BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and petition for relief against Halo Wireless, Inc. for breaching the terms of the wireless interconnection agreement, by BellSouth Telecommunications, LLC d/b/a AT&T Florida	DOCKET NO. 110234-TP FILED: JULY 9. 2012

HALO WIRELESS, INC.'S REQUEST FOR OFFICIAL RECOGNITION

Halo Wireless, Inc. ("Halo"), pursuant to Sections 120.569(2)(i), 90.202 and 90.203, Florida Statutes, hereby requests that the Commission take official recognition of the following orders of a federal bankruptcy court and the Federal Communications Commisson, and federal regulations:

1) Memorandum Opinion, *In re Transcom Enhanced Services, LLC*, 427 B.R. 585 (Bankr. N.D. Tex. 2005).

2) Order Confirming Joint Plan of Reorganization, *In re Transcom Enhanced Services, LLC,* Document No. 386, Case No. 3:05–bk-31929–HDH–11, United States Bankruptcy Court, N.D. Texas, (Filed May 16, 2006).

3) Order Granting Transcom's Motion For Partial Summary Judgment, *Transcom Enhanced Services, Inc vs. Global Crossing Bandwidth, Inc. and Global Crossing Telecommunications, Inc.,* Document No. 39, Adversary No. 3:05–ap-06-03477-HDH, United States Bankruptcy Court, N.D. Texas, (Filed September 21, 2007).

4) Order Granting Motion to Sell, *In re Datavon, Inc. et al.*, Document No. 465, Case No. 3:02-bk-38600–SAF–11, United States Bankruptcy Court, N.D. Texas, (Filed May 29, 2003).

5) *Connect America Order*, FCC 11-161, 2011 WL 5844975, (rel. Nov. 18, 2011).

6) 47 C.F.R. §§ 1301-1319

7) 47 C.F.R. § 20.3

For the convenience of the commission, copies of the above decisions and regulations are attached hereto.

ECO 1
TEL 1
COM
APA
ECR
GCL 5
RAD
SRC
ADM
OPC
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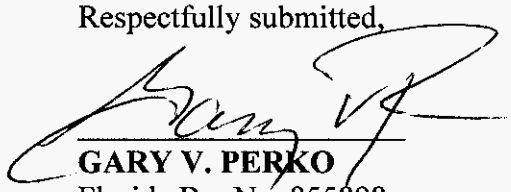
Dated this 9th day of July, 2012.

Respectfully submitted,



GARY V. PERKO
Florida Bar No. 855898
HOPPING GREEN & SAMS, P.A.
119 S. Monroe Street, Suite 300
Post Office Box 6526
Tallahassee, FL 32314
Phone: 850-425-2359
Fax: 850-224-8551

STEVEN H. THOMAS
Texas State Bar No. 19868890
TROY P. MAJOUE
Texas State Bar No. 24067738
JENNIFER M. LARSON
Texas State Bar No. 24071167
McGUIRE, CRADDOCK & STROTHER, P.C.
2501 N. Harwood, Suite 1800
Dallas TX 75201
Phone: 214.954.6800
Fax: 214.954.6850

W. SCOTT MCCOLLOUGH
Texas State Bar No. 13434100
McCOLLOUGH|HENRY PC
1250 S. Capital of Texas Hwy., Bldg. 2-235
West Lake Hills, TX 78746
Phone: 512.888.1112
Fax: 512.692.2522

Attorneys for Halo Wireless, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on the following by electronic mail and United States mail, postage prepaid, on this the 6th day of July, 2012:

Tracy Hatch
Suzanne Montgomery
150 South Monroe Street, Suite 400,
Tallahassee, Florida, 32301-1546
thatch@att.com
SM6526@att.com
Counsel for BellSouth Telecommunications, LLC d/b/a AT&T Florida

Dennis G. Friedman,
Mayer Brown LLP,
71 S. Wacker Dr.
Chicago, IL 60606
dfriedman@mayerbrown.com

Larry Harris, Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
lharris@psc.state.fl.us

Gary V. Perko

427 B.R. 585
(Cite as: 427 B.R. 585)

C

United States Bankruptcy Court,
N.D. Texas,
Dallas Division.
In re TRANSCOM ENHANCED SERVICES, LLC,
Debtor.

No. 05–31929–HDH–11.
April 29, 2005.

Background: Bankrupt telecommunications provider that had filed for Chapter 11 relief moved for leave to assume master agreement between itself and telephone company.

Holdings: The Bankruptcy Court, Harlin D. Hale, J., held that:
(1) bankruptcy court had jurisdiction, in connection with motion by bankrupt telecommunications provider to assume master agreement between itself and telephone company, to decide whether Chapter 11 debtor qualified as enhanced service provider (ESP), so as to be exempt from payment of certain access charges, and
(2) *debtor fit squarely within definition of "enhanced service provider" and was exempt from payment of access charges, as required for it to comply with terms of master agreement that it was moving to assume, and as required for court to approve this motion as proper exercise of business judgment.*

So ordered.

West Headnotes

[1] Bankruptcy 51 ⚿2048.2

51 Bankruptcy
51I In General
51I(C) Jurisdiction
51k2048 Actions or Proceedings by Trustee or Debtor
51k2048.2 k. Core or related proceedings. Most Cited Cases

Bankruptcy court had jurisdiction, in connection with motion by bankrupt telecommunications provider to assume master agreement between itself and telephone company, to decide whether Chapter 11 debtor qualified as enhanced service provider (ESP), so as to be exempt from payment of certain access charges, where debtor's status as ESP bore directly upon whether it could satisfy terms of master agreement and whether its decision to assume this agreement was proper exercise of its business judgment; forum selection clause in master agreement, while it might have validity in other contexts and require that any litigation over debtor's status as ESP take place in New York, did not deprive court of jurisdiction to decide issue bearing directly on propriety of allowing debtor to assume master agreement. 11 U.S.C.A. § 365.

