported by a regulatory structure which imposes burdens on carriers which are not imposed on Internet Service Providers. Moreover, the obvious solution — impose carrier regulations on everyone alike — is generally perceived by the ESP commentors as potentially ruinous of the industry (which itself probably says a great deal about the true nature of common carrier regulation).

For the most part, U S WEST does not favor extending the reach of the FCC's (or of states') common carrier jurisdiction into an industry which seems to have grown strong in an unregulated mode, at least in the absence of compelling evidence to the effect that such extension of common carrier regulation is necessary to protect the public interest. On the other hand, the main difference between entities classified as common carriers today and Internet Service Providers is the technology employed to provide service, which seems to provide a very poor reason for a regulatory classification carrying such significant consequences. We suggest that the Commission use the following principles to guide it in determining proper carrier regulation of Internet Service Providers and other ESPs.

- The ESP exemption can and should be eliminated based on network usage characteristics without classifying or regulating ESPs as carriers. There is no necessary relationship between carrier status and paying usage-sensitive prices for switching and transport.
- Whether or not ESPs (or some ESPs) are classified as carriers, the fact that ESPs and carriers compete in essentially the same marketplace should be recognized in determining when and whether to deregulate the services of existing carriers. The Commission has clear authority to deregulate carrier services,[34] and coexisting ESPs in a market should be considered in evaluating the state of competition in a market.
- Finally, ESPs should be granted the special rights available to carriers under the 1996 Act only so long as they agree to assume the duties imposed on carriers under the Act (most especially Sections 251(a) and (b)). U S WEST agrees that it makes sense to bring ESPs and carriers closer together from a regulatory perspective, but ESPs should be able to control such movement (should they so desire) only by assuming the duties of carriers along with the benefits accruing to carriers. Allowing ESPs to obtain

[34] See 47 U.S.C. § 410.

carrier-like network benefits without assuming concomitant obligations would be contrary to the entire thrust and focus of the 1996 Act.

Respectfully submitted,

U S WEST, INC.

By: Robert B. McKenna

Robert B. McKenna
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2861

Its Attorney

Of Counsel,
Dan L. Poole

April 23, 1997

EXHIBIT A

Subject: Fwd: Connect To AOL With Ease (For Free)
Date: Fri, 18 Apr 1997 01:56:04 -0400 (EDT)
From: MachFront@aol.com
To: jgbarlo@uswest.com

Forwarded message:
From: Phone@att.com
Reply-to: Phone@att.com
To: Phone@att.com
Date: 97-04-17 12:27:05 EDT

Are You Hearing Busy Signals When You
Try To Connect To America Online?

We Can Help!

Our phone company has created a software program that can connect you to America Online with ease--and we're giving it away for free. If you're tired of listening to busy signals, this program can help.

Simply run our program before you try to connect to AOL, and the software will persistently attempt to log on to AOL until it succeeds.

This is one tough piece of software. It will not let up until it gets you connected! The moment a free line becomes available, the program will sign you in.

Similar programs have sold for $20 to $50. But we're giving our software awa for free!

If you sign up for long-distance phone service with UST (we're the nation's #4 phone company) between now and April 30, we'll rush you a free copy of ou software.

What's more, because our long-distance service costs less than the three biggest carriers', you'll also enjoy a lower phone bill.

We only charge 12.9 cents a minute for long distance. Here's how that compares to the major long-distance companies:

AT&T-
Their 15 cents a minute charge is only slightly higher than our rate, but th difference does add up. (Note: Much of UST's service operates on AT&T's phon lines.)

Sprint-
Their 10 cents a minute rate is attractive but it's restricted to late night and weekends. At peek times, Sprint charges a high 25 cents a minute. WE CHARGE THE SAME RATE 24-HOURS A DAY 7-DAYS A WEEK.

MCI-

Like AT&T, they charge 15 cents a minute, but they offer a 3 cent discount t heavy users. All our customers get the same low rate, regardless of their monthly usage.

(Note: All rates listed here--including ours--are for calls made within the continental United States.)

As the above comparison shows, if you sign up for our long distance service, you'll not only connect to America Online faster, you'll also save money every month.

Who We Are:

US Telephone is the #4 long-distance company in the country. Though we don't spend as much on advertising as the big three carriers do, by offering the lowest rates possible, we've been able to grow our customer-base and become the #4 phone company.

Our GUARANTEE to you:

We're so sure that you will save money with us, that we guarantee it. If you are ever dissatisfied with our service, you can switch back to your original phone company and we will NOT charge you for the switch. And whether you continue to use our service or not, you can keep the AOL connection program as our FREE gift to you.

To receive your free software and sign up with our company, send no money. Instead, simply complete the following 3 easy parts and mail them to us.

Part 1: Tell us about the owner of the phone number that you'd like to switc to our service.

Owner's Name: _____

Company Name (if applicable): _____

Where is the phone located?

Address: _____

City, State Zip: _____

What is the billing address (if different)?

Address: _____

City, State Zip: _____

Which phone numbers would you like to have switched to our service?

_____

Is the phone number a business or residential line?

Part 2: Initial your agreement to the following terms.

• I will receive a free copy of our software--which will ease my connection to America Online. (Note: The software will not work if you own an Apple brand computer.)

• I will be charged 12.9 cents per minute for interstate calls made to anyon within the continental United States.

• I will be charged in six second increments. (Which means that if I talk fo a minute and 6 seconds, I will be charged for a minute and 6 seconds--not fo a full TWO minutes.)

• I will not be charged a minimum monthly fee.

• I may cancel UST's service at any time.

Phone Owner's Initials: _____

Part 3: Authorize us to switch you to our phone service, by signing the following.

THE UNDERSIGNED CUSTOMER DOES HEREBY AUTHORIZE INTERNET LONG-DISTANCE TO ACT ON BEHALF OF THE CUSTOMER TO MAKE ANY AND ALL DECISIONS RELATED TO CUSTOMER'S TELECOMMUNICATIONS SERVICES AND CUSTOMER AGREES TO PAY FOR THE TELECOMMUNICATION SERVICES UTILIZED BY CUSTOMER.
THIS LETTER OF AUTHORITY DOES HEREBY GIVE INTERNET LONG-DISTANCE THE AUTHORITY TO NEGOTIATE ON BEHALF OF CUSTOMER FOR TELECOMMUNICATION SERVICES, OBTAIN ALL PERTINENT INFORMATION CONCERNING TELECOMMUNICATION SERVICES, AND SIGN ALL DOCUMENTS FOR THE CUSTOMER RELATED TO TELECOMMUNICATIONS SERVICES.

Phone Owner's Name: _____

Phone Owner's Signature: _____

Date: _____

One you've completed the above 3 parts, mail them to us at:

US Telephone
Quick Connect To AOL Offer
Department PH12
PO Box 660127
Flushing, NY 11366

Remember, we guarantee your satisfaction.

Subject: Fwd: Having Trouble Connecting To AOL?
Date: Fri, 18 Apr 1997 01:58:41 -0400 (EDT)
From: MachFront@aol.com
To: jgbarlo@uswest.com

Forwarded message:
From: Solutions@Mci.com
Reply-to: Solutions@Mci.com
To: Solutions@Mci.com
Date: 97-04-04 08:03:35 EDT

ARE YOU HAVING TROUBLE CONNECTING
TO AMERICA ONLINE?

Don't Give Up On AOL
Our Software Can Help You

If you've grown so tired of waiting to sign on to AOL that you considered switching to another company, DON'T. There's a reason why AOL's lines are busy and other companies' lines aren't:

AOL is the BEST Internet service provider.

So don't make the mistake of switching to a less popular number two. Instead if you're having trouble connecting to AOL, let us help.

Our new software program, called "Let Me In !", can help get you through the busy signals. Simply run the program before you try to connect to AOL, and the software will persistently keep trying to log on to AOL for you until it succeeds.

"Let Me In !" is one tough piece of software. It will not let up until it gets you connected ! The moment a free line becomes available, it will sign you on to AOL.

Whether you use AOL for
PLEASURE, SCHOOL OR BUSINESS,
you'll benefit from this software.

We understand the aggravation you must feel every time you try to log on to the Internet and get nothing but busy signals. If you've grown tired of the frustration, simply order your copy of "Let Me In !" today and start enjoyin your on line time again.

To help get you through this difficult time, we are now selling "Let Me In ! for only $8.50. (To take advantage of this price, please respond by April

18.)

We Gladly Accept
Visa, Master Card, and American Express

To order your copy, fill out the following form and mail it to the address a the bottom. (For your protection, credit card customers must provide the cardholder's name and billing address in the lines below.)

Name_____

Address_____

City, State, Zip_____

Phone_____

E-Mail Address_____

CREDIT CARD ORDERS:
Please provide the following information

Card Number: _____

Card Name (circle one): Visa, Master Card, American Express

Card's Expiration Date: _____

I have entered my credit card's billing address above and I authorize Zeros And Ones to charge my credit card $8.50 plus $1.50 shipping and handling.

Card Holder's Name: _____

Cardholder's Signature: _____

Date: _____

PAYMENTS BY CHECK OR MONEY ORDER:
Make your payment of only $8.50 plus $1.50 shipping and handling to "Zeros And Ones."

SEND YOUR ORDER TO:

"Let Me In !"
Zeros And Ones
Department LE10
PO Box 660107
Flushing, NY 11366

Order your copy of "Let Me In !" today. Your time is worth the $8.50.

EXHIBIT B

INTERNET SERVICE PROVIDER 1997 NETWORK USAGE

Attached are some examples of the peg count, usage and line busies generated by 5 internet providers. All of these IPs are served from the same switch. The traditional busy hour for this switch is 1900 to 2000. It is primarily a residential switch. Also included are graphs of corresponding trunk data for this same office. There is a comparison of the same week in 1996 and 1997. (The trunk data does not include peg count from Independent offices connecting to this switch so the actual peg count would be higher than what is depicted on the graph. The usage does include Independent traffic.) It has no local tandem arrangement for handling alternate final traffic. All trunking is direct trunked between offices within the local area.

These graphs are typical of what U S WEST is seeing across the region. This data illustrates several key points:

• Internet Providers (IPs) use the network elements all day long and not just in off-peak hours as they would have the world believe. In fact in this particular office, the heaviest usage falls directly in the office's "normal" busy hour. (In one case in particular, IP "B", the lines were in use at 36 CCS all day long.) In other situations, the IP traffic actually changes the "normal" busy hour and causes additional equipment requirements in the "new" busy hour.

• IPs generate a great deal more traffic than they can terminate. The line busy graphs show the number of calls that were delivered to the IP and received a normal busy signal. These are not "blocked" calls due to unavailability of equipment in the network. In one case, in a 10 hour period, we offered 31,000 calls to a particular IP and the IP was only able to handle 1000 of these calls.)

• The IPs' inability to terminate the traffic they stimulate, generates a multitude of redials which continue to tie up the common equipment within the PSTN for non-productive calls (note increase of peg-count at times when busies are highest). This results in the unavailability of the common equipment for use by other voice callers attempting to place calls not destined for the IP itself. These non-IP calls are then blocked because of the lack of availability of equipment being held by long IP calls. Other callers attempting to get to the IP are also blocked.

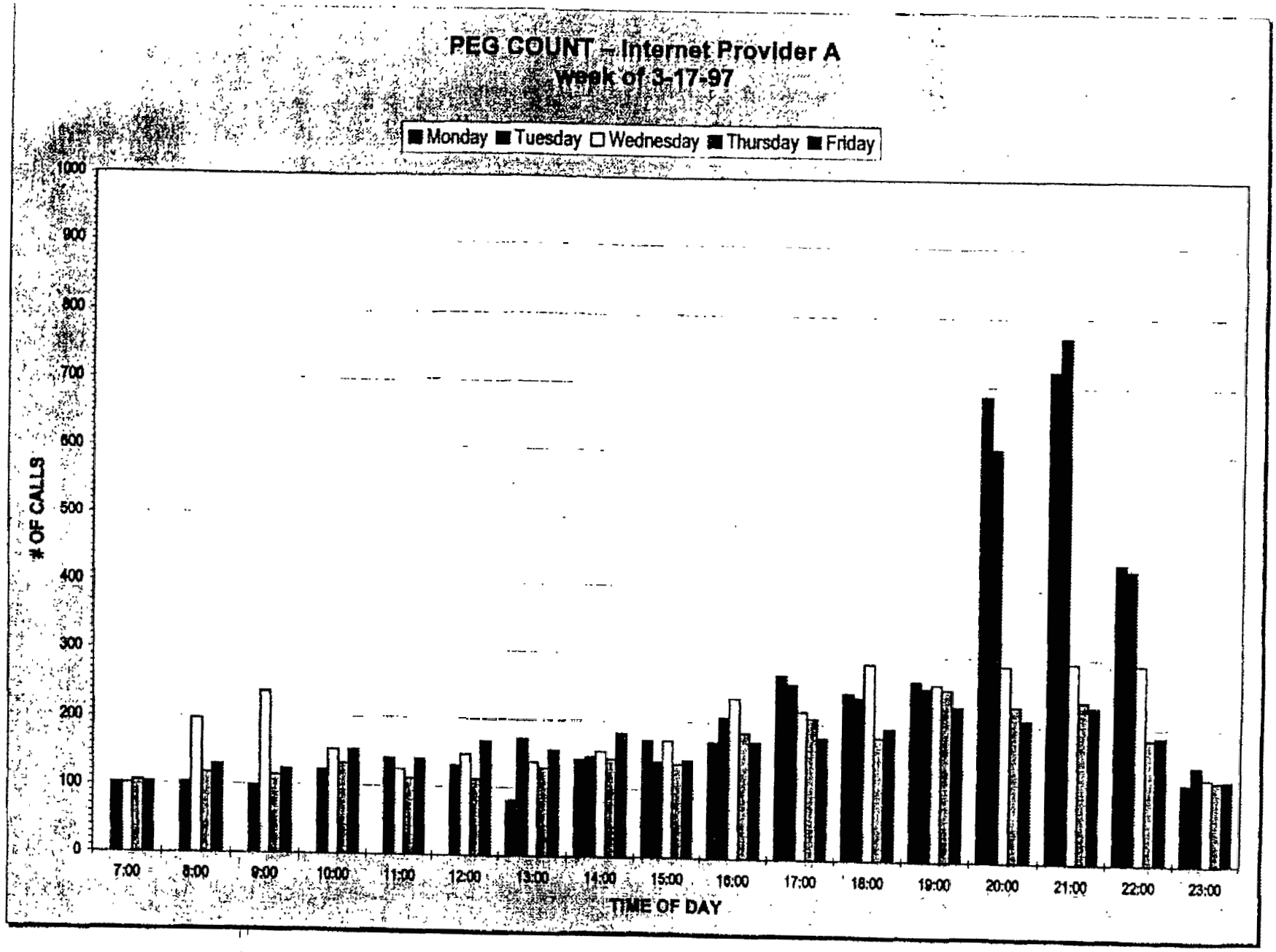
• The calling patterns generated by the IPs has caused considerable reballancing in offices designed to handle primarily residential traffic. These offices use 4:1 (i.e., for every four lines into an office there is one path out of the office), 6:1 or even 8:1 line concentration ratios. Because of the long holding times for these IP calls, a single user can tie up the only path for multiple hours at a time, which does not allow other traffic to complete. U S WEST has spent considerable dollars reballancing these offices and in some cases has had to change to a 1:1 concentration ratio. This is expensive and is not covered by the

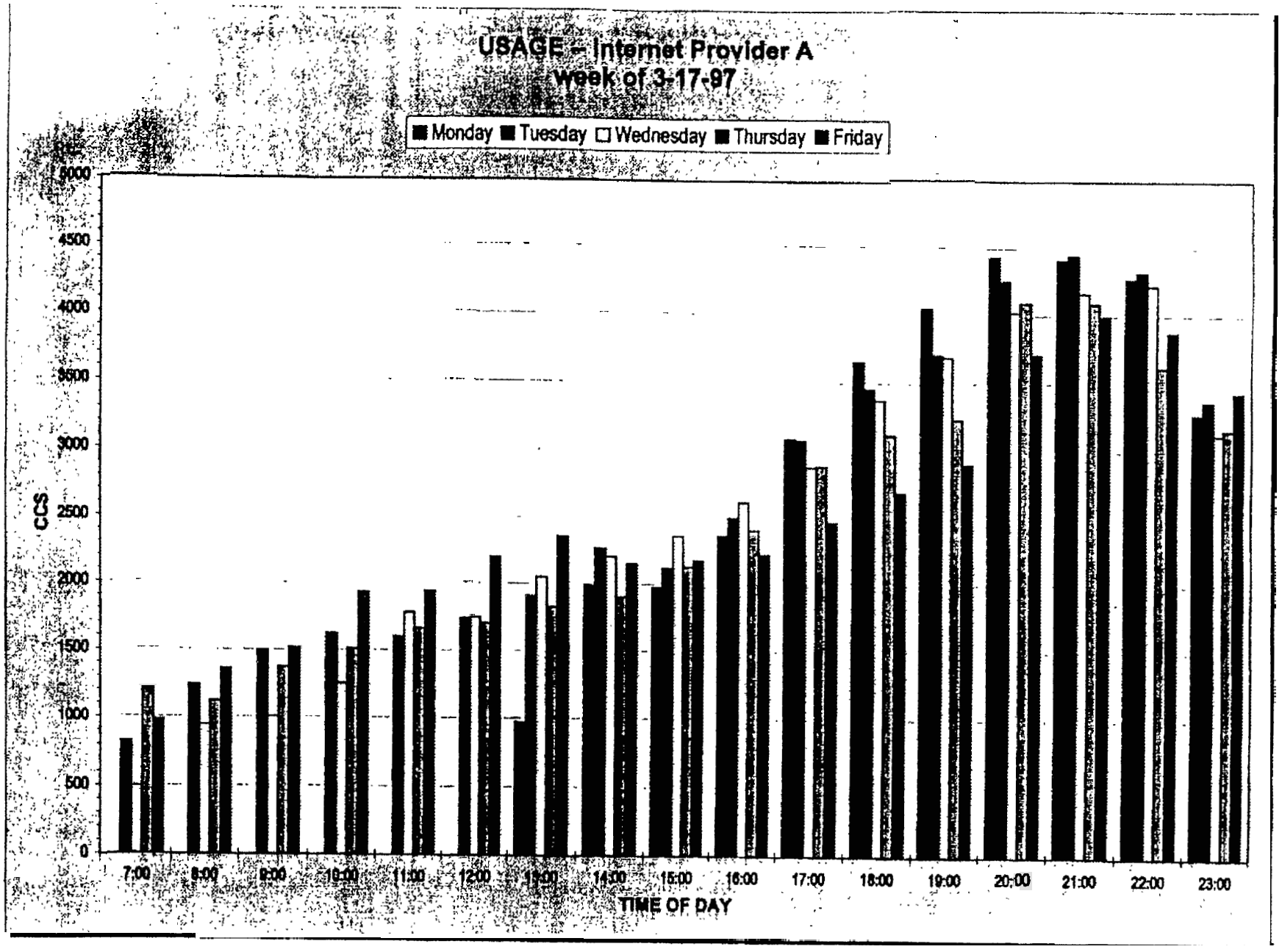
normal tariff rates which assume the ability to share network components among many users.

