BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of unresolved issues in negotiation of interconnection agreement with Verizon Florida Inc. by US LEC of Florida Inc.	DOCKET NO. 020412-TP ORDER NO. PSC-03-0762-FOF-TP ISSUED: June 25, 2003

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

FINAL ORDER ON PETITION FOR ARBITRATION

TABLE OF CONTENTS

On May 10, 2002, US LEC of Florida Inc. (US LEC) petitioned the Commission to arbitrate certain unresolved terms and conditions of an interconnection agreement with Verizon Florida Inc. (Verizon). Verizon filed a response and the matter was set for hearing. At the issue identification meeting, 9 issues were identified by the parties to be arbitrated. Prior to the administrative hearing, the parties resolved one issue.

The administrative hearing was held on February 6, 2003. At the administrative hearing the parties agreed to stipulate into the record all prefiled testimony and waive their rights to cross-examination. This Order addresses the remaining arbitrated issues.

I. INTERCONNECTION POINT SELECTION

This issue addresses whether US LEC is permitted to elect a single interconnection point(IP) per local access and transport area (LATA), to select the interconnection method, and to require

Verizon to bear the financial responsibility to deliver its originating traffic to the IP chosen by US LEC.

A. Arguments

We believe that a brief description of US LEC's current network architecture in the Tampa LATA and of Verizon's Virtual Geographically Relevant Interconnection Points("VGRIP") proposal, is appropriate. We take note that under Verizon's defined terms, the physical point at which the parties physically connect is called a point of interconnection (POI) and billing points that distinguish the financial responsibility of each party for transporting traffic are called Interconnection Points (IPs). Further, we note that although US LEC witness Montano argues that the terms POI and IP are synonymous and interchangeable, US LEC is familiar with Verizon's terms and is willing to use them, so long as the resulting obligations remain consistent with FCC rules that govern interconnection between ALECs and ILECs. US LEC witness Montano states that US LEC has one switch in Florida; it is located in Verizon's service territory in the Tampa area. The US LEC switch currently serves the Tampa LATA and numerous local calling areas within that LATA. US LEC has established Points of Interconnection (POIs) at each Verizon Access Tandem where US LEC has been assigned NXX codes and provides local exchange services to its end users. In describing US LEC's current network architecture in the Tampa LATA US LEC witness Hoffmann adds:

> US LEC delivers its originating traffic to the Verizon-IPs via its point-to-point circuits that connect US LEC's switch to Verizon's tandems. Additionally, US LEC has agreed that where it delivers at least 200,000 minutes of use per month to a Verizon end office, it will deliver such traffic to that end office via direct end office trunks it purchases from Verizon, or via a third party transport provider. Similarly, Verizon is financially responsible for delivering its originating traffic to the US LEC-IP. It is my understanding that Verizon has three tandems in the Tampa LATA, all of which are located within the same building, which is one-third of one mile from US LEC's switch. US LEC has established POIs at two of those tandems where US LEC has numbers and has been assigned NXX codes. US LEC purchases an OC-48 entrance

> facility from Verizon as its method of interconnection to those tandems.
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> After accepting Verizon South's traffic at the POIs, US LEC transports that traffic over the same OC-48 entrance facility back to US LEC's switch and bills Verizon a non-distance sensitive entrance facility charge for providing that transport.

US LEC witness Montano believes that US LEC has the right to maintain its current interconnection method in the Tampa LATA.

We note that the testimony of Verizon witness D'Amico was adopted by Verizon witness Munsell. Verizon witness Munsell claims that the interconnection language initially proposed by Verizon is a compromise because the VGRIP plan mitigates only some of the transport cost; however, it does enable Verizon to deliver its traffic to US LEC at a more central location. Witness Munsell states that "[u]nder VGRIP, Verizon may request that the ALEC establish a POI at a collocation site in each Verizon tandem wire center where the ALEC chooses to assign telephone numbers. That POI would serve as the ALEC's IP under VGRIP." Witness Munsell defines a point where the ILEC and ALEC physically interconnect their respective networks. To exchange traffic, two carriers' networks must be physically linked; the point of that physical linkage is the POI. He adds that an IP, on the other hand, is the place in the network at which one local exchange carrier hands over financial responsibility for traffic to another local exchange carrier.

Verizon witness Munsell maintains that a POI and an IP may be at the same place but do not have to be. Witness Munsell contends that under VGRIP, if Verizon only operates one tandem in a LATA, then Verizon may designate additional VGRIP locations, such as host end office wire centers. In addition, either Party may designate an ALEC collocation site at any Verizon wire center as the ALEC IP for traffic originating from that end office.

Verizon witness Munsell opines that under Verizon's VGRIP proposal, Verizon would incur more than its share of the transport cost, but it would be able to deliver its traffic to the ALECs at a more central location. He reasons his belief by stating that:

> Verizon would be responsible for the costs of hauling this traffic from the Verizon customer to the designated Verizon VGRIP tandem wire center or end office wire center where the ALEC is collocated, even though that location may be beyond the local calling area of the originating customer. The ALEC is then responsible for delivering the call from this central location to the ALEC customer. If an ALEC elects not to collocate and establish a POI/IP at the VGRIP locations, Verizon proposes that the end office serving the Verizon customer who places the call will act as the "virtual IP." Although Verizon will then transport this traffic from the Verizon customer to the ALEC-designated location, the ALEC will be financially responsible for the transport from the "virtual IP" to the ALEC POI.

Verizon witness Munsell believes that Verizon should not have to continue to subsidize US LEC's costs of interconnection or network design choices. Witness Munsell opines that "if US LEC chooses to locate only one point of interconnection ("POI") in a LATA, it should be financially responsible for hauling the Verizon originated call to its distant POI."

While it is evident to us that the crux of the dispute between the parties deals with the designation and quantity of the US LEC Interconnection Points(IPs) in the LATA, the remaining focus is on three contentious questions, for which each party has an answer. The first question is whether US LEC is permitted to select a single interconnection point per LATA. Based on a review of Verizon's proposal, US LEC witness Montano believes that Verizon wants the right to designate the IP or to require US LEC to designate additional IPs even if US LEC has already designated its IP in the Tampa LATA. However, US LEC witness Montano contends that Verizon's position is inconsistent with FCC rules and that US LEC is entitled to select the point(s) of interconnection between the parties' networks. Witness Montano asserts:

> The Act and the FCC recognize that new entrants, such as US LEC, must be able to determine the most efficient location for the exchange of traffic. The Act grants ALECs, not Verizon, the right to select the POI/default IP. Under 47 U.S.C. § 251(c)(2)(B), Verizon must provide

> interconnection at any technically feasible point selected by US LEC.

Witness Montano notes that the fact that the parties have already interconnected at US LEC's requested POI(s) and single IP in the Tampa LATA is evidence that US LEC's current interconnection architecture is technically feasible.

Second, the parties ask us to decide whether US LEC is permitted to select the method of interconnection. US LEC witness Montano believes that Verizon wants to designate collocation as the method US LEC must use to interconnect with Verizon; however, US LEC witness Montano contends that this position is also inconsistent with federal regulations, whereby pursuant to Section 251(c)(2), US LEC is entitled to select a technically feasible entrance facility or other method of interconnection that will be used to establish the physical IP. Witness Montano states that US LEC is not currently collocated at any Verizon office in any LATA in Florida and unlike Verizon, US LEC does not wish to change its current method of interconnecting with Verizon. Witness Montano explains Verizon's proposal and how it might constrain US LEC's network design:

> Under Verizon's proposed contract language, Verizon wants US LEC to interconnect through collocation at Verizon's tandems, and to establish a physical IP at any other collocation arrangement US LEC may establish at a Verizon end office, or pay for Verizon's originating tandem switching costs and all of Verizon's transport costs, beginning at the Verizon end office where the call originates. These so-called "options" require US LEC to mirror Verizon's legacy network architecture (either physically or financially), which may not be the most efficient forward-looking architecture for an entrant deploying a new network, and therefore constitutes a barrier to entry.

The third question the parties want us to resolve is whether US LEC can require Verizon to bear the financial responsibility to deliver its originating traffic to the IP chosen by US LEC. US LEC witness Montano believes that according to Verizon's Virtual Geographically Relevant Interconnection Points("VGRIP") proposal,

if US LEC fails to establish the physical IPs requested by Verizon, then Verizon wants to penalize US LEC by imposing transport charges for the delivery of Verizon's originating traffic, from the Verizon end office to US LEC's IP. Witness Montano contends that charging US LEC for transporting Verizon's originating traffic within the local calling area violates FCC rules and that under current FCC rules, the originating carrier bears the cost of transporting traffic to its point of interconnection with the terminating carrier.