[2] Bankruptcy 51 ⚿3111

51 Bankruptcy
51IX Administration
51IX(C) Debtor's Contracts and Leases
51k3110 Grounds for and Objections to Assumption, Rejection, or Assignment
51k3111 k. "Business judgment" test in general. Most Cited Cases

In deciding whether to grant debtor's motion to assume executory contract, bankruptcy court must ascertain whether or not debtor is exercising proper business judgment. 11 U.S.C.A. § 365.

[3] Bankruptcy 51 ⚿3111

51 Bankruptcy
51IX Administration
51IX(C) Debtor's Contracts and Leases
51k3110 Grounds for and Objections to Assumption, Rejection, or Assignment
51k3111 k. "Business judgment" test in general. Most Cited Cases

Telecommunications 372 ⚿866

372 Telecommunications

372III Telephones
372III(F) Telephone Service
372k854 *Competition*, Agreements and Connections Between Companies
372k866 k. Pricing, rates and access charges. Most Cited Cases

Bankrupt telecommunications provider whose communications system resulted in non-trivial changes to user-supplied information for every *communication processed fit squarely within* definition of "enhanced service provider" and was exempt from payment of access charges, as required for it to comply with terms of master agreement that it was moving to assume, and as required for court to approve this motion as proper exercise of business judgment. 11 U.S.C.A. § 365; Communications Act of 1934, § 3 (43, 46), 47 U.S.C.A. § 153(43, 46); 47 C.F.R. § 64.702(a), 69.5.

585 *MEMORANDUM OPINION

HARLIN D. HALE, Bankruptcy Judge.

On April 14, 2005, this Court considered Transcom Enhanced Services, LLC's (the "Debtor's") Motion To Assume AT & T ***586** Master Agreement MA Reference No. 120783 Pursuant To 11 U.S.C. § 365 ("Motion").[FN1] At the hearing, the Debtor, AT & T, and Southwestern Bell Telephone, L.P., et al ("SBC Telcos") appeared, offered evidence, and argued. These parties also submitted post-hearing briefs and proposed findings of fact and conclusions of law supporting their positions. This memorandum opinion constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9014. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 151, and the standing order of reference in this district. This matter is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2)(A) & (O).

> FN1. Debtor's Exhibit 1, admitted during the hearing, is a true, correct and complete copy of the Master Agreement between Debtor and AT & T.

I. Background Facts

This case was commenced by the filing of a *voluntary Bankruptcy Petition for relief under Chapter* 11 of the Bankruptcy Code on February 18, 2005. The Debtor is a wholesale provider of transmission services providing its customers an Internet Protocol ("IP") based network to transmit long-distance calls for its customers, most of which are long-distance carriers of voice and data.

In 2002, a company called DataVoN, Inc. invested in technology from Veraz Networks designed *to modify the aural signal of telephone calls and* thereby make available a wide variety of potential new services to consumers in the area of VoIP. The FCC had long supported such new technologies, and the opportunity to change the form and content of the telephone calls made it possible for DataVoN to take advantage of the FCC's exemption provided for Enhanced Service Providers ("ESP's"), significantly reducing DataVoN's cost of telecommunications service.

On September 20, 2002, DataVoN and its affiliated companies filed for protection under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, before Judge Steven A. Felsenthal. Southwestern Bell was a claimant in the DataVoN bankruptcy case. On May 19, 2003, the Debtor was formed for purposes of acquiring the operating assets of DataVoN. The Debtor was the winning bidder for the assets of DataVoN and on May 28, 2003, the bankruptcy court approved the sale of substantially all of the assets of DataVoN to the Debtor. Included in the order approving the sale, were findings by Judge Felsenthal that DataVoN provided "enhanced information services".

On July 11, 2003, AT & T and the Debtor entered into the AT & T Master Agreement MA Reference No. 120783 (the "Master Agreement"). In an addendum to the Master Agreement, executed on the same date, the Debtor states that it is an "enhanced information services" provider, providing data communications services over private IP networks (VoIP), such *VoIP services are exempt from the access charges* applicable to circuit switched interexchange calls, and such services would be provided over end user local services (such as the SBC Telcos).

AT & T is both a local-exchange carrier and a long-distance carrier of voice and data. The SBC Telcos are local exchange carriers that both originate and terminate long distance voice calls for carriers that do not have their own direct, "last mile" connections to end users. For this service, SBC Telcos charge an access charge. Enhanced service providers ("ESP's")

are exempt from paying these access charges, and the SBC Telcos had been in litigation *587 with DataVoN during its bankruptcy, and has recently been in litigation with the Debtor, AT & T and others over whether certain services they provide are entitled to this exemption to access charges.

On April 21, 2004, the FCC released an order in a declaratory proceeding between AT & T and SBC (the "AT & T Order") that found that a certain type of telephone service provided by AT & T using IP technology was not an enhanced service and was therefore not exempt from the payment of access charges. Based on the AT & T Order, before the instant bankruptcy case was filed, AT & T suspended Debtor's services under the Master Agreement on the grounds that the Debtor was in default under the Master Agreement. Importantly, the alleged default of the Debtor is not a payment default, but rather pursuant to Section 3.2 of the Master Agreement, which, according to AT & T, gives AT & T the right to immediately terminate any service that AT & T has reason to believe is being used in violation of laws or regulations.

AT & T asserts that the services that the Debtor provides over its IP network are substantially the same as were being provided by AT & T, and therefore, the Debtor is also not exempt from paying these access charges. At the point that the bankruptcy case was filed, service had been suspended by AT & T pending a determination that the Debtor is an ESP, but AT & T had not yet assessed the access charges that it asserts are owed by the Debtor.

