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March 1, 2002

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

Re: Docket No. 000075-TP (Phase II)
Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996

Dear Ms. Bayo:

Please find enclosed an original and 15 copies of the Direct Testimony of Dennis B. Trimble on behalf of Verizon Florida Inc. for filing in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this matter, please contact me at 813-483-2617.

Sincerely,

for Kimberly Caswell

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Enclosures

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Direct Testimony of Dennis B. Trimble on behalf of Verizon Florida Inc. in Docket No. 000075-TP were sent via U.S. mail on March 1, 2002 to the parties on the attached list.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.	)))))	DOCKET NO. 000075 - TP

DIRECT TESTIMONY OF

DENNIS B. TRIMBLE

ON BEHALF OF

VERIZON FLORIDA INC.

March 1, 2002

TESTIMONY OF DENNIS B. TRIMBLE

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND TITLE.

A. My name is Dennis B. Trimble. My business address is 600 Hidden Ridge, Irving, Texas, 75038. I am employed by Verizon Services Group Inc. as Executive Director - Regulatory and am representing Verizon Florida Inc. ("Verizon") in this proceeding.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND BUSINESS EXPERIENCE.

A. I received an undergraduate degree in business and an MBA from Washington State University in the early 1970s. I then served as an Assistant Professor at the University of Idaho, where I taught undergraduate courses in statistics, operations research, and decision theory. From 1973-76, I completed course work towards a Ph.D. degree in business at the University of Washington, majoring in quantitative methods with minors in computer science, research methods, and economics.

I joined GTE Corporation in 1976 as an Administrator of Pricing Research for General Telephone Company of the Northwest. From 1976 until 1985, I held various positions within GTE Northwest and GTE Service Corporation in the areas of demand analysis, market research, and strategic planning. In 1985, I was named Director of Market Planning for GTE Florida Incorporated, and in 1987, I became GTE Florida

Incorporated's Director of Network Services Management. In 1988, I became Acting Vice President – Marketing for GTE Florida. From 1989 to 1994, I was the Director of Demand Analysis and Forecasting for GTE Telephone Operations. In October 1994, I became Director of Pricing and Tariffs for GTE Telephone Operations, and in 1996, I was named Assistant Vice President of Marketing Services. In February 1998, I assumed the position of Assistant Vice President - Pricing Strategy for GTE Corporation. I assumed my current position in September 2000. I am currently responsible for assisting Verizon Communications Inc. in its development of pricing policies and for supporting those policies in the various regulatory arenas in which it operates.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE STATE REGULATORY COMMISSIONS?

A. Yes, I have presented testimony on pricing and customer demand related issues on behalf of various Verizon telephone companies before state commissions in Alabama, California, Florida, Hawaii, Indiana, Missouri, Oregon, Pennsylvania, South Carolina, Texas, Virginia, and Washington. The testimony that I gave in those commission appearances generally concerned analysis of customer demand characteristics and/or policies relating to the pricing of retail and wholesale services.

Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A. My testimony addresses the two issues deferred from the December 5, 2001, agenda conference where the Commission voted on the other

issues in this docket. These are: How should local calling area be defined for reciprocal compensation purposes? (Issue 13); and Should the Commission establish a default reciprocal compensation mechanism when the parties can't agree on one; if so, what should it be? (Issue 17). With regard to the default mechanism, the Commission has asked the parties to focus, in particular, on a bill-and-keep approach.

As the Commission requested, Verizon is also resubmitting portions of its earlier testimony on Issues 13 and 17. That testimony (Dr. Beauvais' Direct and Rebuttal Testimonies and Mr. Haynes' Direct and Rebuttal Testimonies) is attached as Exhibit DBT-1.

Q. DO YOU HAVE A SINGLE RECOMMENDATION ON THE TWO ISSUES TO BE RESOLVED?

A. Yes. The preferred way to define the intercarrier compensation method and the local calling area to be used in applying that method is through negotiation between the contracting parties. I believe the Staff, the Commission, and most, if not all, parties agree with this view. However, I understand the Commission also wishes to establish default options in the event parties' negotiations are unsuccessful. I agree that adoption of default approaches relative to Issues 13 and 17 can be beneficial, as long as these approaches do not favor one class of carrier over any other.

Q. IF THE COMMISSION WISHES TO ADOPT A DEFAULT APPROACH TO ISSUE 13, WHAT SHOULD IT BE?

A. The Commission should maintain the status quo—that is, approve the incumbent local exchange carriers' (ILECs') local calling areas for purposes of applying intercarrier compensation. This is the most administratively simple and competitively neutral approach.

Q. HOW SHOULD THE COMMISSION RULE WITH RESPECT TO A DEFAULT RECIPROCAL COMPENSATION MECHANISM (ISSUE 17)?

A. I would advise the Commission to defer ruling on a default intercarrier compensation mechanism until the FCC concludes its ongoing rulemaking to examine establishment of a unified intercarrier compensation scheme. As Mr. Beauvais testified earlier, the FCC has already undertaken a thorough analysis of the feasibility of a bill-and-keep approach for all traffic, including the local traffic at issue in this docket. (*Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).) Comments and replies have been submitted in that case and further FCC action is pending. Because the FCC is evaluating the same intercarrier compensation issue slated for resolution in this docket, the most efficient approach is to await the FCC's ruling. Although I understand the Commission's desire to resolve the intercarrier compensation issue on a state policy level, I am not aware of the carriers themselves having expressed any particular urgency in this regard. If the Commission adopts a state scheme that is inconsistent with the FCC's, then it will

likely have to abandon that scheme. In that case, both the Commission and the carriers will have wasted considerable time and effort.

If the Commission nevertheless decides to adopt a default compensation scheme for transport and termination of traffic subject to section 251 of the Telecommunications Act of 1996 (Act), a carefully crafted bill-and-keep approach that appropriately addresses critical and inextricably related interconnection trunking arrangements may provide benefits.

ISSUE 13: DEFINITION OF LOCAL CALLING AREA FOR INTERCARRIER COMPENSATION PURPOSES

Q. WHAT IS THE COMMISSION'S JURISDICTION TO ESTABLISH A DEFAULT LOCAL CALLING AREA FOR INTERCARRIER COMPENSATION PURPOSES?

A. I am not a lawyer, but I know that the FCC has affirmed that "state commissions have the authority to determine what geographic areas should be considered 'local areas' for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs." (*See Implementation of the Local Competition Provisions in the Telecomm. Act of 1996*, First Report and Order, 11 FCC Rcd 15499 at para. 1035 (1996).) This authority, of course, must be exercised consistently with State and federal laws and regulations. While I call the Commission's attention to portions of the Act and the Florida

Statutes that may bear on resolution of Issue 13, any legal issues relative to defining local calling areas for applying intercarrier compensation will be thoroughly addressed in Verizon's post-hearing brief.

Q. PLEASE IDENTIFY THE MAJOR POLICY ISSUES ASSOCIATED WITH DEFINING THE LOCAL CALLING AREA FOR INTERCARRIER COMPENSATION PURPOSES.

A. In my opinion, the Commission must remain aware of a number of policy concerns in deciding this issue. The default definition of the local calling area for intercarrier compensation purposes must: (1) be competitively neutral, (2) avoid undermining the advancement and preservation of universal service, (3) be administratively easy to implement, and (4) focus on the end user. Continued use of the ILECs' Commission-approved local calling areas to define intercarrier compensation obligations serves these objectives. In contrast, none of these objectives will be met if the Commission adopts either of the proposals that were presented earlier in this case—(1) defining the entire LATA as the local calling area for applying intercarrier compensation; or (2) allowing the originating carrier to define the local calling area for intercarrier compensation purposes.

Q. DID ANY PARTY IN THIS CASE RECOMMEND A LATA-WIDE CALLING AREA FOR RECIPROCAL COMPENSATION PURPOSES?

A. I was not involved in the earlier stage of this proceeding, but my understanding from reading the Staff's November 21, 2001 Recommendation and the transcript is that no party proposed a LATA-

wide local calling area for reciprocal compensation purposes. (*See, e.g.*, Dec. 5, 2002 Agenda Conf. Tr. at 39.) This extreme approach would have unintended negative consequences.

While Staff nominally acknowledged Verizon's concerns about summarily doing away with the local/toll distinction and access subsidy flows, it dismissed these concerns as relatively insignificant, stating: "The only difference is that Verizon will pay reciprocal compensation to whatever local carrier terminates that call within the LATA." (Staff Recommendation, Nov. 21, 2001, at 46.)

I respectfully disagree with Staff's view of the significance of the policy consequences of imposing a LATA-wide local calling area for assessing reciprocal compensation. LATA-wide reciprocal compensation will obliterate the local/toll distinction that this Commission has maintained for decades. This distinction is not accidental; rather, it is the product of deliberate policy choices by this Commission. While the Commission is free to change longstanding policies, it must have a thorough understanding of the consequences and a well-reasoned basis for the change.

The Texas Public Utility Commission understood this point. It rejected the LATA-wide reciprocal compensation approach (proposed there by AT&T), holding that the ILEC's mandatory local calling areas were the appropriate basis for determining reciprocal compensation obligations.

The Commission correctly observed that the LATA-wide proposal implicated ILEC access revenue streams and had "ramifications on rates for other types of calls, such as intraLATA toll calls," that were beyond the scope of a proceeding to address intercarrier compensation for local traffic. (*Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecomm. Act of 1996*, Arbitration Award, Tex. P.U.C. Docket No. 21982, 2000 Tex. PUC Lexis 95; 203 P.U.R. 4th 419 (2000).)

Q. HOW IS PROMOTION OF UNIVERSAL SERVICE RELATED TO THE EXISTING LOCAL/TOLL REGIME?

A. Verizon witness Haynes discussed the nature and purpose of the local/toll distinction at length earlier in the proceeding, and his testimony (in my Exhibit DBT-1) is worth rereading. Briefly, the historical purpose of local calling area designations is to distinguish local calls from toll calls, to which access charges apply. This Commission's access regime was established with the explicit objective of maintaining universal service. *See Intrastate Tel. Access Charges for Toll Use of Local Exchange Services*, Order No. 12765, at 7 (1983). As the Commission has acknowledged, basic local residential rates are subsidized by revenues from other services, such as access. (*See, e.g.*, Report on Universal Service and Lifeline Funding Issues, Docket 980696-TP, vol. I, ch. III, p. 22 (Feb. 1999).) If the Commission requires payment of intercarrier compensation on a LATA-wide basis, access revenues—and thus the subsidy flows to basic local rates—will diminish.

The Commission cannot responsibly consider doing away with the local/toll distinction for purposes of applying intercarrier compensation without also considering the negative consumer effects of eliminating these access subsidy flows to basic local rates.

I believe a comprehensive treatment of that issue is beyond the scope of this docket, which was intended to address intercarrier compensation. If the Commission is inclined to make the fundamental policy shift inherent in approving LATA-wide reciprocal compensation payments, then all potentially interested parties should have fair notice and opportunity to comment on this major change.

Q. WOULD A LATA-WIDE LOCAL CALLING AREA FOR RECIPROCAL COMPENSATION PURPOSES BE COMPETITIVELY NEUTRAL?

A. No. It would put both IXCs and ILECs at a competitive disadvantage with regard to intraLATA toll calling. Under the LATA-wide approach, all intraLATA calls handled jointly by ALECs and ILECs would be termed "local" and subject to reciprocal compensation. But, an intraLATA call that involves an IXC would still be subject to access compensation rules. The ILECs would, likewise, be subject to access compensation rules when they handle toll calls for their presubscribed customers because Florida law requires them to impute access costs into their intraLATA toll rates. Applying different intercarrier compensation rules to the same type of calls would give the ALECs a significant, artificial competitive

advantage in pricing their intraLATA calls (regardless of whether they call them local calls or toll calls) versus pricing based on the cost structures that the IXC and the ILEC (through imputation) face.

This Commission has a keen interest in promoting fair and efficient competition, but it has no legitimate interest in protecting any particular type of competitor. When regulatory decisions artificially handicap some carriers, but not others, markets cannot develop properly, to the detriment of telecommunications consumers.

Q. PLEASE EXPLAIN FURTHER HOW ACCESS CHARGES ARE ASSESSED ON INTRALATA CALLS TODAY.

A. Access charges are applied to intraLATA toll calls as between a local carrier and an IXC and as between two local carriers.

For intraLATA toll calls carried by IXCs, the IXC pays the originating ILEC an originating access charge (the major components of which are an end-office switching charge, a transport charge, a carrier common line charge, an interconnection charge and a tandem switching charge) and the IXC pays the terminating ILEC a similar terminating access charge. In Verizon's territory, the sum of originating and terminating charges averages about $0.09 per minute, which the IXC recovers through its toll charges to its customer.

Q. DO THESE SAME ACCESS CHARGE STRUCTURES APPLY WHEN

AN ALEC (RATHER THAN AN ILEC) ORIGINATES OR TERMINATES AN IXC'S INTRALATA TOLL CALL?

A. Yes, access charges were developed to address compensation between all local exchange carriers and IXCs when those carriers collaborate to complete long distance calls. Verizon will bill the IXC access charges for whichever end of the call Verizon handles (originating or terminating). The ALEC, likewise, can be expected to charge the IXC an access rate for the other end of the call. The following depicts the various end-user charges and intercompany charges for intraLATA toll that occur under today's set of rules:

Table 1

Compensation Between (1) ILECs or ALECs and (2) IXCs When They Collaborate to Complete IntraLATA Toll Calls

(Current Rules)

ILEC or ALEC		**LEC or ALEC**
Originating Call	**IXC**	**Terminating Call**
Charges the IXC for Originating access	Charges the end-user for toll service	Charges the IXC for terminating access

Q. WHAT HAPPENS TODAY WHEN THERE IS NO IXC INVOLVED, AND THE ILEC AND ALEC COLLABORATE TO COMPLETE AN INTRALATA TOLL CALL?

A. When an ILEC and an ALEC collaborate to complete an intraLATA toll call (excluding toll free services such as 800/888), the following

compensation flows apply:

Table 2

Compensation Between ILECs and ALECs When They Collaborate to Complete IntraLATA Toll Calls

(Current Rules)

ILEC Originating Call	**ALEC Terminating Call**
Charges the end-user for toll service	Charges the ILEC for terminating access
ALEC Originating Call	**LEC Terminating Call**
Charges the end-user for toll service	Charges the ALEC for terminating Access

Q. IF A VERIZON CUSTOMER THAT IS PRESUBSCRIBED TO VERIZON FOR INTRALATA LONG DISTANCE MAKES A TOLL CALL TO ANOTHER VERIZON CUSTOMER, DOES VERIZON PAY ACCESS CHARGES?

A. Since the total call is handled by Verizon, there is no explicit payment of access charges. As I mentioned above, however, state law requires ILECs to "impute" the cost of access charges into their intraLATA toll rates. (Chapter 364, Section 364.051(6)(c)). This imputation requirement assures that Verizon's toll rates reflect a cost structure that is consistent with that of the IXCs; thus, assessment of access charges is competitively neutral as between Verizon and the IXCs that depend on

Verizon's facilities for provisioning of their toll services.

Q. WOULD A LATA-WIDE CALLING AREA FOR RECIPROCAL COMPENSATION PURPOSES FAVOR ONE CLASS OF CARRIERS OVER ANOTHER?

A. Yes. The FCC requires the reciprocal compensation rate to equal the economic cost of the underlying facilities used to terminate traffic; this rule necessarily precludes inclusion of implicit support for universal service objectives. So under a LATA-wide reciprocal compensation structure, the ALEC's new cost structure for what was access traffic is now: Total Direct Cost of a ALEC Call = The ALEC's Originating Facility and Transport Costs plus the ILEC's Reciprocal Compensation Charge. Thus, whereas the ALEC today pays at least something toward universal service support through the access charge structure, it would pay nothing under the LATA-wide reciprocal compensation proposal—again, because reciprocal compensation, unlike access charges, does not include any implicit support for the advancement and preservation of universal service. Because significant amounts of such support continue to exist in the IXCs' toll cost structure and in the ILECs' imputed toll cost structure, the IXCs and the ILECs are artificially disadvantaged in their provision of toll vis a vis the ALECs.

Q. WILL DESIGNATING THE LATA AS THE LOCAL CALLING AREA FOR APPLYING INTERCARRIER COMPENSATION CREATE NEW ARBITRAGE OPPORTUNITIES?

A. Yes. This approach enhances the ALECs' opportunities to arbitrage the ILEC's existing rate structures. Notice that when ILECs or ALECs collaborate with an IXC to complete long-distance calls under the LATA-wide approach, the inter-company compensation with the IXC would be the same as it is now:

Table 3

Compensation Between (1) ILECs or ALECs and (2) IXCs When They Collaborate to Complete IntraLATA Toll Calls

(LATA-wide Reciprocal Compensation Scenario)

ILEC or ALEC		**LEC or ALEC**
Originating Call	**IXC**	**Terminating Call**
Charges the IXC for Originating access	Charges the end-user for toll service	Charges the IXC for terminating access

But under the LATA-wide reciprocal compensation scenario, when an ILEC and an ALEC collaborate to complete what was previously an intraLATA toll call (excluding toll free services such as 800/888), terminating access charges would be replaced with a reciprocal compensation charge (which is significantly less than access charges):

Table 4

Compensation Between ILECs and ALECs When They Collaborate to Complete IntraLATA Toll Calls

(LATA-wide Reciprocal Compensation Scenario)

ILEC Originating Call	**ALEC Terminating Call**

Charges the end-user for toll service	Charges the ILEC the reciprocal Compensation rate
ALEC Originating Call	**LEC Terminating Call**
Charges the end-user for toll service	Charges the ALEC the reciprocal Compensation rate

The point is that competitive neutrality must be evaluated by looking at all the participants in the marketplace, not just a selected few. The LATA-wide reciprocal compensation approach ignores this simple fact. It would confer an artificial cost advantage upon the ALECs because the ALEC, unlike the IXCs and the ILECs, would pay nothing to support universal service. Nothing about this proposal is competitively neutral.

Q. WOULD USING THE ORIGINATING CARRIER'S RETAIL LOCAL CALLING AREA TO DEFINE LOCAL CALLING AREA FOR RECIPROCAL COMPENSATION PURPOSES FAVOR ONE CLASS OF CARRIERS OVER ANOTHER?

A. Yes. Basing intercarrier compensation on the originating carrier's retail local calling area would be even worse than LATA-wide reciprocal compensation. This approach is administratively infeasible and fraught with irrational outcomes. It could enable ALECs to pay lower reciprocal compensation rates for outbound traffic, to receive higher access rates for inbound traffic, or even a combination of the two, exacerbating the problems identified in

relation to LATA-wide reciprocal compensation.