Verizon witness Munsell's testimony focuses on two points: First, explaining the Virtual Geographically Relevant Interconnection Point proposal; second, explaining why, if US LEC chooses to locate only one point of interconnection in a LATA, US LEC should be financially responsible for transporting the Verizon-originated call to US LEC's distant POI. Initially, Verizon witness Munsell discusses the nuances of Verizon's VGRIP proposal, set forth in section 7.1.1 of the Interconnection Attachment of the parties' proposed agreement. According to that section, US LEC is allowed to choose the location of its POI(s) and is provided three options for the establishment of IPs.[1] First, if US LEC established a POI at a collocation site at a Verizon tandem wire center in a multi-tandem LATA, and accepted Verizon's originated traffic at that point, US LEC could designate that site as an IP.[2] Second, if US LEC decided to collocate at a Verizon end office, Verizon may request that this collocation site function as both a POI and an IP for the local calling area where that end office is located.[3] Third, if US LEC chooses not to establish a POI at either of the above locations, the end office serving the Verizon customer who places the call acts as a virtual IP, as though US LEC had elected to establish a collocation site at that location.[4] Any reciprocal compensation due to US LEC for this call would be reduced by the transport and switching costs Verizon incurs in transporting this traffic from the virtual IP to US LEC's POI.

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[1] Verizon Interconnection Attachment, §7.1.1.

[2] See Verizon Interconnection Attachment, § 7.1.1.1.

[3] See id. $ 7.1.1.2.

[4] See id § 7.1.1.3

Therefore, under the agreement proposed by Verizon, US LEC is permitted to select a single interconnection point (IP) per LATA and to choose an interconnection method, although its choices are limited by the options provided in VGRIP.[5]

Verizon witness Munsell believes that under US LEC's proposal, US LEC attempts to have Verizon bear costs that are actually caused by US LEC forcing Verizon to make network architecture decisions for the benefit of US LEC and not for Verizon and its customers. Witness Munsell contends that the main premise behind US LEC's network architecture position is that Verizon should be financially responsible for US LEC's interconnection choices.

Further, witness Munsell testifies that he believes that US LEC's proposed network architecture would qualify as a "technically feasible but expensive" form of interconnection, which under federal law would require US LEC to ". . . bear the cost of that interconnection, including a reasonable profit. . . "[6] because US LEC's proposal would require Verizon to incur costs for which it would not receive compensation. Conversely, witness Munsell contends that Verizon's VGRIP proposal would enable Verizon to receive fair compensation for the transport functions that it provides US LEC. US LEC witness Montano responds to this subject in her Rebuttal Testimony.

In her rebuttal testimony, witness Montano points out that in our generic reciprocal compensation order the Commission specifically rejected the argument made by Verizon ". . . that a point of interconnection and an interconnection point are separate entities because the distinction lacks any discernable [sic] authority."[7] Witness Montano adds that the Commission instead ruled that ". . . ALECs have the exclusive right to unilaterally designate single POIs for the mutual exchange of telecommunications traffic at any technically feasible location on an incumbent's network within a LATA."

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[5] Verizon Interconnection Attachment, §7.1.1.

[6] See Local Competition Order, 11 FCC RCD at 15603, ¶ 199.

[7] See Order No. PSC-02-1248-FOF-TP, p.25.

US LEC witness Montano infers that our decisions in the Reciprocal Compensation Order[8] regarding point of interconnection designation, originating carrier's obligations, and originating carrier's responsibilities are binding in this matter. Witness Montano states that the Reciprocal Compensation Order was issued in a generic proceeding that was opened by the Commission to establish guidelines for all carriers that interconnect in Florida. Witness Montano believes that the Commission's decision supports US LEC's position that Verizon is required to bear the cost of delivering its originating traffic to the POI selected by US LEC, and to compensate US LEC for the transport and termination functions it performs.

In response to Verizon's argument that it may require a separate IP where the ALEC requests an "expensive" form of interconnection, US LEC witness Montano states that she does not believe that this position is viable. Furthermore, she adds, ". . . to the extent that there is any validity to Verizon's 'expensive' interconnection argument, which appears doubtful, my understanding is that Verizon would be required to support its position with cost studies demonstrating that US LEC's single IP per LATA is 'expensive'." In conclusion, witness Montano contends that US LEC's present network architecture is more consistent with current Commission precedent and FCC rules than Verizon's VGRIP proposal.

US LEC witness Hoffmann does not believe Verizon's virtual IP proposal is a compromise. He counters that under Verizon's proposal, US LEC would be forced to bear the cost of transporting both parties' originating traffic if US LEC declines Verizon's "request" to establish collocated physical IPs, thus shifting all of Verizon's financial responsibility to US LEC.

Witness Hoffmann claims that contrary to Verizon witness Munsell's assertions, Verizon is today aggregating and delivering its traffic to US LEC at a central location, at the US LEC switch. US LEC witness Hoffmann believes that Verizon witness Munsell's testimony indicates that ". . . he does not equate 'central

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[8] Order No. PSC-02-1248-FOF-TP, issued September 10, 2002, in DN 000075-TP, In Re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996, (Reciprocal Compensation Order)

locations' with 'single locations'. Rather, by 'central location,' what he really means is at Verizon's tandem switches; via collocation no less!" Further, witness Hoffman believes that Verizon's costs are de minimis, and not significant. He states that US LEC only charges a non-distance sensitive entrance facility rate to carry Verizon's originating traffic back to US LEC's switch.

US LEC witness Hoffman contends that the bottom line is that through VGRIPs, Verizon would force US LEC to choose between one of two equally unacceptable options: US LEC can either establish a POI at a collocation site at a Verizon tandem wire center in a multi-tandem LATA, and accept Verizon's originated traffic at that point, or if US LEC decided to collocate at a Verizon end office, Verizon may request that this collocation site function as both a POI and an IP for the local calling area where that end office is located. In conclusion, witness Hoffmann offers as a compromise that US LEC is willing to allow Verizon to deliver its traffic to US LEC at POIs US LEC has established at Verizon tandems via entrance facilities, provided that (1) US LEC does not have to change its established method of interconnection at Verizon's tandems, and (2) Verizon continues to compensate US LEC for a non-distance sensitive entrance facility, at the rate contained in Verizon's own state access tariff, to transport Verizon's traffic from the POI to US LEC's switch.

According to "option three" of Verizon's proposal, if an ALEC elects not to collocate and establish a POI/IP at the VGRIP location, Verizon proposes that the end office serving the Verizon customer who places the call will act as the "virtual IP." Although Verizon will then transport this traffic from the Verizon customer to the ALEC-designated location, the ALEC will be financially responsible for the transport from the "virtual IP" to the ALEC POI. Verizon witness Munsell agrees with US LEC witness Hoffman that under "option three" US LEC must bear all of the costs of transporting a call from the originating end office to US LEC's chosen IP. Witness Munsell states that under "option three" US LEC must bear the costs of transporting traffic within the local calling area, calculated using the unbundled network element rate in the parties' agreement. Thus, VGRIP is a compromise proposal that provides US LEC with options based on the network architecture that it finds more advantageous. He adds that under "option one,"

where US LEC finds it cost-justified to establish a geographically relevant IP at a Verizon tandem, Verizon can incur more that its share of the transport cost, because Verizon will be responsible for the costs of hauling its traffic from Verizon customers to the geographically relevant IP, even though the IP may be located beyond the Verizon local calling area.

Verizon witness Munsell concludes that it is Verizon's position that our decision in the Sprint Arbitration Order[9] is consistent with FCC rules; however, because of its generic nature, he acknowledges that our recent decision in the Reciprocal Compensation Order is binding. Moreover, he notes that Verizon has sought reconsideration of the decision.[10]

B. Analysis

We note that this issue was addressed by us in the recent generic reciprocal compensation proceedings Docket No. 000075-TP. We find that no new facts or viable arguments have been presented in this proceeding to merit a change from the Commission's decisions in the generic docket. Accordingly, we believe our decision for this issue should be consistent with the decision made in our Reciprocal Compensation Order.

In order for US LEC and Verizon to exchange traffic between their respective customers, they must interconnect their networks as required by Section 251(c)(2) of the Act. The physical points at which they connect are called Points of Interconnection or "POIs" under Verizon's defined terms. In contrast, the billing points that distinguish the financial responsibility of each Party for transporting traffic are called Interconnection Points or "IPs" using Verizon's terms.

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[9] Order No. PSC-01-1095-FOF-TP, issued May 8, 2001, in DN 000828-TP, In Re: Petition of Sprint Communications Company Limited Partnership for arbitration of certain unresolved terms and conditions of a proposed renewal of current interconnection agreement with BellSouth Telecommunications, Inc. (Sprint Arbitration Order) pp 58-63.

[10] Reconsideration was denied by us in Order No. PSC-03-0059-FOF-TP on . However, Verizon and other parties have appealed the Commission's decision.