II. Issues

The issues before the Court are:

(1) Whether the Debtor has met the requirements of § 365 in order to assume the Master Agreement; and

(2) Whether the Debtor is an enhanced service provider ("ESP"), and is thus exempt from the payment of certain access charges in compliance with the Master Agreement.[FN2]

FN2. AT & T has stated in its Objection to the Motion that since it does not object to the Debtor's assumption of the Master Agreement provided the amount of the cure payment can be worked out, the Court need not reach the issue of whether the Debtor is an ESP. However, this argument appears disingenuous to the Court. AT & T argues that the entire argument over cure amounts is a difference of about $28,000.00 that AT & T is willing to forgo for now. However, AT & T later states in its objection (and argued at the hearing):

> "To be sure, this is not the total which ultimately Transcom may owe. It is also possible that ... Transcom will owe additional amounts if it is determined that it should have been paying access charges. But at this point, AT & T has not billed for the access charges, so under the terms of the Addendum, they are not currently due.... AT & T is not requiring Transcom to provide adequate assurance of its ability to pay those charges should they be assessed, but will rely on the fact that post-assumption, these charges will be administrative claims.... Although Transcom's failure to pay access charges with respect to prepetition traffic was a breach, the Addendum requires, as a matter of contract, that those pre-petition charges be paid when billed. This contractual provision will be binding on Transcom post-assumption, and accordingly, is not the subject of a damage award now."
>
> AT & T Objection p. 3–4. As will be discussed below, in evaluating the Debtor's business judgment in approving its assumption Motion, the Court must determine whether or not its approval of the Motion will result in a potentially large administrative expense to be borne by the estate.
>
> AT & T argues against the Court's jurisdiction to determine this question as part of an assumption motion. However, the Court wonders if AT & T will make the same argument with regard to its post-assumption administrative claims it plans on asserting for past and future access charges that it states it will rely on for payment instead of asking for them to be included as cure payments under the pre-

sent Motion.

*588 III. Analysis

Under § 365(b)(1), a debtor-in-possession that has previously defaulted on an executory contract [FN3] may not assume that contract unless it: (A) cures, or provides adequate assurance that it will promptly cure, the default; (B) compensates the non-debtor party for any actual pecuniary loss resulting from the default; and (C) provides adequate assurance of future performance under such contract. *See* 11 U.S.C. § 365(b)(1).

FN3. The parties agree that the Master Agreement is an executory contract.

In its objection, briefing and arguments made at the hearing, AT & T does not object to the Debtor's assumption of the Master Agreement, provided the Debtor pays the cure amount, as determined by the Court. It does not expect the Debtor to cure any non-monetary defaults, including payment or proof of the ability to pay the access charges that have been incurred, as alleged by the SBC Telcos, as a prerequisite to assumption. *See In re BankVest Capital Corp.*, 360 F.3d 291, 300–301 (1st Cir.2004), *cert. denied*, 542 U.S. 919, 124 S.Ct. 2874, 159 L.Ed.2d 776 (2004) ("Congress meant § 365(b)(2)(D) to excuse debtors from the obligation to cure nonmonetary defaults as a condition of assumption.").

Only the Debtor offered evidence of the cure amounts due at the hearing totaling $103,262.55. Therefore, based on this record, the current outstanding balance due from Debtor to AT & T is $103,262.55 (the "Cure Amount"). Thus, upon payment of the Cure Amount Debtor's Motion should be approved by the Court, provided the Debtor can show adequate assurance of future performance.

[1][2] AT & T argues that this is where the Court's inquiry should cease. Since AT & T has suspended service under the Master Agreement, whether or not the Debtor is an ESP, and thus exempt from payment of the disputed access charges is irrelevant, because no future charges will be incurred, access or otherwise. This is because no service will be given by AT & T until the proper court makes a determination as to the Debtor's ESP status. However, in its argument, AT & T ignores the fact that part of the Court's necessary determination in approving the Debtor's motion to assume the Master Agreement is to ascertain whether or not the Debtor is exercising proper business judgment. *See In re Lifeberg Enter., Inc.*, 304 F.3d 410, 438 (5th Cir.2002); *In re Richmond Leasing Co.*, 762 F.2d 1303, 1309 (5th Cir.1985).

If by assuming the Master Agreement the Debtor would be liable for the large potential administrative claim, to which AT & T argues that it will be entitled,[FN4] or if the Debtor cannot show that it can perform under the Master Agreement, which states that the Debtor is an enhanced information services provider exempt from the access charges applicable to circuit switched interexchange calls, and the Debtor would loose money going forward under the Master Agreement should it be determined that the Debtor is not an ESP, then the Court should deny the Motion. On this record, the Debtor has established that it cannot perform under the Master Agreement, and indeed cannot continue its day-to-day operations or successfully reorganize, unless it qualifies as an Enhanced Service Provider.

FN4. See n.2 above.

AT & T and SBC Telcos argue that a forum selection clause in the Master Agreement should be enforced and that any determination as to whether the Debtor*589 is an ESP, and thus exempt from access charges, must be tried in New York. While this argument may have validity in other contexts, the Court concludes that it has jurisdiction to decide this issue as it arises in the context of a motion to assume under § 365. *See In re Mirant Corp.*, 378 F.3d 511, 518 (5th Cir.2004) (finding that district court may authorize the rejection of an executory contract for the purchase of electricity as part of a bankruptcy reorganization and that the Federal Energy Regulatory Commission did not have exclusive jurisdiction in this context); *see also, Ins. Co. of N. Am. v. NGC Settlement Trust & Asbestos Claims Mgmt. Corp. (In re Nat'l Gypsum Co.)*, 118 F.3d 1056 (5th Cir.1997) (Bankruptcy Court possessed discretion to refuse to enforce an otherwise applicable arbitration provision where enforcement would conflict with the purpose or provisions of the Bankruptcy Code).