A simple example will prove the unacceptable nature of this proposal. Tampa and Sarasota are not in the same Commission-approved Verizon local calling area. But under the originating carrier scenario, they could be in the same local calling area of an ALEC. In that situation, when a Verizon Tampa subscriber calls an ALEC's Sarasota subscriber, Verizon would be required to pay the ALEC access to terminate the call. However, under this hypothetical situation, when an ALEC customer in Sarasota calls a Verizon customer in Tampa, the ALEC avoids paying Verizon's terminating access charges and instead pays only the lower reciprocal compensation rate. Thus, for identical calls between Tampa and Sarasota, the ALEC would collect a higher rate for calls from Verizon customers, but pay a lower rate for calls originated by its customers. The inequity of basing intercarrier compensation on the originating carrier's local calling areas is obvious. Like the LATA-wide compensation plan, this plan is not competitively neutral and would encourage gaming of the system.

A very simple example of such gaming would be that in the above situation, an ALEC may set up shop to market outbound calling services. In that case, it may establish a large "local" calling area for its retail customers, and would, under this misguided proposal, pay the lower reciprocal compensation rate for calls that would otherwise be subject to terminating access charges. But the same ALEC may instead choose to

market inbound calling services. In that case, it would charge higher terminating access rates for its inbound traffic—for calls between the same local exchange carriers and the same geographic points to which it pays the lower reciprocal compensation rate.

The direction of the call should play no part in the determining how intercarrier compensation should be assessed. As Mr. Dowds observed when the originating carrier option was raised at the agenda conference:

> [I]t just strikes me as highly anomalous that the form of compensation will differ based upon the direction of the call, which is really what you're, you're allowing for here. It seems to me that you've encouraged gaming.

(Agenda Conf. Tr. 64.)

Mr. Dowds is exactly right about the effects of using the originating carrier's local calling area to determine the form of intercarrier compensation. This approach will prompt ALECs to formulate business plans based on avoiding access charges and receiving maximum reciprocal compensation—rather than focussing on the end user. The Commission should not facilitate this kind of behavior, which does nothing to further true competition.

Q. PLEASE COMMENT ON THE ADMINISTRATIVE PROBLEMS

ASSOCIATED WITH USING THE ORIGINATING CARRIER'S RETAIL LOCAL CALLING AREA FOR RECIPROCAL COMPENSATION PURPOSES?

A. Staff was correct in concluding that allowing the originating carrier to define the local calling area for intercarrier compensation purposes would be administratively infeasible. Each ALEC may have its own originating local calling area, or may have multiple local calling options; given their regulatory freedoms, these ALECS may change their calling areas any time virtually at will. Not only the ILECs—but every ALEC—would have to attempt to track these changes and build and maintain billing tables to implement each local calling area and associated reciprocal compensation application. Administration is even further complicated if one assume that local calling areas may extend within or beyond LATA, or even state boundaries.

For reasons of equity and practicality, a uniform standard must be used to determine whether a call is subject to the payment of reciprocal compensation or access charges. That standard has been and should continue to be whether the call originates and terminates within an ILEC's local calling area; it brings the highest degree of competitive neutrality among ILECs, IXCs, and ALECs when assessing access or reciprocal compensation.

Q. ASIDE FROM COMPETITIVE NEUTRALITY PROBLEMS, HOW

WOULD LATA-WIDE RECIPROCAL COMPENSATION OR INTERCARRIER COMPENSATION BASED ON THE ORIGINATING CARRIER'S RETAIL LOCAL CALLING AREA AFFECT THE COMMISSION'S MISSION TO PROMOTE UNIVERSAL SERVICE?

A. To the extent that ALECs can substitute reciprocal compensation payments for access charge payments, they also avoid supporting universal service. As I've explained, access charges include contributions to basic local rates, while reciprocal compensation payments do not. Thus, the proposals for LATA-wide reciprocal compensation and for using the originating carrier's retail local calling area to define reciprocal compensation obligations directly conflict with the objective of preserving and advancing universal service, which Congress explicitly affirmed:

> All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service. (Act, Section 254(b)(4))

There is no explicit universal service fund in Florida, so all state support for universal service is generated implicitly within the ILECs' rate structures--whether through switched access, toll, or other rate elements. Paying reciprocal compensation rates for what have always been designated as access traffic allows the ALECs to take implicit universal service support flows out of the system—contrary to Congress' expressed intention for all carriers

to equitably contribute to preservation and advancement of universal service.

Q. GIVEN THESE ANTICOMPETITIVE AND ANTICONSUMER EFFECTS, WHY WOULD THE STAFF HAVE PROPOSED LATA-WIDE RECIPROCAL COMPENSATION?

A. I know that Staff intended its recommendation as to the definition of local calling area for reciprocal compensation purposes to be competitively neutral and that it would not knowingly propose a solution that is at odds with universal service objectives. But because no party proposed LATA-wide reciprocal compensation in this proceeding, there was insufficient opportunity to fully inform Staff and the Commission of the consequences of LATA-wide reciprocal compensation for competitive neutrality or other important policy objectives, like maintenance of universal service. Now that I have explained those consequences, there can be no doubt that the LATA-wide approach (or intercarrier compensation based on the originating carrier's retail local calling area) would not be competitively neutral or consistent with universal service objectives.

Aside from competitive neutrality considerations, Staff appears to have believed that LATA-wide reciprocal compensation was superior to the options proposed by the parties for two reasons: (1) it would be easy to administer; and (2) it would give the ALECs' leverage in interconnection negotiations. (*See, e.g.*, Agenda Conf. Tr. at 43, 48.) This is not sound rationale for adopting LATA-wide reciprocal compensation.

Q. WOULD LATA-WIDE RECIPROCAL COMPENSATION BE EASIER TO ADMINISTER THAN THE CURRENT SYSTEM OF DEFINING INTERCARRIER COMPENSATION OBLIGATIONS WITH REFERENCE TO THE ILECS' LOCAL CALLING AREAS?

A. No. LATA-wide reciprocal compensation has no advantage over the existing system of defining intercarrier compensation by using the ILECs' tariffed local calling areas. The current system has the advantage because it has worked well over the years and it is easier to maintain an existing, proven system than to implement and administer a new one. More important, under the current system, all carriers in Florida have an absolute understanding as to what is considered local traffic and what is considered toll traffic for intercarrier compensation purposes. In addition, the current system does not vary between type of carrier (*e.g.*, ILEC, IXC, or ALEC) and all carriers have systems in place that can handle existing rules.

Q. CAN YOU COMMENT ON THE APPARENT OBJECTIVE OF GIVING THE ALEC NEGOTIATING LEVERAGE OVER THE ILEC?

A. The Commission should never strive to give one party a negotiating advantage over the other by establishing a default that deliberately favors one party. This outcome would defeat the Act's preference for negotiation over regulatory fiat, because the "favored" party would have no incentive to engage in good faith negotiations. The Commission should implement only policies that favor efficient competition, not

particular competitors.

Q. ARE THE PROPOSALS TO USE THE ENTIRE LATA OR THE ORIGINATING CARRIER'S RETAIL LOCAL CALLING AREA TO ASSESS RECIPROCAL COMPENSATION CONSISTENT WITH FLORIDA LAW?

A. I am not a lawyer, but the Florida Statutes seem to prohibit circumvention of access charges for terminating calls. Specifically Section 364.16(3)(a) states:

> No local exchange telecommunications company or alternative local exchange telecommunications company shall knowingly deliver traffic, for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service.

For at least 15 years since this Commission established its access regime, all providers have known exactly what traffic constituted calls to which terminating access charges would apply. Redefining the ALECs' traffic (and only the ALECs' traffic) through implementation of LATA-wide reciprocal compensation or through intercarrier compensation based on the originating carrier's retail local calling area seems to be exactly the kind of end-run around access charges that the Legislature intended to prevent.

Q. WOULD PAYMENT OF RECIPROCAL COMPENSATION ON ALL

CALLS WITHIN THE LATA BE CONSISTENT WITH THE COMMISSION'S DECISION AS TO VIRTUAL NXX CALLS?

A. No. At its December 5, 2001 Agenda Conference, the Commission ruled that carriers should be permitted to assign telephone numbers to users physically located outside the rate center to which those telephone numbers are homed; *and* that intercarrier compensation for these "virtual NXX" calls should be based upon the physical end points of the call. The Commission accepted Staff's conclusion that "calls to virtual NXX customers located outside of the local calling area to which the NPA/NXX is assigned *are not local calls for purposes of reciprocal compensation*." (Staff Rec. at 94 (emphasis added).) Under this rationale, virtual NXX calls are not local calls for intercarrier compensation purposes, because their end points are not within the same local calling area *of the ILEC*. "Staff believes that the classification of traffic as either local or toll has historically been, and should continue to be, determined based upon the end points of a particular call." (Staff Rec. at 93.) "[I]t seems reasonable to apply access charges to virtual NXX/FX traffic that originates and terminates in different local calling areas." (Id. at 95.)

The Commission has thus held that intercarrier compensation obligations are determined by reference to the ILECs' established local calling areas. Under the Commission's decision on Issue 15, an ALEC is free to market virtual NXX service, but virtual NXX traffic is *not* local for purposes of applying reciprocal compensation because they traverse ILEC local calling area boundaries. If the Commission adopts LATA-wide reciprocal

compensation on Issue 13, however, reciprocal compensation *will* apply to virtual NXX calls within the LATA. Obviously, an Order that makes contradictory rulings cannot be enforced.

The Commission has already determined that the existing local/toll distinction embodied in the ILECs' tariffs and understood by all carriers should drive intercarrier compensation. Verizon urges the Commission to apply this same logic to Issue 13 and to reject both LATA-wide reciprocal compensation and intercarrier compensation based on the originating carrier's retail local calling area.

Q. WHAT EFFECT, IF ANY, WOULD A LATA-WIDE RECIPROCAL COMPENSATION PLAN OR AN ORIGINATING CARRIER PLAN HAVE ON END USERS AND RETAIL RATES?

A. It is hard to predict with any certainty the immediate end-user effects of LATA-wide reciprocal compensation. If disassociating retail local calling areas from the definition of local calling areas for intercarrier compensation purposes confers preferential treatment on certain competitors (*e.g.*, by lowering their cost structure), then those favored competitors may either pocket the cost savings and/or share some of them with their customers—thereby gaining an artificial, non-economic price advantage in what should be a competitively neutral setting. If the favored competitors are not efficient providers or seek to maximize their own profits, then there is little likelihood that their customers will see any benefits, even in the short term.

But it is easy to predict the long-term impacts of such a decision. The artificial cost advantage that LATA-wide local calling or intercarrier compensation based on the originating company's retail local calling area would give the favored competitors would come directly from the dollars used today to support universal service objectives. Ultimately, this situation could put upward pressure on local rates, if the ILECs are to continue to be the principal supporter of the Commission's universal service objectives.

Q. WHAT WOULD BE THE FINANCIAL IMPACT IF TODAY'S INTRALATA TOLL CALLS BETWEEN ILECS AND ALECS BECOME SUBJECT TO RECIPROCAL COMPENSATION INSTEAD OF ACCESS CHARGES?

A. This is a complicated question, because the answer requires several assumptions about what unintended future consequences will follow from a change in determining how intercarrier compensation is assessed. If one were to look at today's traffic flows between the ILEC and the ALEC, they could simply compute the change in expenditures resulting from the migration to reciprocal compensation rates from access rates. If the traffic volumes were relatively in balance between the two parties and they were using equal rate levels, then the financial impact would likely be minimal. But the ultimate revenue exposure needs to incorporate the shift in the competitive landscape that would result from enhancing the ALEC's competitive cost structure by replacing access charge payments with relatively lower reciprocal compensation payments.

As I have previously discussed, this scenario would not be competitively neutral to IXCs or to ILECs (which are required to impute access charges into their intraLATA toll rates). The IXCs and the ILECs would still incur access costs for both terminating and originating facilities, while the ALECs would enjoy the artificial cost advantage gained through paying reciprocal compensation (rather than access charges) when an ILEC terminates a call for them. As ALECs win toll volumes away from IXCs through this artificial advantage, not only are the IXCs affected, but the ILECs' revenue streams are also dramatically affected by the loss of access revenues generated by IXCs. This is not an inescapable outcome of competition; it is, instead uneconomic and unwarranted arbitrage.

The future financial impact on the ILEC must also incorporate the inevitable gaming that will occur between or among ALECs and IXCs to convert all toll usage to local usage. It is unrealistic to expect that a price difference for transport and termination for identical intraLATA traffic could be sustained based on the "identity" of one of the parties, especially when many Florida ALECs are also IXCs. These companies make no secret of their motivation to avoid paying access charges (*see, e.g.*, Agenda Conf. Tr. at 50), and they can be expected to take full advantage of any regulation allowing them to further this objective. As such, the ILEC's revenues from intraLATA access charges would ultimately decrease by the percent difference between access charge rate levels and reciprocal compensation rate levels.

Q. MUST LOCAL CALLING AREAS FOR INTERCARRIER COMPENSATION PURPOSES MIRROR THE LOCAL CALLING AREAS ESTABLISHED FOR RETAIL PURPOSES?

A. No. Verizon agrees that all carriers should remain free to determine their own retail calling areas. Continuing to use existing local/toll conventions to determine intercarrier compensation obligations will not affect the ALECs' ability to define their own retail local calling areas in any manner they wish. But regulations should not give ALECs the ability to change their overall cost structure—and affect the competitive landscape and universal service by support flows—by redefining the reciprocal compensation and access charge structure.

ISSUE 17: DEFAULT RECIPROCAL COMPENSATION MECHANISM

Q. THE COMMISSION HAS ASKED FOR ADDITIONAL INPUT ON THE MERITS OF A BILL-AND-KEEP DEFAULT COMPENSATION APPROACH. HOW DOES THIS APPROACH WORK?

A. Under a bill-and-keep system, each carrier interconnects its facilities to those of other carriers and traffic flows between and among networks according to the carriers' interconnection agreements. The parties do not bill each other for termination of traffic, but are instead expected to recover their respective costs from their end users.

Q. DOES THE COMMISSION HAVE THE AUTHORITY TO ESTABLISH A BILL-AND-KEEP INTERCARRIER COMPENSATION MECHANISM FOR SECTION 251 TRAFFIC?

A. Yes. The FCC has given the States explicit authority to impose bill-and-keep arrangements for termination of local traffic "if the state commission determines that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction, and is expected to remain so." (FCC Rule 51.713(b).)

Q. SO MUST THE COMMISSION FIND THAT TRAFFIC IS IN BALANCE BEFORE IT CAN IMPOSE BILL-AND-KEEP FOR ANY PAIR OF CARRIERS?

A. No. Subsection (c) of the above-quoted Rule 51.713 states: "Nothing in this section precludes a state commission from presuming that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption." So there is no need for the Commission to make any factual findings that traffic is balanced before it concludes that a bill-and-keep policy preference is justified. In fact, it would be impossible for the Commission to do so in this generic docket. Inquiries about balance of traffic are necessarily specific to pairs of carriers; traffic flows between different carrier pairs will have different characteristics. As Commissions elsewhere have recognized, there is no

barrier to adopting a policy preference for bill-and-keep with the proviso that it will apply until traffic is out of balance by a specified amount. Of course, the FCC rule allows carriers to rebut the presumption that traffic is in balance, so no carrier will be forced to operate under bill-and-keep where it may not be the most appropriate choice.

Q. SHOULD THE COMMISSION ESTABLISH A STANDARD FOR "ROUGHLY IN BALANCE" BY WHICH COMPANIES CAN REBUT THE PRESUMPTION IN LATER PROCEEDINGS?

A. If the Commission establishes a default compensation mechanism, it should also adopt a standard for "roughly in balance." Verizon would recommend that the Commission define traffic as roughly in balance if the traffic imbalance is less than 10% in any three-month period. This is the parameter in Verizon's Interconnection Agreement with AT&T (and other ALECs that have adopted that Agreement).

Q. TO WHOM WOULD A CARRIER MAKE A SHOWING THAT TRAFFIC IS NOT IN BALANCE IF IT WISHED TO REBUT THE PRESUMPTION?

A. The interconnecting ALEC and ILEC should first attempt to resolve any traffic balance matters themselves, using Commission rules for guidance. If carriers cannot come to agreement on whether traffic is balanced for purpose of applying a bill-and-keep scheme, then the Commission would need to resolve the dispute.

Q. EVEN THOUGH THE COMMISSION HAS THE AUTHORITY TO

ORDER BILL-AND-KEEP IN THIS GENERIC PROCEEDING, *SHOULD* IT ORDER ANY DEFAULT COMPENSATION MECHANISM AT THIS TIME?

A. No. As I stated at the outset, the FCC has launched its own proceeding to establish a reciprocal compensation mechanism for all traffic subject to Section 251 of the Act, including the traffic at issue in this case. To avoid potentially conflicting rulings and subsequent revisions to the state scheme, Verizon has recommended that the Commission retain the record in this case, but defer any ruling until the FCC rules.

If, however, the Commission decides to move forward with a decision at this time, Verizon agrees that it should adopt a default compensation mechanism. Carriers should know what the arrangement will be if they are unable to agree. These default arrangements should be simple and clear. A carefully designed bill-and-keep mechanism may be a good default approach if the mechanism includes provisions that reasonably assign the cost of transport between the interconnecting carriers.

Q. IN THAT REGARD, WHAT CRITERIA SHOULD THE COMMISSION USE TO DESIGN A BILL-AND-KEEP COMPENSATION MECHANISM?

A. Consistent with Verizon's position at the FCC, an appropriate default mechanism would:

(1) produce the correct incentives for the development of an efficient network that minimizes the overall costs involved in interconnection,

(2) discourage game-playing and arbitrage,

(3) contain a rational geographic limit on the obligation to deliver traffic, and

(4) reasonably assign the cost of transport between interconnecting carriers in a symmetrical manner that does not penalize any carrier.

The default mechanism should not favor one party over the other nor should it hamper either party's ability to recover the costs they incur due to interconnection requirements (or to offset those costs with expense reductions).

Q. CAN VERIZON RECOMMEND A DEFAULT MECHANISM THAT SATISFIES THOSE CRITERIA?

A. Yes, Verizon has already presented one model that does so in its Comments in the FCC's Unified Intercarrier Compensation Rulemaking. This model (explained in Verizon's FCC Reply Comments, attached as Ex. DBT-2), was devised in direct response to the FCC's specific questions on how bill-and-keep would affect interconnection (point of interconnection (POI) and interconnection point (IP) requirements) and transport costs.

Any bill-and-keep proposal must, among other components, continue to require efficient direct trunking. Absent specific requirements, originating carriers may impose network inefficiencies, costs, and significant switch

augmentation requirements on terminating carriers because there is no longer a price incentive to deliver traffic to the point of switching nearest the terminating end user. For example, absent requirements or incentives, originating ALECs could deliver terminating traffic to the ILEC tandem, quickly exhausting tandem switching and transport facilities with local traffic volumes and causing resulting congestion, blocking, and facilities expense.