Under the parties' current interconnection architecture, US LEC has elected to have one switch in Florida, located in Verizon's service territory in the Tampa area. This switch currently serves the Tampa LATA and numerous local calling areas within that LATA. US LEC has also chosen to establish POIs at each Verizon Access Tandem where US LEC has been assigned NXX codes and provides local exchange services to its end users. We find that the parties' current method of interconnection is appropriate and in compliance with FCC rules and our prior ruling, as long as US LEC's POI is within Verizon's network. According to the FCC's current rules, the originating carrier is responsible for the cost of delivering its calls to the point of interconnection with the co-carrier; recovery of the cost of the facilities used to deliver this traffic to the POI is the originating carrier's responsibility. The originating carrier recovers the cost of these facilities through the rates it charges its own customers for making calls.[11] This sentiment was echoed by us in our Reciprocal Compensation Order.[12]

We came to two additional conclusions with regard to this issue in our Reciprocal Compensation Order.[13] First, we found that ALECs have the exclusive right to unilaterally designate single POIs for the mutual exchange of telecommunications traffic at any technically feasible location on an incumbent's network within a LATA. Second, we found that an originating carrier is precluded by FCC rules from charging a terminating carrier for the cost of transport, or for the facilities used to transport the carrier's originating 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.

Although we acknowledge that Verizon indicates that US LEC's selected interconnection points are "technically feasible but

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[11] TSR Wireless, LLC v. US West Communications Inc., File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18m Memorandum Opinion and Order, FCC 00-194, ¶34 (rel. June 1, 2000) ("TSR Wireless"), aff'd, Quest Corp. et al. v. FCC, et al, 252 F.3d 462 (D.C. Cir 2001)

[12] See Order No. PSC-02-1248-FOF-TP, p.25.

[13] See Id. pp. 25 and 26.

expensive," we agree with US LEC witness Montano that it is incumbent on Verizon to provide support for this claim. Verizon has not provided any such support. Consequently, we were not persuaded by Verizon's testimony on this matter.

We believe that our decisions for this issue should mirror the Commission's rulings made in the Reciprocal Compensation Order and the subsequent Order Denying Reconsideration of the Reciprocal Compensation Order.[14] We find that no new facts have been presented to us by the parties. Therefore, we find that US LEC shall be permitted to select a single interconnection point(IP) per LATA, to select the interconnection method, and to require Verizon to bear the financial responsibility of delivering its originating traffic to the IP chosen by US LEC, as long as that IP is within Verizon's network.

C. Decision

We find that US LEC is permitted to select a single interconnection point(IP) per local access and transport area (LATA), to select the interconnection method, and to require Verizon to bear the financial responsibility to deliver its originating traffic to the IP chosen by US LEC, as long as that IP is within Verizon's network.

II. DESIGNATION OF US LEC IP

This issue addresses whether Verizon can require US LEC to designate a US LEC collocation site at a Verizon end office as a US LEC IP, and impose additional charges on US LEC if US LEC declines that request.

A. Arguments

Based on the testimony of the parties, coupled with the parties' acknowledgment of the relevant and binding decisions made by us in our Reciprocal Compensation Order, we are puzzled that the parties have not agreed to remove this issue from consideration by

[14] Order No. PSC-03-0059-FOF-TP, issued January 8, 2003, in DN 000075-TP, denying reconsideration of the Reciprocal Compensation Order. (Order Denying Reconsideration of the Reciprocal Compensation Order)

us in this docket. US LEC witness Montano objects to Verizon's requirement that US LEC establish an IP via collocation for two reasons. First, US LEC witness Montano states that US LEC does not use collocation as its method of interconnection with Verizon. Witness Montano affirms that US LEC is not collocated at any Verizon office in Florida, nor does US LEC wish to change its method of interconnecting with Verizon.

Second, US LEC witness Montano believes that US LEC's right to select an entrance facility or other method of interconnection is granted by Section 251(c)(2) of the Act, which permits US LEC to select any technically feasible method of interconnection that will be used to establish the physical IP. US LEC witness Montano contends that Verizon's proposed contract language requires US LEC to interconnect through collocation at Verizon's tandems, establish a physical IP at a collocation arrangement US LEC may establish at a Verizon end office, or pay for Verizon's originating tandem switching costs and all of Verizon's transport costs, beginning at the Verizon end office where calls originate. Witness Montano states that ". . . this portion of Verizon's VGRIP proposal is a penalty that has not been sanctioned by the Commission, and Verizon should be prohibited from imposing it."

US LEC witness Montano points out that under current FCC rules, the originating telecommunication carrier bears the costs of transporting traffic to its point of interconnection with the terminating carrier; thus, the POI serves as the IP. US LEC witness Montano believes that Verizon's obligation to deliver its originating traffic to US LEC's IP is not conditioned on US LEC establishing the collocated IPs Verizon is trying to require through Verizon's contract proposals. Consequently, witness Montano believes that the Commission should find that US LEC has the right to maintain its chosen IP(s) in each LATA and, at US LEC's option, its current interconnection method.

We note that the testimony of Verizon witness D'Amico was adopted by Verizon witness Munsell. Verizon witness Munsell believes that Verizon's Virtual Geographically Relevant Interconnection Point ("VGRIP") proposal is consistent with federal law. Witness Munsell states that under Verizon's proposal, ". . . if US LEC chooses to locate only one point of interconnection("POI") in a LATA, it should be financially

responsible for hauling the Verizon-originated call to its distant POI." Verizon witness Munsell believes that a POI is different from an Interconnection Point("IP"). He elaborates:

> A POI is where the ILEC and ALEC physically interconnect their respective networks. To exchange traffic, two carriers' networks must be physically linked; the point of that physical linkage is the POI. An IP, on the other hand, is the place in the network at which one local exchange carrier hands over financial responsibility for traffic to another local exchange carrier. A POI and an IP may be at the same place but do not have to be.

Verizon witness Munsell contends that pursuant to Verizon's proposal, Verizon is financially responsible for delivering its traffic to US LEC's IP. Once Verizon transports traffic originating on its network to US LEC's IP, then US LEC takes over financial responsibility for delivering the traffic to its customer.

Witness Munsell believes that Verizon's VGRIP proposal, which is found in the Interconnection Attachment of US LEC's petition for arbitration in Sections 7.1.1.1, 7.1.1.2, and 7.1.1.3, mirrors Sprint's proposal in the Sprint Arbitration Order, which we determined was in compliance with the 1996 Act and the FCC's rules implementing the Act. Verizon witness Munsell claims that under VGRIP, Verizon may request that the ALEC establish a POI at a collocation site in each Verizon tandem wire center where the ALEC chooses to assign telephone numbers. He adds:

> That POI would serve as the ALEC's IP under VGRIP. If Verizon only operates one tandem in a LATA, then Verizon may designate additional VGRIP locations, such as host end office wire centers. In addition, either may designate an ALEC collocation site at any Verizon wire center as the ALEC IP for traffic originating from that end office.
>
> If an ALEC elects not to collocate and establish a POI/IP at the VGRIP location, Verizon proposes that the end office serving the Verizon customer who places the call will act as the "virtual IP." Although Verizon will then

> transport this traffic from the Verizon customer to the ALEC-designated location, the ALEC will be financially responsible for the transport from the "virtual IP" to the ALEC POI.

Verizon witness Munsell does not believe that Verizon's proposal in the Interconnection Attachment grants Verizon the power to change US LEC's network architecture at Verizon's sole discretion. Witness Munsell maintains that Verizon's VGRIP proposal allows Verizon to request that US LEC establish POI/IPs at a collocation site at either a Verizon tandem or a Verizon end office; however, US LEC remains free to meet VGRIP's requirements through the establishment of virtual IPs, which does not require US LEC to change its network architecture.

Verizon witness Munsell notes that any dispute about Verizon's VGRIP proposal with regard to collocation is entirely hypothetical because ". . . US LEC admits that it does not currently collocate with Verizon. . . " and this issue only applies when an ALEC has established a collocation arrangement in a Verizon end office. Witness Munsell believes that unless US LEC decides to change its network architecture, this issue will not affect it in any way.

In response, US LEC witness Montano contends that US LEC's position to continue operating using their existing network interconnection architecture is more consistent with current Commission precedent and FCC rules than Verizon's VGRIP proposal. Consequently, US LEC witness Montano believes that the Commission should adopt US LEC's proposal with regard to Issue 2.

Verizon witness Munsell maintains that Verizon's VGRIP proposal is consistent with our decision in the Sprint Arbitration Order and therefore should be adopted by . However, referring to the Reciprocal Compensation Order later in his testimony, witness Munsell acknowledges that in a more recent decision, we held that "an originating carrier is precluded by FCC rules from charging a terminating carrier for the costs of transport, or for facilities used to transport the originating carrier's traffic from its source to the point(s) of interconnection in a LATA," which witness Munsell believes is contrary to our decision in the Sprint

Arbitration Order.[15] Verizon witness Munsell claims that in reaching our generic decision we did not discuss the Sprint Arbitration Order; thus, Verizon sought and has been denied reconsideration of our decision in Order No. PSC-02-1248-FOF-TP. Consequently, in its brief, Verizon has offered this later decision as an alternative to Verizon's VGRIP proposal.