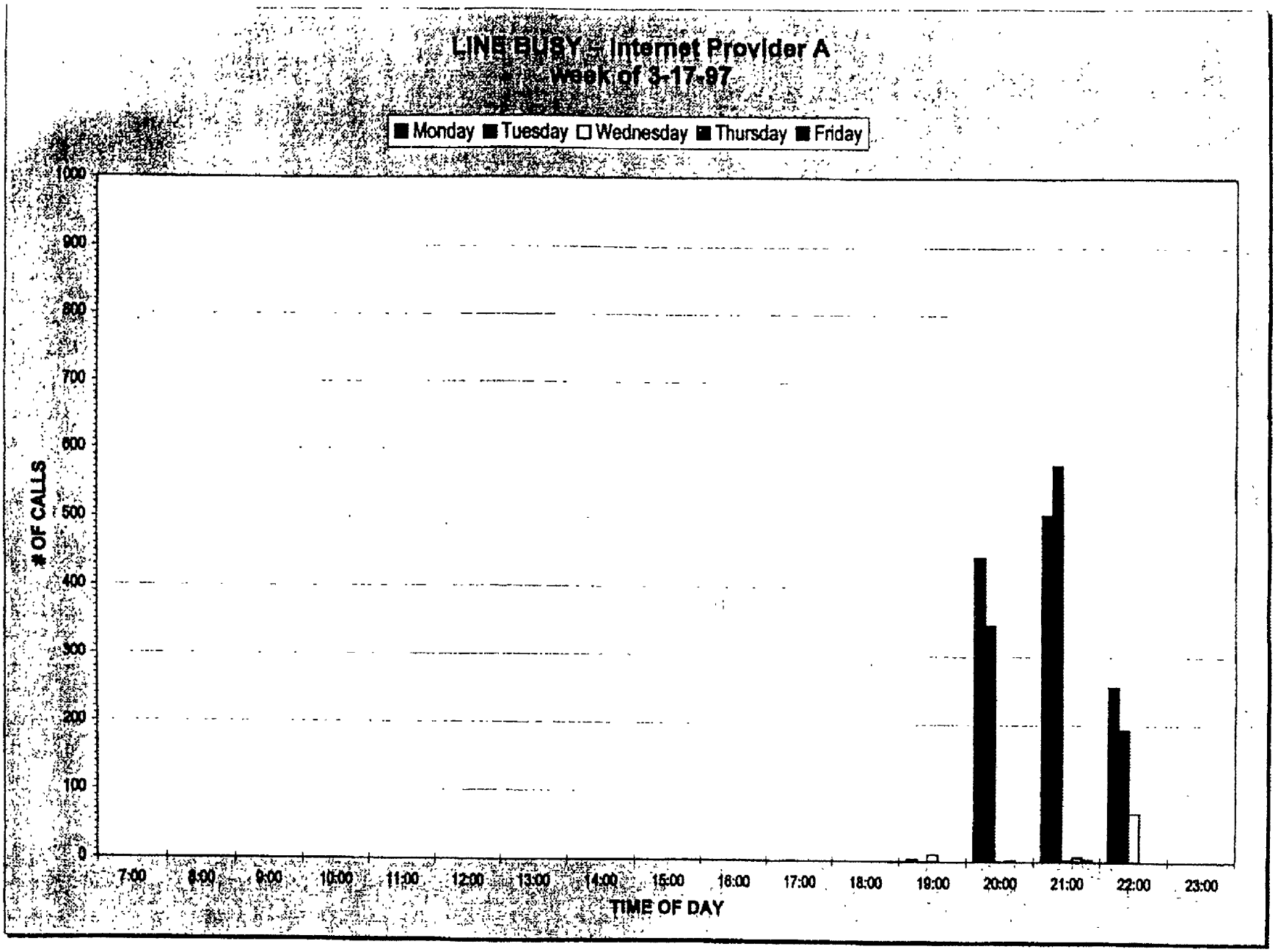
• The "normal" busy hour for the switch is no longer a single hour with perhaps a couple of side hours, but instead high usage is stretching throughout the day.

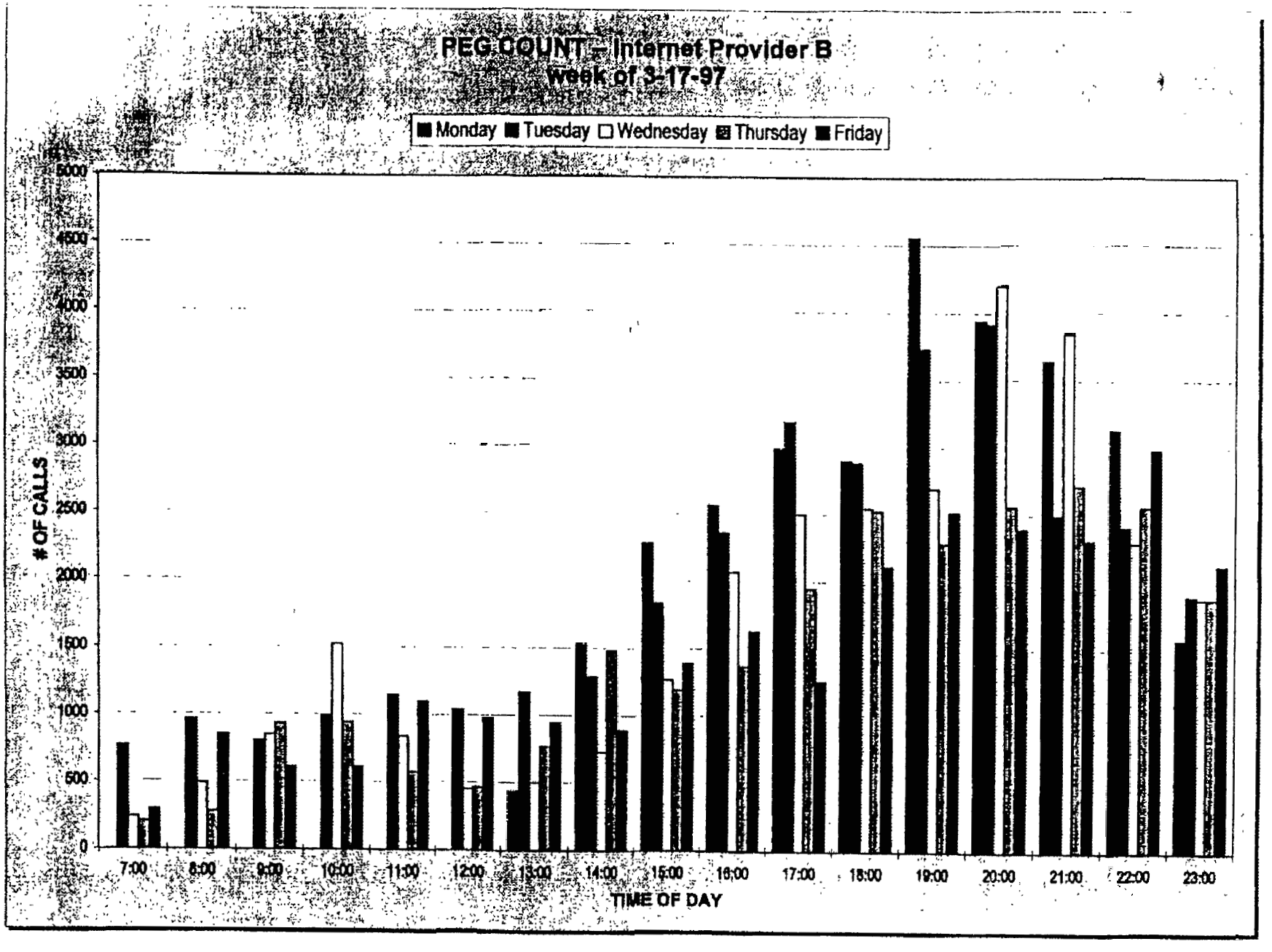
• The trunk data associated with this office shows a drastic increase in call volumes in just one year. From 6/30/95 to 6/30/96 the maximum CCSgrowth was 69 %. From 6/30/96 to 3/31/97 (not even a complete year), the maximum growth experienced was 382 %.

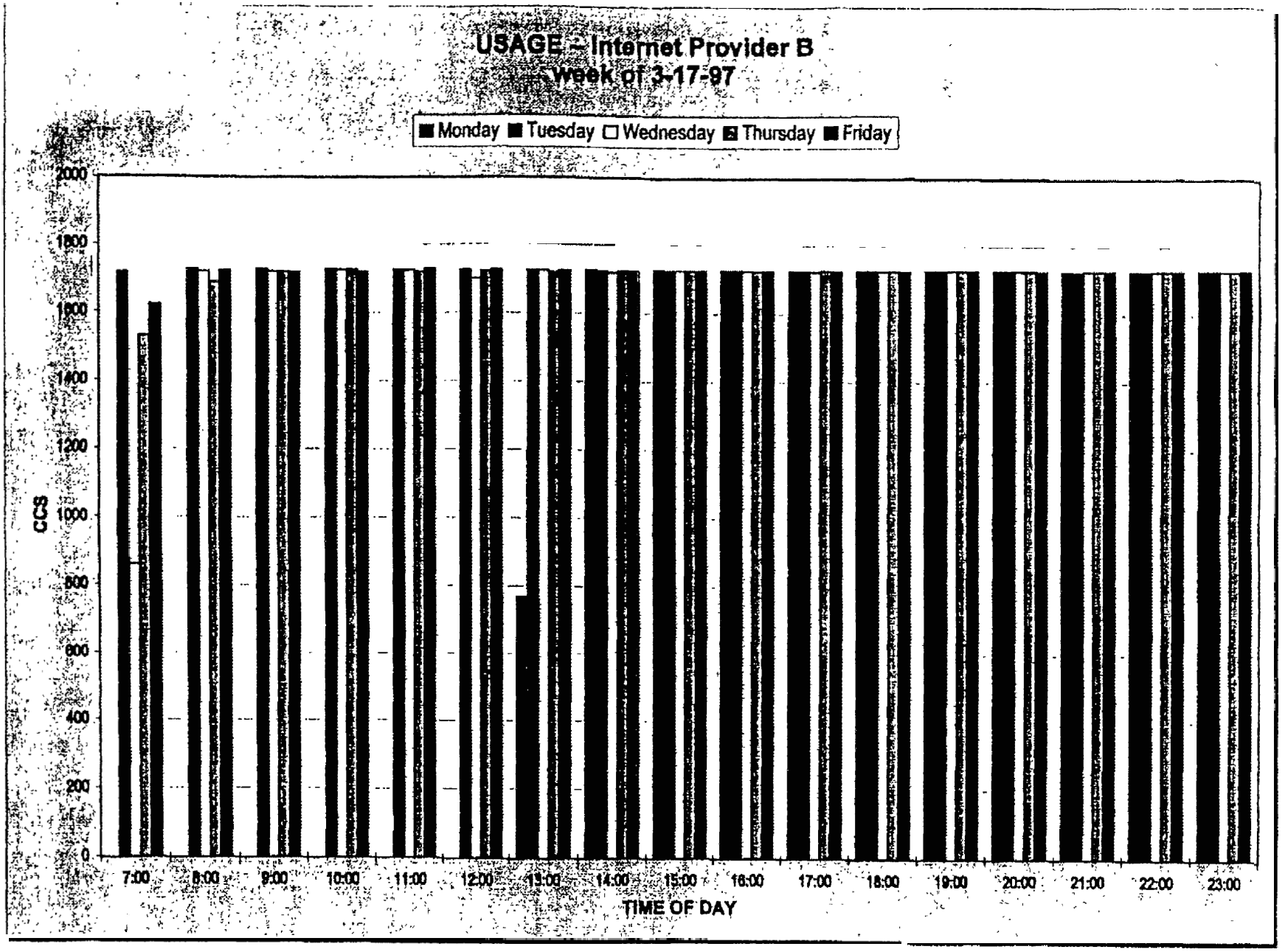
• The traffic characteristics and calling patterns for this office and the associated trunk groups have been greatly impacted by the large presence of IPs resident in this switch. Unanticipated growth has resulted in severe blocking problems. These problems stem from the long holding times of IP users and their inability to terminate all of the traffic that they generate resulting in numerous redials. The redials play havoc with the infrastructure and cause massive buildouts to handle non-productive calls.