One solution would be to apply bill-and-keep only at the point of switching nearest the terminating end user (for example, the serving end office in a traditional ILEC network). Another solution may be a more comprehensive interconnection architecture standard establishing common interconnection point locations that do not unfairly benefit one class of carriers at the expense of another by requiring the originating carrier to deliver allegedly "local" traffic to distant interconnection points.

Q. WOULD VERIZON'S DEFAULT PROPOSAL TO ADDRESS CRITICAL INTERCONNECTION ARCHITECTURE OBLIGATIONS REQUIRE THE COMMISSION TO RECONSIDER ITS VOTE ON ISSUE 14, CONCERNING PLACEMENT OF THE POI?

A. That may well be the case. But this fact should not stop the Commission from giving due consideration to all aspects of Verizon's generic bill-and-keep proposal. If the Commission is inclined to establish a bill-and-keep approach, it is critical to define its particulars in a way that will best further the four objectives I listed above--and which this Commission presumably

supports.

However, even if the Commission orders a less efficient network design than Verizon has described here or in the attached FCC Comments, Verizon still believes a bill-and-keep intercarrier compensation approach can provide benefits over today's method of explicit billing.

Q. WILL THE ADOPTION OF BILL AND KEEP ARRANGEMENTS AS A DEFAULT MECHANISM MINIMIZE THE NEED FOR REGULATORY INTERVENTION FOR THE IMMEDIATE TERM AND FOR THE FUTURE?

A. I believe so. I would expect regulatory intervention to occur primarily when parties cannot agree to whether traffic is in balance between them under the Commission-defined standard.

Q. WHAT ARE THE QUANTIFIABLE TRANSACTION COSTS (MEASURING AND BILLING COSTS) THAT WOULD BE AVOIDED BY THE ADOPTION OF BILL AND KEEP ARRANGEMENTS?

A. Verizon would expect to continue to measure the traffic it terminates from ALECs, if for no other purpose than to facilitate the determination of whether the traffic was "roughly balanced" or not. Verizon has not quantified the billing costs which would be avoided through a default standard of bill and keep mechanism, but doing away with bills (and billing disputes) would obviously eliminate significant costs.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. As to Issue 13, there is only one rational, pro-competitive approach to defining a default local calling area for purposes of intercarrier compensation. The Commission should maintain existing conventions under which the ILECs' mandatory local calling areas determine intercarrier compensation obligations. Retention of the status quo minimizes market distortions, mitigates impacts on universal service support flows, and is consistent with state and federal law and regulations. Continuing to use the ILECs' local calling areas for intercarrier compensation purposes will leave all carriers free to define their own retail local calling areas as they see fit.

As to Issue 17, the Commission should decline to order a default intercarrier compensation mechanism for section 251 traffic at this time. Because the FCC has undertaken the same effort, it is best to await the FCC's decision rather than expend more time and resources implementing an approach that may well need to be abandoned in the event of an inconsistent FCC ruling. If the Commission decides to order a default mechanism now, it should be bill-and-keep, with the efficient architecture conditions I have outlined in this testimony, and only for traffic between two local exchange carriers within the established ILEC local calling areas.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

Issue 13: How should a "local calling area" be defined, for purposes of determining the applicability of reciprocal compensation?

Earlier Verizon Testimony (highlighted portions):

Beauvais Direct (filed 3/12/01) pp. 2-4, 8-9
Beauvais Rebuttal (filed 4/19/01) pp. 3-6, 7-10, 12
Haynes Direct (filed 3/12/01) pp. 2-3, 5-6, 9-14, 18-19
Haynes Rebuttal (filed 4/19/01) pp. 2-3, 5-7, 11-13, 16-17

Issue 17: Should the Commission establish compensation mechanisms governing the transport and delivery or termination of traffic subject to Section 251 of the Act to be used in the absence of the parties reaching agreement or negotiating a compensation mechanism? If so, what should be the mechanism?

Earlier Verizon Testimony (highlighted portions):

Beauvais Direct (filed 3/12/01) pp. 2-4, 16-17

Commission's jurisdiction to specify compensation for transport and delivery of traffic subject to Section 251 of the Telecommunications Act (Act); issue 17 asks whether the Commission should establish a default compensation mechanism for transport and delivery of traffic subject to Section 251 of the Act; and issue 18 asks how the Commission should implement the policies it establishes in this docket.

The remaining issues identified by the Commission are addressed by Verizon witnesses Jones (11), Haynes (15a and 15b), and Geddes (16a).

Q. WHAT IS THE EXTENT OF THE COMMISSION'S AUTHORITY TO SPECIFY THE RATES, TERMS, AND CONDITIONS GOVERNING COMPENSATION FOR TRANSPORT AND DELIVERY TRAFFIC SUBJECT TO SECTION 251 OF THE ACT?

A. Under the Act section 251(b)(5), local exchange carriers have the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications. This provision is intended to ensure that when local carriers collaborate to complete a call, both the carrier originating the call and the carrier terminating the call will receive appropriate compensation. The FCC has interpreted the Act's reciprocal compensation requirement to apply to only "local telecommunications traffic." (47 C.F.R. sec. 51.70(a).) Such local traffic is typically defined in Verizon's interconnection agreements with ALECs as traffic that originates on one party's network and terminates on the other party's network within a local calling area. This definition is consistent with the

FCC's order, which held that reciprocal compensation provides for "recovery by each carrier of the costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." (In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, (First Report and Order) at ¶ 1034 (quoting 47 U.S.C. § 252(d)(2)(A)(i)) (emphasis added) (1996).) (As I explained in my Direct Testimony in Phase I of this proceeding--and as the FCC has confirmed--local traffic does not include Internet-bound calls, which are jurisdictionally interstate.)

Thus, when Verizon and an ALEC negotiate an interconnection agreement, they are obliged to include reciprocal compensation arrangements which would encompass a bill-and-keep option for local traffic. If they cannot successfully negotiate such arrangements, then either may petition the State Utilities Commission to arbitrate the issue. Although I am not a lawyer, that is what I understand the Commission's jurisdiction to be—stepping in to determine reciprocal compensation arrangements for local traffic when the parties' negotiations fail.

Q. THE COMMISSION HAS ASKED WHEN AN ALEC MIGHT BE ENTITLED TO COMPENSATION AT THE ILEC'S TANDEM INTERCONNECTION RATE. IF THE COMMISSION ADOPTS YOUR PROPOSED APPROACH, IS A GENERIC RESOLUTION OF THIS ISSUE NECESSARY?

A. Not necessarily. The question seems to assume that there will be a nominal compensation paid by one carrier to another for use of a carrier's tandem switching facilities. But as I explained in my Phase I testimony, if a rate structure is adopted for intercompany compensation of "local" traffic which is consistent with the rate structure paid by the end users in Verizon Florida's areas of operations, then there is no explicit nominal compensation to be paid. Under a bill-and-keep approach, each carrier simply interconnects its facilities to that of other carriers and traffic flows between and among networks according to the arrangements in the carriers' interconnection agreements. In such situations, there is no explicit compensation to be paid by any carrier to another at the tandem rate or any other positive price per minute of use. The compensation is that each carrier allows other carriers to use its network in completing calls which both originate and terminate within the agreed-upon local calling area.

If the Commission approves a bill-and-keep arrangement in this proceeding as the preferred default when parties fail to negotiate other arrangements, then it need not resolve the tandem interconnection issue in a generic sense. The tandem interconnection issue, however, is likely to arise in arbitrations if the Commission does not approve a bill-and-keep approach here.

Q. IN THESE INSTANCES, WHAT DO THE ACT AND THE FCC RULES REQUIRE BEFORE AN ALEC IS TO BE COMPENSATED AT THE

common-sense interpretation of the FCC's rules is correct. (MCI Telecomms. Corp. v.Ill. Bell Tel., 1999 U.S. Dist. LEXIS 11418 (N.D. Ill., June 22, 1999); U.S. West Comm. v. MFS Intelenet, Inc., 193 F.3d 1112, 1124 (9th Cir. 1999). The same analysis is warranted here in a statement of general policy to be applied in the context of any arbitration of the tandem interconnection rate issue.

Q. WHAT DOES "COMPARABLE GEOGRAPHIC AREA" MEAN UNDER THE FCC'S RULES?

A. In this context, the straightforward meaning is that the area served by the ALEC's switch is about the same physical area as that served by the ILEC's tandem switch. Again, if either of the geographic comparability or the tandem functionality prongs are not met, then incremental compensation at the tandem interconnection rate (in addition to the end office switching rate) is not appropriate.

Q. HOW SHOULD A "LOCAL CALLING AREA" BE DEFINED FOR PURPOSES OF DETERMINING THE APPLICABILITY OF RECIPROCAL COMPENSATION?

A. "Local calling area" should be defined in the parties' local interconnection agreements, as is the case today. Typically, that definition relies on the ILEC's local calling scope as reflected in its local exchange tariffs. It is quite possible that an ALEC's local calling area will be different from that of the ILEC, just as the local calling scope of a wireless carrier may be different from that of the ILEC. But given that the ILEC's local calling

scope is subject to regulation by the Florida Public Service Commission, the fact that the retail calling scopes may be different should have no bearing on the definition of the local calling area for purposes of applying reciprocal compensation or other Commission policies or practices, such as access charges. For instance, an ALEC may define the entire state as a local calling area, but it cannot, by doing so, avoid the payment of access charges and the underlying policy of support flows to basic local services. Certainly it can be said that the Florida Commission has established access rates as a matter of public policy and such a policy should not be circumvented merely by the declaration of a calling scope as local. If it could be, then an unregulated carrier could say the entire state is its local calling area and avoid paying access charges as intended by the FPSC. Mr. Haynes' testimony on behalf of Verizon covers the issue of calling scope in much greater detail. As a practical matter, Verizon is not at liberty under Commission regulation to simply change its calling scopes in private negotiation.

One aspect that should be beyond contention is that to be eligible for reciprocal compensation purposes, the call must be local under the definitions in place; that is, the call must both originate and terminate in the local calling scope agreed to by the parties. As I emphasized in the first phase of this proceeding, Internet-bound calls are not local because they do not terminate in the local exchange calling area, but rather continue beyond the ISP's modem.

about internet telephony at this time, I can observe that it does seem quite likely that there may be serious future implications for the overall design of rates. I would just generally reiterate the observation I made in Phase I of this proceeding that the issue of relative prices is very much affected by the Commission's decisions. Based on the testimony of Ms. Geddes, and the public statement of Global NAPS, it would appear that the use of packet technologies will very much confuse the jurisdictional nature of the traffic being carried, making it even more difficult to segregate state, interstate and local, as is called for in current rate-making. If IP-based telephony becomes widespread, it may be necessary for significant public policy reforms with respect to the pricing mechanisms currently utilized in the industry.

Q. SHOULD THE COMMISSION ESTABLISH COMPENSATION MECHANISMS GOVERNING THE TRANSPORT AND TERMINATION OR DELIVERY OF TRAFFIC SUBJECT TO SECTION 251 OF THE ACT TO BE USED IN THE ABSENCE OF THE PARTIES REACHING AN AGREEMENT OR NEGOTIATING A COMPENSATION MECHANISM? IF SO, WHAT SHOULD BE THE MECHANISM?

A. As I explained above and in Phase I, if parties to interconnection negotiations cannot agree on an intercarrier compensation mechanism for local traffic under the Act, then the Commission may, in the context of an arbitration, establish such a compensation mechanism. But, as this Commission-designated issue seems to recognize, the Commission cannot order parties to use a generic compensation mechanism without

first allowing negotiations to conclude.

If parties seek arbitration of a compensation mechanism, then the Commission can conceivably use policies it establishes here to guide its decision in the arbitration, depending on the specific facts of the case. As I recommended in Phase I, the best approach is to allow the additional costs associated with the increase in ISP-bound traffic, including compensation costs, to be reflected in end user rates. If that approach is not taken, then the Commission should establish a policy preference for bill-and-keep arrangements for all local traffic under Section 251 of the Act.

Q. HOW SHOULD THE POLICIES IN THIS DOCKET BE IMPLEMENTED?

A. As I discussed above, and as advised by my attorney, it is Verizon's legal position that any policies established in this docket can be implemented only in the context of arbitrations under the Act.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

Q. THE ALECS BELIEVE THEY HAVE A UNILATERAL AND UNCONDITIONAL RIGHT TO SPECIFY A SINGLE POINT OF INTERCONNECTION (POI) FOR EXCHANGE OF TRAFFIC. DO YOU AGREE?

A. No. The ALECs claim an undisputed right to specify one point of interconnection within a LATA at which all traffic can be exchanged, so that the carrier with which traffic is being exchanged has no say in the matter. I would first point out that a LATA typically contains numerous local exchange areas, many of which would be toll calls to each other subject to access interconnection arrangements, rather than "local" calls subject to local interconnection and reciprocal compensation under the Telecommunications Act. I would next point out that the Telecommunications Act calls for bi-lateral negotiations among interconnecting carriers on terms that are mutually advantageous to both parties. This latter consideration suggests that the parties should engage in negotiations to determine where one (or more) physical points of interconnection should be efficiently established.

I would readily agree that it is likely that many ALECs may intially desire a single point of interconnection, given their network architecture, as this would appear to minimize their costs. Indeed, there may well be ALECs with business plans utilizing number assignments and reciprocal compensation, as described more fully in Mr. Haynes' testimony, which may seek a single point of interconnection indefinitely. At the same time,

the ILEC may well prefer multiple interconnection points in an attempt to optimize its own network efficiency. This, of course, immediately suggests that contrary to the statements made by Dr. Selwyn, the ILECs will not be indifferent to the location of the point(s) of interconnection, as it does affect the costs incurred for transport facilities, as well as implicating pricing issues. At the very least, it suggests that negotiations between the interconnecting carriers are called for to attempt to reach a settlement.

Q. YOU MENTIONED ABOVE THAT THE NUMBER AND LOCATION OF PHYSICAL POINTS OF INTERCONNECTION AFFECT THE COSTS OF TRANSPORT FACILTIIES. DON'T DR. SELWYN AND OTHER ALEC WITNESSES ASSERT THAT TRANSPORT COSTS HAVE BEEN FALLING RAPIDLY AND THAT DISTANCE IS NO LONGER A COST DRIVER?

A. Yes, they do and I am in agreement that such costs have decreased. That is, if one asks the question as to how does the cost of an additional minute of use vary with the distance of the call transport, I believe Dr. Selwyn and I would agree that the answer is that they are far less significant than they once were. However, it is still the case that transport facilities do have a positive cost and that for any given capacity, building those facilities for twenty-five miles is more expensive than building them for only one mile. So the location of the physical point of interconnection does, in fact, matter, especially if additional facilities must be added to handle the increased traffic.

Q. YOU ALSO MENTIONED ABOVE THAT THERE ARE TYPICALLY NUMEROUS LOCAL CALLING AREAS WITHIN A LATA. IF A SINGLE POI IS ESTABLISHED, COULDN'T THIS LEAD TO SITUATIONS WHERE THE ILEC IS ASKED TO CARRY WHAT WOULD APPEAR TO IT TO BE TOLL TRAFFIC WITHOUT COMPENSATION AND BE RESPONSIBLE FOR THE COSTS OF THE TRANSPORT AT THE SAME TIME?

A. I would say that result is likely, depending upon the geographic distribution of an ALEC's customer base. The problem obviously arises from the difference in the definition of local calling scopes between pairs of carriers. I completely agree with the ALECs that they should be at liberty to define their local calling scopes as they desire for retail purposes (to their originating customers). Such a characteristic is likely a desirable element of rivalry in the marketplace and can indeed help differentiate one firm's offering from that of another to the end user making the purchasing decision. I would not advocate suppressing this element of inter-firm competition by imposing the ILEC's local calling scope on the ALEC for retail marketing to consumers. By the same token, the ALECs should not be able to force their definitions on the ILECs or any other carrier when it comes to inter-firm compensation.

This situation once again calls for compromise by both parties, rather than futile speculation about what the FCC may or may not have meant when it made particular statements. Again, Congress established bi

lateral negotiations as the preferred process for determining interconnection terms and conditions.

Q. WHAT IS VERIZON'S POSITION WITH RESPECT TO THE POINT OF INTERCONNECTION?

A. The cleanest method from Verizon's point of view would be to have a POI in each of its local exchange/rate center areas. However, it is understood that ALECs, given their network architectures, would not be very amenable to such a physical arrangement. Verizon does not necessarily object to an ALEC being able to select a physical point of interconnection at any technically feasible point on the ILEC's network, within reason. At that physical point of interconnection, traffic can be exchanged between the carriers. However, keep in mind that we are talking about the exchange of "*local*" traffic. Thus, Verizon suggests, that in addition to the physical POI, each ALEC designate a virtual interconnection point ("VIP") in every local exchange/rate center. When a Verizon customer originates a "local" call to a customer served by an ALEC, then the ILEC assumes responsibility for delivering the call to the ALEC's VIP within or at the boundaries of that local exchange/rate center area. If that call goes beyond the local exchange/rate center area of the ILEC, then the ALEC is responsible for the costs associated with those facilities to the physical point where the carriers' networks meet--the POI.

Q. IS THIS WHAT THE ALEC WITNESSES REFER TO AS "COST SHIFTING?"

A. That is indeed how they characterize this approacn when referring to BellSouth's position. It is certainly not Verizon's intention to inefficiently impose costs on other parties. But I view the above-described proposal as a method to effect a fair and reasonable compromise between the competing exchange definitions. Recall from my direct testimony that I stated that the cost of the transport facilities should be negotiated between the carriers. Assuming that an ILEC customer originates a call, there is no debate that the provision of the facilities up to the virtual IP within a local exchange/rate center area are the responsibility of the ILEC; likewise, there is no debate that from the physical POI onward, the responsibility is that of the ALEC. This means that a compromise must be reached on the facilities between the VIP(s) and the POI. One view of this position is that the ALEC should bear complete responsibility for all the costs between the VIP(s) and the POI -- what the ALECs describe as the BellSouth position; another view is that the ILEC should have one hundred percent of the cost responsibility for those facilities -- what I would describe as the ALECs' current position. The BellSouth or Verizon position is no more an attempt to shift costs to the ALECs than is the ALEC position an atternpt to shift costs to the ILECs. I would recommend that the costs of these facilities be shared between the two carriers as negotiated and agreed to between the parties.

Q. MOVING ON TO A DIFFERENT MATTER, THE ALECS ARGUE THAT THEY SHOULD BE COMPENSATED FOR HANDLING CALLS AT A RATE WHICH INCLUDES LOCAL SWITCHING, TRANSPORT, AND

TANDEM SWITCHING, BASED ON THE ILEC'S RATES. DO YOU AGREE?