Verizon indicates in its brief that Verizon's alternative proposal does not contain a counterpart to Interconnection Attachment section 7.1.1.2. If this section is adopted by us, it would permit Verizon to request US LEC to designate as a US LEC IP, any collocation site US LEC establishes at a Verizon end office, which is the basis for Issue 2. By purposely omitting this section Verizon implies that it no longer seeks to request that US LEC designate an established US LEC collocation site at a Verizon end office as a US LEC IP.

B. Analysis

We believe that although Verizon witness Munsell disagrees, he recognizes that this Commission's decision in the Reciprocal Compensation Order is inconsistent with Verizon's VGRIP proposal. We applaud the foresight Verizon displayed in its brief, where it proffered an alternative proposal to VGRIP. However, we are disappointed that the parties failed to settle what is now considered by at least one of the parties a moot issue.

In light of Verizon's acknowledgment of the binding nature of our Reciprocal Compensation Order and the alternative proposal offered by Verizon in its brief, we believe that this issue should have been stipulated by the parties prior to our rendering a decision. Nevertheless, we are compelled to echo our findings in the Reciprocal Compensation Order, in our decision of this issue. Thus, it is clear to us: that a point of interconnection and an interconnection point are not separate entities; that ALECs have the exclusive right to unilaterally designate single POIs for the mutual exchange of telecommunications traffic at any technically feasible location on an incumbent's network within a LATA; and that an originating carrier has the responsibility for delivering its

[15] See Order No. PSC-02-1248-FOF-TP, pp. 25-26.

traffic to the point(s) of interconnection designated by the alternative local exchange company (ALEC) in each LATA for the mutual exchange of traffic.

C. Decision

If US LEC establishes a collocation site at a Verizon end office, we find that Verizon shall not be permitted to request US LEC designate that site as a US LEC IP and impose additional charges on US LEC if US LEC declines that request. However, Verizon shall only be required to bear the financial responsibility to deliver its originating traffic to an IP chosen by US LEC, if that IP is on Verizon's network, within a LATA.

III. COMPENSATION FOR VOICE INFORMATION SERVICES

This issue address whether US LEC is entitled to reciprocal compensation for terminating or delivering "Voice Information Services" traffic.

A. Arguments

Although the focus of this issue is the applicability of reciprocal compensation, the point of contention between the parties is the way in which "Voice Information Services" traffic should be characterized. US LEC witness Montano believes that the categories of traffic that Verizon now wants to define as Voice Information Services traffic fit completely within the definition of "Reciprocal Compensation Traffic," which is defined in the proposed agreement as "Telecommunications traffic originated by a Customer of one Party on that Party's network and terminated to a Customer of the other Party on that other Party's network, except for Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access." She asserts that this is the basis for the parties' reciprocal compensation obligations. Witness Montano further explains:

> The categories of traffic included in the definition of "Voice Information Services Traffic" fit this definition: Whether the call is a "recorded voice announcement information" or "a vocal discussion program open to the

> public," it is originated by a customer of one party on that party's network and is terminated by a customer of the other party on that party's network.
>
> At the same time, the traffic at issue can not be characterized as interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access. In short, there does not appear to be any basis to exclude what Verizon South has defined as "Voice Information Services Traffic" and, as such, the parties should be required to compensate each other for exchanging and terminating such traffic.

Verizon provided its position in response to our staff's interrogatories. Verizon indicated that "Voice Information Services Traffic should be excluded from the scope of the parties' reciprocal compensation obligations to the extent (and only the extent) that such traffic is "interstate or intrastate exchange access, information access, or exchange services for such access." Verizon does not dispute that the definition of Reciprocal Compensation Traffic given by US LEC is the language agreed to in the proposed agreement; however, Verizon focuses on what the definition excludes. Verizon alleges that the definition of "Voice Information Services" traffic includes only traffic that is not subject to reciprocal compensation under current law.

Conversely, US LEC claims the types of traffic considered as Voice Information Services Traffic fit the definition of "Reciprocal Compensation Traffic" in the parties' proposed Interconnection Agreement. US LEC asserts none of the exempted traffic types enumerated in 47 CFR Section 51.701(b)(1) apply to Voice Information Services traffic.

> The traffic plainly is not "Exchange Access" traffic, which is defined in the Telecommunications Act as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153 (16) The term has the same meaning for the purposes of the parties' exchange of traffic in Florida because they have defined it in their proposed Interconnection

> Agreement as having "the meaning set forth in the Act." (Glossary at § 2.33). Thus, VIS traffic is not Exchange Access because it is not toll traffic subject to access charges.
>
> Nor is it properly categorized as "Information Access" traffic, which is not defined in the Act, but rather, is defined in the Modified Final Judgement as "the provision of specialized exchange telecommunications services by a BOC in an exchange area in connection with origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services." (United States v. AT&T, 552 F. Supp. 131, 229 (D.C. 1982)
>
> In turn, "Information Services" is defined in the Act as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available 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."[16]

Verizon disputes US LEC's claim that Voice Information Services traffic can never constitute ". . . interstate or intrastate exchange access, information access, or exchange services for such access. . . " as a matter of law. In order to support its position Verizon cites:

> As the FCC made clear in the ISP Remand Order, reciprocal compensation does not apply to "traffic destined for an information service provider" because such traffic falls into the category of "information access." ISP Remand

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[16] 47 U.S.C. § 153 (20)

Order ¶ 44.[17] The FCC further held 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" set forth in United States v. AT&T.[18]

The Consent Decree defined "information access" 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."[19] And "information services" were in turn defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information which may be conveyed via telecommunications."[20] The definition of Voice Information Services in the proposed agreement at the very least includes such traffic, because (among other things) that definition includes calls that are intended to retrieve "recorded voice announcement information." US LEC Pet'n, Exh. B at 43, Additional Services Attachment § 5.1. The FCC has explicitly held that

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[17] Although the D.C. Circuit Court of Appeals remanded the ISP Remand Order to the FCC, the court explicitly declined to vacate the order, which thus remains binding federal law. See, Worldcom, Inc. v. FCC, 288 F.3d 429, 434 (D.C. Cir. 2002); see also Memorandum Opinion and Order, Joint Application of BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Georgia and Louisiana, 17 FCC Rcd 9018, 9173, ¶ 272 (2002) (rules adopted in the ISP Remand Order "remain in effect") (Verizon App. Tab 7)

[18] See ISP Remand Order ¶ 44 (citing United States v. AT&T, 552 F. Supp. 131, 196, 229 (D.D.C. 1982))

[19] See id.

[20] AT&T, 552 F. Supp. at 229.

retrieval of recorded information is an enhanced service, the FCC's term for an information service.[21]

B. Analysis

FCC rules define "Reciprocal Compensation" as an arrangement ". . . in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier."[22] Similarly, the parties propose to define Reciprocal Compensation Traffic in their agreement as ". . . telecommunications traffic originated by a Customer of one party on that party's network and terminated to a Customer of the other party on that party's network, except for Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access."[23]

"Information Services" is defined in the Act as ". . . 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."[24] Voice Information Services (VIS) is defined in section 5.1 of the Additional Services Attachment of the parties' proposed agreement as ". . . a service that provides (i)recorded voice announcement information or (ii) a vocal discussion program open to

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[21] See, e.g., Memorandum Opinion and Order, Petition of Nevada Bell, 16 FCC Rcd 19255, ¶ 1 (2001) (Verizon App. Tab 11).

[22] FCC Rule 51.701(e).

[23] See Proposed Agreement Glossary, Section 2.75, pp. 35-36.

[24] 47 U.S.C. § 153(20).

the public. It also defines Voice Information Service Traffic as intraLATA switched voice traffic, delivered to a 'Voice Information Service'."

Interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access are not telecommunications traffic subject to reciprocal compensation, per FCC Rule 51.701(b)(1) and the parties' proposed agreement. We find that calls to VIS Providers who offer "a vocal discussion program open to the public," such as chatlines, are entitled to reciprocal compensation because such a service does not fall into any of the categories of traffic identified in FCC Rule 51.701(b)(1) to which reciprocal compensation does not apply. However, we are not persuaded by US LEC witness Montano's argument that "Information Access" traffic was meant to apply solely to BOCs. We reason that this decision was made prior to the Telecommunications Act of 1996, in a time when the industry consisted of BOCs and IXCs. We find that because ALECs did not exist at that time, they were excluded from this particular definition of "Information Access." However, we believe that it would be disingenuous at best to conclude that non-RBOCs such as Sprint or US LEC do not make information access calls. Consequently, it is clear to us that calls to recorded voice announcements, such as time/temperature, weather information, and sports information, etc. fall into the category of information access. Therefore, we find that such traffic shall be excluded for the purposes of reciprocal compensation.