In re Orion, which is heavily relied upon by AT & T, is inapplicable in this proceeding. *See In re Orion Pictures Corp.*, 4 F.3d 1095 (2d Cir.1993). On its face, *Orion* is distinguishable from this case in that in

Orion, the debtor sought damages in an adversary proceeding at the same time it was seeking to assume the contract in question under Section 365. The bankruptcy court decided the Debtor's request for damages as a part of the assumption proceedings awarding the Debtor substantial damages. Here, the Debtor is not seeking a recovery from AT & T under the contract which would augment the estate. Rather the Debtor is only seeking to assume the contract within the parameters of Section 365. Similar issues to the one before this Court have been advanced by another bankruptcy court in this district.

The court in *In re Lorax Corp.*, 307 B.R. 560 (Bankr.N.D.Tex.2004), succinctly pointed out that a broad reading of the Orion opinion runs counter to the statutory scheme designed by Congress. *Lorax*, 307 B.R. at 566 n. 13. The *Lorax* court noted that *Orion* should not be read to limit a bankruptcy court's authority to decide a disputed contract issue as part of hearing an assumption motion. *Id.* To hold otherwise would severely limit a bankruptcy court's inherent equitable power to oversee the debtor's attempt at reorganization and would diffuse the bankruptcy court's power among a number of courts. The *Lorax* court found such a result to be at odds with the Supreme Court's command that reorganization proceed efficiently and expeditiously. *Id.* at 567 (citing *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 376, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988)). This Court agrees. The determination of the Debtors status as an ESP is an important part of the assumption motion.

Since the Second Circuit's 1993 *Orion* opinion, the Second Circuit has further distinguished non-core and core jurisdiction proceedings involving contract disputes. In particular, if a contract dispute would have a "much more direct impact on the core administrative functions of the bankruptcy court" versus a dispute that would merely involve "augmentation of the estate," it is a core proceeding. *In re United States Lines, Inc.*, 197 F.3d 631, 638 (2d Cir.1999) (allowing the bankruptcy court to resolve disputes over major insurance policies, and recognizing that the debtor's indemnity contracts could be the most important asset of the estate). Accordingly, the Second Circuit would reach the same conclusion of core jurisdiction here since the dispute addressed by the Motion "directly affect[s]" the bankruptcy court's "core administrative function." *United States Lines*, at 639 (citations omitted).

Determination, for purposes of the motion to assume, of whether the Debtor *590 qualifies as an ESP and is exempt from paying access charges (the "ESP Issue") requires the Court to examine and take into account certain definitions under the Telecommunications Act of 1996 (the "Telecom Act"), and certain regulations and rulings of the Federal Communications Commission ("FCC"). None of the parties have demonstrated, however, that this is a matter of first impression or that any conflict exists between the Bankruptcy Code and non-Code cases. Thus, the Court may decide the ESP issues for purposes of the motion to assume.

[3] Several witnesses testified on the issues before the Court. Mr. Birdwell and the other representatives of the Debtor were credible in their testimony about the Debtor's business operations and services. **The record establishes by a preponderance of the evidence that the service provided by Debtor is distinguishable from AT & T's specific service in a number of material ways, including, but not limited to, the following:**

(a) Debtor is not an interexchange (long-distance) carrier.

(b) Debtor does not hold itself out as a long-distance carrier.

(c) Debtor has no retail long-distance customers.

(d) The efficiencies of Debtor's network result in reduced rates for its customers.

(e) Debtor's system provides its customers with enhanced capabilities.

(f) Debtor's system changes the content of every call that passes through it.

On its face, the AT & T Order is limited to AT & T and its specific services. This Court holds, therefore, that the AT & T Order does not control the determination of the ESP Issue in this case.

The term "enhanced service" is defined at 47 CFR § 67.702(a) as follows:

> For the purpose of this subpart, the term enhanced service shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.

The term "information service" is defined at 47 USC § 153(20) as follows:

> The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

Dr. Bernard Ku, who testified for SBC was a knowledgeable and impressive witness. However, during cross examination, he agreed that he was not familiar with the legal definition for enhanced service.

The definitions of "enhanced service" and "information service" differ slightly, to the point that all enhanced services are information services, but not all information services are also enhanced services. See First Report And Order, *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd 21905 (1996) at ¶ 103.

The Telecom Act defines the terms "telecommunications" and "telecommunications*591 service" in 47 USC § 153(43) and (46), respectively, as follows:

> The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, *without change in the form or content* of the information as sent and received. (emphasis added).

> The term "telecommunications service" means the offering of *telecommunications* for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. (emphasis added).

These definitions make clear that a service that routinely changes either the form or the content of the transmission would fall outside of the definition of "telecommunications" and therefore would not constitute a "telecommunications service."

Whether a service pays access charges or end user charges is determined by 47 C.F.R. § 69.5, which states in relevant part as follows:

> (a) End user charges shall be computed and assessed upon end users ... as defined in this subpart, and as provided in subpart B of this part. (b) Carrier's carrier charges [i.e., access charges] shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities *for the provision of interstate or foreign telecommunications services*, (emphasis added).

As such, only telecommunications services pay access charges. The clear reading of the above provisions leads to the conclusion that a service that routinely changes either the form or the content of the telephone call is an enhanced service and an information service, not a telecommunications service, and therefore is required to pay end user charges, not access charges.