A. In a sense, I do agree, but with qualifications. To the extent that the ALECs provide such services, then *assuming a usage-sensitive compensation system*, they should indeed receive compensation for what services they provide in handling a call. The issue really is what services do they, in fact, provide and at what costs. While these factors can be discussed in general, I believe they will have to be addressed on a company-by-company basis, depending upon the network configuration of the ALEC involved.

Consider the simplified network diagram in Verizon Rebuttal Exhibit ECB-3, page 1 of 2. It is, obviously, quite basic, but it is useful for considering the issue before the Commission at a policy level. In all of the scenarios I am assuming that the interconnected switching networks are in the rate center area of Verizon.

In the upper half of the exhibit on page 1, labeled Scenario 1, assume that the IP and POI are one and the same and that point is located at the ALEC's switching center. Further assume for purposes of exposition that the call is from an ILEC end user to an ALEC customer. In this case, the facilities connecting the ILEC end user to the network (labeled "A") are not part of the reciprocal compensation issue for "local" calls. The ILEC provides the originating end office switching ("B"), the interoffice transport to the tandem office ("C"), the tandem switching ("D") and the transport

("E") to the ALEC's switch. The ALEC then takes the call, provides the switching ("F") necessary to route the call onto the end user and the facilities to carry the call from the network to that end user ("G"). In this example, the ALEC has provided none of the functions or facilities traditionally associated with interoffice transport and tandem switching.

In the bottom portion of the exhibit, page 1 of 2, the POI has been moved to a point at the tandem switch. Again, that portion of the network, most typically known as the loop ("A"), is not part of the reciprocal compensation structure. The ILEC again provides the originating end office switching, that portion of the end office transport between the originating end office and the tandem, the tandem switching, but now hands the call off to the ALEC. The ALEC performs the same functions as before, but now the ALEC does, indeed, perform traditional transport functions, as well, in completing the call. In this case, the ALEC would be eligible for compensation for that portion of the transport it does provide ("E"), in addition to the switching services provided on that call ("F"). Note, however, that the ALEC still does not provide the tandem switching in this Scenario 2.

Scenario 3, at the top of page 2 of 2 of Rebuttal Exhibit ECB-3, illustrates a situation in which the POI has been placed at a meet point along interoffice transport facilities ("C"). In this scenario, I am assuming that all the facilities to the right of the designated interconnection point, including the tandem switch, are provided by the ALEC rather than the ILEC. In

Scenario 3, the ALEC would be eligible to receive compensation for some portion of the transport facilities it provides in competing the call from the IP onward, a portion of ("C") as negotiated in the contract between the carriers, the tandem switching ("D"), the transport between the tandem and the switch serving the receiving customer ("E" and "F"), again assuming a usage based compensation arrangement. In this case, the ALEC has, indeed, provided tandem switching and a substantial portion of the transport facilities, as well, and would be compensated for those services.

In the bottom half of the exhibit on page 2 of 2, there is an interesting variation. Suppose that the ALEC has designated the POI to be at the originating carrier's originating switching location and then picks up this traffic on its fiber ring. In a very real sense, this is the case in which the ALEC is using its facilities as a substitute for the tandem and interoffice transport network that would normally be employed by the ILEC to deliver a local call. I would argue under these conditions that the ALEC is providing a service which is eligible for such transport compensation, as well as the switching service it provides.

Q. AT THE VERY END OF YOUR LAST RESPONSE YOU INDICATED THAT THE ALEC WOULD BE ELIGIBLE FOR TRANSPORT COMPENSATION. WHAT ABOUT THE TANDEM SWITCHING ELEMENT?

A. As I indicated in my direct testimony and here again, the carrier should be

attempt to capture them for themselves. However, I disagree with Dr. Selwyn when he states that the presence of such rents does not affect the end users. Payments to ALECs from ILECs are a legitimate cost of doing business in a multi-provider marketplace for local service, which is what we are discussing here. Likewise, any payments to ILECs from ALECs are a legitimate part of the ALECs' cost of providing service. We have certainly heard that same argument from the IXCs when the topic is access charges and they were quite correct in making it: switched access charges are a legitimate component of the IXCs' cost of service. Intercompany compensation costs are an integral part of a local exchange carrier's costs as well. If competition among carriers is to result in economically efficient outcomes, then the consumers must see those costs reflected in the prices they face in the marketplace. If those rents are present, as is likely to be the case--in that I agree with Dr. Selwyn--then while those rents are good for the ALEC, they also must be reflected in the prices seen by the consumers. That is, the prices consumers see will be higher than would otherwise be the case.

To the extent that the charges are on a usage-sensitive basis and that usage between carriers continues to increase (in what appears to be predominantly a single direction -- ILEC to ALEC, for most carrier pairs), the total economic rent received by the ALECs will continue to grow, everything else equal. Again, that increasing cost to the ILEC is properly reflected in the prices seen by the consumer. If those costs cannot be reflected in the end user prices, then the principal mechanism that could

The short response to these questions is: (1) carriers should not be permitted to assign telephone numbers to end users located outside of the rate center to which the telephone number is homed (unless foreign exchange service is ordered or the parties agree to an appropriate compensation arrangement) and (2) compensation for calls terminated to telephone numbers outside of the rate center should be based on the customer's location. To aid in understanding the issues associated with these questions, I will provide a detailed description of the nature of so-called "virtual NXX" traffic. I will explain why virtual NXX traffic is not local in nature, how such traffic is compensated today, and the ramifications to Verizon and its customers if the Commission designated virtual NXX calling as local.

Q. BEFORE DISCUSSING VIRTUAL NXX TRAFFIC, PLEASE DEFINE THE TERMS RELEVANT TO THAT DISCUSSION.

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

An "**exchange**" is a geographical unit established for the administration of telephone communications in a specified area, consisting of one or more central offices together with the

associated plant used in furnishing communications within that area.

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

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

An "**NPA,**" commonly known as an "area code," is a three-digit code that occupies the first three (also called "A, B, and C") positions in the 10-digit number format that applies throughout the North American Numbering Plan ("NANP") Area, which includes all of the United States, Canada, and the Caribbean islands. There are two kinds of NPAs: those that correspond to discrete geographic areas within the NANP Area, such as the "813" NPA that serves many of our customers in and around Tampa, and those used for services with attributes, functionalities, or requirements that transcend specific geographic boundaries (such as NPAs in the N00 format, *e.g.*, 800, 500, etc.). *See "NPA" in the Glossary of the "Central Office Code (NXX) Assignment Guidelines," INC 95-0407-008, April 11, 2000.*

but related functions: proper call routing and rating. In fact, each exchange code or NXX within an NPA is assigned to *both a switch*, identified by the Common Language Location Identifier ("CLLI"), *and a rate center*. As a result, telephone numbers provide the network with specific information (*i.e.*, the called party's end office switch) necessary to route calls correctly from the callers to their intended destinations. At the same time, telephone numbers also identify the exchanges of both the originating caller and the called party to provide for the proper rating of calls. It is this latter function of assigned NXX codes – the proper rating of calls – that is at the heart of the virtual NXX issue.

Q. CAN YOU EXPLAIN WHAT YOU MEAN BY THE "PROPER RATING" OF TELEPHONE CALLS?

A. A major public policy goal that has guided regulators and the telecommunications industry for many decades has been the widespread availability of affordable telephone service. To achieve and sustain this "universal service" objective, certain telephone pricing principles or conventions were adopted, and are still in use today. The primary principle is that the basic exchange access rate typically includes the ability to make an unlimited number of calls within a confined geographic area at modest or no additional charge. This "confined geographic area" consists of the customer's "home" exchange area and additional surrounding exchanges, together designated as the customer's "local calling

area." Calls outside the local calling area, with limited exceptions noted in the paragraph below, are subject to an additional charge, referred to as a "toll" or Message Telecommunications Service ("MTS") charge. "Toll" service is generally priced higher, on a usage-sensitive basis, than local calling. In order to ensure that basic local phone service is universally available and affordable, regulators permit local exchange companies to use revenues gained from toll service to hold down the monthly cost for basic local service.

A second industry pricing convention is the principle that, generally, the calling party pays to complete a call – with no charge levied on the called party. There are a few exceptions, such as where a called party agrees to pay toll charges in lieu of applying those rates on the calling party (e.g., 800/877/888-type "toll-free" service, or "collect" and third party billing) or where both the calling and called parties share the cost of the call, as with Foreign Exchange Service. I will discuss Foreign Exchange Service separately later in the testimony.

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

A. Incumbent Local Exchange Carriers' (ILECs') tariffs and billing systems use the NXX codes of the calling and called parties to ascertain the originating and terminating rate centers/exchange

virtual NXX, the ILEC's switch sees the NXX code as being assigned to the exchange area/rate center of the originating caller or to an exchange area within the originating caller's local calling area and, thereby, incorrectly assumes the call to be local. In fact, the call is delivered by the CLEC to its end user located *outside* the local calling area of the originating customer, in which case toll charges should properly apply. Worse still, the CLEC also presents Verizon with a bill for reciprocal compensation on such traffic by claiming that it is local. However, the CLEC does not terminate the call within the local calling area of the originating caller. Rather, the CLEC simply takes the traffic delivered to its switch and delivers the calls to its virtual NXX subscriber, often located in the same exchange as its switch – if not physically collocated with the CLEC at its switch.

In short, the CLEC has gamed the regulatory pricing policy established to support affordable and universally available telephone service. The CLEC gets a free ride for its toll traffic on the incumbent's interoffice network *and* gets reimbursed by Verizon through reciprocal compensation for local termination costs it does not incur. Verizon incurs essentially all of the transport costs yet is denied, by misapplication of proper NXX codes, an opportunity to recover its costs either from its originating subscriber or from the CLEC. There can be little doubt why some CLECs have embraced "virtual NXX" service to the exclusion of other legitimate service

arrangements.

Q. PLEASE EXPLAIN HOW VERIZON IS COMPENSATED FOR LOCAL CALLS ORIGINATED BY ITS CUSTOMERS TO OTHER VERIZON CUSTOMERS AND TO CLEC CUSTOMERS.

A. When a Verizon customer makes a local call to another Verizon customer (i.e., both the caller and the called party are located within the same local calling area), the call is transported entirely over Verizon's network. Verizon theoretically is compensated for this call by the caller, either through the flat-rate exchange charge paid to Verizon, or through local usage charges.

When a Verizon customer makes a true local call to a CLEC customer (i.e., where the CLEC customer being called is physically located within the local calling area of the caller), the call is routed with the CLEC transporting the call back to the caller's local calling area where the called party is located. In this case, as with the Verizon-to-Verizon call above, Verizon theoretically is compensated for its costs solely by its customer who originated the call. However, Verizon pays the CLEC reciprocal compensation for terminating the local call. If the above situation is reversed and a CLEC customer places a local call to a Verizon customer, then the CLEC would charge its customer for the service and pay Verizon reciprocal compensation. The concept of reciprocal compensation assumes reciprocity–that carriers will be exchanging local traffic for

termination between them.

Q. ARE CALLS FROM VERIZON CUSTOMERS TO CLECS' VIRTUAL NXXS LOCAL?

A. No. A virtual NXX, as defined earlier, is an exchange code assigned to a carrier and designated by that carrier for a rate center/exchange area in which the carrier has no customers of its own and no facilities to serve customers of its own. Instead, the CLEC uses the virtual NXX to provide telephone numbers to customers physically located in rate centers/exchanges other than the one to which the code was assigned. The reason CLECs use virtual NXXs is to make calls appear "local" both to the caller *and the caller's carrier* and thereby claim reciprocal compensation. However, if the CLEC customer is located outside the local calling area of the Verizon caller, the call is not local – regardless of whether the CLEC has assigned its customer a number that appears to be within the Verizon customer's local calling area.

Q. BUT CAN'T CLECS ESTABLISH DIFFERENT LOCAL CALLING AREAS THAN THE ILECS?

A. While a CLEC is free to determine local calling areas *for its own customers*, it does not have the right to define/modify local calling areas for Verizon's customers. However, by using exchange codes in the manner described as virtual NXXs, CLECs are doing just that. The incumbent LECs' rates and practices governing "toll" and

"local" historically have been set by the regulator, in part, to ensure that basic local service is both affordable and universally available. If calls to CLECs' "virtual NXXs" were made only by CLECs' own customers, that would be one thing. But CLECs did not establish virtual NXXs for their own customers – they did so to make interexchange/toll calls appear local to ILECs and their customers. By using "virtual NXXs," CLECs lead Verizon's customers to believe that the number they are dialing is a local call inside their own exchange area. Therefore, the customer believes he/she is placing a local call, when in fact he/she is reaching a party outside the exchange area and this termination would normally be processed as a toll call. In addition, as described previously, since ILECs rate calls using the NXX code (which historically identifies the called party's location for rating purposes), and because a "virtual NXX" has no relationship to the physical location of the called party, the ILEC's network will identify the call as local for rating purposes even though the call was actually transported outside of the local exchange area. Unknowingly, the ILEC rates calls placed to "virtual NXXs" as "local," the CLEC is perceived to be entitled to reciprocal compensation payments from the ILEC and the ILEC is unable to collect toll service charges from the calling party. In essence, "virtual NXXs" sever the connection between exchange areas and their corresponding exchange codes or NXXs, which prevents ILECs from collecting for toll calls and simultaneously inhibits ILECs' ability to maintain low and affordable

basic local phone service. The entire "virtual NXX" scheme undermines the long-standing and successful public policy goal to ensure that basic local service is affordable and universally available.

Q. PLEASE EXPLAIN THE GENESIS OF THE TERM VIRTUAL NXX.

A. It is my understanding that virtual NXX is a term that was coined a few years ago by some CLECs to describe the arrangement they devised ostensibly to provide their customers – generally ISPs – with a one-way/inward 800-type service. Had the CLECs legitimately provided their ISP customers with a one-way/inward toll-free number service, the customer with the toll-free 800, 877 or 888 number (*i.e.*, the ISP) would pay to receive all incoming calls, the terminating carrier (the CLEC) would pay the originating carriers (*e.g.*, Verizon, independent telephone companies) carrier access charges, and the callers would reach the ISP free of charge. However, under the virtual NXX scheme employed by some, CLECs receive an 800-like arrangement, with Verizon bearing the costs to transport their traffic without compensation.

Q. HOW DID THE CLECS' ESTABLISHMENT OF VIRTUAL NXXS AFFECT THE EXCHANGE OF TRAFFIC BETWEEN ILECS AND CLECS?

A. Since the virtual NXX calls ended up being rated improperly as local to the caller, the CLEC declared the call local and billed the

originating carrier reciprocal compensation (rather than paying access charges to the originating carrier for an inward toll call), arguing that such compensation was due in accordance with interconnection agreements for allegedly terminating a local call. However, reciprocal compensation – as expressly defined in those same interconnection agreements – applies only to calls originating and terminating *within the same local calling area*. Of course, Verizon disputes the notion that CLECs serving ISPs "terminate" ISP-bound traffic, such that this traffic is local. But even if one accepts that notion for the sake of argument, then virtual NXX calls are still not local. Again, the determining factor for rating a call as local in all instances is the location of the calling and called parties within the same local calling area. As mentioned earlier, the concept of reciprocal compensation was predicated on reciprocity – the assumption that carriers would be exchanging local traffic. However, by obtaining ISPs as customers and declaring their NXXs as virtual NXX or non-traditional FX codes, the CLECs created a situation that is anything but reciprocal. Rather, these CLECs have set up a one-way calling arrangement designed to secure reciprocal compensation monies from the ILECs while using the ILECs' networks free of charge to transport toll calls.

Q. ARE THERE ADDITIONAL IMPACTS THAT RESULT FROM THE USE OF VIRTUAL NXXS?

A. Yes, the use of virtual NXXs has a significant impact on numbering

not devised as a mechanism to make calls appear local to the callers' carriers as a way to avoid transport costs and to collect reciprocal compensation. But some CLECs do use virtual NXX/FX numbers to make calls appear local both to the Verizon customer placing the call and to Verizon, the carrier originating the call for its customer. And because the call appears local to Verizon, based on the CLEC customer's NXX code, the CLEC declares the call local and bills Verizon reciprocal compensation. However, it is Verizon, not the CLEC, that is transporting the call from the caller's local calling area (the "foreign" exchange) to the CLEC's switch – transport for which Verizon is not compensated. From there, the CLEC simply hands off the call to the virtual FX customer usually collocated with the CLEC and proceeds to bill Verizon for reciprocal compensation, as if the call was local.

Q. IF THE COMMISSION FINDS THAT CALLS TO VIRTUAL NXX NUMBERS ARE "LOCAL" FOR ILECS' CUSTOMERS, WHAT EFFECT WILL THIS HAVE ON ILECS AND THEIR CUSTOMERS?

A. If the Commission were to declare virtual NXX traffic local, it effectively would extend the local calling areas for ILEC customers and provide an incentive for CLECs to expand this practice. Eventually, such a practice would further erode the ILECs' toll and access revenues in the state, which have traditionally been used by the Commission to hold down basic exchange rates. Such a ruling

would place tremendous upward pressure on Verizon's existing rates for basic local exchange service and undermine the maintenance of affordable and available basic local phone service.

As I've explained, some CLECs are using virtual arrangements to make calls from ILECs' customers to the CLECs' ISP/FX customers appear local to both the caller and the ILEC. As shown on pp. 16-17 of the June 30, 2000 Order in Maine PUC Docket No. 98-758 and 99-593, a CLEC has attempted to utilize a virtual NXX arrangement (referred to as "Regional Exchange (RX) service") to provide state-wide toll-free calling to an Internet Service Provider (ISP). Further, Verizon transports this one-way internet-bound traffic to the CLECs' points of interconnection. These virtual arrangements result in Verizon incurring transport costs to haul calls from across the state to the CLECs' interconnection points (usually at their single switches) and paying reciprocal compensation, with no revenues to offset these costs. If this situation is allowed to continue, given Verizon's limited ability to increase basic local rates, Verizon may have to reduce current network investment levels in Florida to make-up for the inappropriate revenue loss.

Q. ARE YOU AWARE OF ANY STATE COMMISSIONS THAT HAVE ADDRESSED THE ISSUE OF ASSIGNMENT OF TELEPHONE NUMBERS TO END USERS LOCATED OUTSIDE OF THE RATE

"local" by comparing the NXX codes of the calling and called parties. (Gates Direct Testimony (DT) at 4.) He states, correctly, that this is the process used today. (Id.) But he also proposes that carriers should be permitted to assign NXX codes across the state, without regard to the physical location of the end user. He claims that this is the practice today and the Commission should formally sanction it. (Gates DT at 4-5, 25-32.) However, the result of Gates' recommendations would be an obliteration of the longstanding local/toll distinction that guides this Commission's telephone service pricing policy.