C. Decision

We find that US LEC is entitled to reciprocal compensation for terminating and/or delivering "Voice Information Services" traffic, as defined in the proposed agreement, when the call is to a service that provides a vocal discussion program open to the public; however, when the traffic is to a service that provides recorded voice announcement information, such traffic falls into the category of information access and is therefore excluded from reciprocal compensation.

IV. "TERMINATING PARTY" OR "RECEIVING PARTY"

This issue addresses whether the term "terminating party" or "receiving party" should be employed for the purpose of traffic measurement and billing over interconnection trunks in the proposed agreement.

A. Arguments

US LEC believes that the term "terminating party" should be employed for the purposes of traffic measurement and billing over interconnection trunks. US LEC witness Montano gives two reasons in support of this position: historical reference and consistency.

First, witness Montano asserts that historically, as well as currently, when it comes to billing, measuring, and engineering purposes, traffic is referred to as either originating or terminating. Thus, for any call, there is an originating party served by an originating carrier and a terminating party served by a terminating carrier. Witness Montano contends that "US LEC sees no need to disrupt the historic framework that has governed the transport, exchange and billing of traffic for decades." Additionally, US LEC is not willing to abandon decades of precedence in engineering, measuring, and billing for traffic without a satisfactory explanation.

Second, US LEC witness Montano believes that Verizon should use either "terminating party" or "receiving party" consistently throughout the agreement; witness Montano adds that Verizon should not seek to interject the entirely new concept of a "receiving party" in order to ". . . escape some of its compensation obligations, which are grounded in the traditional 'originating party-terminating party' designations." Witness Montano provides an example:

> In section 7.2, the parties agree that they will compensate each other for the "transport and termination" of Reciprocal Compensation Traffic. In turn, "Reciprocal

> Compensation" is defined with respect to the "transport and termination" of "Reciprocal Compensation Traffic," which itself, is defined with reference to traffic that is "terminated on the other Party's Network."
>
> In contrast, in Sections 2.16 of the Glossary and 8.5.2 and 8.5.3 of the Interconnection Attachment dealing with the definition of an "IP" (Interconnection Point), Verizon abandons the "terminating party" designation and, instead, refers to traffic delivered to the "receiving party" and provides no valid reason why, in these limited sections, the term "receiving party" should replace the more standard "terminating party." Similarly, Section 2.56 of the Glossary refers to the "receiving party," not the "terminating party" when defining Measured Internet Traffic.

US LEC witness Montano contends that it is important that the agreement refer consistently to the "terminating party" for all purposes.

Verizon provided no testimony on this issue, choosing instead to proffer its position in responses to discovery and in its brief. In its brief, Verizon states that it does not agree that the receiving carrier ". . . terminates traffic delivered to ISPs and other information service providers . . . "; therefore, the term "receiving party," not "terminating party" should be used.

In a response to a US LEC interrogatory, Verizon attempts to differentiate between "receiving" and "terminating" traffic. Verizon asserts that:

> "'Receiving traffic' is a broader term than 'terminating traffic.' It includes traffic, such as Internet-bound traffic, that the receiving carrier does not terminate but instead passes on to another party for onward transmission. For example, with respect to an Internet-bound call from a Verizon customer through an Internet

> service provider ("ISP") served by US LEC, US LEC would receive the call but would not terminate it." Further, "[i]n the case of Internet-bound traffic originated by a Verizon customer through an ISP served by US LEC, US LEC would receive the traffic; Verizon would not know who the terminating carrier would be in such a circumstance."

In response to our Staff's Second Set of Interrogatories, Verizon provided a contemporary definition of the term "receiving party" and an explanation of how it is to be distinguished from the historical reference of receiving party, such as those found in the proposed agreement. In its response Verizon alleges that:

> "Receiving party" means the party receiving the telecommunications traffic originated on the originating party's network. The use of the term "receiving" in this context is consistent with the use of that term in other contexts; the only difference is what is being "received." Thus, in the case of section 10 of the proposed agreement's inter-carrier compensation provisions, telecommunications traffic is being received.

Verizon concludes that whether or not Internet-bound traffic terminates at the ISP, there can be no doubt that such traffic is received by the carrier serving the ISP for delivery to the ISP. Accordingly, Verizon asserts there can be no dispute that the term "receiving party" accurately and unambiguously describes the carrier receiving the traffic at issue.[25]

B. Analysis

In its 1999 ISP Declaratory Ruling, the FCC 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

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[25] Response of Verizon Florida Inc. to Petition for Arbitration Filed by US LEC of Florida Inc., p. 22.

another state."[26] Accordingly, the FCC determined that ISP-bound traffic was not subject to reciprocal compensation under its existing rules; however, this determination was later vacated by the D.C. Circuit Court of Appeals and the matter remanded to the FCC. In its ISP Remand Order, the FCC determined that the use of the term "local traffic" to define parties' reciprocal compensation obligations under section 251(b)(5) had "created unnecessary ambiguities" and it abandoned its former jurisdictional analysis.[27]

In its brief, Verizon implies that it has not attempted to gain any collateral advantage by using this terminology. Under current law, the question of whether or not traffic "terminates" at the ISP's premises does not govern the parties' obligations under section 251(b)(5) and the FCC's implementing rules. Citing the history of the rulings entered into the record in this proceeding, there is arguably a possibility that the FCC could conclude at its next opportunity to consider the issue that, in fact, for purposes of reciprocal compensation, calls to ISPs do terminate at the ISP. It is also possible that the FCC will not alter its previous position.

We believe that the only apparent reason for wanting to use the term "receiving party" pertains to traffic not subject to reciprocal compensation, notably ISP-bound traffic. However, since current FCC rules and orders govern the applicability of reciprocal compensation, Verizon's proposed language is an unnecessary complication. Any attempt to countermand the historical language of this issue as it relates to reciprocal compensation would be premature. Therefore, we find that the term "terminating party" shall be employed for the purposes of traffic measurement and

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[26] 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, 14 FCC Rcd 3689, 3697, ¶ 12 (1999) ("1999 ISP Declaratory Ruling"), vacated, Bell Atlantic Tel. Cos. v. FCC, 206 F. 3d 1 (2000).

[27] ISP Remand Order, 16 FCC Rcd at 9173, ¶ 46.

billing over interconnection trunks for the proposed agreement. However, when the term "terminating party" is not applicable, such as in the case of traffic bound for ISPs, where a higher degree of specificity is required for clarification, the parties are free to use an additional established term or notation, defined in the glossary of their agreement, for clarification; e.g. *not subject to reciprocal compensation.

C. Decision

We find that all references in the Agreement to a party that is terminating traffic shall refer to that party as the "terminating party." Further, all references to the party "receiving" traffic or to the "receiving party" shall refer instead to the party "terminating" traffic and to the "terminating party" with terms or notations added solely for purposes of clarification.

V. COMPENSATION MECHANISM FOR VIRTUAL NXX/FX TRAFFIC

In this issue the Commission is presented with two matters for determination. First, the Commission is to determine if the parties should pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. Second, the Commission is to determine if the originating carrier should be able to charge originating access for the aforementioned traffic.

A. Arguments

In its brief, US LEC indicates that the parties should pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. Further, US LEC believes that the originating carrier should not be able to charge originating access for calls that originate in one

local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. US LEC witness Montano states that the Commission has not resolved the issue of whether reciprocal compensation is payable on virtual NXX traffic, and US LEC wants the Commission to do so in this proceeding. Witness Montano believes that Verizon is obligated to pay intercarrier compensation for all calls originated by Verizon customers to US LEC lines with "NXX" codes associated with the calling party's local calling area. Witness Montano adds that ". . . calls are conventionally rated and routed throughout the U.S. telephone industry based upon the NXX codes of the originating and terminating numbers. US LEC submits that there is no reason to deviate from that convention now." In explaining US LEC's position witness Montano states:

> Standard industry procedure provides that each NXX code is associated with a particular rate center within a local calling area. (A single rate center may have more than one NXX code, but each code is assigned to one and only one rate center.) This uniquely identifies the end office switch serving the NXX code, so that each carrier that is routing a call knows which end office switch to send the call to. However, it is not uncommon for NXX codes to be assigned to customers who are not physically located in the local calling area where the NXX is "homed." When an ILEC provides this arrangement, it typically is called foreign exchange or FX service. This type of arrangement also may be referred to as "Virtual NXX" because the customer assigned the telephone number has a "virtual" presence in the calling area associated with that NXX. Calls to these customers are still routed to the end office switch associated with the NXX code, but then are routed within the terminating carrier's network to the called party's actual physical location.

US LEC witness Montano believes that deviating from the historical practice of rating a call based upon the NXX codes of the

originating and terminating number would give Verizon the ability to arbitrarily reclassify local calls as toll calls. Witness Montano states that this is due to the fact that under Verizon's proposed language, it would be nearly impossible and much more economically burdensome for US LEC to utilize virtual NXXs in the provision of service to its customers.