Based on the evidence and testimony presented at the hearing, the Court finds, for purposes of the § 365 motion before it, that the Debtor's system fits squarely within the definitions of "enhanced service" and "information service," as defined above. Moreover, the Court finds that Debtor's system falls outside of the definition of "telecommunications service" because Debtor's system routinely makes non-trivial changes to user-supplied information (content) during the entirety of every communication. Such changes fall outside the scope of the operations of traditional telecommunications networks, and are not necessary for the ordinary management, control or operation of a telecommunications system or the management of a telecommunications service. As such, Debtor's service is not a "telecommunications service" subject to access charges, but rather

is an information service and an enhanced service that must pay end user charges. Judge Felsenthal made a similar finding in his order approving the sale of the assets of DataVoN to the Debtor, that DataVoN provided "enhanced information services". *See* Order Granting Motion to Sell, 02-38600-SAF-11, no. 465, entered May 29, 2003. The Debtor now uses DataVoN's assets in its business.

Because the Court has determined that the Debtor's service is an "enhanced service" not subject to the payment of access charges, the Debtor has met its burden of demonstrating adequate assurance of future performance under the Master Agreement. The Debtor has demonstrated that it is within Debtor's reasonable business judgment to assume the Master Agreement.

Regardless of the ability of the Debtor to assume this agreement, the Court cannot go further in its ruling, as the Debtor has requested to order AT & T to resume *592 providing service to the Debtor under the Master Agreement. The Court has reached the conclusions stated herein in the context of the § 365 motion before it and on the record made at the hearing. An injunction against AT & T would require an adversary proceeding, a lawsuit. Both the Debtor and AT & T are still bound by the exclusive jurisdiction provision in § 13.6 of the Master Agreement, as found by the United States District Court for the Northern District of Texas, Hon. Terry R. Means. As Judge Means ruled, any suit brought to enforce the provisions of the Master Agreement must be brought in New York.

IV. Conclusion

In conclusion, the Court finds that the provisions of 11 U.S.C. § 365 have been met in this case. Because the Court finds that the Debtor's service is an enhanced service, not subject to payment of access charges, it is therefore within Debtor's reasonable business judgment to assume the Master Agreement with AT & T.

Only the Debtor offered evidence of the cure amounts at the hearing. Based on the record at the hearing, the current outstanding balance due from Debtor to AT & T is $103,262.55. To assume the Master Agreement, the Debtor must pay this Cure Amount to AT & T within ten (10) days of the entry of the Court's order on this opinion.

A separate order will be entered consistent with this memorandum opinion.

Bkrtcy.N.D.Tex.,2005.
In re Transcom Enhanced Services, LLC
427 B.R. 585

END OF DOCUMENT

EXHIBIT 2

The following constitutes the order of the Court.

Signed May 16, 2006

Harlin DeWayne Hale
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**CASE NO. 05-31929-HDH-11**
	§	
TRANSCOM ENHANCED	§	**CHAPTER 11**
SERVICES, LLC,	§	
	§	**CONFIRMATION HEARING:**
DEBTOR.	§	**MAY 16, 2006 @ 10:00 a.m.**

ORDER CONFIRMING DEBTOR'S AND FIRST CAPITAL'S
ORIGINAL JOINT PLAN OF REORGANIZATION AS MODIFIED

Came on for consideration on May 16, 2006 the Original Joint Plan of Reorganization Proposed by Transcom Enhanced Services, LLC (the "Debtor") and First Capital Group of Texas III, L.P. ("First Capital") filed on March 31, 2006 (the "Plan"). The Debtor and First Capital are collectively referred to herein as the "Proponents." All capitalized terms not defined herein have the meanings ascribed to them in the Plan. Just prior to the confirmation hearing, the Proponents filed their Modifications to Plan which relate to the Objections to Confirmation filed by Carrollton-Farmers Branch, Dallas County, Tarrant County and Arlington ISD, as well as the

comments of the United States Trustee and the Objection to Cure Amount in Plan filed by Riverrock Systems, Ltd. ("Riverrock"). The modifications comport with Bankruptcy Code 1127. In addition to the above objections, Broadwing Communications LLC ("Broadwing") and Broadwing Communications Corporation ("BCC") (collectively "Broadwing") filed its Objection to Final Approval of Disclosure Statement and Confirmation of Plan on May 11, 2006. Similar to the objections of Riverrock and the taxing authorities, and based upon an agreement reached between the Debtor and Broadwing, Broadwing withdrew its objection and amended its ballots to accept the Plan at the confirmation hearing. The Bankruptcy Court, having considered the Disclosure Statement, the Plan, the statements of counsel, the evidence presented or proffered, the pleadings, the record in this case, and being otherwise fully advised, makes the following findings of fact and conclusions of law:

Findings of Fact

1. On February 18, 2005 (the "Petition Date"), the Debtor filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"). Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is operating its business and managing its property as debtor in possession.

2. The Debtor was formed in or around May of 2003 for the purpose of purchasing the assets of DataVon, Inc. Since then, the Debtor has continued to provide enhanced information services, including toll quality voice and data communications utilizing converged, Internet Protocol (IP) services over privately managed private IP networks. The Debtor's information services include voice processing and arranged termination utilizing voice over IP technology.

EXHIBIT 2

3. The Debtor's network is comprised of Veraz I-gate and Pro media gateways, a Veraz control switch, miscellaneous servers, routers and equipment, and leased bandwidth. The network, which is completely scalable, is currently capable of processing approximately 600 million minutes of uncompressed, wholesale IP phone calls per month. However, the number of minutes processed may be increased significantly with more efficient use of IP endpoints. The architecture of the network also provides a service creation environment for rapid deployment of new services via XML scripting capabilities and SIP interoperability.