As I explained in my Direct Testimony, a customer's basic exchange rate typically includes the ability to make an unlimited number of calls within a designated geographic area at modest or no additional charge. Calls outside the local calling area (as defined in Verizon's tariffs and local interconnection agreements) are subject to an additional, toll charge. Toll service is generally priced higher, on a usage-sensitive basis, than local calling. As regulators across the country, including this Commission, understand, toll revenues have historically been used to hold down the price of basic local service.

The ILECs' tariffs and billing systems use the NXX codes of the calling and called parties to ascertain the originating and terminating exchanges involved in a call, and the call is rated accordingly. If NXX codes can be assigned to customers outside their home rate center (to

avoid what Mr. Gates calls the "disincentive of a toll call," Gates DT at 26), then the ILEC cannot discern whether the call is local or toll, and cannot properly rate it. Potentially, all calls will look like local calls, even if they are classified as toll for billing purposes in the ILECs' tariffs. This means that ILECs will lose the toll revenues that are a principal source of contribution to local rates.

From another perspective, what Mr. Gates seeks to achieve is massive rate center consolidation, with potentially an entire LATA as a local calling area. As I discuss later, Verizon has no problem with the ALECs (or the ILECs) defining their own calling areas as they see fit. However, Mr. Gates' proposal would force Verizon to redefine its local calling areas. The local/toll calling concept that is linked to Verizon's rate centers, and that is embodied in its tariffs and interconnection agreements, will be rendered meaningless.

As a legal matter, I am told the Commission no longer has the ability to implement rate center consolidation, which would be the effect of Mr. Gates' proposal. As a policy matter, Mr. Gates' approach is a stunning departure from decades-long policies. Certainly, this kind of major policy overhaul could not be undertaken in a docket intended to evaluate the much narrower issue of reciprocal compensation. I am confident the Commission will see Mr. Gates' proposals for what they are and give them no serious consideration in this docket.

ALEC can arbitrarily expand the local dialing scope of an ILEC customer, as they propose to do here with a service that resembles 1-800 inward dialing, at least without appropriate compensation to the ILEC handling the traffic.

I believe the Commission agrees with this principle. As Mr. Ruscilli pointed out in his Direct Testimony, in an arbitration between BellSouth and Intermedia, the Commission forbade Intermedia to assign numbers "outside of the areas with which they are traditionally associated" unless and until Intermedia can provide information to other carriers that will allow proper rating of calls to those numbers. (Ruscilli DT at 37, *citing* FPSC Order No. PSC-00-1519-FOF-TP, Docket No. 991854-TP, Aug. 22, 2000).

In addition, I believe this interpretation is consistent with section 251.g of the Telecommunications Act, which maintained the distinction between access services and local interconnection, and more specifically maintained access services under existing access arrangements unless or until those regulations were specifically superseded. These principles were further reinforced by the FCC in its order implementing the Telecommunications Act, in which the FCC asserted that "transport and termination of local traffic are different services than access service for long distance communications" (order par. 1033). Dr. Selwyn's proposal selfishly seeks to eliminate the existing access regime for interexchange calls and to manipulate local

interconnection into a windfall for a few ALECs at the expense of Florida customers.

Q. WOULD RECIPROCAL COMPENSATION BE HANDLED FAIRLY AND REASONABLY UNDER THE ALECS' VIRTUAL NXX PROPOSAL?

A. No. The ALECs expect an ILEC handling traffic anywhere within a LATA (that is, including intraLATA toll traffic) to pay reciprocal compensation for calls that are delivered to customers outside the local calling area of the customer originating the calls. (Selwyn DT at 44; Gates DT at 38.) This arrangement is a sharp departure from the billing policies that have existed within the telecommunications industry for many years. As I stated earlier, certain telephone pricing conventions were adopted decades ago in support of universal service goals. A primary principle is that the basic exchange access rate of an ILEC includes an unlimited number of calls within a defined geographic area at little or no additional charge. Generally speaking, this geographic area includes the customer's home exchange and specific neighboring exchanges designated as the customer's "local calling area." Whenever calls are placed to customers outside of the local calling area, an additional charge applies, which generally takes the form of a "toll" or message telecommunications service charge. In lieu of a toll charge to the customer initiating the call, ILECs can be reimbursed for their handling of the long-distance call through arrangements such as toll-free 1-800/877/888 or through foreign

exchange (FX) service. In no instance does Verizon offer to transport traffic outside of the local calling area without additional compensation for the long-distance handling. Doing so would undermine the infrastructure that has been established to help maintain affordable local service.

The Commission is very familiar with issues relative to expansion of local calling scopes. Before the Legislature took away the Commission's authority to entertain expanded area service requests, many such proceedings were held. A key issue in these cases was how to accommodate the ILEC's loss of toll revenues. In some cases, for example, customers voted to pay a monthly "adder" to obtain a wider calling scope.

Verizon vigorously disagrees with Dr. Selwyn's observation that the issue here is "one of pricing and competitive response, not one of policy." (Selwyn DT at 54.) This would certainly come as a surprise to this Commission, whose EAS and expanded calling scope (ECS) decisions have duly considered the existing local/toll scheme and the need to address ILEC toll losses when converting intraLATA toll routes to local routes.

Q. WOULD ASSIGNMENT OF NUMBERS OUTSIDE THE CUSTOMER'S RATE CENTER BE CONSISTENT WITH INDUSTRY PRACTICES TODAY?

OF THE HOME RATE CENTER IS THE POSSIBILITY THAT THE ILEC MAY SUSTAIN A COMPETITIVE LOSS. (SELWYN DT AT 53.) DO YOU AGREE WITH THAT ASSESSMENT?

A. Certainly not. Virtual NXX traffic is not traditional local traffic. Dr. Selwyn suggests that Verizon should ignore the cost of transporting the calls outside of the local calling area and simultaneously pay reciprocal compensation. Today, when calls are transported outside of the local calling area, Verizon is supposed to be compensated through access charges; reciprocal compensation does not apply because the calls are not local in nature. If the Commission were to endorse the ALECs' approach, Verizon would lose revenue not through legitimate competition, but because an ALEC inappropriately assigned numbers to customers located in rate centers outside of the local calling area. In fact, Verizon is experiencing these losses today, as ALECs admit they are misassigning numbers.

Verizon urges the Commission to join the ranks of state commissions denying reciprocal compensation for virtual NXX traffic. Mr. Ruscilli lists and describes their decisions in his Direct Testimony (at 36-53). Connecticut will likely soon be added to this list. The Department of Public Utility Control there has just issued a draft order rejecting arguments, like those the ALECs make here, that the ILECs are somehow evading their reciprocal compensation obligations by refusing to pay such compensation for virtual NXX traffic. The Department has proposed to deny reciprocal compensation for

termination of these non-local calls, and is instead considering applying access charges to them. (*DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities*, Draft Decision (March 29, 2001).)

Q. DO YOU AGREE WITH MR. GATES THAT CUSTOMERS WISH TO USE VIRTUAL NXX CODES "TO TAKE ADVANTAGE OF STATE-OF-THE-ART, CURRENTLY AVAILABLE TECHNOLOGIES THAT ALLOW CONSUMERS TO REACH THEIR BUSINESSES WITHOUT THE DISINCENTIVE OF A TOLL CALL" (GATES DT AT 26)?

A. No. Virtual NXX service is hardly a state-of-the-art technology and it is certainly not necessary to provide customers toll-free calling. Telephone companies have been offering toll-free service for more than 20 years. In fact, the ALEC number assignment action forces originating ILECs like Verizon to (1) at the originating switch, treat the call as a local call for billing and switch routing purposes, and then (2) transport the call over Verizon facilities (at Verizon expense) to the distant ALEC interconnection point, much like Verizon would transport a toll call or an originating access call -- existing services for which Verizon would be compensated by the originating toll user or the interexchange access customer, respectively. The only thing that's "new" here is the new scheme to manipulate intercarrier transport and compensation in a manner to load all of the costs on the originating ILEC, and then, instead of compensating the originating ILEC for the services provided, to prevent the originating ILEC from billing either

the originating customer or the receiving ALEC -- and then to bill reciprocal compensation to the originating ILEC! There is not any aspect of the virtual NXX service that would be considered new or state-of-the-art from a technology perspective.

With regard to the "disincentive" a toll call may create, Verizon would agree that most customers would like all their calls to be local, rather than having to pay any toll charges. But that's not sufficient reason for the Commission to suddenly reject the existing local/toll system and its underlying public policy rationale.

Q. MR. GATES SUGGESTS IF THE COMMISSION "PROHIBITS" USE OF VIRTUAL NXXS, THEN EAS CALLS MAY NO LONGER BE CONSIDERED LOCAL. (GATES DT AT 28-29.) DO YOU AGREE?

A. Absolutely not. This odd theory seems to be rooted in Mr. Gates' misperception of the status quo, as well as the nature of EAS. Once again, I believe that Mr. Gates' assumption that ALECs can use virtual NXXs today is unjustified. From my perspective, prohibition of virtual NXXs *is* the status quo, and it has had no effect on the classification of EAS as local.

Mr. Gates implies that EAS developed because the ILECs asked the Commission to change toll traffic into local in order to stem competition for toll services. (Gates DT at 29.) This is not true. As the Commission knows, EAS has generally been established in response

In addition, under the ALECs' proposal, ILECs would be expected to pay reciprocal compensation to ALECs for traffic that would traditionally have been handled more like a 1-800 call. So Verizon is definitely *not* indifferent to handling virtual NXX traffic from a cost perspective.

Q. DO YOU AGREE WITH MR. GATES, THAT "RESTRICTING NXX ASSIGNMENT" VIOLATES THE TELECOMMUNICATIONS ACT (GATES DT AT 39)?

A. No, I do not. Although I am not a lawyer, anybody can read the Act and see that there's nothing in there allowing the kind of misassignment of numbers the ALECs support. Likewise, there is nothing in there that gives the ALEC the unilateral right to erase a Commission-approved distinction between local and toll service or to waste numbering resources.

Mr. Gates invokes the Act's general intent for all consumers, including those in rural, insular, and high cost areas, to have access to telecommunications and information services at just, reasonable, and comparable rates. (47 U.S.C. sec. 254(b).) Verizon provides customers in rural areas with access to telecommunications services at reasonable rates. Verizon would have difficulty maintaining these reasonable rates, however, if the ALECs approach to virtual NXX service were adopted. In that event, local rates for both rural and urban customers would need to rise to compensate Verizon for the

increased, uncompensated use of its network for providing toll-free or FX service. The Act does not require an ILEC to subsidize an ALEC to ensure the ALEC's success in the marketplace. Rather, in the context at issue, the ILEC's obligation is to accommodate ALEC interconnection at any reasonable point within the ILEC's network. This is a far cry from being required to carry traffic outside of the local calling area in order to provide free transport, while also being required to pay reciprocal compensation relative to this traffic.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

REPLY COMMENTS OF VERIZON

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REPLY COMMENTS OF VERIZON

Summary

The Commission should act promptly to put an end to two abuses that have discouraged facilities-based local competition and encourage inefficient behavior. First, it should confirm that carriers may not obtain telephone numbering resources for a geographic area in which the carrier has no facilities and no prospect of any local service customers. In doing so, it should make clear that carriers may not use telephone numbers to steal transport services from one LEC in order to provide an interexchange service disguised as local. Second, it should accelerate the transition to bill and keep for calls to the Internet.

Much of the debate in the comments was over the use of some form of bill and keep for interconnection compensation for local and CMRS calls. Verizon believes that the simplicity of that arrangement could make it appropriate and beneficial for this purpose. Eliminating compensation payments will also eliminate the possibility of other abuses that are based on the receipt of reciprocal compensation for local calls. If the Commission elects to retain some form of payment, it should not base it on TELRIC. TELRIC costs are not appropriate for compensation under section 252(d)(2)(A)(ii), as they do not result in compensation for the "additional costs of terminating a local call."

As a necessary part of a bill and keep approach, the Commission should adopt new default interconnection point rules. A clear statement of what the arrangements will be in the absence of a negotiated agreement will provide certainty and reduce disputes and litigation. These new default rules should recognize the telecommunications networks that exist today, those of the ILECs, CLECs and CMRS providers, and should provide for an equitable apportionment of transport costs. Under such a compromise, the new interconnection point would be the same regardless of which way the traffic was flowing. Carriers that make choices of network architectures should receive the benefits and bear the costs of those choices.

For these reasons, Verizon proposes that the bill and keep default interconnection point be at the wire center that contains the highest point of switching in the ILEC network in a LATA, which will most often be at the tandem wire center. To avoid over-large transport obligations, there would be at least two interconnection points in each LATA. While interconnection may be at the ILEC tandem wire center, that does not mean that the ILEC should necessarily be required to provide tandem switching. Where the interconnection between the ILEC and another carrier has sufficient traffic volumes, the default rules should require a separate trunk to avoid tandem switch exhaust.

Experience has shown that carriers will offer transit services when they are able to do so profitably. By the same token, there is no need to mandate such services. Indeed, the Commission should not impose any requirements that would decrease a carrier's incentive to provide transit services.

Finally, the Commission should stay the course and let consumers and the industry enjoy the benefits of the CALLS plan. There should be no changes in the access charge regime until

CALLS and MAG have run their course. The Commission previously refused to prescribe access charges, and nothing has happened that should cause it to change its mind.

1. The Near-Term Issues — NXX Misuse and Internet

There are two issues on which the Commission should promptly rule.

A. The Commission Should Eliminate Fraudulent Misuse of Telephone Numbers.

Verizon and others explained that some LECs are misusing telephone numbers to make toll calls look like local calls.[1] This CLEC misuse of number assignments imposes additional transport costs on other carriers; ILEC FX services do not, as the ILEC transports the call to the distant FX customer. The Commission should reject any arguments that this is "just like FX." This scheme is not only inefficient and another flavor of regulatory arbitrage, but it also forces one LEC to provide free service for another LEC in order to allow the second LEC to provide an interexchange service without having to build any facilities of its own. The Commission should make it clear that these arrangements are unlawful.

Some commentors say that there is nothing wrong with these arrangements, as they are just like ILEC FX services.[2] This is not correct. The ILEC providing FX service has a switch in the rate center with which the NXX used to provide the FX service is associated, and it provides local exchange service to customers in that rate center. Calls to an ILEC FX customer are delivered to the ILEC switch, and the ILEC is responsible for transporting the call to the FX customer.

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[1] SBC at 17-18; BellSouth at 7; USTA at 32-34; Michigan Exchange Carrier Assoc. at 45.

[2] Cablevision Lightpath at 6-7; AT&T at 61; Focal at 56; Allegiance at 56.

The same is not the case with the CLEC's so-called "virtual" NXX. As most graphically illustrated in Maine, where the CLEC obtained more than fifty NXX codes for rate centers throughout the state.[3] It had no switch — or any facilities of any type — in any of these rate centers, nor did it offer local service to customers in these rate centers. It did not want other carriers to deliver calls to these NXXs in the rate center with which the NXXs were associated — it had no equipment with which to receive those calls. Rather, it wanted other carriers to deliver calls to these NXXs to its facilities elsewhere in the state, often hundreds of miles away. And it claimed that it had to pay nothing for having other carriers transport its calls for it.

It may be that some CLECs will offer real FX services — that they will receive telephone number assignments for one rate center and occasionally assign numbers from that NXX to customers that are outside that area. All LECs offering such services should be required to assume full financial responsibility for transporting calls from the originating LEC subscriber's local calling area to their remote subscribers. A LEC may satisfy this requirement either by having these calls delivered to it in the local calling area with which the NXX is associated or by paying the originating carrier for transport from that area to the LEC's interconnection point.

Similarly disingenuous are arguments that the only thing that's going on here is CLECs' establishing local calling areas that are different from those of the incumbent.[4] A CLEC may certainly give its customers different local calling areas than the ILEC offers its customers. It could, for example, offer unlimited state-wide flat-rate calling, treating all calls within the state

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[3] *Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber Communications*, Order Requiring Reclamation of NXX and Special ISP Rates by ILECs (Order No. 4), Docket No. 98-758 (Me. P.U.C. June 30, 2000) *available at* www.state.me.us/mpuc/orders/98/98758or.pdf.

[4] *E.g.*, Cbeyond at 12.

as local. A CLEC's decision to do that, however, does not make a call from the ILEC's customer to the CLEC's customer a local call, subject to all the interconnection and compensation arrangements that apply to local calls.

Focal is more direct. It frankly states that "CLECs should be allowed to define the boundaries of calling areas in which inbound calls would be rated as local just as much as they define boundaries of calling areas in which outbound calls are rated as local."[5] This, of course, would allow a CLEC to establish the local calling area of both the ILEC and other CLECs operating in the area — the very evil that the CLECs accuse the ILECs of trying to perpetrate. It would also undermine decisions by state regulators about what calls should be local and which should be toll for ILEC subscribers and the overall cost-recovery systems adopted by those regulators for the still-heavily-regulated ILEC.

KMC claims that traffic is routed to a "virtual NXX" in exactly the same manner as to any other NXX.[6] But the routing is not the main issue — compensation is. And "virtual NXXs" can be used to hide the nature of the call, where the nature of the call determines the compensation to be paid. Verizon has no objection to routing and delivering calls to a CLEC virtual NXX wherever the CLEC asks; it just wants to be compensated for delivering them outside the local calling area, or for the CLEC to transport the calls, and Verizon does not want to pay compensation based on the supposition that the call is local.

Cbeyond urges the Commission not to address these issues here, but instead to take them up in other proceedings.[7] The Commission has correctly teed up these issues in this docket, as

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[5] Focal at 59.

[6] KMC at 7.

[7] Cbeyond at 13.

they relate, in part, to efforts by some carriers both to avoid paying compensation and to extract intercarrier compensation from other carriers. More important than this docket-pigeonholing, of course, is that these arrangements are resulting in inefficiencies and distortions which should be brought to an end as soon as possible, in whatever proceeding can take them up first.

As Verizon and others also showed,[8] it is inconsistent with existing number assignment principles and rules for carriers to get NXX or number block assignments for use in this way. These arrangements waste increasingly scarce numbering resources, as they encourage LECs to obtain numbers in areas in which they will have no customers. The Commission should put an end to them for this reason as well.

B. The Commission Should Fully Eliminate the Arbitrage on Internet-Bound Calls.

Nothing offered in the comments should change the Commission's conclusion that the extraction of reciprocal compensation for Internet-bound calls is "regulatory arbitrage" that "distorted the economic incentives related to competitive entry into the local exchange and exchange access markets."[9] The Commission should follow through on its policy decision in the *Remand Order* "to address and curtail a pressing problem that has created opportunities for regulatory arbitrage and distorted the operation of competitive markets."[10] The Commission should promptly put this regulatory arbitrage to an end for good.

Allegiance claims that it would be "discriminatory" for the Commission "[t]o create a distinction in what LECs may charge one another for transport and termination based upon the

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[8] Verizon at 8-9; USTA at 33.

[9] *Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 at ¶ 2 (2001) ("*Remand Order*").