US LEC witness Montano affirms that Virtual NXXs are used by carriers to provide a local number to customers in calling areas in which the customer is not physically located. Witness Montano contends that if the Commission adopts Verizon's language and allows Verizon to avoid rating calls based on the NXX of the originating and terminating numbers, calls to "virtual NXX" customers would effectively be reclassified as toll calls and Verizon would no longer be obligated to compensate US LEC for terminating what for decades have been rated as simple local calls.

US LEC witness Montano states that the only costs that Verizon incurs on locally dialed calls are the transport and switching charges required to bring traffic to the interconnection point between Verizon and US LEC; therefore, it would be inconsistent and anti-competitive to allow Verizon to charge US LEC originating switched access charges for calls going to a particular NXX code. US LEC witness Montano believes that "Verizon would double-recover for carrying such traffic and it would also be compensated for cost not incurred."

US LEC witness Montano testifies that there are two main technical reasons why the Commission should find that calls should continue to be rated as local or toll calls based on the NXX codes of the originating and terminating parties rather than on the end points of the call. First, witness Montano states that there is no practical, cost-effective way for the parties to segregate the disputed traffic from other locally dialed traffic. She contends that calls dialed to a number assigned a "virtual NXX" are indistinguishable from all other locally dialed traffic sent over local trunk groups. Witness Montano believes that US LEC would be required to expend considerable effort and absorb the cost

associated with developing a program to separate the calls so that invoices submitted to Verizon do not include both types of calls, if Verizon's proposal is adopted by us.

Second, US LEC witness Montano asserts that because it has always been standard industry procedure for carriers to use NXX codes as rate center identifiers, the software in the LEC and ALEC switches and billing systems looks at the NXXs of the calling and called parties to determine whether a call is to be rated and billed as local or toll. Witness Montano believes that implementing Verizon's proposal would be unjustifiably burdensome, expensive, and disruptive. She adds:

> Adoption of Verizon's position would require US LEC to devote considerable effort and resources to undo the automated billing systems which have served as the basis for the design of modern switches and to maintain and assure the accuracy of a costly and burdensome alternative tracking system. Verizon's proposal would likewise necessitate the difficult and expensive step of requiring both parties to establish different ratings for a single telephone number; one set for end user purposes, the other for compensation purposes. Verizon has not addressed these serious considerations, and the Commission should evaluate them when determining whether a departure from industry practice is warranted.

Verizon witness Haynes believes that reciprocal compensation does not apply to calls that originate and terminate in different local calling areas, defined by reference to the actual originating and terminating points of the complete end-to-end communication. Witness Haynes adds:

> US LEC is confusing the rating of calls for the purpose of assessing end-user charges and the treatment of calls for intercarrier compensation purposes. Before the widespread introduction of local competition following the adoption of the 1996 Act, the most important type of

> intercarrier compensation was the access charges that interLATA long distance carriers paid to local telephone companies. Such intercarrier compensation has always been governed by the originating and terminating points of the end-to-end call, not the NPA-NXX of the calling and called party.
>
> The FCC has always held that reciprocal compensation does not apply to interexchange traffic, whether interstate or intrastate, but only to traffic that remains within a single local calling area. The FCC confirmed this in its April 2001 ISP Remand Order, when it ruled that reciprocal compensation does not apply to "exchange access, information exchange access, or exchange services for such access." 47 C.F.R. § 51.701 (b)(1).

Witness Haynes asserts that US LEC's proposal to require payment of reciprocal compensation by reference to the NPA-NXX of the called number, rather than the terminating point of the complete communication, is also inconsistent with our ruling on the same issue in our generic reciprocal compensation docket.

Verizon witness Haynes points out that we squarely held that reciprocal compensation depends on where a call physically originates and terminates, not on ". . . the NPA/NXXs assigned to the calling and called parties." The Commission, therefore, concluded that virtual NXX traffic is not subject to reciprocal compensation because it does not physically terminate in the same local calling area in which it originates. Witness Haynes interprets this finding to mean that whether a particular call is interexchange does not depend on the telephone number, but on whether the call remains within the local calling area or travels outside it.

Verizon witness Haynes believes that US LEC should pay originating access charges for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, even if the NXX of the called number is

associated with the same local calling area as the NXX of the calling number, because it is a type of toll-free interexchange traffic. He elaborates:

> Even though a Verizon customer is placing an interexchange call, Verizon cannot impose toll charges because of the way in which US LEC has assigned telephone numbers to its customers. Instead, US LEC receives compensation from its customer. There is nothing necessarily wrong with that, but US LEC must compensate Verizon for this originating access service. Access charges have always been applied to toll-free traffic. In fact, this Commission approved its Staff's logic that "it seems reasonable to apply access charges to virtual NXX/FX traffic that originates and terminates in [sic] different local calling area."

Witness Haynes concludes that if US LEC uses a Verizon access service, as it does in the "virtual FX" arrangements at issue here, it must pay the tariffed access rates per the parties' agreement.

Verizon witness Haynes suggests that for purposes of billing reciprocal compensation, Verizon's billing system may be outdated because the method it uses to determine the amount of CLEC originated traffic sent to a FX number will not yield a correct answer for intercarrier compensation billing. Verizon's billing system assumes that the volume of CLEC originated traffic sent to a FX number on Verizon's network is very small. Witness Haynes contends that since the advent of local competition, the assumption that a customer's assigned NPA-NXX code most likely corresponds to the customer's physical location is often not a valid assumption in the case of traffic delivered to CLECs. Based on the information on page 5 of Exhibit 3, which refers to a study performed by Verizon, witness Haynes alleges that the volume of locally rated interexchange traffic being delivered to some CLECs makes up a significant percentage of the traffic delivered to those CLECs, which would justify Verizon's steps to develop methods to

accurately measure the volume of CLEC traffic terminated to Verizon FX numbers.

Verizon witness Haynes states that Verizon conducted an inexpensive study to identify those calls that were originated by CLEC customers and terminated to Verizon FX numbers. He continues ". . . the study amounted to nothing more elaborate than matching call records that Verizon creates on calls originated from facility based CLECs to a list of telephone numbers that Verizon assigned to FX service lines." Witness Haynes maintains that this study was conducted with the intent of providing a means for Verizon to properly estimate the access revenue that CLECs would be entitled to for CLEC originated calls terminated to Verizon FX numbers.

Verizon witness Haynes states that Verizon also considered what approach would be required to properly account for traffic originated by Verizon customers which terminated to CLEC virtual FX numbers. Witness Haynes claims that two options were identified. The first option would be for the CLEC to conduct a study, similar to the one performed by Verizon, to quantify the number of Verizon customer originated minutes that were delivered to the CLEC virtual FX numbers. Witness Haynes adds that the second option would be for the CLEC to notify Verizon of the numbers it has assigned as virtual FX numbers. He continues:

> In this scenario, Verizon would modify its traffic data collection system to capture all traffic delivered to the NPA-NXXs associated with the virtual FX numbers. A data query could then be run to identify what portion of the traffic delivered to the NPA-NXXs was actually virtual NXX traffic. A billing adjustment would then be entered into each parties' billing system to properly account for the Verizon traffic delivered to the CLEC virtual FX numbers.

Further, witness Haynes notes that Verizon is prepared to work with US LEC to implement one of these options so that traffic can be properly billed.

In response, US LEC witness Montano claims that Verizon witness Haynes is incorrect in stating that NXX codes have not been used to establish intercarrier compensation. Witness Montano asserts that "Verizon rates and bills its customers based on the NXX codes of the calling and called party. If the call is rated as local, Verizon bills its customer for a local call; conversely, if the call is rated as toll, Verizon bills the customer for a toll call."

US LEC witness Montano also infers that Verizon's proposed "fix" has not been evaluated or approved by us. Witness Montano points out that how Verizon's "fix" will be implemented or monitored is not mentioned in the proposed interconnection agreement. Moreover, she asserts that "US LEC has no way of knowing whether Verizon's fix actually works. Verizon states that it is based on a traffic study conducted here in Florida, but nowhere does Verizon state that its fix has been implemented, is functioning smoothly and is accurate."

In his rebuttal testimony, Verizon witness Haynes claims that "the parties' sole disagreement for purposes of this proceeding is whether the NXX code should be used to determine intercarrier compensation, i.e., whether reciprocal compensation must be paid when the called party is actually located in a different local calling area from the calling party." Witness Haynes restates his contention that carriers must pay compensation based on the physical location of the called party, not the NXX code of the called party, which is generally associated with the local calling area of the calling party. Witness Haynes maintains that although the traffic he referred to in his direct testimony was interLATA traffic, the principle is the same for virtual FX traffic. Witness Haynes adds:

> If a local telephone subscriber originates a call to an interLATA FX number, the local exchange carrier delivers the call to the interexchange carrier's point of presence for onward transmission to a called party; the local exchange carrier is entitled to originating access for

> such a call, even though the call is rated as a local call. Likewise, in the case of virtual FX traffic, the local exchange carrier delivers the traffic to the CLEC's point of interconnection; the CLEC then delivers the call to the called party, which is by definition located in a different local calling area. Because the call is interexchange, no reciprocal compensation applies.