4. Currently, the Debtor is a wholesaler of VoIP processing and termination services to domestic long distance providers. (The Debtor is in the process of expanding its service offerings to include retail services and additional IP applications). The primary asset of the Debtor is a private, nationwide VoIP network utilizing state-of-the-art media gateway and soft switch technology, connected by leased lines. Utilization of this network enables the Debtor to provide toll-quality voice services to its customers at significantly lower rates than comparable services provided by traditional carriers. In contested hearings held on or about April 14, 2005, the Debtor established that its business activities meet the definitions of "enhanced service" (47 C.F.R. § 67.702(a)) and "information service" (47 U.S.C. § 153(20)), and that the services it provides fall outside of the definitions of "telecommunications" and "telecommunications service" (47 U.S.C. § 153(43) and (46), respectively), and therefore, as this Court has previously determined, Debtor's services are not subject to access charges, but rather qualify as information services and enhanced services that must pay end user charges.

5. On March 31, 2006, the Proponents filed their Original Plan of Reorganization (the "Plan") and Disclosure Statement for Plan (the "Disclosure Statement"). On April 3, 2006, the Proponents filed their Joint Motion for Conditional Approval of Disclosure Statement (the

EXHIBIT 2

"Motion for Conditional Approval"). On April 12, 2006, and over the objections of Broadwing and EDS Information Services, L.L.C. ("EDIS"), the Court entered its order granting the Motion for Conditional Approval and conditionally approving the Disclosure Statement (the "Conditional Approval Order"). Under the Conditional Approval Order, a final hearing to consider approval of the Disclosure Statement was combined with the confirmation hearing of the Plan, which hearings were set for May 16, 2006 at 10:00 a.m. (the "Combined Hearing"). Thereafter, and in accordance with the Conditional Approval Order, the Disclosure Statement was supplemented to address the concerns raised in the objections of both Broadwing and EDIS, the Plan and Disclosure Statement was distributed to creditors, interest-holders, and other parties-in-interest.

6. On or about April 10, 2006 and May 15, 2006, the Proponents filed non-material Modifications to the Plan pursuant to Bankruptcy Code § 1127 ("Plan Modifications").

7. The objections filed by Dallas County, Tarrant County, Carrollton-Farmers Branch ISD, Arlington ISD, Riverrock and Broadwing have been withdrawn.

8. The Proponents have provided appropriate, due and adequate notice of the Combined Hearing, the Disclosure Statement and Plan Supplements and the Plan Modifications, and such notice is in compliance with Bankruptcy Code § 1127 and Bankruptcy Rules 2002, 3019, 6006 and 9014. Without limiting the foregoing, as evidenced by certificates of service related thereto on file with the Court, and based upon statements of counsel, the Proponents have complied with the notice and solicitation procedures set forth in the April 12, 2006 Conditional Approval Order. No further notice of the May 16, 2006 Combined Hearing, the Plan, the Disclosure Statement or the Plan Modifications is necessary or required.

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9. Class 1, consisting of the Pre-Petition Secured Claim on First Capital, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

10. Class 2, consisting of the Post-Petition Secured Claim on First Capital, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

11. Class 3, consisting of the Secured Claim on Redwing Equipment Partners Limited as successor-in-interest to Veraz Networks, Inc. ("Redwing"), is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

12. Class 4, consisting of the Secured Tax Claims, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

13. Class 5, consisting of General Unsecured Claims, is Impaired under the Plan and has accepted the Plan in accordance with Bankruptcy Code §§ 1126(c) and (d).

14. Classes 6 and 7 of the Plan shall receive nothing under the Plan, and are deemed to reject the Plan.

15. Confirmation of the Plan is in the best interest of the Debtor, the Debtor's Estate, the Creditors of the Estate and other parties in interest.

16. The Court finds that the Debtor has articulated good and sufficient business reasons justifying the assumption of the executory contracts and unexpired leases specifically identified in Article X of the Plan, including the Debtor's Customer Contracts under Plan Section 10.01 and Vendor Agreements under Plan Section 10.02 and specifically listed on Exhibit 1-B of the Plan. No cure payments are owed with respect to the Debtor's Customer Contracts; and the only cure payments owed with respect to the Vendor Agreements are specifically identified in

Exhibit 1-B of the Plan. No other arrearages are owed with respect to the Vendor Agreements. Unless otherwise provided in the Plan Modifications, the proposed cure amounts set forth in Section 10.02 satisfies, in all respects, Bankruptcy Code § 365. Furthermore, the Court finds that the Debtor has articulated good and sufficient business reasons justifying the rejection of all other executory contracts and unexpired leases of the Debtor.

17. The Proponents have solicited the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code.

Conclusions of Law

18. The Court has jurisdiction over this Chapter 11 Case and of the property of the Debtor and its Estate under 28 U.S.C. §§ 157 and 1334.

19. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L).

20. Good and sufficient notice of the Disclosure Statement, the Plan, solicitation thereof, the May 16, 2006 Combined Hearing and the Plan Modifications have been given in accordance with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the Northern District of Texas and the April 12, 2006 Conditional Approval Order. The Plan Modifications that were filed with the Bankruptcy Court are non-material and do not require additional disclosure or re-solicitation of Plan acceptances and/or rejections.

21. Adequate and sufficient notice of the Plan Modifications has been provided to the appropriate parties which have agreed to the modifications. Pursuant to Bankruptcy Rule 3019, the Bankruptcy Court finds that the Plan Modifications do not adversely change the treatment of the holder of any Claim under the Plan, who has not accepted in writing the Plan Modifications.

EXHIBIT 2

All Creditors who have accepted the Plan without the Plan Modifications, are deemed to accept the Plan with the Plan Modifications.