[10] *Remand Order* at ¶ 81.

content of the traffic or the identity of the customer receiving the call."[11] In fact, the distinction that exists in the Act and Commission orders is between information access and traffic subject to reciprocal compensation under section 251(b)(5).

Similarly beside the point is the argument made by AOL and others that because the costs of transporting Internet-bound calls do not differ from the costs of transporting local calls, the compensation should be the same.[12] For a variety of reasons, there are often different prices for services or arrangements that have similar costs. The history of abuses concerning compensation of Internet-bound calls provides an ample basis here. Moreover, the record before the Commission included ample evidence that the costs are very different.[13]

AT&T suggests that the problems identified by the Commission could be eliminated by capping compensation for Internet-bound traffic at forward-looking costs.[14] However, this would require CLEC "rate cases" in every state, a result the Commission has consistently striven to avoid.[15] Moreover, the Commission concluded in the *Remand Order* that it was not the rate levels that were the problem, it was the very fact that payments were made. "[T]he market

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[11] Allegiance at 44.

[12] AOL at 2; Ill. Commerce Commission at 2-3.

[13] *Ex parte* letter to Ms. Magalie Roman Salas from Robert T. Blau of BellSouth, CC Docket No. 99-68, dated Feb. 1, 2001, at 2-3 ("... the CLECs average switching costs for dial up traffic works out to about $.0001 per minute or about 1 to 5 percent of current reciprocal compensation rates"); *Ex parte* letter to Ms. Magalie Roman Salas from Gary L. Phillips of SBC Telecommunications, Inc., CC Docket No. 99-68, dated Feb. 16, 2001, at 1 ("significantly less than $.001") and attached Morgan Stanley Dean Witter In Depth Report at page 9, which states that soft-switches can be almost 70% cheaper than circuit-based technology.

[14] AT&T Ordover-Willig Dec. at 23.

[15] *See, e.g., Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, 16 FCC Rcd 9923 (2001).

distortions caused by applying a CPNP regime to ISP-bound traffic cannot be cured by regulators or carriers simply attempting to 'get the rate right.'"[16]

The Commission should now definitively rule that reciprocal compensation is not due on this traffic.

2. The Mid-Term Issue — Section 251(b)(5) Reciprocal Compensation

While promptly resolving these issues, the Commission should also develop a new default plan for section 251(b)(5) intercarrier compensation for local (non-access) calls, both between LECs and between LECs and CMRS providers. Carriers should always be free to negotiate arrangements that make the most sense for them. However, carriers should know what the arrangements will be if they are unable to agree. These default arrangements should be simple and clear. For these calls, this plan should be based on bill and keep arrangements assuming that the Commission establishes clear and equitable default rules as to interconnection points.

A. Properly Structured, Bill and Keep Can Provide Correct Incentives for Efficiency.

The Notice has identified the various problems caused by the existing scheme of intercarrier compensation for local calls.[17] It also correctly notes that a pure bill and keep system could eliminate many of the complexities and issues raised by the existing system.[18] Of course, Verizon pointed out in its comments that any bill and keep system would have to be carefully designed so as not encourage game-playing and arbitrage. The concerns raised by some of the

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16 *Remand Order* ¶ 76.

17 *Notice* at ¶¶ 17, 69.

18 *Notice* at ¶ 52.

commentors about bill and keep, however, do not outweigh the benefits of such a system, if it is properly implemented.

Some parties have argued that a system of bill and keep for local, ISP and CMRS traffic should not be adopted because it would fail to meet various notions of economic optimality. AT&T, for example, offers a statement by economists Ordover and Willig, who dispute the efficiency of bill and keep, arguing instead that the Commission should attempt to determine "perfect" charges for a calling party's network pays regime. Time Warner includes more balanced analyses by Farrell and Hermalin and by Katz and Hermalin, but again suggests that bill and keep is not efficient.[19] In fact, bill and keep for this traffic could provide the Commission with the regulatory approach that is most likely to produce efficient outcomes.[20] To do so, however, the Commission would have to adopt a clear and equitable plan for interconnection points and impose clear financial responsibility on carriers to deliver traffic to those points. With that framework, bill and keep will allow the Commission to pursue its goals through limited regulation of default terms, rather than by attempting to prescribe the "right" price for every inter-carrier transaction.

It is unlikely that end users, when originating calls, are able to take much account of the cost of termination under today's regime. Most local service is not measured, other services (such as CMRS) are sold in "buckets" of minutes, and toll charges are averaged. However, there is another decision that is of crucial importance, and almost entirely ignored by Ordover and Willig, even though it is much more likely to be influenced by the method of intercarrier

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19 Time Warner at 6.

20 Verizon will explain in a later section why the application of bill and keep to access raises very different issues that dictate a different answer.

compensation. Each end user must choose a local carrier. In doing so, that customer should take into account all the costs and benefits, including the carrier's cost of termination. Bill and keep, which requires each carrier to recover its costs from its own end users, ensures that each consumer will "internalize" such cost differences when choosing a carrier.

For the same reason, bill and keep does not establish a price of zero for the exchange of traffic, since each carrier contributes in kind. The challenge is to design a system of defaults that reasonably assigns the cost of transport between the interconnecting carriers.

WorldCom and AT&T both argue that bill and keep would create incentives for ILECs to exercise their "market power" by engaging in pricing behavior designed to disadvantage their competitors.[21] AT&T suggests that this is a reason not to adopt bill and keep; WorldCom proposes default rules which are anything but balanced, justifying them by the need to control ILEC market power.

These concerns are misplaced, and should not influence the decision whether to adopt bill and keep. Any exercise of ILEC market power is constrained in many markets by competition. As explained above, the alignment of end user prices with end user choices in local markets will be improved under bill and keep, thus promoting the development of efficient local competition. In those markets where the Commission remains concerned about market power, it retains the ability to prevent abuse.

More fundamentally, the concerns raised by AT&T and WorldCom are not caused by bill and keep and are, therefore, not reasons to prefer the existing system over bill and keep. First, these parties complain about the effect of bundling a service provided by the ILEC, when a

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[21] WorldCom at 25, AT&T at 31.

competing service is provided by another carrier. Second is the use of discounts designed to disadvantage competitors. Both of these arguments are variations of the generic "price squeeze" concern.[22]

The Commission has long recognized that bundling of services into attractive packages creates valuable options for consumers, and that consumers are made better off by having those choices. The objective of policy, therefore, cannot be to eliminate such bundling. Given that bundling exists, the possibility of a price squeeze is the same under bill and keep as it is under the existing system. This is a general issue which has been considered (and rejected as a concern) by the Commission in the past[23], and is not a reason for preferring one system of inter-carrier compensation over another.

The issue of price squeeze in this situation thus does not depend on whether part of the price is charged separately to the end user or built into an end-to-end price. Ordover and Willig admit as much when they say that bill and keep "would not alter the basic economics" of price squeezes.[24] Therefore, vulnerability to price squeezes is not a basis for choosing among regimes. If anything, allowing end users to see clearly the price they are paying for access to other carriers, rather than passing it to an interconnecting network, should allow consumers to evaluate those costs more clearly, and to more effectively police any attempt to discriminate in the application of those charges.

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22 Ordover and Willig at 27.

23 *See, e.g., Bell Atlantic New York 271 Order*, 15 FCC Rcd 3953 at ¶¶ 382-3 (1999); *Bell Atlantic New York 271 Reconsideration Order*, 16 FCC Rcd 11457 at ¶¶ 2-3 (2001).

24 Ordover and Willig at 28.

B. The Commission Should Establish Default Interconnection Points.

Many parties oppose pure bill and keep because COBAK does not establish a limit on how far a carrier must transport traffic. As several commentors have observed,[25] it is unreasonable for one carrier to have to transport traffic hundreds of miles simply because another carrier chooses a distant location for its switch. This suggests a geographic limit on the obligation to deliver traffic, and some commentors have offered different rules to apply such a limit.[26]

The default rules should ensure that the division of transport costs is symmetrical and not penalize any class of carrier. At the same time, each carrier should pay for the results of its own choices with respect to network design. If one carrier chooses more costly switches, then the cost of that choice should be reflected in rates paid by that carrier's end user customers. Similarly, there might be a choice in network design between switching and transport. A choice to have fewer switches may involve higher transport costs, and those costs should also be borne by that carrier's end users. Any residual concerns over market power should be dealt with by making the obligations symmetrical, not through imposing punitive restrictions on ILECs or by assigning asymmetric default rights to one party, as WorldCom proposes.[27]

As Verizon and other parties have noted,[28] a new framework of intercarrier compensation should not ignore the facility arrangements that already exist. These arrangements represent

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25 BellSouth at 14.

26 *E.g.*, Sprint at 31.

27 WorldCom at 25-26.

28 BellSouth at 13, n.19.

significant investments, and any new default rules should not arbitrarily devalue these investments.

Verizon, therefore, proposes a framework for the definition of default responsibility that reasonably balances the concerns raised in the comments. This proposal is a significant compromise in that it would have ILECs allow connecting carriers the benefit of connecting to a multi-tiered network without the financial responsibility to deliver to individual end offices. This proposal would make bill and keep a workable compensation solution for interconnection of local and CMRS traffic.

i. New rules should create equitable transport obligations.

Today, ILEC tandem wire centers are logical locations to serve as interconnection points, and the default rule should be based on the expectation that interconnection with ILECs will take place at those locations. First, tandem wire centers are widely used for this purpose already. Thus, using tandem wire centers as interconnection points would allow investments in existing interconnection arrangements — by ILECs and other carriers — to continue to be used. The number of points of interconnection would be reduced, meeting a concern raised by several parties. If a CLEC's obligation to deliver traffic were to end at the tandem wire center, it would be relieved of having to pay for transport between the tandem and each end office, and the cost of this transport would be borne by the ILEC.

Because almost all carriers interconnect with the ILECs, and the largest traffic flows are those to and from the ILECs, each ILEC should designate at least two interconnection points in each LATA. These interconnection points should generally be established at the highest level of switching in the ILEC's network hierarchy within each LATA. Other carriers would use these

points of interconnection to interconnect with the ILEC. For direct interconnection with one another, non-ILECs would designate additional interconnection points.

As shown on the attached diagram, this default interconnection point would be located at the ILEC's highest point of switching in the LATA. Under today's ILEC network architecture and prevalent installed switching technology, this point would be at tandem switching center locations. In LATAs that have multiple highest points of switching, the ILEC could designate each as an interconnection point, with connecting carriers delivering traffic to the interconnection point that serves the wire center where the call is destined.[29] In those LATAs where the ILEC's serving area has fewer than two such points, the ILEC would designate additional interconnection points to ensure that there are at least two interconnection points in each LATA. This would provide a reasonable balance of transport obligations on both carriers exchanging traffic. These additional interconnection points might be at a facility hub wire center or other similar point in the ILEC's network.[30] ILECs that do not have tandems in their serving areas may designate other suitable locations as their interconnection points.[31]

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[29] Within their networks, carriers interconnecting with ILECs would be obligated to identify traffic destined for ILEC Numbering Plan Area ("NPA")/NXXs assigned to end offices subtending a particular tandem and to deliver that traffic to the interconnection point at that tandem wire center When the interconnecting carrier has multiple highest points of switching within a LATA, there would be a symmetric obligation for the ILEC to identify traffic destined for NPA/NXXs associated with each of those highest points of switching and to deliver that traffic to the appropriate interconnection points. These symmetric obligations would avoid inefficient inter-tandem switching and/or transport on either network.

[30] As new technologies, such as voice over ATM are deployed, a network "edge" gateway device could serve as the interconnection point and the access point to the core ATM switch.

[31] For example, if an ILEC had a number of stand-alone end offices, one end office could be designated as an interconnection point. From this point, the ILEC would be obligated to provide transport to other stand-alone end offices and to provide a tandem-like switching function and associated transport upon request.

All carriers exchanging traffic with an ILEC would be responsible for getting traffic to and carrying traffic from the interconnection point. They could satisfy this responsibility either by using their own facilities for this transport or buying it from another carrier. Thus, for example, the ILEC would be responsible for all transport between the interconnection point and the end office serving the ILEC customer, for local switching at the end office and for tandem switching of traffic below a specified threshold. This obligation would apply to both originating and terminating traffic. Similarly, any interconnecting carrier would be responsible, in both directions, for all transport on its side of the interconnection point and for any other network elements required to carry the traffic to or from its end user. These would be default obligations, and carriers would be free to negotiate different arrangements.

For direct interconnection with one another, non-ILEC carriers would establish additional interconnection points at locations that contain the highest level of switching in each carrier's network. CLECs often state that their networks are not designed in the same tandem/end office topology used by ILECs. To avoid that concern, each carrier would establish at least one such interconnection point in each LATA where it exchanges traffic with a carrier other than an ILEC.

If the traffic destined for a specific end office subtending the tandem exchanged between the ILEC and another carrier at the interconnection point is less than a threshold of the equivalent of one DS-1, this traffic could be routed through the ILEC tandem switch, at the option of the interconnecting carrier. The cost of this tandem switching would be borne by the ILEC. This would allow carriers with small volumes of traffic destined for a specific end office subtending the tandem to achieve greater trunking efficiencies by taking advantage of the aggregating function provided by the tandem. However, when the traffic at the interconnection point destined for a specific end office subtending the tandem is greater than a threshold of one DS-1,

it is no longer economical for the ILEC to have the traffic switch through the tandem, nor is it reasonable for the ILEC to be required to provide this function. Interconnecting carriers must, therefore, have the default obligation to provide for direct trunking of this traffic.[32] This default direct trunking obligation would be symmetric in that the interconnecting party would have an obligation to accept direct trunking at the interconnection point from the ILEC when originating traffic from a specific end office subtending the tandem destined for the interconnecting carrier exceeds the DS-1 threshold. However, either carrier using direct trunking would still retain the option of using the tandem for overflow traffic from its direct trunks, so long as the amount of overflow did not exceed the threshold of the equivalent of one DS-1. This option would help all involved manage the use of their direct trunks efficiently, in much the same way that IXCs use direct and tandem-routed transport for long distance traffic.

This default rule would still allow LECs to agree to interconnect at fewer points, such as one point per LATA as some commentors want.[33] However, it does mean that carriers which choose such arrangements would be responsible for paying for the additional transport. This is consistent with what the Commission has held all along. For example, in the *Local Competition*

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[32] In this context, "direct trunking" does not mean, as it does in the context of interstate access, that the interconnecting carrier must provide or pay for a separate transport route to the end office. The interconnecting party would present the traffic at the interconnection point, and the ILEC would still be responsible for transport from the interconnection point to the end office. "Direct trunking" in this context means simply that the traffic is exchanged at the interconnection point (or at another point mutually agreed to, such as the end office), but is not switched through the tandem. In order to make this routing possible, the interconnecting carrier would be required to sort the traffic at its own switch, so that the traffic bound for each end office would be segregated on specific circuits which the ILEC could then directly connect to its own transport to that office.

[33] *E.g.*, Cbeyond at 8; Focal at 54; Level3 at 20; Time Warner at 15; WorldCom at 22.

Order, the Commission held that a CLEC that desires "a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit."[34] This "pay or carry" approach will give these carriers the incentives to make rational choices that promote economic efficiency.

Where carriers pass SS7 signaling to each other, they must also designate interconnection points for their SS7 networks. This is because SS7 signaling is carried over different facilities than the voice or other content of the telephone call. Signaling Transfer Points, or STPs, are the devices carriers use to switch and route SS7 signaling traffic. Verizon proposes that, where the interconnecting carriers both have their own STPs, ISDN User Part ("ISUP") call setup signaling traffic for local calls should be exchanged on a bill and keep basis. If one interconnecting carrier does not have an STP, but relies on STP functionality provided by the other party, then the carrier providing the STP functionality should be permitted to charge for that service. Existing arrangements and pricing would continue for other uses of SS7 functionality, such as database inquiries, unless the parties voluntarily agree otherwise.

Each carrier would be responsible for transport to the other carrier's STP. Today, some carriers do not wish to provide their own transport to every ILEC STP. Verizon and other providers offer STP gateway and transport services to meet those needs. Verizon's service allows the interconnecting carrier to bring its signaling to a central Verizon STP, which then serves as a hub for reaching other Verizon STPs, using Verizon's transport.[35] ILECs could

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[34] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 at ¶ 199 (1996) ("*Local Competition Order*").

[35] The STPs which serve as gateways are set forth in Verizon's tariffs. Sections 271(g)(5) and (6) of the Act impose certain limitations on the uses of this service.

continue to offer such services within a new bill and keep framework. This would allow an interconnecting carrier to meet its default obligations by bringing its signaling traffic to an ILEC gateway, and by purchasing the gateway service at the tariffed rates. Because the exchange of SS7 ISUP traffic would still take place on a bill and keep basis when the gateway option is used, there would be no usage charge for the use of the SS7 functionality, although there may be port and transport charges associated with the gateway service itself.

This system offers significant advantages. It provides a reasonable distribution of the transport obligations between the parties by balancing limiting the distance any carrier must transport traffic and limiting the number of interconnection points to which traffic must be delivered. It defines the default obligation to deliver traffic without reference to any particular technology or network design, which will provide neutrality with respect to different technologies, minimize unnecessary disputes and avoid creating artificial incentives for inefficient network designs.

Other proposals should be rejected. Cbeyond asks that the Commission require ILECs to provide meet point interconnection at CLEC request.[36] While carriers should be permitted to use meet point arrangements if mutually agreeable, the Act does not require them because such a location is not a "point within the carrier's network."[37]

ii. New rules should minimize opportunities for manipulation.

The Verizon proposal also addresses some of the concerns raised about adverse incentives that might be created under bill and keep for section 251 (b)(5) traffic.

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36 Cbeyond at 11.

37 47 U.S.C. § 251(c)(2)(B).

One concern expressed by several parties is the possibility that each carrier may attempt to assign as much transport cost to interconnecting carriers as possible by manipulating the placement of interconnection points. Farrell and Hermalin refer to this in the context of COBAK as "moving central offices."[38] Verizon's proposal addresses this concern by defining a very limited number of interconnection points, by associating them with the highest point of switching in each network, and in the ILECs, with tandem locations that are already well known and widely used. Because there is a two-way interconnection point for exchange of traffic with the ILEC, no carrier can gain an advantage by designating some other location as an "end office."

Another concern is that a carrier might design its network to place interconnection points on or near the premises of its customers, in order to obligate other carriers to deliver traffic to those customers. The framework proposed here would make such strategies more difficult. Even for the exchange of traffic among non-ILEC carriers, in order to designate multiple interconnection points in a LATA, it would be necessary to form a new entity for each interconnection point, which would be costly and inefficient.