Based on US LEC witness Montano's testimony, witness Haynes believes that US LEC wants to be able to force Verizon to bear the cost of transporting virtual FX traffic without paying Verizon for that service.

Witness Haynes argues that contrary to US LEC witness Montano's claim, there is a practical, cost-effective way to ensure that the parties receive the appropriate intercarrier compensation. Witness Haynes claims that Verizon has offered to share this mechanism for separating FX traffic with US LEC, as long as US LEC supplies Verizon a list of virtual FX numbers. He states that ". . . determining the volume of FX traffic is neither burdensome, nor expensive, nor disruptive. If US LEC is unsure how to distinguish virtual FX traffic from local traffic, Verizon would be happy to cooperate with their technical personnel to implement a reliable system."

Verizon witness Haynes maintains that access charges should apply to virtual FX traffic. Witness Haynes reasons that a virtual FX arrangement, like traditional FX arrangements or other toll-free calling arrangements, allows a subscriber to receive calls from a distant exchange without the calling party incurring the toll charges that would normally apply. He adds:

> In place of those toll charges, the called party with FX service must pay for a Local Channel, interoffice transport, plus applicable usage charges. In the case of toll-free service, the customer must pay toll charges for calls received. In the case of toll-free calls, the interexchange carrier then pays originating access

> charges to the originating local exchange carrier. The situation is the same here: the CLEC has set up a toll-free calling arrangement for its customer. The customer is thus able to take advantage of the local exchange service that Verizon is providing in that distant exchange, yet Verizon not only receives no subscriber revenue from the CLEC customer; it is also deprived of the toll charges that would ordinarily apply. Access charges provide the originating LEC some measure of compensation for the service that it provides.

In response to US LEC witness Montano's charge that "Verizon would double-recover for carrying such traffic and it would also be compensated for cost not incurred . . . " Verizon witness Haynes replies that ". . . the costs of delivering traffic to a CLEC depends on the interconnection architecture in place; if a virtual FX call is delivered to the same point of interconnection as a local call from the same point, Verizon's costs of delivering the traffic will be the same. But if the Commission were to exempt the CLEC from paying the access charges that ordinarily apply to such interexchange traffic, the Commission would be encouraging the CLEC to implement these arrangements even when they are inefficient." Witness Haynes continues:

> This is because the CLEC (and the CLEC's customers) would not bear the appropriate costs of providing the services that they consume. Thus, Verizon would have to originate and carry a great deal more traffic, and would therefore be required to bear significantly higher costs, than if access charges were properly applied.
>
> Moreover, Ms. Montano ignores the fact that virtual FX arrangements mean that Verizon will be unable to collect toll charges from its customers where toll charges would apply (but for the assignment of a virtual NXX code). Again, I am not asserting that there is anything wrong with a CLEC setting up such toll free arrangements for its customers, so long as the CLEC complies with

> applicable state and federal regulations. But it is wrong for the CLEC to attempt to shift the costs of those arrangements to Verizon, and it is also wrong to exempt the CLEC and its customers from bearing an appropriate share of the costs of providing local exchange service in the distant exchange. As long as Verizon is the carrier providing that local exchange service, it is entitled to be compensated for it, and access charges provide that compensation.

Witness Haynes concludes that local exchange charges compensate Verizon for providing service within the local exchange. If a call travels outside the local exchange, Verizon should be entitled to additional compensation. Virtual FX service should be no exception.

B. Analysis

We are disappointed that the parties were not able to reach a mutual agreement on this issue despite being urged by us in our Reciprocal Compensation Order to negotiate the best intercarrier compensation mechanism for this type traffic. We are troubled that the parties chose to use this forum to rehash past issues without presenting us with a new or persuasive argument to justify a departure from prior decisions.

Based on the testimony of the parties, it is clear that the parties acknowledge that we found in our Reciprocal Compensation Order that calls to virtual NXX customers located outside of the local calling area to which the NXX is assigned are not considered local calls, and therefore carriers are not obligated to pay reciprocal compensation.[28] Additionally, we agree with Verizon witness Haynes that US LEC's proposal to require payment of reciprocal compensation by reference to the NPA-NXX of the called number, rather than the terminating point of the complete communication, is inconsistent with our ruling on the same issue in

[28] Order No. PSC-02-1248-FOF-TP, p. 33.

our generic reciprocal compensation docket. Consequently, with respect to part (A) of this issue, we find that the parties shall not pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, even if the NXX of the called number is associated with the same local calling area as the NXX of the calling number.

The remaining element of this issue asks us to resolve the issue of whether the originating carrier should be able to charge originating access for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. In discussing this traffic in Order No. PSC-02-1248-FOF-TP, we stated that ". . . [w]e find that calls terminated to end users outside the local calling area in which their NPA/NXXs are homed are not local calls for purposes of intercarrier compensation; therefore, we find that carriers shall not be obligated to pay reciprocal compensation for this traffic." In this decision the Commission did not ". . . mandate a particular intercarrier compensation mechanism for virtual NXX/FX traffic"; however, the Commission found that ". . . virtual NXX traffic and FX traffic shall be treated the same for intercarrier compensation purposes." Therefore, we find that the originating carrier shall be able to charge originating access on traffic that originates in one local calling area and is delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. We find that this treatment shall also apply to calls to FX numbers.

C. Decision

We find that the parties shall not pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local

calling area as the NXX of the calling number. In addition, we find that the originating carrier shall be able to charge originating access on the traffic described in Issue 6(A). We find that this treatment shall also apply to FX numbers.

VI. COMPENSATION FRAMEWORK FOR ISP-BOUND TRAFFIC

This issue addresses whether the parties' agreement should set forth specific language to address the compensation of ISP-bound traffic in the event the interim compensation framework set forth in the FCC's ISP Remand Order is vacated or reversed.

A. Arguments

US LEC asserts in its brief that in the event the compensation framework in the FCC's ISP Remand Order is vacated or reversed on appeal, the parties should continue to compensate each other at the rates set forth in the Order, but waive any other terms and conditions of that Order (e.g., the growth caps and new market restrictions). US LEC proposes in the interests of certainty and stability, and in order to avoid expensive and time consuming negotiations and litigation, that US LEC is willing to forego the opportunity to be compensated at state rates and proposes that the parties accept the rate structure set forth in the ISP Remand Order for the balance of the term of the agreement, or until the FCC imposes a permanent rate structure governing that traffic. US LEC further asserts that verizon's refusal to accept US LEC's proposal will result in additional negotiation and possibly litigation.

Verizon asserts in its brief that although the D.C. Circuit Court remanded the ISP Remand Order, the Court expressly refused to vacate that order; as a result, the rules the FCC adopted remain in effect pending further FCC proceedings on remand. Verizon asserts further that the ISP Remand Order set forth a specific intercarrier compensation regime that governs the exchange of Internet-bound traffic between Verizon and US LEC during the course of this arbitrated agreement. If there is a subsequent change of law,

Verizon contends the parties' obligations will conform to that change pursuant to the change of law clause in the agreement.

In further support of its opposition to the US LEC proposal, Verizon states US LEC's proposal would lead to results contrary to governing federal law. Verizon asserts under the US LEC proposal, the growth cap and new market provisions in the ISP Remand Order would have been eliminated contrary to what was explicitly decided by the D.C. Circuit.

Additionally, Verizon cites to the rejection of US LEC's proposal by the South Carolina Public Service Commission[29] and the Wireline Competition Bureau's[30] adoption of the Verizon position on this issue. US LEC did not distinguish the decision of the South Carolina Public Service Commission; however, US LEC asserts that its proposal is different than the one presented by the CLECs/ALECs which were parties in the recent arbitration before the Wireline Competition Bureau. US LEC asserts the parties in that arbitration sought a return to state rates in the event the compensation framework governing ISP-bound traffic is vacated or reversed, whereas US LEC seeks to apply the rate structure but not the limitations on growth and new markets.

[29]Petition of US LEC of South Carolina Inc. for Arbitration of an Interconnection Agreement with Verizon South, Inc., Docket No. 2002-181-C, Order on Arbitration, Order No. 2002-619 (S.C. PSC Aug. 30, 2002)

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

B. Analysis

In remanding back to the FCC the ISP Remand Order, the D.C. Circuit held,

> "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 Commission has authority to elect such a system (perhaps under §§ 251(b)(5) and 252(d)(B)(I)). Thus, we simply remand the case to the Commission for further proceedings."

WorldCom, 288 F.3d at 434.