22. The Plan complies with all applicable requirements of Bankruptcy Code §§ 1122 and 1123. Furthermore, the Plan complies with the applicable requirements of Bankruptcy Code §§ 1129(a) and (b), including, but not limited to the following:

a. the Plan complies with all applicable provisions of the Bankruptcy Code;

b. the Debtor and First Capital, as Proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code;

c. the Plan has been proposed in good faith and not by any means forbidden by law;

d. any payment made or to be made by the Debtor for services or for costs and expenses in or in connection with the case, has been approved by, or will be subject to the approval of, this Court as reasonable;

e. the Plan does not contain any rate change by the Debtor which requires approval of a governmental or regulatory entity;

f. each holder of a Claim or Equity Security Interest in an Impaired Class has accepted the Plan or will receive or retain under the Plan on account of such Claim or Equity Security Interest property of a value as of the Effective Date that is no less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code as of the Effective Date;

g. Classes 1, 2, 3, 4 and 5 are Impaired under the Plan, and have accepted the Plan;

h. the Plan does not unfairly discriminate against dissenting classes;

i. the Plan is fair and equitable with respect to each class of claims or interests that is impaired, and has not accepted, the Plan;

j. the Plan provides that holders of Claims specified in Bankruptcy Code §§ 507(a)(1)-(6) receive Cash payments of value as of the Effective Date of the Plan equal to the Allowed Amount of such Claims;

k. at least one Class of Creditors that is Impaired under the Plan, not including acceptances by Insiders, has accepted the Plan;

l. confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization by the Debtor;

m. all fees payable under 28 U.S.C. § 1930, have been timely paid or the Plan provides for payment of all such fees;

n. the Debtor is not obligated for the payment of retiree benefits as defined in Bankruptcy Code § 1114.

23. All requirements of Bankruptcy Code § 365 relating to the assumption, rejection, and/or assumption and assignment of executory contracts and unexpired leases of the Debtor have been satisfied. The Debtor has demonstrated adequate assurance of future performance with regard to the assumed executory contracts and unexpired leases of the Debtor.

24. The Redwing Settlement Agreement attached as Exhibit 1-A to the Plan is fair and equitable, and approval of the Redwing Settlement Agreement is in the best interests of the Debtor and its Estate.

25. All releases of claims and causes of action against non-debtor persons or entities that are embodied within Section 15.04 of the Plan are fair, equitable, and in the best interest of the Debtor and its Estate.

26. The Proponents and their members, officers, directors, employees, agents and professionals who participated in the formulation, negotiation, solicitation, approval, and confirmation of the Plan shall be deemed to have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code with respect thereto and are entitled to the rights, benefits and protections of Bankruptcy Code §§ 1125(d) and (e).

27. The Disclosure Statement contains "adequate information" as defined in 11 U.S.C. § 1125. All creditors, equity interest holders and other parties in interest have received appropriate notice and an opportunity for a hearing of the Plan and the Disclosure Statement.

EXHIBIT 2

28. The Plan and Disclosure Statement have been transmitted to all creditors, equity interest holders and parties in interest. Notice and opportunity for hearing have been given.

29. The requirements of §1129 (a) and (b) have been met.

30. The Plan as proposed is feasible.

31. All conclusions of law made or announced by the Court on the record in connection with the May 16, 2006 Combined Hearing are incorporated herein.

32. All conclusions of law which are findings of fact shall be deemed to be findings of fact and vice versa.

It is therefore,

ORDERED that the Disclosure Statement for Original Joint Plan of Reorganization filed by the Debtor and First Capital on March 31, 2006, is hereby APPROVED; it is further

ORDERED that the Original Joint Plan of Reorganization filed by the Debtor and First Capital on March 31, 2006, as modified, is hereby CONFIRMED; it is further

ORDERED that the Debtor and First Capital are authorized to execute any and all documents necessary to effect and consummate the Plan; it is further

ORDERED that pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the assumption of the Customer Contracts, as specifically defined in Section 10.01 of the Plan, is hereby approved; it is further

ORDERED that pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the assumption of the Vendor Agreements, as specifically defined in Section 10.02 of the Plan, is hereby approved; it is further

ORDERED that unless otherwise agreed to in writing by the Reorganized Debtor and the counter-party to the Vendor Agreement, the Reorganized Debtor shall cure the arrears

specifically listed in Exhibit 1-B of the Plan by tendering six (6) equal consecutive monthly payments to the Vendor Agreement counter-party until the arrears are paid in full; it is further

ORDERED that, except for the Customer Contracts, Vendor Agreements, and executory contracts or leases that were expressly assumed by a separate order, all pre-petition executory contracts and unexpired leases to which the Debtor was a party are hereby REJECTED effective as of the Petition Date; it is further

ORDERED that pursuant to Bankruptcy Rule 9019, the Redwing Settlement Agreement is hereby APPROVED, and the Debtor may execute any and all documents required to carry out the Redwing Settlement, including, but not limited to the Redwing Settlement Agreement, and such agreement shall be in full force and effect; it is further

ORDERED that nothing contained in this Order or the Plan shall effect or control or be deemed to prejudice or impair the rights of the Debtor, the Reorganized Debtor, Veraz Networks, Inc. or Redwing with respect to the dispute over the validity or extent of any license claimed by the Debtor in 15,000 ICE or logical ports currently utilized by the Debtor in connection with the operation of its network and each of the Debtor, the Reorganized Debtor, Veraz Networks, Inc. and Redwing reserve all of their rights with respect to such issue; it is further

ORDERED that except as otherwise provided in Plan Section 15.03, First Capital, the Debtor, the Reorganized Debtor, and the Reorganized Debtor's present or former managers, directors, officers, employees, predecessors, successors, members, agents and representatives (collectively referred to herein as the "Released Party"), shall not have or incur any liability to any person for any claim, obligation, right, cause of action or liability (including, but not limited to, any claims arising out of any alleged fiduciary or other duty) whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or

EXHIBIT 2

omission, transaction or occurrence from the beginning of time through the Effective Date in any way relating to the Debtor's Chapter 11 Case or the Plan; and all claims based upon or arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Reorganized Debtor's obligations under the Plan).