A final concern raised with bill and keep is that end users would try to masquerade as carriers for all or part of their traffic. Any system that treats end users and carriers differently will have some exposure to such game-playing, and the Commission should make full use of its enforcement authority to end such abuses where they occur. The framework proposed here, however, would tend to limit the potential gains from such a strategy and would thereby discourage such activity in the first place. An end user that poses as a carrier would take on a

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[38] Farrell and Hermalin at 8: "If bill and keep is imposed, each carrier has an incentive to "dump" traffic on another carrier as soon as possible, and to accept it as late as possible. It seems inevitable that COBAK would create 'regulatory arbitrage' incentives to locate 'central offices' as far out in the network as possible."

two-way obligation to deliver its traffic to and from an interconnection point. There would be no opportunity to split the end user's originating traffic from its terminating traffic, or to induce other carriers to deliver traffic to the end-user's location.

iii. Service quality will not be adversely affected.

WorldCom suggests that an ILEC would have the incentive and the ability to impose costs on its local competitors by selectively reducing the quality of traffic exchanged with those competitors.[39] In fact, WorldCom's concerns are answered by Verizon's interconnection proposal.

For local, ISP-bound and CMRS traffic, the originating customer has a retail relationship with a local carrier and will most likely perceive any degradation of outgoing calls as a problem with that carrier's service. The relevant question then becomes whether it is reasonable to conclude that an ILEC could selectively reduce the quality of calls terminated from other networks, without simultaneously affecting the quality perceived by its own customers on originating calls. To answer this question, it is useful to consider the alternative arrangements for terminating traffic under Verizon's proposal.

First, for traffic below the threshold of one DS-1 that Verizon has proposed, traffic could be routed through an access tandem. These calls would then be carried from the tandem to the end office over trunks that are used to carry other traffic, including that of the ILEC's own customers. The ILEC could not degrade quality on these trunks without affecting its own originating traffic:

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[39] WorldCom at 25.

Second, once the threshold level is reached, some traffic would be delivered over direct trunks and not switched at the tandem. If the ILEC also has originating traffic from that end office bound for the other carrier, it is usually advantageous for both parties to agree on a shared, two-way direct trunk. In this case, it would again be impossible for the ILEC to degrade quality without affecting its own originating traffic.

Third, there may be instances where a shared direct trunk group has not been agreed upon. In those cases, under Verizon's proposal, the interconnecting carrier would deliver traffic to Verizon's interconnection point over groomed, one-way trunks, which Verizon would then transport to its end offices. However, for any direct trunking, whether one-way or two-way, Verizon's proposal maintains the option of overflowing traffic to the ILEC tandem. There would be strong incentives for an interconnecting carrier to make use of this option, since it would allow more efficient use of its direct trunks. Given this arrangement of direct trunking with overflow to the tandem, any effort by either carrier to under-provision the direct trunk group on its side of the interconnection point would be counterproductive. If the interconnecting carrier provided too few direct trunks, the amount of overflow would exceed the allowed limit, and the ILEC would be able to demand that the trunking be increased until the overflow was below the DS-1 threshold. If the ILEC provided too few trunks on its side of the interconnection point, this again would simply cause more overflow to the tandem. There would be no selective degradation of the other carrier's traffic, since the final grade of service seen by the interconnecting carrier would be determined at the margin by the tandem-routed traffic, and once again the ILEC could not reduce this level of quality without affecting its own customers. Further, the ILEC, by creating this overflow, would generate additional tandem switching costs for itself, and further exacerbate the problem of tandem loading that several ILECs have

emphasized in their comments. Thus, the design for bill and keep Verizon has proposed will tend to be self-correcting, with the level of overflow to the tandem serving as a "relief valve" and indicating the need for additional trunking from one or the other of the interconnecting parties.[40]

In summary, there is no reason to expect that an ILEC could selectively reduce the quality of the service perceived by the customers of another, interconnecting local carrier. Any attempt to do so would be self-defeating, since it would affect the ILEC's own customers, and in some cases impose additional costs on the ILEC as well.

C. Alternatives to Bill And Keep for Non-Access Traffic Should be Based on "Additional Costs," not a Prescribed Model.

Ordover and Willig suggest that any evils of the current regime can be cured simply by prescribing the "properly cost based" rate for each intercarrier transaction.[41] This is precisely the wrong direction for the Commission to go, particularly in light of the level of competition in the industry and the goals of Telecommunications Act to reduce regulation and place greater reliance on competition.

Hermalin and Katz show that models of intercarrier pricing are extraordinarily complex, and they must make restrictive assumptions and omit important considerations in order to solve their models.[42] Finally, the detailed information necessary to use any of their models solutions, such as elasticities and marginal costs, are not readily available to the Commission, and any

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[40] Incentives are different in the case of originating interexchange access, since the end user may have a separate retail relationship with the IXC. This is another reason why the considerations surrounding bill and keep for access are fundamentally different from those affecting ISP-bound, local, and CMRS traffic.

[41] Ordover and Willig at 5.

[42] For example, Hermalin and Katz at 5-9 and Farrell and Katz at 2: "The overall problem, blending short-run and this somewhat nuanced longer-run analysis, is far more complex than even the Hermalin-Katz upgrade of Dr. DeGraba's analysis."

effort to approximate them would involve years of proceedings and litigation, create uncertainty for all the parties, as well as for the capital markets on which they all depend for funding, and provide ample opportunities for rent-seeking behavior by parties seeking to influence the prescribed rates.

The Commission should certainly not use a TELRIC methodology to set intercarrier compensation prices for local calls because TELRIC pricing has several substantial disadvantages in terms of the incentives it provides to both incumbent local exchange carriers and new entrants.

TELRIC does not capture the actual "additional costs of terminating a local call" as specified in the Act.[43] Instead, TELRIC as interpreted by the Commission captures the forward-looking costs of a hypothetically efficient firm.

TELRIC by definition identifies the cost of all usage and as such is at odds with the Act's requirement to price reciprocal compensation based on the specific cost "of calls that originate on the network facilities of the other carrier."[44] Also TELRIC theoretically provides the total cost of providing an element. This again is inconsistent with the Act's specification of the use of "additional cost." TELRIC looks at the cost of building a network from scratch and uses as its demand the total of all demand from all services. The "additional cost" standard, however, looks at things differently.

Additional cost is by definition the "added" cost of providing service. An average incremental cost calculation could be used to determine such an amount. This requirement is

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43 47 U.S.C. § 252(d)(2)(A)(ii).

44 47 U.S.C. § 252(c)(2)(A)(i).

fundamentally different from other cost standards in the Act and rightly so. Access charges, for example, are a service, with "just and reasonable" rate requirement. There, a long distance carrier is using the local network as a component of its own service. In contrast, for local and CMRS interconnection, there are independent networks that need to interconnect to provide full communication value for their own customers. They are not using the other network for their own service, but rather to allow a customer to complete a call outside their own network. As explained in the attached declaration of Professor Howard Shelanski, there is "no reason that the economics of local interconnection should be assumed identical to those of the very different relationship inherent in long distance access."[45] Of course, if transport is apportioned fairly, as it is under Verizon's proposal, there is no need to have any exchange of payments in such a situation.

If payment is retained and if some form of TELRIC is adopted — a result Verizon does not support — then the Commission should rule that the ILEC price is presumptively the ceiling for other carriers' compensation rates. The ILEC has the largest, most dispersed network, deployed over many years in ways that might not be the most efficient if the ILEC were starting from scratch today (as most other carriers are). These other carriers should not be allowed to charge a price higher than the ILEC's without demonstrating that the price is necessary to allow it to recover its "additional costs of terminating a local call."

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[45] Shelanski Declaration ¶ 1.

D. The Act Does Not Require ILECs To Provide Transit Services for Other LECs.

Some commentors claim that the Commission has authority under sections 201 and 251 to require ILECs to provide transit services, and to provide them at TELRIC-based rates.[46] There is no such obligation, and there certainly is no basis for using TELRIC.

Transit service is a service provided by one carrier, often the ILEC, to facilitate the interconnection of the other carriers' networks where those carriers do no interconnect directly with each other. The service allows the other carriers to terminate traffic on each others' networks without directly connecting with each other. Transit service does not involve the origination or termination of traffic to customers of the transiting carrier.

There is no reason that these two carriers cannot interconnect directly and negotiate interconnection arrangements between themselves. Section 251(a)(1) of the Act, of course, imposes on all carriers an obligation to interconnect. Therefore, if one of the commentors wants to deliver traffic to customers of another LEC, it can simply interconnect directly with that other carrier, and the other carrier is required to do so.

While Verizon is required to interconnect with a CLEC to accept CLEC-originated local traffic that is to be delivered to Verizon's end-user customers, nothing in the Act requires Verizon to accept any CLEC traffic that is destined for another carrier (such as another CLEC or a non-Verizon ILEC). Section 251 requires carriers to "interconnect" with each other. The Commission has interpreted this term to mean "the linking of two networks for the mutual exchange of traffic."[47] In a transit situation, Verizon as the transiting carrier is not exchanging

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[46] AT&T at 10, 62; Sprint at 33; Triton PCS at 13.

[47] 47 C.F.R. § 51.5.

traffic with either of the two other carriers — it is simply facilitating the exchange of traffic, or the interconnection, of those carriers.

And, of course, Verizon would not be required to pay reciprocal compensation if it did handle this transit traffic. Section 252(d)(2)(A)(i) states that reciprocal compensation shall provide for the recovery by each carrier "of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier . . ." A call from a customer of LEC A to a customer of LEC B originates on LEC A's network and terminates on LEC B's network. If these carriers use Verizon to facilitate their interconnection, that does not mean that this call "originates" on Verizon's network facilities. Because this transit traffic does not originate on Verizon's network, there can be no reciprocal compensation obligation. This is the conclusion the Commission reached in an analogous situation in *TSR Wireless LLC v. U.S. West Communications, Inc.*, where the Commission held that transit traffic was not an interconnection service for which UNE pricing was appropriate.[48]

The New York commission recently rejected a similar argument by AT&T. In that proceeding, the New York commission flatly held, "The Commission finds that Verizon is not obligated to provide transit service for the exchange of traffic between AT&T and other carriers."[49] The Commission should reach the same conclusion.

The fact is that carriers will offer transit services where it is economical for them to do so, even where a regulator does not require it. This is proven by the fact that Verizon voluntarily

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[48] 15 FCC Rcd 11166 at n.70 (2000).

[49] *Joint Petition of AT&T Communications of New York, TCG New York and ACC Telecom for Arbitration to Establish and Interconnection Agreement with Verizon New York,* Case 01-C-0095 at 42 (N.Y. P.S.C. July 30, 2001).

provides these services today in many areas. Verizon offers transit services and tandem switching of transit traffic up to DS-1 capacity at rates equivalent to those in the interconnection agreements. As explained above in connection with points of interconnection, the DS1 limitation is reasonable to limit traffic congestion and tandem exhaust. Limiting congestion at the ILEC's tandems benefits all users of the public switched telephone network.

If there is no limitation on the level of transit traffic, then the two carriers would have no incentive to interconnect directly with each other. The ILEC would be obligated to provide this service in perpetuity because the two carriers would never have to negotiate with each other, provision their own facilities to collect and receive traffic from carriers other than the ILEC or directly bill one another. Once the traffic volumes reach a DS-1 level, however, there is no reason for the ILEC to continue to provide transit services. At this level, the traffic between the two carriers is sufficient to justify a direct interconnection trunk for their traffic. For traffic levels above DS-1, CLECs may self-supply or purchase transit services as special access offerings from ILECs or other network providers.

Transit services should be subject to minimal or no regulation, given that the ILEC is offering the service as a third party vendor. Further, the services would be available in the market at market-based prices. Should the Commission decide that a level of regulation is necessary, transit services should be regulated as any other state or interstate service. The pricing standards, rules and regulations in place for the jurisdiction in which the service is offered would be applicable for the transit offering.

3. Long-Term Issue — Stay the Course on Access and Toll Calls

Finally, when these issues have been resolved, the Commission should consider what, if any, changes should be made to its access charge system for intercarrier compensation for toll calls.

A. Continue the CALLS Plan.

The Commission got it right when it said that the relevant question was, "What comes after CALLS?,"[50] and nothing that's been filed suggests otherwise.[51] The CALLS plan took effect only a year ago and will last until mid-2005. It establishes interstate access rate levels and an aggregate amount of interstate universal service support for 97 percent of the interstate access traffic. There should be no changes in the CALLS plan until 2005. Similarly, the Commission has announced the adoption of the "MAG" plan for non-price cap LECs. It too should be allowed to run its course before major structural changes are made.

Nothing that has been filed suggests that the Commission should now deviate from its plan for the CALLS plan to provide a five-year period of stability in the access rules — "the CALLS Proposal provides stability during its term and addresses several issues that have served as major obstacles to access charge reform and universal service."[52] This will allow both LECs and interexchange carriers to plan more effectively and to put an end to the arguments over access rates that had occupied so many resources since 1990. AT&T, one of the proponents of

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50 *Notice* at ¶ 97.

51 The fact that certain aspects of CALLS have been remanded to the Commission does not change the fact that CALLS established a comprehensive five-year plan for the pricing of the overwhelming majority of all the interstate access services provided in the country or provide any basis for setting a new course in mid stream.

52 *CALLS Order*, 15 FCC Rcd 12962 at ¶ 35 (2000).

TELRIC-based access charges today, touted this as one of the benefits of CALLS, telling the Commission:

> "The CALLS Plan provides reasonable solutions to each of these important issues, solutions that will also produce a stable, predictable regulatory environment conducive to making the investments necessary for competition. That in itself is an important public interest benefit of the CALLS Plan."[53]

Most important, nothing that has been filed suggests that the public would benefit from an elimination of the access charge regime and an untimely scrapping of CALLS. CALLS is plainly in the public interest — "We therefore find the CALLS Proposal to be in the public interest"[54] — and should be allowed to run its course.

By contrast, the comments do show that the Commission would have to resolve numerous issues and make fundamental changes in its existing rules before such a change could be made. The states would also have to buy into the new plan and resolve issues consistent with the Commission's plan; many of the possible benefits of a bill and keep system — simplicity, reduction of administrative burden, etc. — would be lost if there were inconsistent federal and state intercarrier compensation regimes. Before the Commission decides that it will abandon the existing per minute access charge regime in favor of a unified bill and keep regime, it would be important to understand how that will affect intrastate regulation. Will it create untenable arbitrage opportunities? Will it create inefficient regulation to prevent arbitrage? Will it force changes in other regulations? Answering the likely interaction effects of proposed changes is important to understanding the efficiency effects of proposed rule changes.

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[53] *Access Charge Reform Notice of Proposed Rulemaking*, AT&T Comments at 20, dated November 12, 1999.

[54] *CALLS Order* ¶ 35.

In addition, if LECs cannot collect $11 billion annually in interstate access charges from interexchange carriers — revenues are used to cover these carriers' costs of providing service — the Commission must provide the opportunity for LECs to recover them from other sources. These twin requirements might not be easy to achieve.

B. Don't Prescribe Access Rates.

Some of the commenting interexchange carriers argue that TELRIC or some other theoretical forward looking cost models should be the basis of any new access charge regime.[55] The Commission rejected such requests before for good reasons. First, the Commission found that "accurate forward-looking cost models are not available at the present time to determine the economic cost of providing access service" and that "[b]ecause of the existence of significant joint and common costs, the development of reliable cost models may take a year or more to complete." This is still true today. The Commission was also "concerned" that any "dramatic cuts in access charges" "could result in a substantial decrease in revenue for incumbent LECs, which could prove highly disruptive to business operations," concerns that still exist. Finally, it is still true that "precipitous action could lead to significant errors in the level of access charge reductions necessary to reach competitive levels [which] would further impede the development of competition in the local markets and disrupt existing services."[56] These conclusions were supported by substantial factual evidence and economic opinion, and nothing has occurred that should cause the Commission to change its mind.

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[55] AT&T at 16-17; WorldCom at 23.

[56] *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*, 12 FCC Rcd 15982, at ¶¶ 45-46 (1997).

The TELRIC approach is also totally inconsistent with the Commission's policy direction over the past decade to move away from cost-based regulation and its establishment of price caps as the regulatory regime for interstate access charges. As Professor Shelanski explains, "the Commission should be seeking ways to make regulation less prescriptive, and less information-intensive."[57] Indeed, the Commission has begun the process of removing price regulation as competition grows. Any rate prescription now would be an abrupt change of course and would disrupt that growth. The Commission should not make such a fundamental course change now.

Substituting TELRIC for CALLS would be the worst of both worlds. It would continue everything that is bad about the existing regime — heavy regulatory involvement, cumbersome recordkeeping and complexity. In fact, it even enlarges these evils by requiring new TELRIC-based cost studies and a system of rules that is far more complicated than that required by price caps and CALLS. At the same time, the rates this new system would produce would not provide incentives for economically efficient choices by consumers and carriers, a requirement of any pricing scheme. If there is to be an access charge system, then, those charges should generate revenues sufficient to recover the costs of the carrier's actual network, as these are the only costs that send correct price signals to the market, and not be based on the forward-looking costs of a purely hypothetical carrier that always uses throughout its network the most up-to-date technology deployed in the most efficient network configuration.[58] This is because access charges that are below costs could prevent entry by efficient facilities-based carriers because they would be competing with a firm required to charge prices below cost.

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57 Shelanski Declaration ¶ 4.

58 *Local Competition Order* at ¶¶ 679, 683-685.

TELRIC as applied by the Commission does not permit carriers to recover the costs of their networks.[59] Moreover, using TELRIC would be inappropriate even if the Commission utilized a different forward-looking cost model, such as one that is not based on the hypothetical network. Carriers spent real money over a period of years to construct the facilities used to provide access transport and switching services, and prices must be set to allow carriers to recover these real world costs. Any cost standard that ignores real costs would skew the competitive marketplace and cause inefficient behavior. For example, model-based rates would stifle competition in the access services market, as low model-based access rates would turn away potential entrants into the market. Commission action that would serve to dampen competitive entry into the access market would hardly "provide incentives for competitors to ultimately offer more of their own facilities."[60]

It was the Commission's express goal in adopting TELRIC to produce dramatically *lower* prices than would be dictated by either a measure of a carrier's actual forward looking costs or its historical costs.[61] If applied to access, such a shift would be bad policy in that it would undermine future ILEC investment and, by underpricing the existing network, it would discourage competing investment as well. Moreover, under the constitutional test set forth in *Duquesne Light Co. v. Barasch*, a new regulatory regime is unlawful if the new rates are not within the "range of reasonableness" based on the prior regime.[62] TELRIC cannot pass this test.

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59 *See* Shelanski Declaration ¶ 5.

60 Michael K. Powell, *Digital Broadband Migration Part II*, Press Conference, October 23, 2001, at 3, *available at* http://www.fcc.gov/Speeches/Powell/2001/spmkp109.html.

61 *Local Competition Order* at ¶ 706 (historical costs would require "increasing the rates for interconnection and unbundled elements").

62 488 U.S. 299 at 312 (1988).