The D.C. Circuit explicitly chose not to vacate the FCC's compensation scheme; rather, it remanded the case to the FCC for further consideration. Therefore, the compensation scheme set forth in the FCC's ISP Remand Order is applicable federal law.

US LEC seeks to include contingency language in the parties' agreement to address ISP compensation if the ISP Remand Order is reversed or vacated at a later date. It is our belief that such language at this time could only be considered highly speculative. It is impossible to ascertain at this time whether the compensation framework set forth in the ISP Remand Order will be reversed or vacated, and if it were reversed or vacated, whether the D.C. Circuit would vacate the language in its entirety and on what grounds. Such speculation could result in contingency language which is contrary to federal law.

Furthermore, the parties' agreement includes a change of law clause which sets forth the obligations and rights of the parties should a change of law render a portion of the parties' agreement null and void. General Terms and Conditions §4.6 of the parties' proposed agreement provides:

> If any final and unstayed legislative, regulatory, judicial or other governmental decision, order,

> determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the right or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.

We believe this provision protects the rights equally of both parties under the final interconnection agreement should the ISP Remand Order be reversed or vacated at a later date.

C. Decision

Based upon the preceding analysis, we find the parties' agreed-upon change of law clause shall govern the parties' obligations in the event the interim compensation framework set forth in the FCC's ISP Remand Order is vacated or reversed on appeal. Thus, the parties shall renegotiate in good faith and amend their final interconnection agreement if the interim compensation framework for ISP-bound traffic is vacated or reversed on appeal.

VII. EFFECT OF TARIFFED CHARGES WHICH TAKE EFFECT AFTER THE AGREEMENT BECOMES EFFECTIVE

This issue addresses whether tariffed charges which take effect after the agreement becomes effective should take precedence over non-tariffed charges previously established in the parties' agreement for the same or similar services or facilities.

A. Arguments

US LEC asserts in its brief that tariffed charges should be permitted to change during the term of the agreement due to changes in applicable tariffs; however, non-tariffed charges must remain

fixed for the term of the agreement. US LEC contends that Verizon seeks the unrestricted ability to modify rates that the parties have agreed to include in the agreement through subsequent tariff filings that would supercede the rates in the agreement. US LEC Witness Montano states ". . . it would be anti-competitive and detrimental to US LEC if Verizon had the unfettered ability and sole discretion to modify its non-tariffed rates."

In its brief, Verizon asserts it is both fair and appropriate that, if the generally applicable charges for a particular service change, the charges under the agreement should change along with them. Verizon further asserts the principle that the charges for services provided to CLECs should be nondiscriminatory is deeply embedded both in the history of telecommunications regulation and in the 1996 Act in particular; federal law specifically requires that charges for interconnection unbundled network elements, services offered for resale, and collocation must be ". . . just reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(2), (3), (4), (6). Verizon contends by providing that applicable tariffs and other charges that are mandated or approved by the FCC or us should supersede any changes set forth in the agreement, Verizon's proposed language gives effect to the letter and the spirit of these non-discrimination provisions.[31]

Verizon argues it is not free to modify its generally applicable charges unilaterally; rather, the charges will change in one of two ways: either Verizon will publicly file a tariff with the appropriate state or federal commission providing US LEC the opportunity to challenge the tariff prior to the tariff's effective date, or a generic ratemaking proceeding will commence in which US LEC would presumably be able to participate in the proceedings. US LEC counters that Verizon's assertions fail to recognize the considerable burden, both in terms of financial cost and in diversion of personnel whose resources would otherwise be devoted to more pressing matters, that is placed on ALECs to dispute a particular rate proposal. US LEC argues the entire process would

[31]Tariffs are deemed "presumptively valid."

undermine the purpose of having a binding interconnection agreement that provides relative pricing certainty to the parties in the first instance.

In its brief, US LEC cites the US LEC/Verizon South Carolina Arbitration Decision[32] in support of its assertions. US LEC states the South Carolina Commission found Verizon South's proposal "unpersuasive" in directing the parties to incorporate US LEC's proposed language in their interconnection agreement. Additionally, US LEC cites to a recent arbitration before the Wireline Competition Bureau[33] in which Verizon was a party and this same issue was addressed. The Wireline Competition Bureau ". . . rejected Verizon's proposed language because it would allow for tariffed rates to replace automatically the rates arbitrated in this proceeding. Thus, rates approved or allowed to go into effect by the Virginia Commission would supercede rates arbitrated under the federal Act."

Verizon asserts in its brief that the Wireline Competition Bureau's decision actually supports Verizon's position. Specifically, that Bureau held that, under the parties' agreement, "[i]f a commission establishes new rates, that would constitute a change in law, which the parties would be able to incorporate into the agreement pursuant to the change of law provisions of the contract." Verizon further asserts the Wireline Competition Bureau's failure to provide that all tariffed rates would automatically supersede rates arbitrated by the FCC was a result of the Virginia commission's refusal to apply federal law in its state proceedings.

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[32]Petition of US LEC of South Carolina Inc. for Arbitration of an Interconnection Agreement with Verizon South, Inc., Docket No. 2002-181-C, Order on Arbitration, Order No. 2002-619 (S.C. PSC Aug. 30, 2002)

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

B. Analysis

Although both parties cited in their briefs recent decisions by other Commissions in support of their position on this issue, we note that the parties failed to discuss in their briefs our past holdings when the same or similar issue has been addressed. In fact, Verizon f/k/a GTEFL has previously litigated this same issue before the Commission. In the AT&T/MCI/GTEFL Arbitration Order[34], we held:

> We believe that GTEFL should not be permitted to unilaterally modify an agreement reached pursuant to the Act by subsequent tariff filings. One party to a contract cannot alter the contract's terms without the assent of the other parties. United Contractors, Inc. v. United Construction Corp., 187 So. 2d 695 (Fla. 2d DCA 1966); 17A C.J.S. §375

Id. at 146.

In the AT&T/MCI/GTEFL Final Arbitration Order, and recently reaffirmed in the Sprint/Verizon Final Arbitration Order[35], the Commission found that an interconnection agreement between parties may be modified by subsequent tariff filings if the agreement contains reference to a specific tariff provision. Moreover, in this case, Verizon seeks the right to modify the non-tariffed rates of the parties' agreement through subsequent tariff filings. We

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[34]In Re: Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. for arbitration of certain terms and conditions of a proposed agreement with GTE Florida Incorporated concerning interconnection and resale under the Telecommunications Act of 1996, Docket No. 960847-TP and Docket No. 960980-TP, Order No. PSC-97-0064-FOF-TP, issued January 17, 1997. (AT&T/MCI/GTEFL Arbitration Order)

[35]In Re: Petition by Sprint Communications Company Limited Partnership for Arbitration with Verizon Florida Inc. Pursuant to Sections 251/252 of the Telecommunications Act of 1996, Docket 010795-TP, Order No. PSC-03-0048-FOF-TP, issued January 7, 2003. (Sprint/Verizon Arbitration Order)

find that Verizon's proposal would undermine the purpose of the parties signing a negotiated final agreement in which the parties have agreed to non-tariffed rates.

Furthermore, we find that Verizon's assertion that allowing it to modify non-tariffed rates in the parties' final interconnection agreement through subsequent tariff filings furthers the policy of non-discrimination between carriers is misguided. We believe the Telecommunications Act of 1996 (Act) already ensures non-discriminatory treatment of ALECs by ILECs entering into negotiated final interconnection agreements. Pursuant to §252(i)of the Act:

> 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.

Accordingly, Verizon is required to make available to a requesting carrier the same terms and conditions set forth in its agreement with US LEC, thus eliminating the possible competitive advantage gained by US LEC in not being subject to a subsequently filed tariff.

C. Decision

Based on the preceding analysis, we find that non-tariffed charges must remain fixed for the term of the agreement, unless changed pursuant to a valid Commission order. If during the term of the final interconnection agreement, Verizon seeks to assess a new tariffed rate, it must first enter into a negotiated amendment to the final interconnection agreement with US LEC.

CONCLUSION

We have conducted these proceedings pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our

decisions are consistent with the terms of Section 251, the provisions of FCC rules, applicable court orders and provision of Chapter 364, Florida Statutes.

The parties shall be required to submit a signed agreement that complies with this Order for approval within 30 days of issuance of the Commission's Order. This docket shall remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the specific findings set forth in this Order are approved in every respect. It is further

ORDERED that the issues for arbitration identified in this docket are resolved as set forth within the body of this Order. It is further

ORDERED that the parties shall submit a signed agreement that complies with our decisions in this docket for approval within 30 days of issuance of this Order. It is further

ORDERED that this docket shall remain open pending our approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

By ORDER of the Florida Public Service Commission this 25th Day of June, 2003.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

AJT

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 the Commission Clerk and Administrative Services, 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 the Commission Clerk and Administrative Services 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.