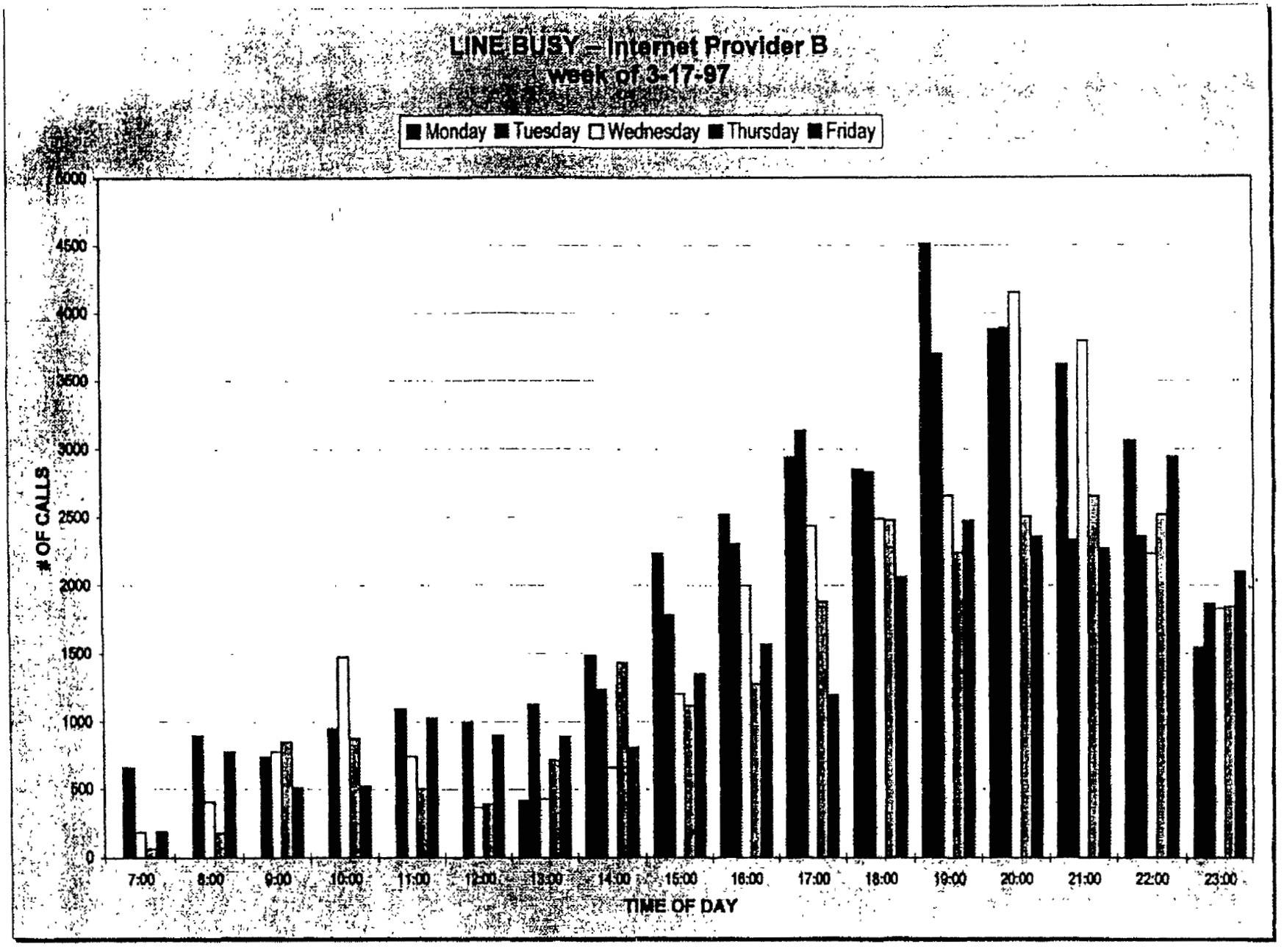

PEG COUNT – Internet Provider A
Week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
OF CALLS
0
100
200
300
400
500
600
700
800
900
1000
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY

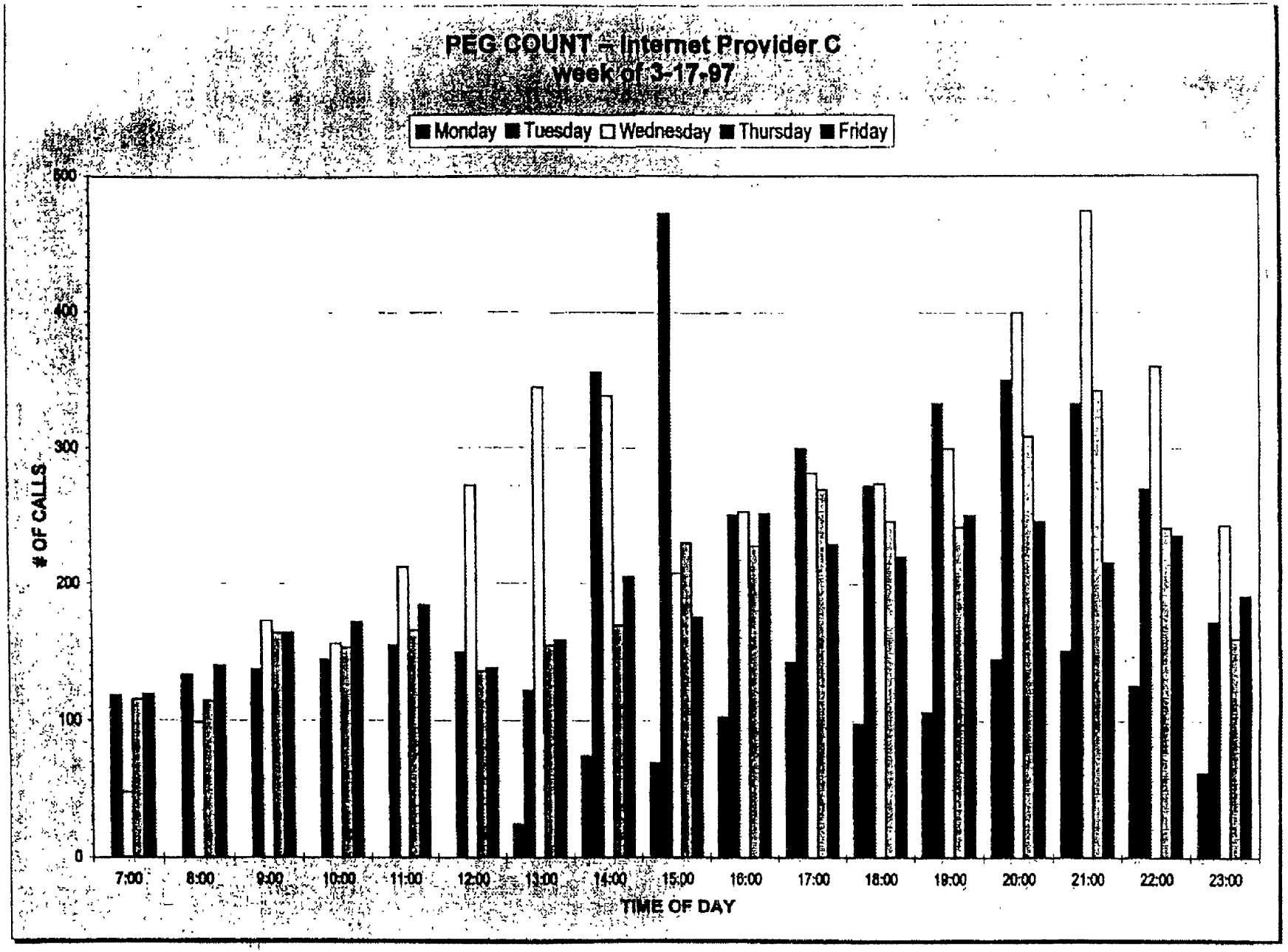

USAGE - Internet Provider A
week of 3-17-97
Monday Tuesday Wednesday Thursday Friday
CCS
5000
4500
4000
3500
3000
2500
2000
1500
1000
500
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY

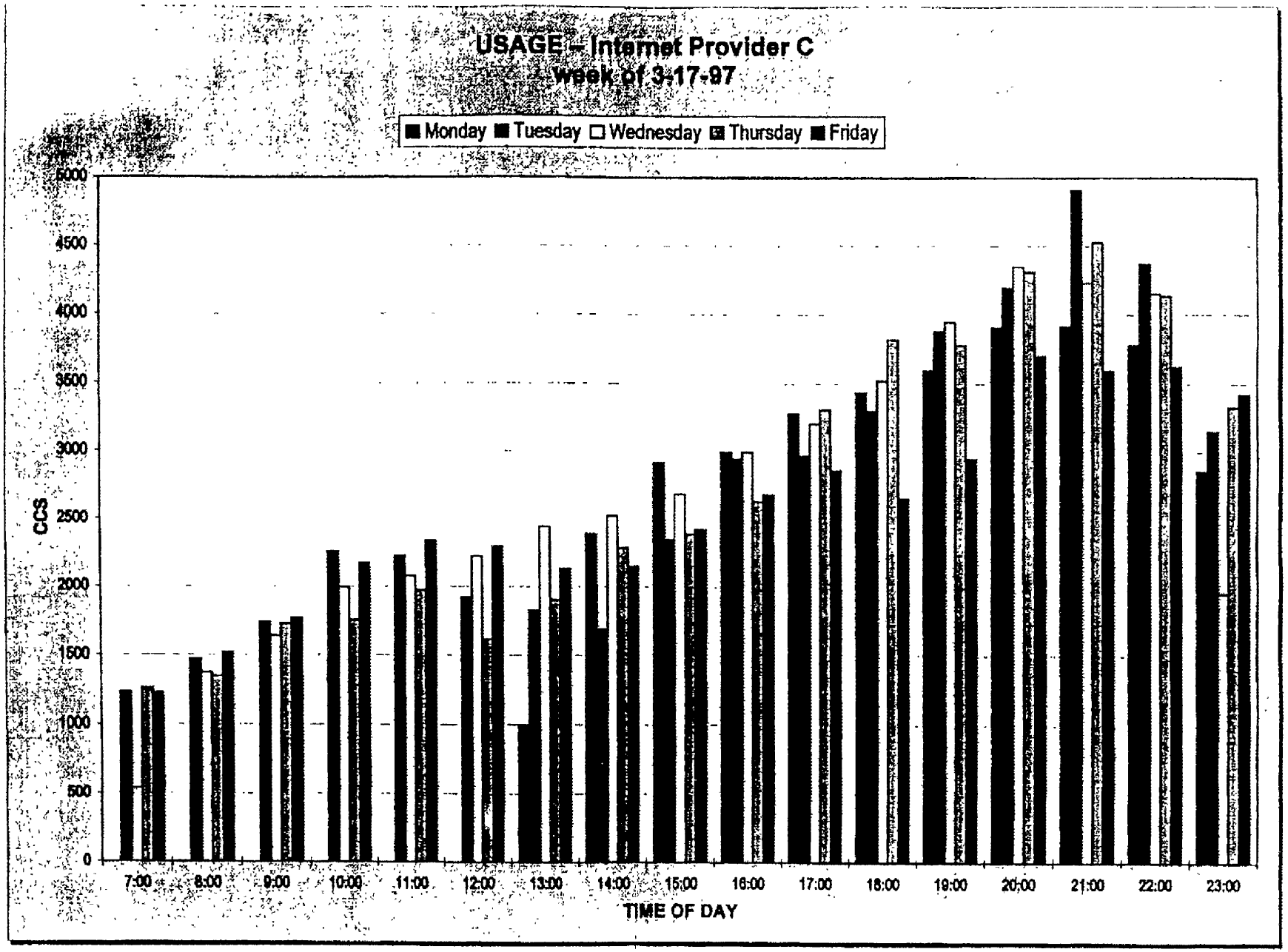

LINE BUSY - Internet Provider A
Week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
OF CALLS
1000
900
800
700
600
500
400
300
200
100
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY

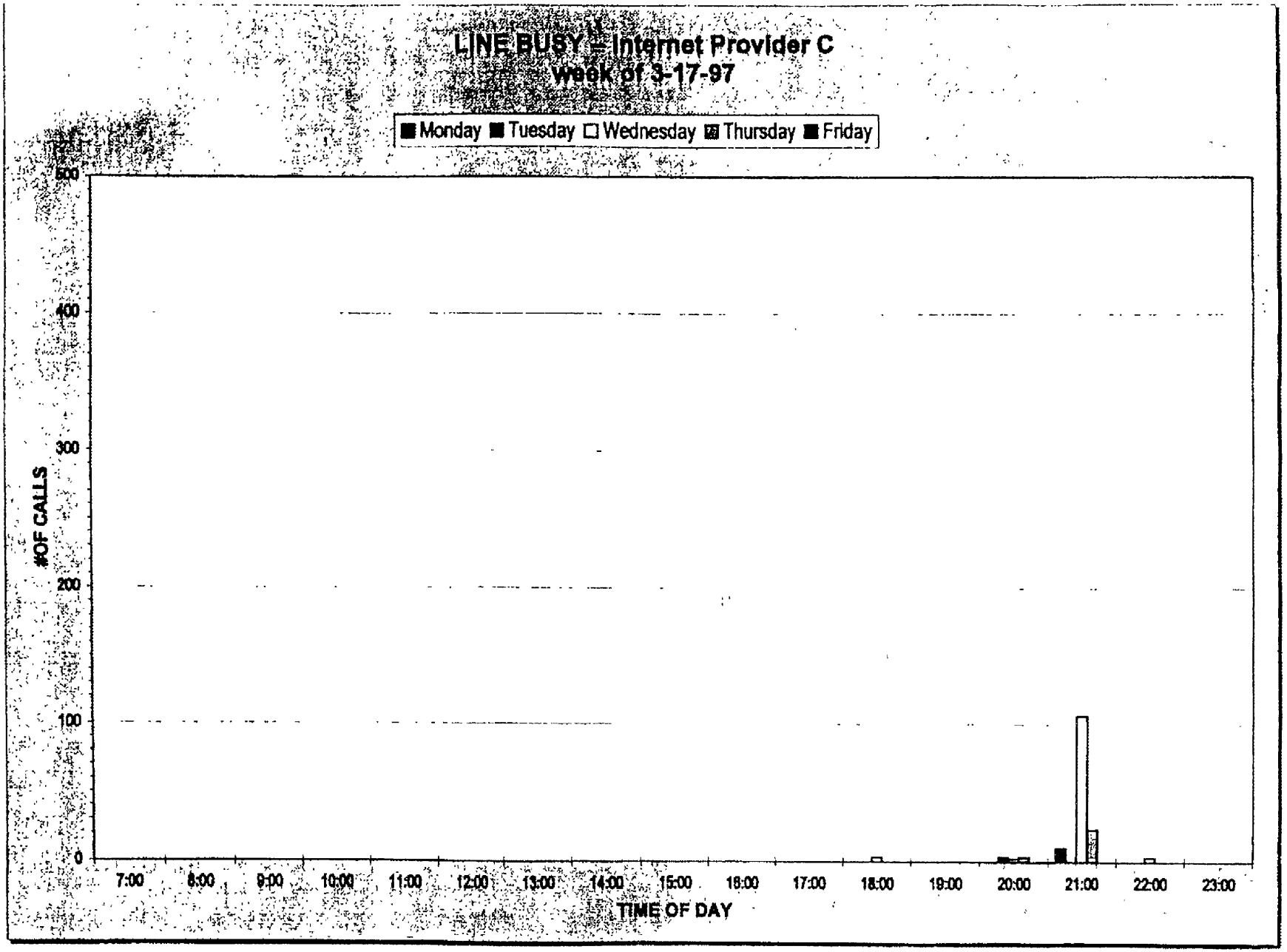

PEG COUNT - Internet Provider B
week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
OF CALLS
5000
4500
4000
3500
3000
2500
2000
1500
1000
500
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY

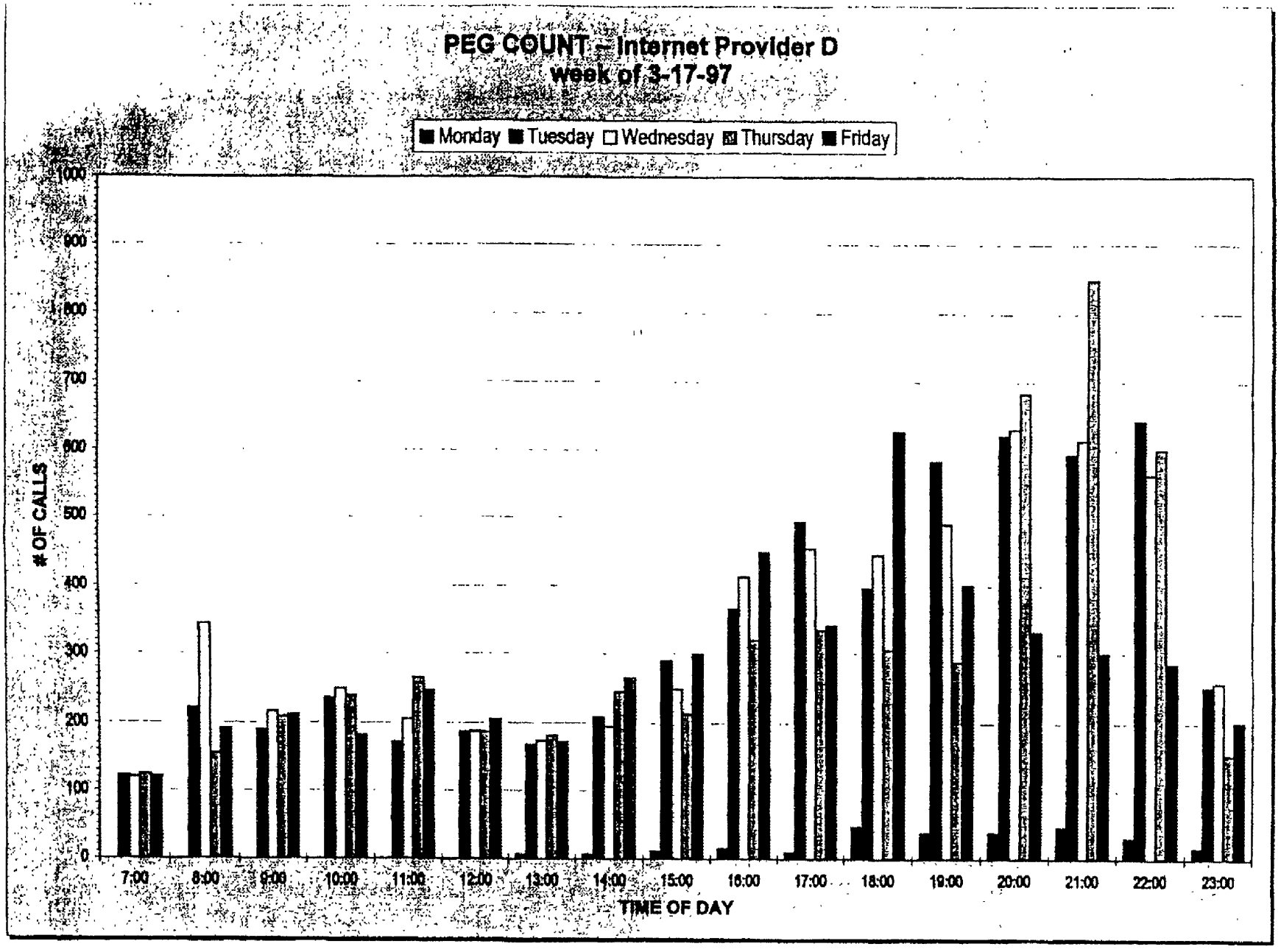

USAGE – Internet Provider B
Week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
CCS
2000
1800
1600
1400
1200
1000
800
600
400
200
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY

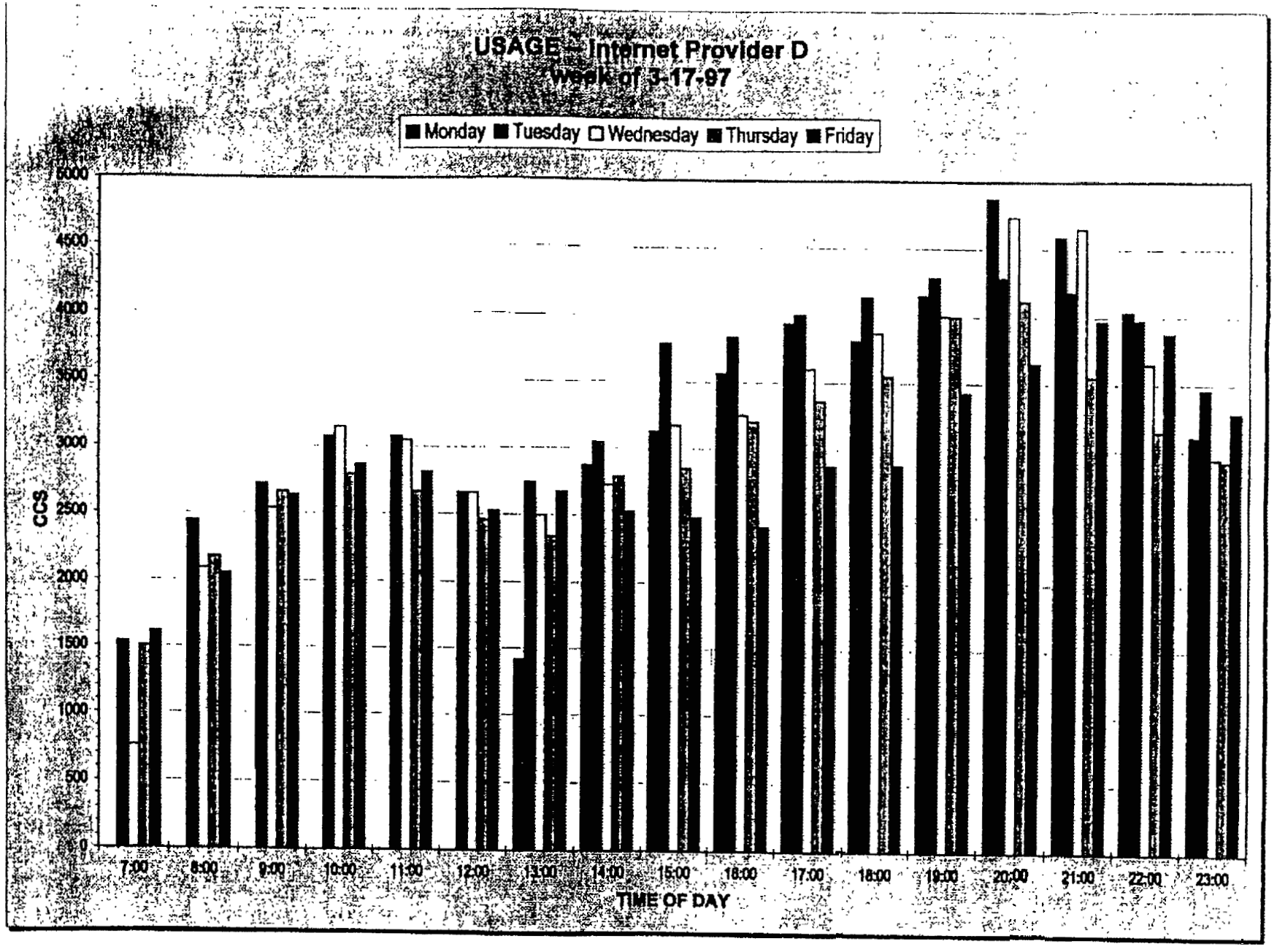

LINE BUSY – Internet Provider B
week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
OF CALLS
0
500
1000
1500
2000
2500
3000
3500
4000
4500
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY

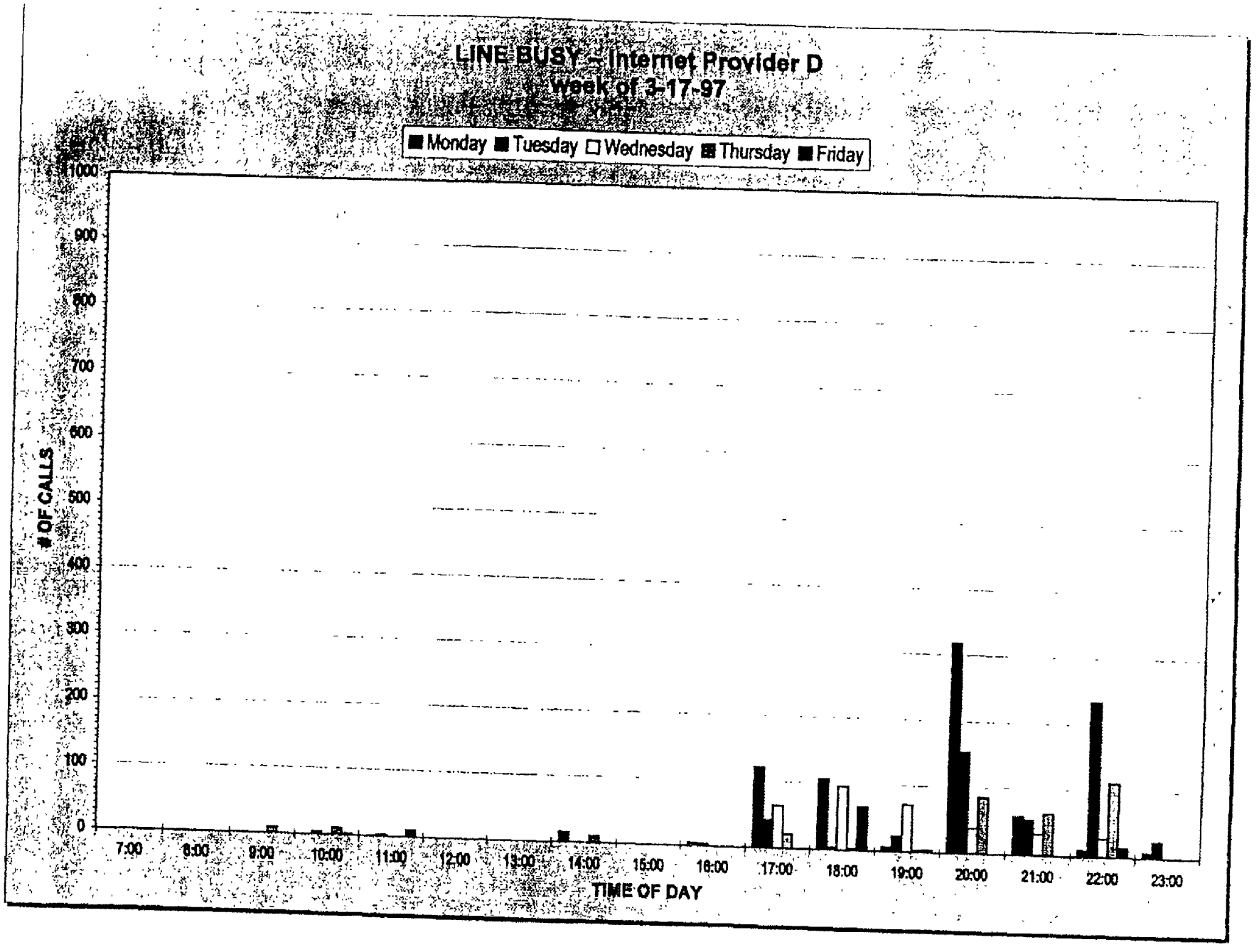

PEG COUNT – Internet Provider C
week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
OF CALLS
0
100
200
300
400
500
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY

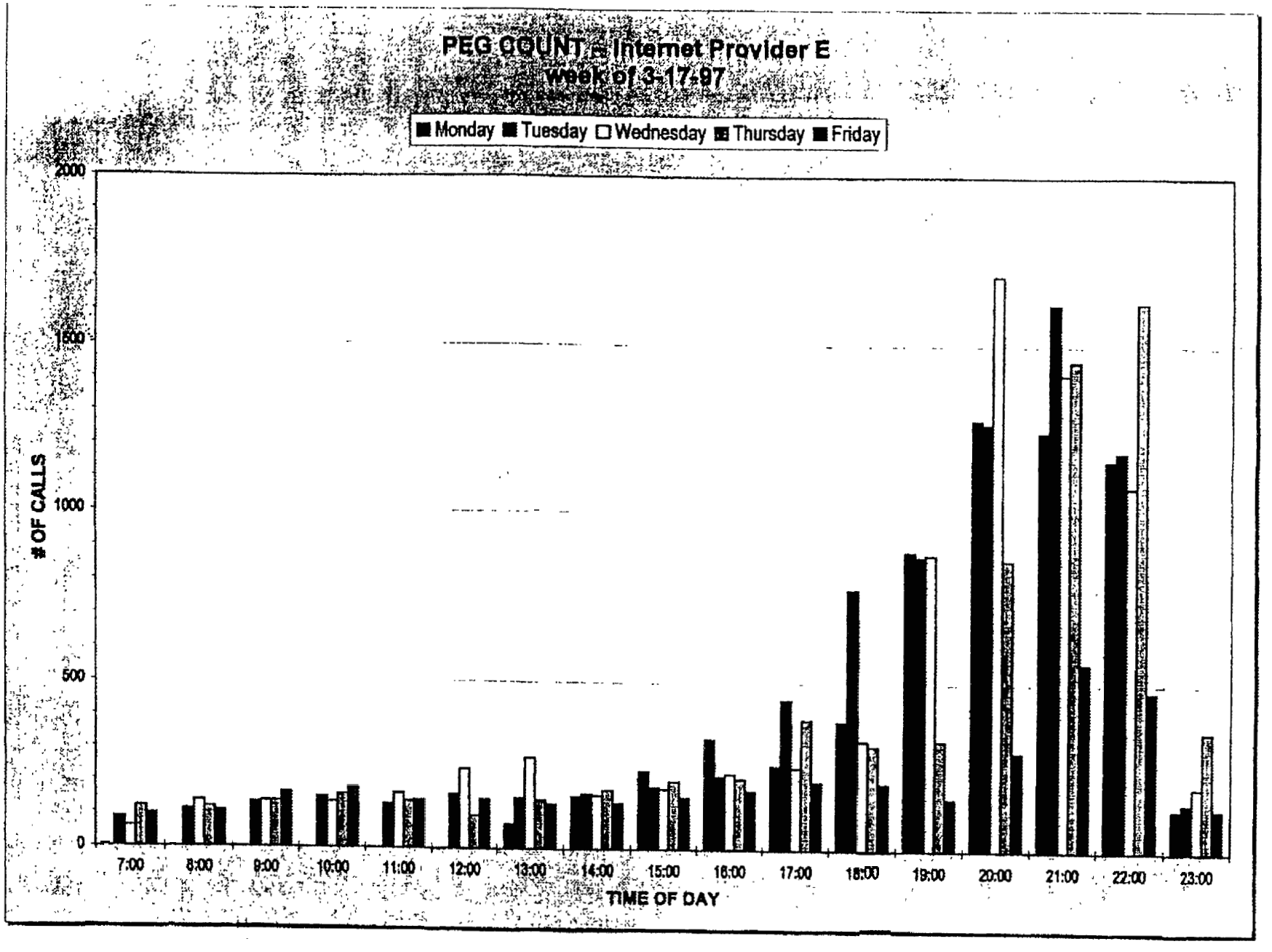

USAGE - Internet Provider C
week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
CCS
0
500
1000
1500
2000
2500
3000
3500
4000
4500
5000
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY

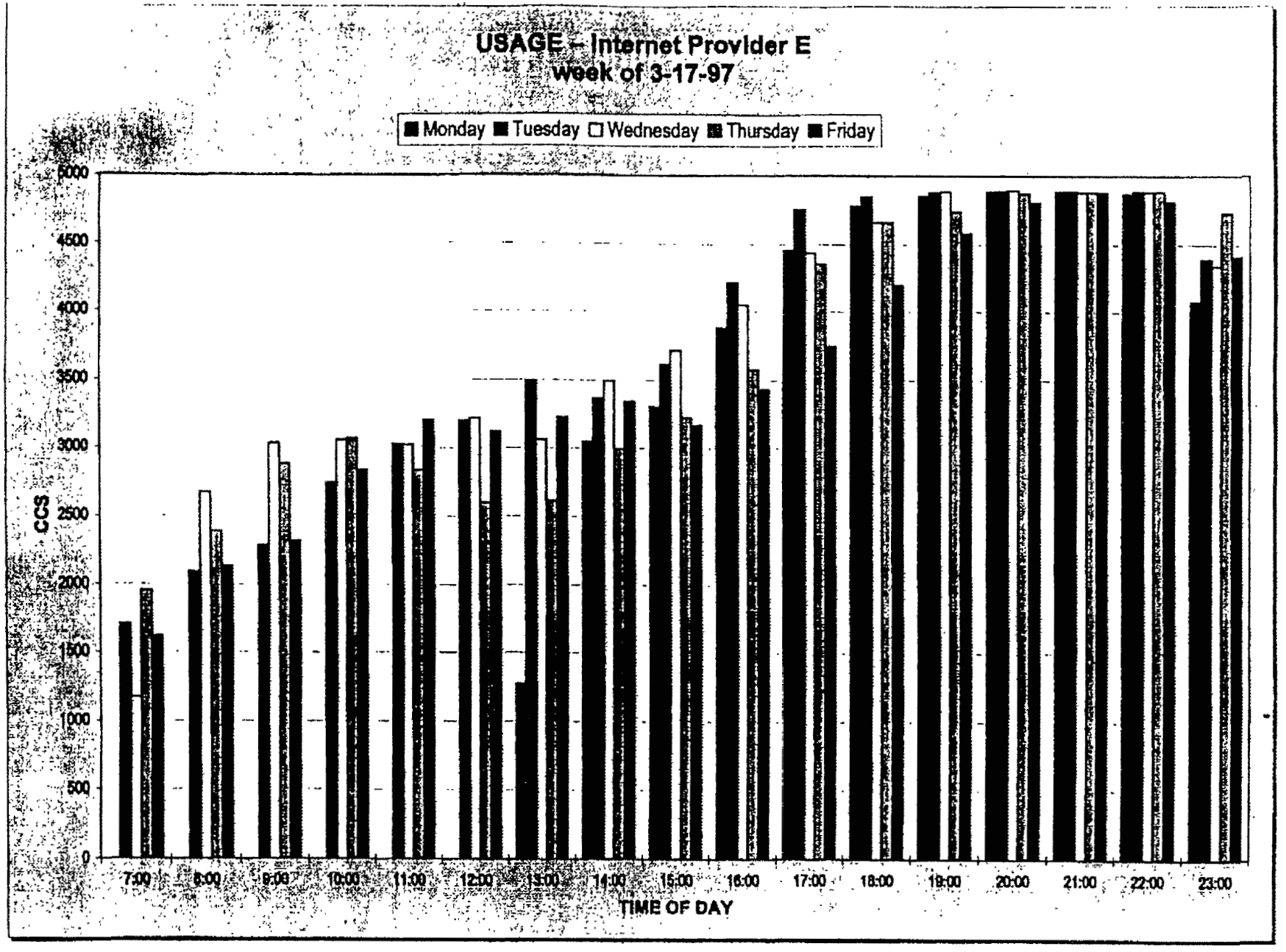

LINE BUSY – Internet Provider C
Week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
#OF CALLS
500
400
300
200
100
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY

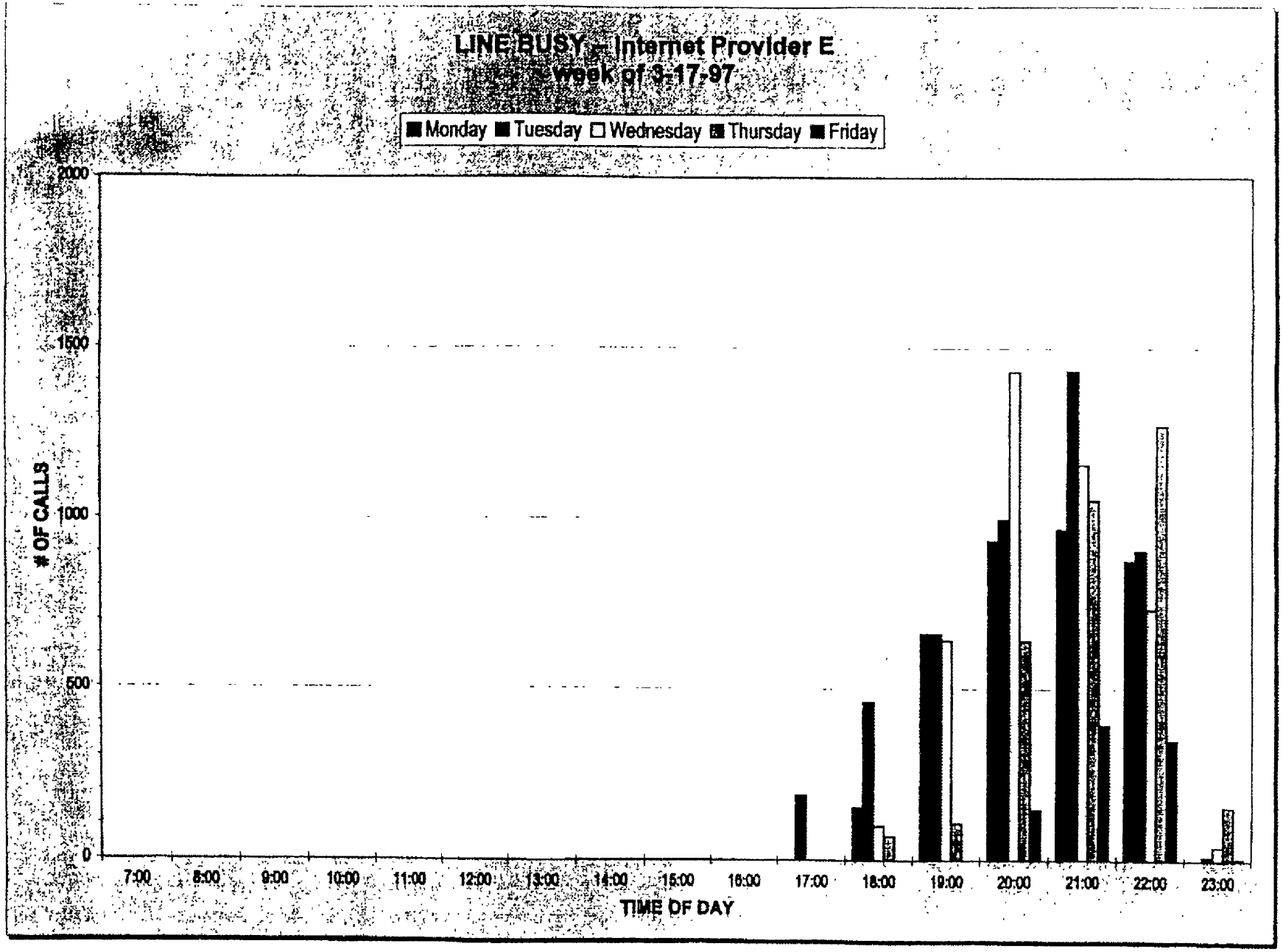

PEG COUNT – Internet Provider D
week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
OF CALLS
0
100
200
300
400
500
600
700
800
900
1000
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY

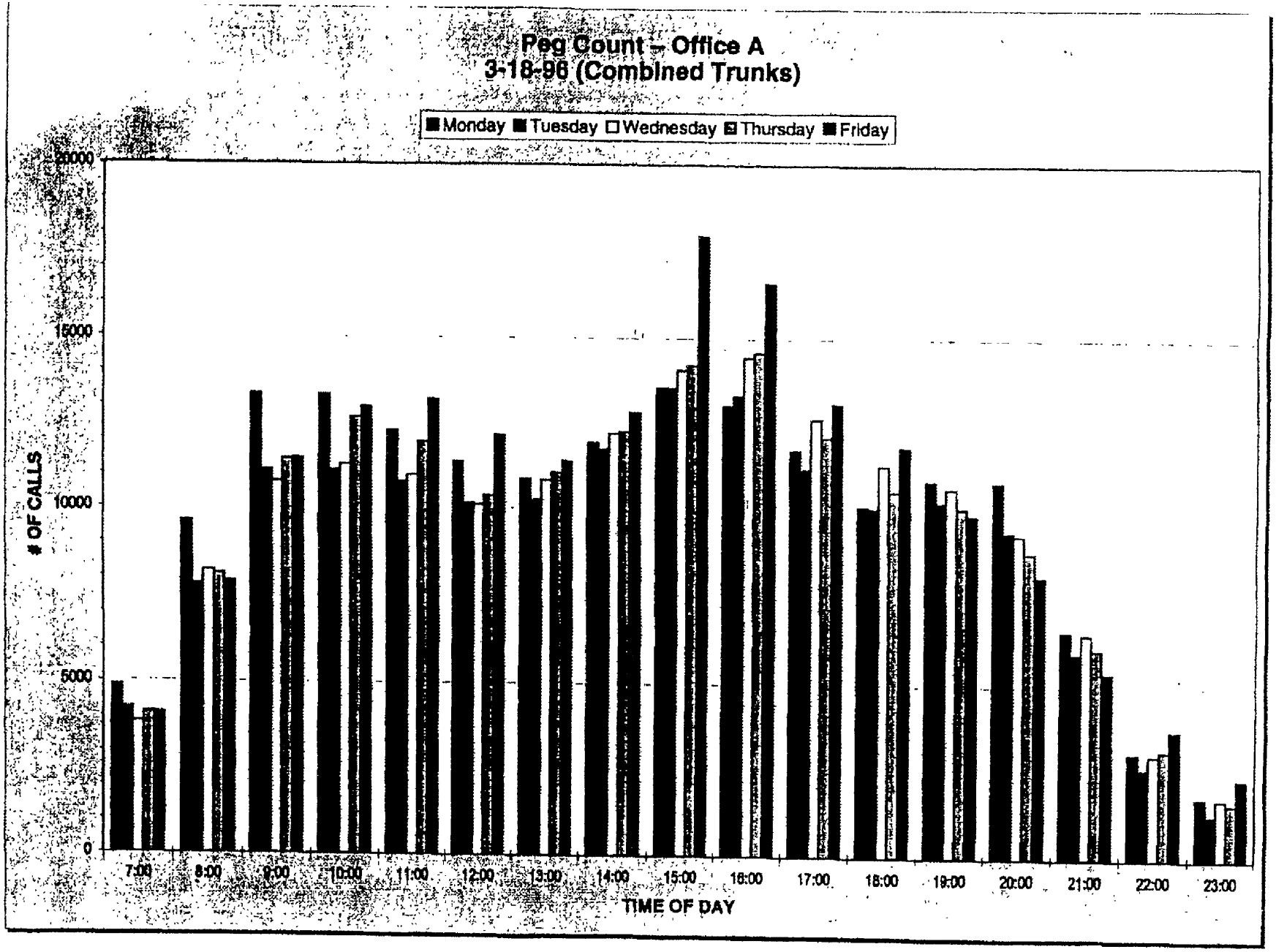

USAGE – Internet Provider D
Week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
CCS
6000
4500
4000
3500
3000
2500
2000
1500
1000
500
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY

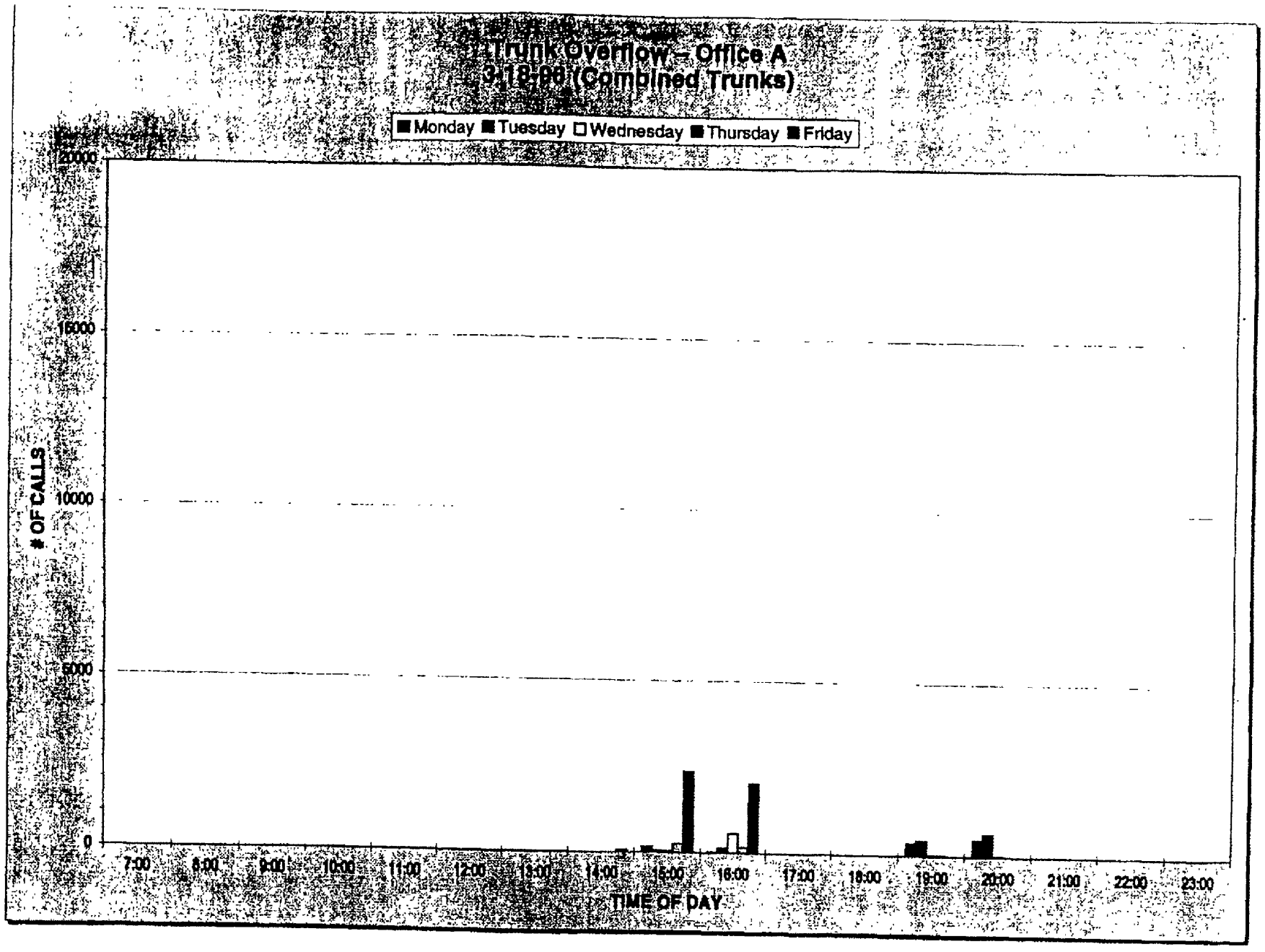

LINE BUSY - Internet Provider D
Week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
OF CALLS
1000
900
800
700
600
500
400
300
200
100
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY

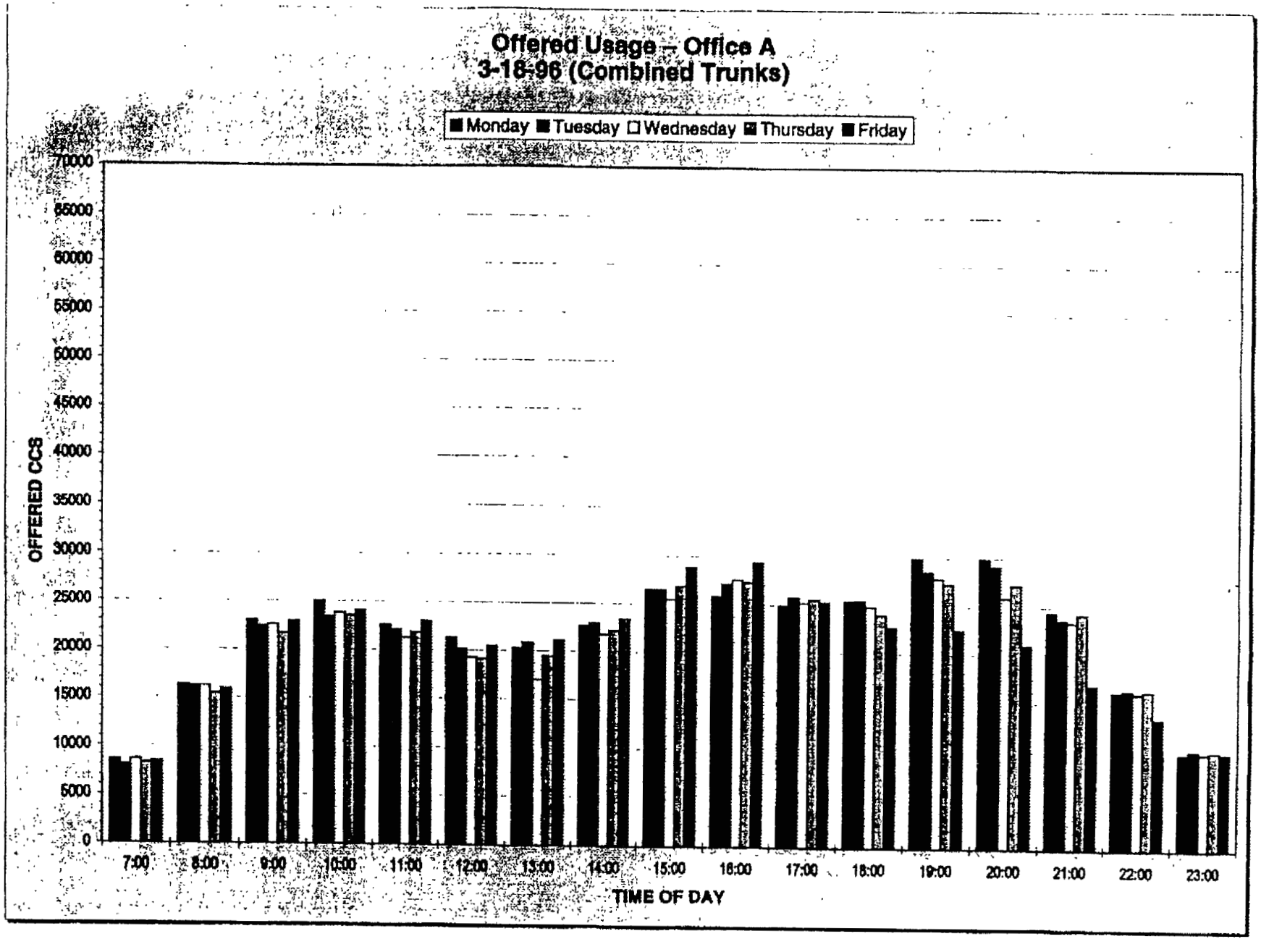

PEG COUNT - Internet Provider E
Week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
OF CALLS
2000
1500
1000
500
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY

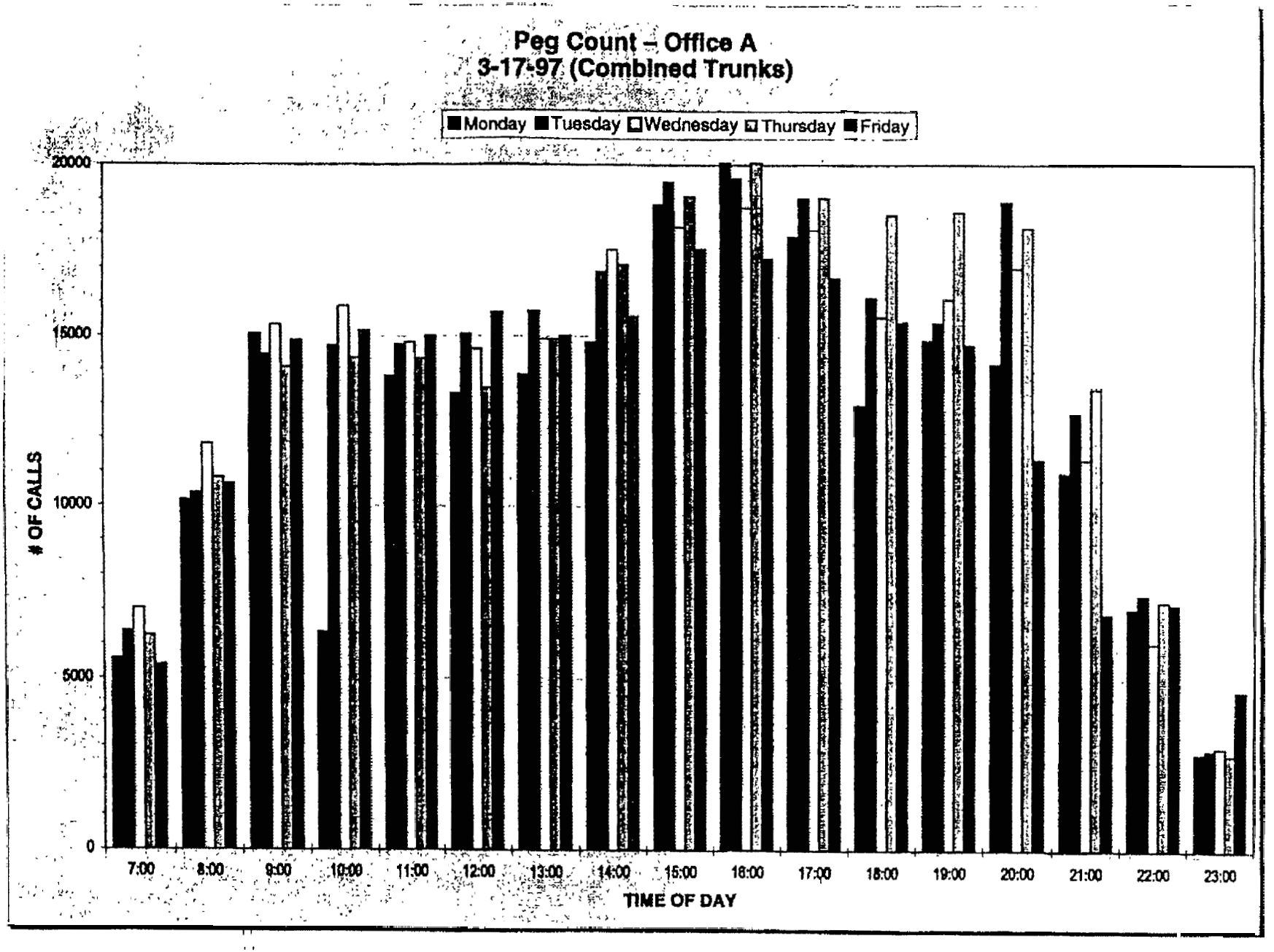

USAGE – Internet Provider E
Week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
CCS
5000
4500
4000
3500
3000
2500
2000
1500
1000
500
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY

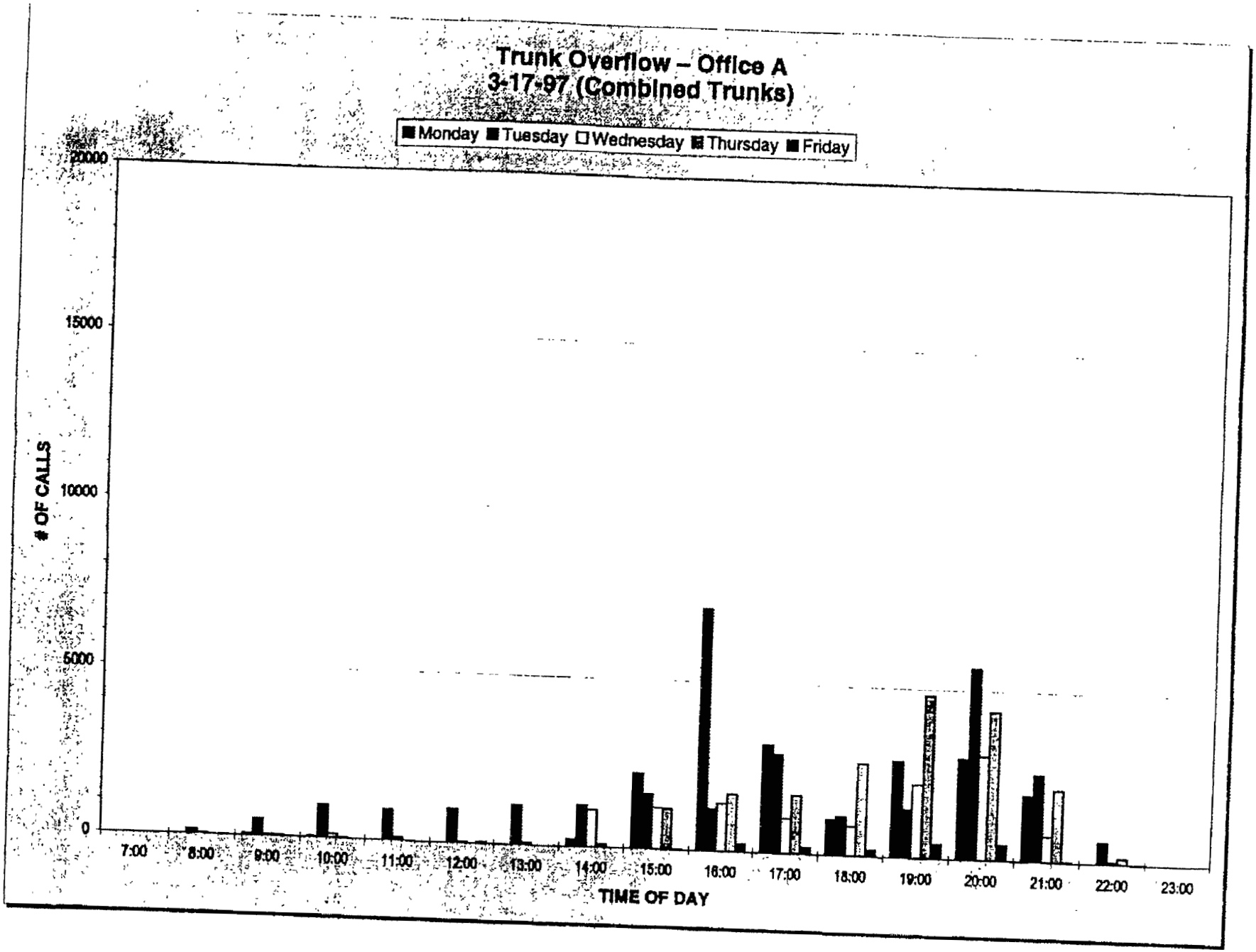

LINE BUSY – Internet Provider E
week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
OF CALLS
2000
1500
1000
500
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY

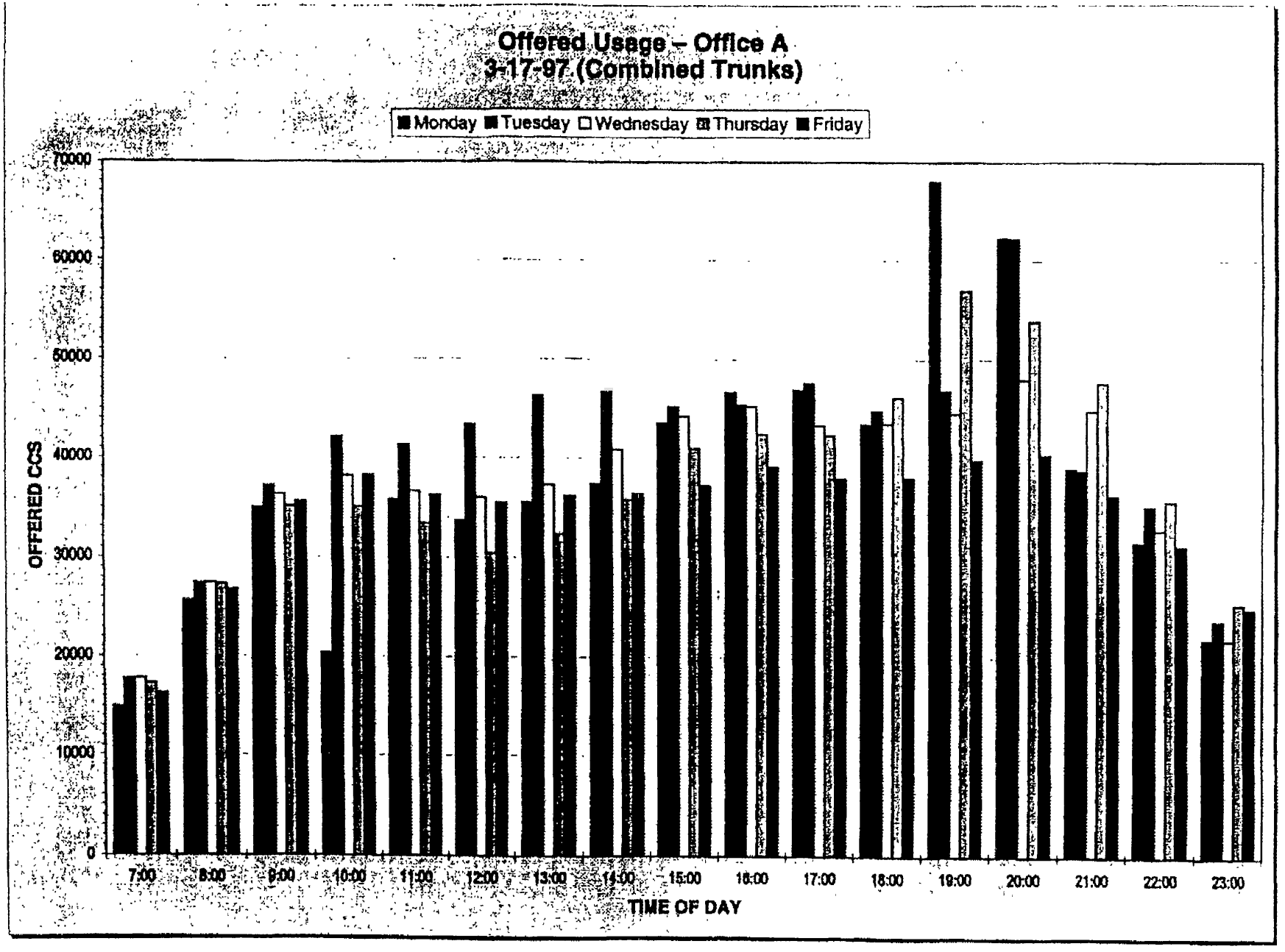

Peg Count – Office A
3-18-96 (Combined Trunks)
Monday
Tuesday
Wednesday
Thursday
Friday
OF CALLS
20000
15000
10000
5000
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY


Trunk Overflow - Office A
3:18:00 (Combined Trunks)
Monday
Tuesday
Wednesday
Thursday
Friday
OF CALLS
20000
15000
10000
5000
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY


Offered Usage – Office A
3-18-96 (Combined Trunks)
Monday
Tuesday
Wednesday
Thursday
Friday
OFFERED CCS
70000
65000
60000
55000
50000
45000
40000
35000
30000
25000
20000
15000
10000
5000
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY

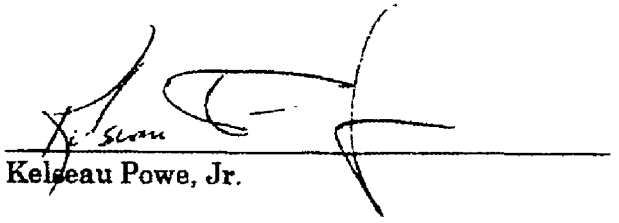

Peg Count – Office A
3-17-97 (Combined Trunks)
Monday
Tuesday
Wednesday
Thursday
Friday
OF CALLS
20000
15000
10000
5000
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY


Trunk Overflow – Office A
3-17-97 (Combined Trunks)
Monday
Tuesday
Wednesday
Thursday
Friday
OF CALLS
20000
15000
10000
5000
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY


Offered Usage – Office A
3-17-97 (Combined Trunks)
Monday
Tuesday
Wednesday
Thursday
Friday
OFFERED CCS
70000
60000
50000
40000
30000
20000
10000
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 23rd day of April, 1997, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.** to be served via first-class U. S. Mail,* postage-prepaid, upon the persons listed on the attached service list.**



Kelseau Powe, Jr.

---

* Via Hand-Delivery

** As required by the December 24, 1996 NOI (FCC 96-488), a 3 x 5 inch diskette is filed with the Office of the Secretary of the FCC, along with the original and hard-copies.

(CC96262C COS/BM/lh)

*James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

*Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

*Susan P. Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

*Rachelle B. Chong
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

*Regina M. Keeney
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

*James D. Schlichting
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

*Competitive Pricing Division
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

(2 Copies)

*Jane E. Jackson
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

*Rich Lerner
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

*International Transcription Services, Inc.
Suite 140
2100 M Street, N.W.
Washington, DC 20037

Ward W. Wueste
Gail L. Polivy
GTE Service Corporation
Suite 1200
1850 M Street, N.W.
Washington, DC 20004

R. Michael Senkowski — GTE
R. Paul Margie
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

Joseph S. Paykel — IUC
Andrew Jay Schwartzman
Gigi B. Sohn
Media Access Project
Suite 400
1707 L Street, N.W.
Washington, DC 20036

Daniel J. Weitzner — IUC
Center for Democracy and Technology
Suite 1100
1634 Eye Street, N.W.
Washington, DC 20006

Leslie A. Harris — IUC
Leslie Harris & Associates
7th Floor
1146 19th Street, N.W.
Washington, DC 20036

Jonathan Jacob Nadler — IAC
Squire, Sanders & Dempsey, LLP
1201 Pennsylvania Avenue, N.W.
POB 407
Washington, DC 20044

Colleen Boothby — IAC
Levine, Blaszak, Block and Boothby
Suite 500
1300 Connecticut Avenue, N.W.
Washington, DC 20036-1703

John G. Williams — IAC
Telecommunications Consulting Group, Inc.
Suite 400
1201 Pennsylvania Avenue, N.W.
Washington, DC 20044

Thomas E. Taylor
Cincinnati Bell Telephone Company
6th Floor
201 East Fourth Street
Cincinnati, OH 45202

Christopher J. Wilson — CBTC
Frost & Jacobs, LLP
2500 Central Trust Center
201 East Fifth Street
Cincinnati, OH 45202

Mark C. Rosenblum
Ava B. Kleinman
AT&T Corp.
Room 3252J1
295 North Maple Avenue
Basking Ridge, NJ 07920

Gene C. Schaerr
James P. Young
AT&T Corp.
1722 Eye Street, N.W.
Washington, DC 20006

Lawrence W. Katz
Edward D. Young, III
Betsy L. Anderson
Bell Atlantic Telephone Companies
8th Floor
1320 North Court House Road
Arlington, VA 22201

Joseph Di Bella
NYNEX Telephone Companies
Suite 400 West
1300 I Street, N.W.
Washington, DC 20005

Bradley Stillman
Don Sussman
Alan Buzacott
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20036

Margaret E. Garber
Pacific Telesis Group
4th Floor
1275 Pennsylvania Avenue, N.W.
Washington, DC 20004

Marlin D. Ard
Jeffrey B. Thomas
Pacific Telesis Group
Room 1529
140 New Montgomery Street
San Francisco, CA 94105

Scott J. Rubin
Pennsylvania Internet Service Providers
3 Lost Creek Drive
Selinsgrove, PA 17870-9357

Durward D. Dupre
Mary W. Marks
Thomas A. Pajda
Southwestern Bell Telephone Company
Room 3536
One Bell Center
St. Louis, MO 63101

M. Robert Sutherland
N. Richard M. Sbaratta
BellSouth Corporation
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

Diane Iglesias
Southern New England Telephone Company
227 Church Street
New Haven, CT 06510-1806

Robert J. Aamoth CTA
Kelley, Drye & Warren, LLP
Suite 500
1200 19th Street, N.W.
Washington, DC 20036

Genevieve Morelli
Competitive Telecommunications
Association
Suite 800
1900 M Street, N.W.
Washington, DC 20036

Randolph J. May CI & PRODIGY
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, N.W.
Washington, DC 20004-2404

Kathy L. Shobert
General Communication, Inc.
Suite 900
901 15th Street, N.W.
Washington, DC 20005

Mary E. Brooner
Motorola, Inc.
Suite 400
1350 I Street, N.W.
Washington, DC 20005

Daniel L. Brenner
David L. Nicoll
National Cable Television Association, Inc.
1724 Massachusetts Avenue, N.W.
Washington, DC 20036

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
11th Floor
1850 M Street, N.W.
Washington, DC 20036

Teresa Marrero
J. Manning Lee
Teleport Communications Group, Inc.
Suite 300
Two Teleport Drive
Staten Island, NY 10311

Donna N. Lampert AOL
Christopher J. Harvie
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, PC
Suite 900
701 Pennsylvania Avenue, N.W.
Washington, DC 20004

William W. Burrington
Jill A. Lesser
America OnLine, Inc.
Suite 400
1101 Connecticut Avenue, N.W.
Washington, DC 20036