C. Don't Adopt Bill and Keep for Access Now.

Likewise, there is virtually no support from affected parties for using bill and keep for access at this time. Local exchange carriers oppose it,[63] as do state regulators[64] and most of the interexchange carriers.[65]

As discussed above, there are fundamental differences between establishing bill and keep for local and CMRS interconnection and doing so for access. Under the current regime, long distance access is an input to service provided by the long distance carrier. Thus, local interconnection is a "reciprocal compensation relationship of termination services between carriers, whereas long-distance service is a vertical relationship in which local termination is just an input into the long-distance carrier's provision of calling services to end users. There is no reason that the economics of local interconnection should be assumed identical to those of the very different relationship inherent in long distance access."[66]

As virtually everyone recognizes, using bill and keep for access would require a fundamental restructuring of the way local telephone companies recover their costs, both at the interstate and intrastate levels. Costs that are now recovered from long distance companies through access charges would, presumably, be recovered from the local company's end user customers. These changes cannot be accomplished over night and would require the coordinated efforts of the Commission and the states.

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63 SBC at 24; USTA at 22; NECA at 17; Michigan Exchange Carrier Assoc. at 8.

64 *E.g.*, Alaska at 2; California at 6; Florida at 5 ; Iowa at 3; Maryland at 13.

65 AT&T at 47; Sprint at 22.

66 Shelanski Declaration ¶ 1.

WorldCom seems to be the only affected entity that has any interest in bill and keep for access.[67] However, WorldCom's own comments highlight some of the new issues bill and keep would raise. WorldCom proposes that if there were a shift to bill and keep for access charges that the interexchange carrier should get to choose the quality of the trunk and monitor the quality.[68] This proposal, of course, would provide incentive and ability for interexchange carriers to shift costs to LECs and to demand "Rolls Royce" quality trunks or to use inefficient trunks that benefit the interexchange carrier.

WorldCom proposes that the Commission, should it decide to adopt bill and keep for access,

> "should also adopt rules to prevent incumbent LECs from routing originating traffic over facilities other than those used by the IXC to route its terminating traffic. One such rule, as an example, could require that while IXCs determine how traffic will be routed, incumbent LECs are responsible for a pro-rata share of the costs of the facilities selected by the IXC based on the proportion of originating minutes to terminating minutes."[69]

This would place all the control in the hands of the interexchange carriers. These carriers could completely determine routing and pay only a miniscule portion of the costs if the area were one that originated a large number of calls. The interexchange carrier would have little incentive to pick a cost minimizing routing because the cost of additional capacity would be borne disproportionately by the LEC.

The Commission should reject substituting bill and keep for access charges at this time.

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67 WorldCom at 9-13.

68 WorldCom at 25-26.

69 WorldCom at 25-26.

Conclusion

The Commission should promptly deal with the issues that need immediate attention, move to adopt Verizon equitable interconnection proposal for local and CMRS traffic, and carefully work through the much larger issues raised by any wholesale change in compensation mechanisms.

Respectfully submitted,

/S/

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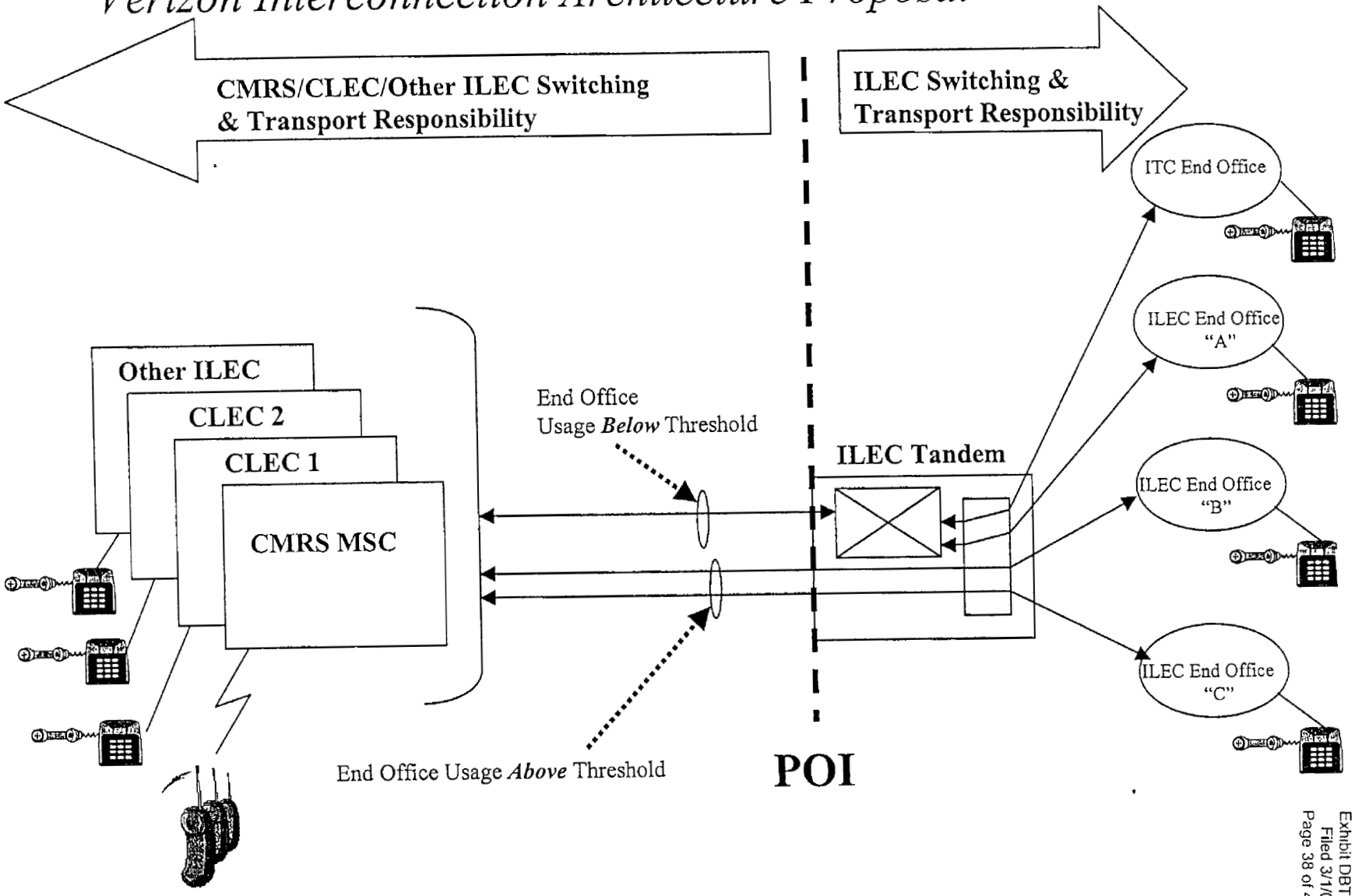
Dated: November 5, 2001

Verizon Interconnection Architecture Proposal



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

DECLARATION OF HOWARD A. SHELANSKI

Statement of Qualifications

I am Acting Professor of Law at the University of California at Berkeley. I received my B.A. from Haverford College in 1986, my J.D. from the University of California at Berkeley in 1992, and my Ph.D. in economics from the University of California at Berkeley in 1993. I have been a member of the Berkeley faculty since 1997. In 1998-2000 I was on leave from my faculty position to serve as a Senior Economist to the President's Council of Economic Advisers (1998-99) and then as Chief Economist of the Federal Communications Commission (1999-2000). I formerly practiced law in Washington, D.C. and served as a law clerk to Justice Antonin Scalia of the U.S. Supreme Court.

I teach and conduct research in the areas of telecommunications regulation, antitrust, and applied microeconomics. My recent publications include articles in the *Journal of Law, Economics and Organization*, the *Yale Journal on Regulation*, the *University of Chicago Law Review*, the *Journal of Law and Economics*, the *University of Chicago Legal Forum,* and the *Columbia Law Review*. I am co-author of the recently published legal textbook *Telecommunications Law and Policy* (Carolina Academic Press, 2001). I have served as a referee

for a number of economics journals and am an editor of the *International Review of Law and Economics*. My C.V. is attached.

Introduction

The purpose of this affidavit is not to address the comparative merits of bill and keep versus calling-party-network-pays (CPNP) rules for local interconnection. It is, instead, to argue that whatever the benefits of bill and keep or CPNP for inter-carrier compensation for local traffic, it would be bad policy to implement either in the context of access charges. The following paragraphs will discuss several reasons why the access charge regime that is currently in place should not be disturbed in favor of either bill and keep or prescribed CPNP rates.

TELRIC or Other Rate Prescription Should Not Be Applied To Access Charges

1. It is important to recognize, first, that the policy for local interconnection should not dictate the policy for inter- or intrastate access charges. Interconnection in the local (or CMRS) context involves carriers that serve distinct customers cooperating so that carrier A's cusotmers can reach carrier B's customers. Carrier A has no relationship with the customers of carrier B, and carrier B's network is irrelevant to carrier A and its customers, unless those customers happen to call subscribers to carrier B (and vice versa). Moreover, when local carriers pass traffic back and forth, they are performing equivalent termination services for each other. Long-distance access differs. While local carriers terminate calls that are handed-off to them by long-distance carriers, long-distance networks do not in turn perform reciprocal termination services for local carriers. Long-distance carriers are instead providing calling services to end users, for

which local termination constitutes an essential input. Local interconnection is thus a reciprocal relationship of termination services between carriers, whereas long-distance service is a vertical relationship in which local termination is just an input into the long-distance carrier's provision of calling services to end users. There is no reason that the economics of local interconnection should be assumed identical to those of the very different relationship inherent in long-distance access.

2. Thus, while bill and keep may have desirable properties for inter-carrier compensation for local interconnection under some circumstances, there are significant challenges to be overcome before the Commission could consider applying it to access. Access charges have traditionally been used to provide a large proportion of ILECs' revenues. Any change to a bill and keep system would therefore involve a very substantial shift of recovery to end-user prices, with attendant controversies over customer impact and universal service concerns. And, as I explain below, artificially constraining recovery would not only harm ILECs, but could deter efficient, competitive entry as well. Since intrastate access charges are regulated by the states, there is also the problem of coordinating federal and state policy with respect to access charges, so as not to create unacceptable arbitrage between state and interstate access traffic.

3. These considerations weigh in favor of maintaining access charges on a CPNP basis, at least until the issues associated with bill and keep for access can be fully addressed. In the context of CPNP, there is no reason that the access regime recently adopted by the Commission, through the CALLS and MAG plans, should be reexamined now. Ordover

and Willig nonetheless propose that access rates should be reset prescriptively and that the standard for doing so should be some measure of forward-looking cost, such as TELRIC.

4. I believe that any new prescription of access rates would at this time be bad policy. As I have already discussed, there is no set of "perfect" CPNP rates that will address the concerns raised in the NPRM. More generally, the Commission should be seeking ways to make regulation less prescriptive, and less information-intensive. The Commission adopted price caps for ILEC access charges eleven years ago, precisely because it recognized that it did not have the information necessary to prescribe specific levels for each access charge element. Instead, it designed the price cap system to protect consumers where necessary, but also to provide incentives for efficiency and to elicit information about the relative levels of specific prices. In the years since, the Commission has relaxed price cap controls in those markets where it has found sufficient competition. As competition continues to develop, the Commission may need to maintain regulatory protection in certain markets, but it should be seeking the least intrusive means for doing so. Its methods should not depend on ascertaining detailed information about cost or demand in an attempt to prescribe specific rates, but should instead focus on establishing more general constraints that will promote efficient outcomes. For access, for the present, it might mean maintaining the current price cap regime adopted under the CALLS plan only until the Commission determines that sufficient competition exists to remove the caps.

5. But even if the Commission were to prescribe rates for access – which it should not— TELRIC would not be a reasonable standard on which to base those rates. In fact, TELRIC has several important drawbacks for pricing access of any kind. Notably, TELRIC does not capture the actual costs of originating or terminating traffic. Instead, TELRIC as interpreted by the Commission captures the forward-looking costs of a hypothetical firm containing the optimal network given today's technology. TELRIC will thus likely understate the costs any real-world firm, even one that efficiently upgrades and replaces its network, actually incurs to provide access on its network. TELRIC has been extremely controversial for its reliance on the costs of an idealized, hypothetical network. The United States Court of Appeals for the Eighth Circuit rejected TELRIC because of its hypothetical nature and the case is now pending before the Supreme Court. Numerous economists have criticized the Commission's TELRIC approach on the grounds that it would systematically under-compensate carriers for use of network elements and thereby lead to poor investment incentives for ILECs and inefficient entry decisions by CLECs.

6. Whatever the ultimate legal fate of TELRIC in the courts, it is the latter economic point about efficient investment decisions that is most important for access pricing. Access prices should provide incentives for incumbents to invest efficiently in their networks and for new firms to enter the market if they could provide access more efficiently than the incumbents do. But if access prices artificially understate the incumbents' true costs, then those prices will provide inaccurate signals to new entrants and will deter entry where it in fact would be efficient. Such inaccurate price signals will flow from any regulation

that risks prescribing charges that are below the actual costs of the carriers providing network access.

7. It is important to recognize that TELRIC cannot be justified on the basis that it replicates prices found in a competitive market, which is the objective Ordover and Willig argue (at page 6 of their affidavit) the Commission should seek to achieve. As applied to date, TELRIC has modeled forward-looking costs based on a hypothetically efficient network that would not, in fact, ever be found in long-run equilibrium, even under competitive conditions. To see that TELRIC models are unlikely to have any relation to prices that result under real competition, one need only to look at the market for long-distance telephone services, which is often heralded as being vigorously competitive. The average revenue per minute for long distance carriers appears much higher than the sum of access charges and the TELRIC of providing long-distance services.[1] TELRIC is both theoretically and empirically a poor proxy for competitive market outcomes and thus fails to do what Ordover and Willig argue that a proper pricing rule should do.

8. The difficulty of supplanting the current access charge regime becomes even more complicated when existing state regulation is taken into account. Before the Commission decides that it will abandon the existing per minute access charge regime in favor of a new, unified regime for inter-carrier compensation, it would be important to understand how that will affect intrastate regulation. Will it create untenable arbitrage opportunities?

[1] According the Commission's Statistics of Common Carriers (August,2001) the average revenue per minute for interstate switched long distance services (excluding international services) is 11 cents per minute. Under the CALLS plan, interstate switched access charges are approaching 1.1 cents per minute (including both ends of a call), or about one tenth of the long distance price. See also Farrell and Hermalin at 5.

Will it create inefficient regulation to prevent arbitrage? Will it force changes in other regulations? Answering the likely interaction effects of proposed changes is important to understanding the efficiency effects of proposed rule changes. The Commission recognized this in its *Notice* where it said "any discrepancy in regulatory treatment between similar types of traffic or similar categories of parties is likely to create opportunities for regulatory arbitrage."[2] A unilateral federal movement of access charges may create arbitrage that undermines state regulatory goals and leads to ad hoc regulatory responses that, while perhaps defeating arbitrage, undermine cost recovery and possibly deter entry.

9. Given these hazards, the Commission should not extend TELRIC or other rate prescription to access charges. The current, recently adopted access charge regime should be left in place, and the Commission should avoid re-prescribing those rates in a manner that will require increased regulatory oversight, create additional uncertainty for incumbent carriers and potential entrants, and be likely to provide inefficient investment and entry decisions.

[2] Notice, para. 12.

Declaration

I, Howard Shelanski, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on November 5, 2001.

Howard A. Shelanski

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Education

University of California at Berkeley, Economics Department
Ph.D. 1993; M.A. 1989
Dissertation: "Transfer Pricing and the Organization of Intrafirm Exchange."

University of California at Berkeley, School of Law (Boalt Hall)
J.D. 1992; Order of the Coif
Senior Articles Editor, *California Law Review*

Haverford College, Pennsylvania
B.A. (history) with high honors, 1986
Phi Beta Kappa; varsity track and cross country

Current Position

University of California at Berkeley, School of Law
Acting Professor of Law. Teaching areas include antitrust law, telecommunications law, regulated industries, and contract law.

Experience

Federal Communications Commission, Washington, D.C.
Chief Economist. 1999-2000.

President's Council of Economic Advisers, Washington, D.C.
Senior Economist, responsible for issues of industrial organization, competition policy, regulation, and trade, 1998-99.

Kellogg, Huber, Hansen, Todd & Evans, Washington, D.C.
Associate, telecommunications and general litigation practice, 1995-97.

Law Clerk to Justice Antonin Scalia, United States Supreme Court, 1994–95.

Law Clerk to Judge Louis H. Pollak, U.S. District Court, Eastern District of Pennsylvania, 1993-94.

Law Clerk to Judge Stephen F. Williams, United States Court of Appeals, D.C. Circuit, 1992-93.

Other

Speak French and Spanish;
Enjoy brewing beer, outdoor sports, and travel;
Admitted to the Bar in the District of Columbia and Pennsylvania.

Research & Publications

"Robinson-Patman Act Regulation of Intraenterprise Pricing," (comment), 80 *California Law Review* 247 (1992).

(With Peter Klein) "Empirical Research in Transaction Cost Economics: A Review and Assessment," 11 *Journal of Law, Economics, & Organization* 335 (1995).

"Transaction-Level Determinants of Transfer Pricing Policy: Evidence From the High Technology Sector," working paper, U.C. Berkeley School of Law, September 1997.

"The Bending Line Between Conventional Broadcast and Wireless Carriage," 97 *Columbia Law Review* 1048 (1997).

"Video Competition and the Public Interest Debate," Mackie-Mason and Waterman (eds.), Telephony, the Internet, and the Media: Selected Papers from the 25th Annual Telecommunications Policy Research Conference (1998).

(With Peter Huber) "Administrative Creation of Property Rights to Radio Spectrum," XLI(2) *Journal of Law and Economics* 581 (October 1998).

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"The Speed Gap: Broadband Infrastructure and Electronic Commerce," 14 *Berkeley Tech. L. J.* 721 (1999).

"A Comment on Competition and Controversy in Local Telecommunications," 50 *Hastings L. J.* 1617 (2000).

"Competition and Deployment of New Technology in U.S. Telecommunications," 2000 *The U. Chicago Legal Forum* 85 (2000).

(With Greg Sidak) "Antitrust Divestiture in Network Industries," 68 *U. Chicago L. Rev.* 1 (winter 2001).

(With Stuart Benjamin and Douglas Lichtman) Telecommunications Law and Policy, Carolina Academic Press (2001).

"Pricing Access to Incumbent Telecommunications Networks: The Law and Economics of *Verizon* v. *FCC*," working paper, June 2001.

"From Sector-Specific Regulation to Antitrust Law for U.S. Telecommunications: The Prospects for Transition," working paper, July 2001.

"Regulation in an Evolving Network Industry: the Case of Broadband Communications," working paper, October 2001.