Haden E. Rogers
9804 Kernville Drive
Las Vegas, NV 89134

Sharon L. Nelson
Richard Hemstad
William R. Gillis
Washington Utilities and
Transportation Commission
POB 47250
Olympia, WA 98504-7250

Charles C. Hunter — TRA
Catherine M. Hunter
Hunter Communications Law Group
Suite 701
1620 I Street, N.W.
Washington, DC 20006

Margot Smiley Humphrey — NRTA for RTC
Koteen & Naftalin, LLP
Suite 100
1150 Connecticut Avenue, N.W.
Washington, DC 20036

David Cosson — For RTC
L. Marie Guillory
National Telephone Cooperative Association
2626 Pennsylvania Avenue, N.W.
Washington, DC 20037

Lisa M. Zaina — For RTC
Kenneth Johnson
OPASTCO
Suite 700
21 Dupont Circle, N.W.
Washington, DC 20036

Ron Dunn
Information Industry Association
Suite 700
1625 Massachusetts Avenue, N.W.
Washington, DC 20036

Shiela Jackson Lee
Congress of the United States
House of Representatives
Washington, DC 20515

Robert N. Kittel
Cecil O. Simpson, Jr.
Office of the Judge Advocate General
U.S. Army Litigation Center
Suite 713
901 North Stuart Street
Arlington, VA 22202-1837

Snavely King Majoros O'Connor & Lee, Inc.
1220 L Street, N.W.
Washington, DC 20005

Carl Wayne Smith
Defense Information Systems Agency
701 Court House Road
Arlington, VA 22204

Emily C. Hewitt
Vincent L. Crivella
Michael J. Ettner
General Services Administration
Room 4002
18th and F Streets, N.W.
Washington, DC 20405

Charles H. Helein ACTA
Robert M. McDowell
Brian A. Cute
Helein & Associates, PC
Suite 700
8180 Greensboro Drive
McLean, VA 22102

David P. McClure AOOP
Association for OnLine Professionals
Suite D
6096 Franconia Road
Alexandria, VA 22310

Dennis C. Hayes AOOP
Hayes Microcomputer Products, Inc.
5953 Peachtree Industrial Boulevard
Norcross, GA 30092

Glenn B. Manishin CAIS
Michael D. Specht JUNO
Christine A. Maillous MULT
Blumenfeld & Cohen
Suite 700
1615 M Street, N.W.
Washington, DC 20036

(3 Copies)

Steven P. Klingler AOOP
Clark Development Company, Inc.
Suite 303
3950 South 700 East
Murray, UT 84107

Randall B. Lowe DSC
John E. Benedict
Piper & Marbury, LLP
7th Floor
1200 19th Street, N.W.
Washington, DC 20036

G. Todd Hardy
H. Robert Jones, III
Nathaniel J. Hardy
Hardy & Ellison, PC
Suite 100
9306 Old Keene Mill Road
Burke, VA 22015

Stephen L. Goodman NTI
David E. Colton
Halprin, Temple, Goodman & Sugrue
Suite 650 - East Tower
1100 New York Avenue, N.W.
Washington, DC 20005

John G. Lamb, Jr.
Northern Telecom, Inc.
2100 Lakeside Boulevard
Richardson, TX 75081-1599

David R. Bender
John H. Crosby IV
The Special Libraries Association
1700 18th Street, N.W.
Washington, DC 20009-2514

Randall R. Zach
TCA, Inc. Telecommunications Consultants
Suite 1
3617 Betty Drive
Colorado Springs, CO 80917

Linda A. Legier Topp
13806 Farmstead Way
Chester, VA 23831

Edgewood Senior Highschool Student Council
2428 Blake Road
Ashtabula, OH 44004

Ramsey L. Woodworth U.S. IPA
Robert M. Gurss
Rudolph J. Geist
Wilkes, Artis, Hedrick & Lane, Chtd.
Suite 1100
1666 K Street, N.W.
Washington, DC 20006

Jeffrey L. Sheldon
Thomas E. Goode
UTC, The Telecommunications Association Council
Suite 1140
1140 Connecticut Avenue, N.W.
Washington, DC 20036

Catherine R. Sloan
Richard L. Fruchterman
Richard S. Whitt
David N. Porter
WORLDCOM, INC. d/b/a LDDS WorldCom
Suite 400
1120 Connecticut Avenue, N.W.
Washington, DC 20036

Hal R. Varian
University of California, Berkeley
School of Information Management and Systems
Suite 4600
102 South Hall
Berkeley, CA 94720-4600

(CC96262C.BM/lh)
Last Update: 4/23/97

Mary McDermott
Linda Kent
Keith Townsend
Hance Haney
United States Telephone Association
Suite 600
1401 H Street, N.W.
Washington, DC 20005

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and/or petition for arbitration by Global NAPS, Inc. for enforcement of Section VI(B) of its interconnection agreement with BellSouth Telecommunications, Inc., and request for relief.	DOCKET NO. 991267-TP ORDER NO. PSC-00-1511-FOF-TP ISSUED: August 21, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.

FINAL ORDER GRANTING EXTENSION OF TIME AND DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

On August 31, 1999, Global NAPs, Inc. (Global NAPs or GNAPs) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) for alleged breach of the parties' interconnection agreement. The subject agreement was initially executed by ITC^DeltaCom, Inc., (DeltaCom or ITC^DeltaCom) on July 1, 1997, and was previously approved by the Commission in Docket No. 970804-TP, by Order No. PSC-97-1265-FOF-TP, issued October 14, 1997. DeltaCom's agreement was effective in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. On January 18, 1999, GNAPs adopted the DeltaCom agreement in its entirety.

In its complaint, GNAPs asserted that BellSouth had failed to properly compensate GNAPs for delivery of traffic to Internet Service Providers that are GNAPs' customers. GNAPs also alleged that the terms of the agreement provide for reciprocal compensation for the delivery of local traffic, including ISP traffic. GNAPs stated that BellSouth has failed to comply with specific provisions of the agreement concerning the payment of reciprocal compensation to GNAPs. GNAPs asked for relief, including payment of reciprocal compensation and attorney's fees, plus interest.

On September 27, 1999, BellSouth filed its Answer to GNAPs' complaint. Based on the complaint, and BellSouth's response, this matter was set for hearing.

On November 15, 1999, DeltaCom filed a petition to intervene in this proceeding. By Order No. PSC-99-2526-PCO-TP, DeltaCom's petition was denied. Thereafter, a hearing on GNAPs' complaint was held on January 25, 2000.

By Order No. PSC-00-0802-FOF-TP, issued April 24, 2000, we rendered our post-hearing decision. Therein, we determined that:

> we believe that the plain language of the Agreement shows that the parties intended the payment of reciprocal compensation for all local traffic, including traffic bound for ISPs. Therefore, it is not necessary to look beyond the written agreement to the actions of the parties at the time the agreement was executed or to the subsequent actions of the parties to determine their intent.

Order at p. 7.

Subsequently, on May 9, 2000, BellSouth filed a Motion for Reconsideration of our decision. On May 19, 2000, GNAPs filed a Motion for Extension of Time to Respond to the Motion for Reconsideration. Thereafter, GNAPs filed its response to BellSouth's motion on May 24, 2000. BellSouth did not respond to GNAPs' request for additional time to respond to the Motion for Reconsideration.

This is our decision on these motions.

I. Motion for Extension of Time

GNAPs asserts that neither Commission staff counsel nor counsel for BellSouth oppose its request for a two-day extension to respond to the Motion for Reconsideration. GNAPs contends that the extension will not affect any other time frames in this case.

As noted above, BellSouth did not file a response to the Motion.

The extension is hereby granted. The two-day extension will neither cause any undue burden to any party nor will it give any undue advantage to either party.

II. Motion for Reconsideration

A. BellSouth

The proper standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which we failed to consider in rendering our Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

BellSouth contends that we should reconsider our decision because we have failed to consider or overlooked points of fact and law. BellSouth argues that this is the result of our rendering a decision based on facts outside the record, contrary to the law of the case as set forth by the prehearing officer in this case, and contrary to federal law.

First, BellSouth argues that we based our decision on facts outside the record. BellSouth references statements in the our Order wherein we indicate that the relevant intent in interpreting an adopted agreement is the intent of the original parties and that the original and adopted agreement should receive the same interpretation.[1] BellSouth contends that these statements result in an inconsistent decision.

Based on the referenced statements in our Order, BellSouth argues that the GNAPs/BellSouth agreement must receive the same interpretation as the DeltaCom agreement. BellSouth emphasizes

---

[1]Order at p. 7-8.

that the Commission has, however, not yet interpreted the DeltaCom/BellSouth agreement. Thus, BellSouth argues that the Commission has either prejudged the outcome of the DeltaCom complaint, which is currently being addressed in a separate docket, or it has made a decision contrary to its own interpretation of Section 252(i) of the Act by requiring BellSouth to pay reciprocal compensation under an adopted agreement, when BellSouth may not be required to do so under the terms of the underlying agreement. Regardless, BellSouth contends that we have strayed from the law of the case as set forth by the prehearing officer when DeltaCom was excluded from this proceeding.

BellSouth further argues that the prehearing officer specifically stated in his order denying DeltaCom intervention in this proceeding:

> . . . our decision in this case will consider only the GNAPs/BellSouth agreement and evidence relevant to that agreement. Our final decision will apply only to GNAPs and BellSouth. Therefore, any decision in this case will be based on evidence presented by the parties to this case and as such, will have no precedential value for any other case involving the same terms and conditions of an agreement between different parties. . .

Order No. PSC-99-2526-PCO-TP at pp. 5-6.

BellSouth contends that our final determination that the GNAPs/BellSouth agreement and DeltaCom/BellSouth agreement must be interpreted the same is inconsistent with the holding of the prehearing officer. BellSouth argues that we changed the process and evidentiary standard established by the prehearing officer, i.e. the "law of the case," in rendering our final decision. Therefore, BellSouth argues that it was denied due process to address the intent of the parties in negotiating the DeltaCom/BellSouth agreement.

BellSouth also argues that our decision departs from prior Commission decisions on compensation for ISP traffic. BellSouth notes that in this case, we stated that evidence of intent was not necessary, while in previous Commission decisions, the Commission analyzed evidence regarding the intent of the negotiating parties. BellSouth adds that even though we stated that we did not believe

evidence of intent was necessary in this case, we still included an analysis of facts reflecting the parties' intent, including a criticism of BellSouth for failing to seek modification of the agreement before allowing GNAPs to adopt it. BellSouth contends that this analysis is not only based upon an erroneous understanding of the facts, but also upon a misunderstanding of BellSouth's obligations under Section 252(i) of the Act.

BellSouth further contends that had we applied the same analysis in this case that we used in prior decisions in cases regarding reciprocal compensation, then BellSouth would have prevailed. BellSouth emphasizes that here, there was evidence that BellSouth did not intend to treat ISP traffic as if it were local, and GNAPs even admitted that it knew BellSouth did not believe it should be treated as local. BellSouth adds that this Commission seems to improperly "infer" negative intent on behalf of BellSouth because BellSouth did not clarify the language in the agreement before executing the adoption by GNAPs. BellSouth argues that this inference is inconsistent with the testimony of BellSouth's witness Shiroishi, who explained that GNAPs adopted the DeltaCom/BellSouth agreement to circumvent the negotiation process and to obtain reciprocal compensation language different from the standard language proposed by BellSouth.

BellSouth also argues that our decision violates federal law. BellSouth states that we found the language in the agreement is clear and only calls for reciprocal compensation for local traffic. Order at p. 6. Thus, based on this statement, BellSouth believes that it should have prevailed because the FCC has stated that traffic to ISPs is interexchange traffic, not local traffic. BellSouth contends that we deviated from our own prior orders and rendered a legal determination that traffic to ISPs is "local traffic," and as such, is subject to reciprocal compensation. BellSouth argues that this decision is clearly erroneous and should, therefore, be reconsidered.

In addition, BellSouth argues that our decision will have extensive negative consequences because every adopted agreement will have to be interpreted consistent with the original agreement. BellSouth emphasizes that the prehearing officer in this case denied intervention by the original party to the agreement, consistent with Commission policy on the handling of complaints under the Act. Thus, BellSouth contends that we will have to determine the rights of the parties to original agreements, before addressing complaints regarding adopted agreements, and will have

to do so without the benefit of evidence regarding the actions and intent of the original parties. BellSouth argues that this will either violate the ALEC's due process rights, or we will have to reconsider its policy against intervention in complaint proceedings, unless it decides to refrain from rendering decisions on complaints regarding adopted agreements until the underlying agreement has been interpreted.

BellSouth also maintains that this Commission's policy is discriminatory to BellSouth, because BellSouth will never be able to amend any mistakes it may have made in the original agreements, and those mistakes will be carried over to the adopted agreements. ALECs, however, will be able to opt into another agreement if they determine that they have made a bad deal with BellSouth.

Finally, BellSouth argues that we should not feel reassured that "mistakes" will only be perpetuated as long as the original agreement is in effect. BellSouth notes that while we acknowledged, in this case, that the underlying agreement in this case expired last year, in other reciprocal compensation cases, we have, essentially, perpetuated reciprocal compensation provisions beyond the life of the agreement by requiring the parties in arbitrations to "handle the [reciprocal compensation] issue consistent with the prior agreement."[2] Even though the provisions may not be specifically perpetuated in adopted agreements beyond the life of the original agreement, BellSouth argues that we are consistently perpetuating them through the arbitration process.

For all these reasons, BellSouth asks that we reconsider our decision in this case.

B. GNAPs

In its response, GNAPs argues that BellSouth has not met the standard for reconsideration in that it has not identified any mistake of fact or law made by this Commission in rendering its decision in this case. Thus, GNAPs contends that the Motion should be denied.

Specifically, GNAPs argues that our decision was based exclusively on facts in the record of this case. GNAPs contends that BellSouth has not identified any extra-record facts relied

---

[2]Citing Dockets Nos. 990149-TP, 990691-TP and 990750-TP.

upon by the Commission. GNAPs further emphasizes that we clearly identified all of the facts upon which our decision is based and that all such facts are in the record.

GNAPs argues that we concluded that the Agreement does not differentiate between traffic bound for ISPs and "local traffic" and does not contain a mechanism to compensate for traffic to ISPs apart from reciprocal compensation. Therefore, we determined that the language in the agreement was clear in that it provides for reciprocal compensation for all local traffic, including traffic bound for ISPs. GNAPs adds that because we looked only at the plain language of the agreement, there was no need to further examine the subjective intent of the parties.

GNAPs further contends that BellSouth's argument that we relied upon the intent of the parties to the DeltaCom/BellSouth agreement, and therefore, upon extra-record facts, is inaccurate. GNAPs explains that this Commission very clearly stated that it did not need to look to substantive intent in this case. We merely added, as dicta, an explanation that if we did have to look to additional evidence of intent in a case addressing a less clearly worded agreement, then the relevant intent would be the intent of the original parties to the agreement. GNAPs emphasizes that we applied "hornbook law" to conclude that evidence of subjective intent is necessary only when a contract is ambiguous. In this case, however, this Commission found that the contract was not ambiguous, and therefore, we did not look beyond the language in the contract.

GNAPs also maintains that even if we did look to evidence of the intent of the original parties to the DeltaCom/BellSouth agreement, there was some evidence in the record regarding that intent. GNAPs explains that its witness Rooney provided an exhibit at hearing that was the testimony of a relevant DeltaCom employee presented in a dispute regarding this same contract before the Alabama Commission. GNAPs contends that this is direct evidence in this record as to the intent of the original parties to the agreement. GNAPs also notes that BellSouth also presented evidence that BellSouth had developed language to clarify its agreement, but never incorporated the clarification into the DeltaCom/BellSouth agreement. GNAPs believes, therefore, that it is reasonable to infer that BellSouth intended the plain meaning of the original contract language to prevail.

GNAPs also disputes BellSouth's conclusion that we have prejudiced BellSouth in its ongoing dispute with DeltaCom by rendering a decision in this case. GNAPs contends that BellSouth has not been precluded by this decision from making any argument it may see fit to make in the DeltaCom case. Therefore, BellSouth has not demonstrated any error made by this Commission.

GNAPs adds that there is also no basis for us delay ruling until the DeltaCom case has been concluded, because we have already determined that the agreement is clear. Therefore, we should resist any attempts by BellSouth to delay implementation of the agreement terms.

As for BellSouth's reliance upon the prehearing officer's Order Denying Intervention, GNAPs argues that BellSouth has failed to note that the prehearing officer's order was issued three days after the parties had already filed rebuttal testimony in this case. GNAPs contends that regardless of the prehearing officer's decision, BellSouth had already decided not to present detailed evidence of the subjective intent of the parties to the underlying agreement. Therefore, GNAPs argues that BellSouth's contention that we somehow changed the evidentiary standard of this case is without merit. BellSouth simply chose to stick with one strategy for presenting its case, while GNAPs took a "cover the bases" approach. GNAPs maintains that just because BellSouth has now realized that it may have "dropped the ball," does not mean that this Commission made a mistake in rendering its decision, or that BellSouth was somehow denied due process.

GNAPs notes that BellSouth has even attached the affidavit of Jerry Hendrix to its Motion for Reconsideration in an attempt to get us to consider additional testimony in this case. GNAPs contends that this testimony could have been presented at hearing, includes no new facts, and is simply BellSouth's attempt to rectify its own strategic mistakes. GNAPs further argues that in order to reopen the record of a case, there must be a significant change of circumstances not present at the time of the proceedings, or a demonstration that a great public interest will be served.[3] GNAPs argues that BellSouth has failed to demonstrate any basis for reopening the record to admit evidence that could and should have

---

[3]Citing Austin Tupler Trucking, Inc. v. Hawkins, 377 So. 2d 679 (Fla. 1979), and Peoples Gas System v. Mason, 187 So. 2d 335 (Fla. 1966).

been a part of the original proceeding. GNAPs adds that if BellSouth were allowed to admit the evidence, then GNAPs would have to have an opportunity to cross-examine and rebut the testimony, which would lead to a perpetuation of this case, which the doctrine of administrative finality was designed to prevent except in the most extreme circumstances.

GNAPs also disagrees with BellSouth's contention that the prehearing officer's ruling somehow placed a substantive constraint on how this Commission could rule on the merits of this dispute. GNAPs argues that the doctrine of "law of the case" simply holds that the highest jurisdictional decision controls, as opposed to the prehearing officer's decision controlling the decision of this Commission.[4] GNAPs argues that under the "law of the case" doctrine, we could conclude, as a matter of law, that the DeltaCom/BellSouth agreement is unambiguous, based on the decision in this case. GNAPs explains that BellSouth would not be prejudiced in any way, because it has already had an opportunity in this case to contest the clarity of the language in the contract. However, under BellSouth's theory of the "law of the case," GNAPs emphasizes that the prehearing officer's denial of DeltaCom's petition to intervene would be a substantive determination that this Commission could not find that the contract is unambiguous. GNAPs contends that this is clearly not the intent of the prehearing officer's ruling.

In addition, GNAPs argues that we based our decision on the clear language in the agreement and upon fundamental principles of contract interpretation. GNAPs emphasizes that although the Commission took a slightly different approach than that taken by the Commission in previous cases addressing reciprocal compensation provisions, the contract at issue here is a different contract.

GNAPs explains that this Commission's decision is also consistent with federal law. GNAPs contends that every federal court that has considered a state decision finding that reciprocal compensation is due for traffic to ISPs has determined that the

---

[4]Citing Brunner Enterprises v. Department of Revenue, 452 So. 2d 550 (Fla. 1984), and Greene v. Massey, 384 So. 2d 24 (Fla. 1980).

state decision is consistent with federal law.[5] GNAPs further notes that BellSouth lost on this same issue in federal court in Atlanta five days before filing its Motion for Reconsideration with this Commission. GNAPs states that the federal court acknowledged the DC Circuit's recent reversal of the FCC's Reciprocal Compensation Order, and explained that the DC Circuit had vacated the FCC's Order because the FCC had failed to explain why the FCC's end-to-end analysis for determining whether a call to an ISP is local

> . . . is relevant to discerning whether a call to an ISP should fit within the local call model of two collaborating LECs or the long-distance model of a long-distance carrier collaborating with two LECs.

BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Services, Inc., 2000 U.S. Dist. LEXIS 6743 at **10-11 (N.D. Ga. 2000). Thus, GNAPs contends that the DC Circuit determined that the portions of the FCC's Reciprocal Compensation Order upon which BellSouth relies do not really make much sense. As such, GNAPs believes that this Commission's decision is consistent with federal law.

Finally, GNAPs argues that our decision is not discriminatory to BellSouth and will not place BellSouth in a situation in which it can never correct a mistake until the agreement expires. GNAPs emphasizes that BellSouth will only be held to these contracts for as long as the contracts last. GNAPs states that this is no different than any other business that wishes it had made a better deal for itself. GNAPs contends that BellSouth was allowed to freely negotiate the underlying contract in accordance with the provisions of the Act. While Section 252(i) may amplify any mistake BellSouth may have made in those negotiations, that is a part of the process contemplated by Congress and considered by the FCC in its rulemaking to implement the Act. GNAPs points out that the FCC developed Rule 47 C.F.R. §51.809 specifically to address situations in which the LEC has made a deal so detrimental to

---

[5]Citing Southwestern Bell Telephone v. Texas PUC, 208 F.3d 475, 483 (5th Cir. 2000); Illinois BellTel. v. WorldCom, 179 F.3d 566, 572 (7th Cir. 1999); and US West Communications v. MFS Intelenet, 196 F. 3d 1112, 1122-1123 (9th Cir. 1999).

itself that successive CLECs should be prevented from obtaining the same deal through Section 252(i) adoptions.

As for the issue of whether we have erred in other dockets by requiring the parties to continue to operate under the terms of their prior agreements until the FCC renders a final decision on compensation for traffic to ISPs, GNAPs argues that this appears to be an appropriate policy. Nevertheless, GNAPs argues that BellSouth should raise that issue in ongoing arbitration dockets, instead of in this case, because the argument is not a basis for reconsideration in this matter.

For all of these reasons, GNAPs asks that BellSouth's Motion for Reconsideration be denied.

III. DETERMINATION

BellSouth argues that we erred by: 1)considering facts outside the record; 2)straying from the "law of the case," as established by the prehearing officer; 3) departing from prior Commission decisions on this issue; 4) deciding the issue contrary to federal law; and 5) rendering a decision which is discriminatory in its consequences to BellSouth.

1. Consideration of Facts in Evidence

BellSouth contends that simply by indicating which parties' intent is the relevant intent when interpreting an agreement, we somehow considered facts outside the record of this case. BellSouth adds that in doing so, we not only strayed from the record of this case, but rendered a potentially inconsistent decision in that the agreement between ITC^DeltaCom and BellSouth has not yet been interpreted. We disagree. While we did indicate that the intent of the original parties to an agreement is the relevant intent in interpreting an agreement, we also stated that in this particular case, the language is clear as to what that intent was. Therefore, there was no need for us to look to further evidence, such as the actions of the original parties, in order to determine the underlying intent. Instead, we found that the evidence that is in the record of this proceeding, the agreement language, is clear and provides a sufficient basis upon which we determined that the parties intended for the payment of reciprocal compensation to include traffic bound for ISPs. BellSouth has not demonstrated that our decision is inconsistent, much less in error.

As such, BellSouth has failed to identify a basis for reconsideration of our decision.

2. Impact of Prehearing Officer's Decision on Petition to Intervene

BellSouth also contends that when the prehearing officer in this case denied ITC^DeltaCom intervention in this proceeding, that decision precluded us from considering the intent of the underlying parties to the agreement in rendering our final decision. BellSouth argues that it based its presentation of its own case upon the prehearing officer's decision; thus, BellSouth believes it has been denied due process to address the intent of the underlying parties. On this point, we agree with GNAPs. While we did explain at pages 7 and 8 of the Order that we believe that the relevant intent in interpreting an Agreement is the intent of the original parties, not the adopting party, those statements are not the basis for the decision in the case, nor are they responsive to any issues presented for consideration by this Commission. Furthermore, although our statements in our final order are somewhat contrary to the prehearing officer's determination in denying ITC^DeltaCom intervention, the decision to deny intervention did not abrogate BellSouth's right to due process in this case. In fact, the specific issue we were asked to address was:

> Under their Florida Partial Interconnection Agreement, are Global NAPs, Inc. and BellSouth Telecommunications, Inc. required to compensate each other for delivery of traffic to Internet Service Providers (ISPs)? If so, what action, if any, should be taken?

In order to answer this question, we did not find it necessary to analyze evidence as to the subjective intent of the parties, beyond its finding that the plain language of the agreement itself provides the best evidence of what the agreement requires. That is the only finding rendered in our Final Order. Discussion in the Order of the relevant intent when interpreting an adopted agreement is clearly dicta intended to provide all parties with guidance in the future as to how this Commission intends to approach the interpretation of adopted agreements, particularly when the language at issue is not as clear as it is in this case. The prehearing officer's decision did not prevent BellSouth from making any argument that the language is not clear, nor did it

prevent BellSouth from putting on any evidence of the intent of the parties to the underlying agreement.

In denying ITC^DeltaCom intervention, the prehearing officer simply stated that only evidence presented by BellSouth and GNAPs would be considered in this proceeding. The Order Denying Intervention did not, however, preclude either of the parties from presenting evidence of the intent of the original parties, nor did it restrict our ability to resolve the substantive issue in this case. In addition, we emphasize, as has GNAPs, that the Order Denying Intervention to ITC^DeltaCom was issued after BellSouth had already filed its rebuttal testimony. Thus, that decision could not have had any impact on the preparation of BellSouth's case. For these reasons, we do not believe that BellSouth has identified a mistake of fact or law made by this Commission in rendering our decision in this case.

3. Departure from Prior Commission Decisions on this Issue

BellSouth further argues that our decision in this case departs from our prior analysis and decisions regarding reciprocal compensation provisions in interconnection agreements. BellSouth emphasizes that in previous cases, we looked to evidence regarding the actions of the parties at the time they entered into agreements in order to determine the underlying intent. In this case, however, we only looked to the language in the agreement. BellSouth adds that even though we stated that we did not need to look to additional evidence of intent, we still analyzed and commented on matters that went beyond the language in the agreement.

Again, we do not believe that BellSouth's arguments on this point identify anything that this Commission did in this case that was in error. BellSouth has merely pointed out that our decision takes a somewhat different approach than that taken in past Commission decisions on similar issues. We did, however, acknowledge in our Final Order that we were taking a different approach than that taken in past decisions, and explained our basis for doing so. We are not required to follow prior decisions in arbitrating complaints under the Act, particularly when the contract at issue is a different contract than those previously interpreted.

As for the comments in the Order that BellSouth believes demonstrate an analysis of intent, we note that we clearly stated

in our Final Order that the extraneous analysis was not the basis of our decision. As for noting that BellSouth never amended the agreement, even though amendatory language had apparently been developed, this merely indicates that we acknowledged that the language at issue was the language from the original ITC^DeltaCom/BellSouth Agreement. There is no indication in the Order that we drew any inferences regarding intent based upon BellSouth's failure to amend the agreement, negative or otherwise. Even if we did draw some "negative inference," it would not constitute a mistake of fact or law in our decision. Although we had already clearly stated in the Order that our decision was based on the clear language of the Agreement, we were not precluded from "covering all the bases" and further addressing all the arguments presented. As such, BellSouth has not identified any mistake of fact or law made by this Commission in rendering our decision.

4. Decision Not Contrary to Federal Law

BellSouth also contends that our decision is contrary to the FCC's decision that traffic to ISPs is not local traffic. BellSouth contends that our decision clearly determines that traffic to ISPs is local traffic; therefore, it is in error. Staff, however, disagrees. As the FCC specifically acknowledged in its Reciprocal Compensation Order, Order 99-38 at ¶ 26,

> A state commission's decision to impose reciprocal compensation obligations in an arbitration proceeding -- or a subsequent state commission decision that those obligations encompass ISP-bound traffic -- does not conflict with any Commission (FCC) rule regarding ISP-bound traffic.

While the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit or Court) recently vacated the FCC's decision in Order 99-38, the Court specifically stated that it did not reach a decision on the arguments raised by the ILECs regarding the state commissions' jurisdiction to compel payments for traffic to ISPs. Thus, there is still no indication at any level that state commissions are prevented from making their own determinations regarding the appropriate compensation for this traffic. Instead, the DC Circuit stated that it was vacating the FCC's ruling because the FCC had not satisfactorily explained why LECs that terminate calls to ISPs are not viewed

> . . . as 'terminating . . . local telecommunications traffic,' and why such traffic is 'exchange access' rather than 'telephone exchange service'. . . .

Bell Atlantic Telephone Companies v. FCC, 206 F.3d 1, 9 (D.C. Cir. 2000). As GNAPs points out, these same statements taken from the FCC's Order 99-38 and this rationale are the primary basis that BellSouth has relied upon for its arguments that the traffic sent to ISPs should not be considered "terminated" for purposes of reciprocal compensation.

In this case, we determined that the language in the agreement was clear and that the parties intended to include traffic to ISPs within the definition of "local traffic." In reaching this conclusion, we emphasized that there is nothing in the Agreement to indicate that traffic to ISPs should be treated otherwise. Without some indication in the agreement that traffic to ISPs was intended to be treated differently or somehow segregated from "local traffic," although dialed by the customer as a local call, we can find no basis for BellSouth's contention that the definition of "local traffic" is not clear. Certainly, the DC Circuit's ruling impairs, at a minimum, any basis for BellSouth's argument to the contrary. Regardless, BellSouth has not demonstrated that this Commission's decision conflicts with federal law, and as such, it has failed to identify an error of fact or law in our decision. Furthermore, as BellSouth points out in its own motion at page 8, fn. 6, much of this same argument was already presented to and considered by us in our Final Order.

5. Decision Not Discriminatory to BellSouth

As for BellSouth's contentions that our decision is discriminatory and will "amplify the effect on BellSouth of errors in business judgment," we note much of BellSouth's argument goes to procedural difficulties that may arise in future cases. Such argument does not identify an error in this Commission's decision in this case. In fact, in discussions at the Agenda Conference when we considered our staff's post-hearing recommendation in this case, it was pointed out that in future cases, it may be necessary to allow intervention by the original party to the agreement--particularly if the agreement is not clear--if the party that has adopted an agreement files a complaint before an interpretation of that agreement has been rendered for the original parties.

BellSouth also contends that any perceived error in the agreements will be passed on to other ALECs that adopt the agreement. While this is true, it does not identify an error in our decision, although it may be a cautionary point for BellSouth to consider in its future negotiations.

Finally, BellSouth argues that we have been perpetuating these reciprocal compensation terms beyond the life of the agreements in some arbitration cases by telling the companies to continue operating under the terms of their prior agreements until the FCC reaches a decision regarding traffic to ISPs. In referencing our decisions in other cases, BellSouth has not identified an error in the decision in this case. We also note that we have not yet rendered a decision on the pending arbitration case (Docket No. 991220-TP) between these two companies. Thus, the terms of this agreement have not been extended through arbitration. In addition, the decisions referenced by BellSouth were based upon the evidence presented in those particular arbitration cases and upon the state of the law at the time of this Commission's decisions in those cases. Thus, BellSouth has not identified a basis for reconsideration of the decision in this case.

IV. CONCLUSION

Based on the foregoing, BellSouth's Motion for Reconsideration be denied. BellSouth has failed to identify any mistake of fact or law made by this Commission in rendering our decision in this case.

It is therefore

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s Motion for Reconsideration is hereby denied. It is further

ORDERED that Global NAPs, Inc.'s Motion for Extension of Time to Respond to Motion for Reconsideration is granted. It is further

ORDERED that this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st day of August, 2000.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

BK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).

EXHIBIT REDACTED IN ITS ENTIRETY

↓

G to Exh. N

PUBLIC VERSION – CONFIDENTIAL MATERIAL REDACTED

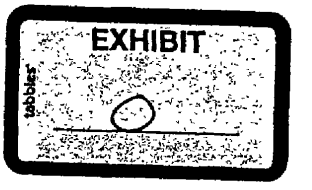
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	
Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida, for review of a decision by The American Arbitration Association in accordance with Attachment 1 Section 11.2(a) of the Interconnection Agreement between GTE Florida Inc. and TCG South Florida	)	Docket No. 030643-TP Filed: September 5, 2003

EXHIBIT O TO

PETITION OF VERIZON FLORIDA, INC.

Multi-Page™



CLOSING ARGUMENTS

FRIDAY, OCTOBER 11, 2002

CASE NO. 71Y 181 00852 01

TCB V. VERIZON FLORIDA

KENNEDY REPORTING SERVICE, INC.

(512)474-2233

KENNEDY
REPORTING
SERVICE
a record of excellence
1801 Lavaca · Suite 115 · Austin, Texas 78701 · 512-474-2233

PUBLIC VERSION – CONFIDENTIAL MATERIAL REDACTED

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	
Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida, for review of a decision by The American Arbitration Association in accordance with Attachment 1 Section 11.2(a) of the Interconnection Agreement between GTE Florida Inc. and TCG South Florida	)	Docket No. 030643-TP Filed: September 5, 2003

EXHIBIT P TO

PETITION OF VERIZON FLORIDA, INC.

PUBLIC VERSION – CONFIDENTIAL MATERIAL REDACTED

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	
Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida, for review of a decision by The American Arbitration Association in accordance with Attachment 1 Section 11.2(a) of the Interconnection Agreement between GTE Florida Inc. and TCG South Florida	)	Docket No. 030643-TP Filed: September 5, 2003

EXHIBIT Q TO

PETITION OF VERIZON FLORIDA, INC.