*** END OF ORDER ***

PREPARED BY:

By /s/ David L. Woods (5.16.06)
J. Mark Chevallier
State Bar No. 04189170
David L. Woods
State Bar No. 24004167
MCGUIRE, CRADDOCK & STROTHER, P.C.
ATTORNEYS FOR DEBTOR and
DEBTOR-IN-POSSESSION

EXHIBIT 3

The following constitutes the ruling of the court and has the force and effect therein described.

Harlin DeWayne Hale

Signed September 20, 2007 **United States Bankruptcy Judge**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
TRANSCOM ENHANCED SERVICES, LLC,	§	**CASE NO. 05-31929-HDH-11**
	§	
DEBTOR.	§	
	§	
TRANSCOM ENHANCED SERVICES, INC.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
GLOBAL CROSSING BANDWIDTH, INC. and GLOBAL CROSSING TELECOMMUNICATIONS, INC.,	§	**ADVERSARY NO. 06-03477-HDH**
	§	
Defendants.	§	
	§	

EXHIBIT 3

GLOBAL CROSSING BANDWIDTH, INC. and GLOBAL CROSSING TELECOMMUNICATIONS, INC.,	§
Third Party Plaintiffs,	§
v.	§
TRANSCOM ENHANCED SERVICES, LLC and TRANSCOM COMMUNICATIONS, INC.,	§
Third Party Defendants.	§

ORDER GRANTING TRANSCOM'S MOTION FOR PARTIAL SUMMARY JUDGMENT BASED ON THE AFFIRMATIVE DEFENSE THAT TRANSCOM QUALIFIES AS AN ENHANCED SERVICE PROVIDER

On this date, came on for consideration the Motion For Partial Summary Judgment On Counterplaintiffs' Sole Remaining Counterclaim Based On The Affirmative Defense That Transcom Qualifies As An Enhanced Service Provider (the "Motion") filed by Transcom Enhanced Services, Inc. ("Transcom" or "Counterdefendant"), in which Transcom seeks summary judgment on the sole remaining counterclaim (the "Counterclaim") asserted by Counterplaintiffs' Global Crossing Bandwidth, Inc. ("GX Bandwidth") and Global Crossing Telecommunications, Inc. ("GX Telecommunications") (collectively, "GX Entities" or "Counterplaintiffs") based on the affirmative defense that Transcom qualifies as an enhanced service provider.

Twice previously, this Court has ruled that Transcom qualifies as an enhanced service provider, and therefore is not obligated to pay access charges, but rather must pay end user charges. In filing the motion, Transcom relied heavily on the evidence previously presented to this Court in contested hearings (the "ESP Hearings") involving the SBC Telcos (collectively, "SBC") and AT&T

Corp. ("AT&T") along with Affidavits from a principal of Transcom and one of Transcom's expert witnesses establishing that Transcom's system has not changed since the time of the ESP Hearings, that the services provided to the GX Entities by Transcom are the same as the services provided to all other Transcom customers, and that Transcom's expert witness is still of the opinion that Transcom's business operations fall within the definitions of "enhanced service provider" and "information service."

In response to the Motion, Counterplaintiffs have asserted that they neither oppose nor consent to the relief sought in the Motion. In their responses to Transcom's interrogatories, however, Counterplaintiffs asserted that Transcom did not qualify as an enhanced service provider because its service is merely an "IP-in-the-middle" service, which Transcom asserts is a reference to the FCC's Order, *In The Matter Of Petition For Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt From Access Charges,* 19 FCC Rcd 7457, Release Number FCC 04-97, released April 21, 2004 (the "AT&T Order").

During the ESP Hearings, a number of witnesses testified on the issue of whether Transcom is an enhanced service provider and therefore exempt from payment of access charges. The transcripts and exhibits from those hearings have been introduced as summary judgment evidence in support of the Motion. That record establishes by a preponderance of the evidence that the service provided by Transcom is distinguishable from AT&T's specific service (as described in the AT&T Order) in a number of material ways, including, but not limited to, the following:

(a) Transcom is not an interexchange (long distance) carrier.

(b) Transcom does not hold itself out as a long distance carrier.

(c) Transcom has no retail long distance customers.

(d) The efficiencies of Transcom's network result in reduced rates for its customers.

(e) Transcom's system provides its customers with enhanced capabilities.

(f) Transcom's system changes the content of every call that passes through it.

On its face, the AT&T Order is limited to AT&T and its specific services. This Court therefore holds again, as it did at the conclusion of the ESP hearings, that the AT&T Order does not control the determination of whether Transcom qualifies as an enhanced service provider.

The term "enhanced service" is defined at 47 C.F.R. § 67.702(a) as follows:

> For the purpose of this subpart, the term enhanced service shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.

The term "information service" is defined at 47 USC § 153(20) as follows:

> The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

The definitions of "enhanced service" and "information service" differ slightly, to the point that all enhanced services are information services, but not all information services are also enhanced services. See First Report And Order, *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, as amended, 11 FCC Rcd 21905 (1996) at ¶ 103.

The Telecom Act defines the terms "telecommunications" and "telecommunications service" in 47 USC § 153(43) and (46), respectively, as follows:

> The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, *without change in the form or content* of the information as sent and received. (emphasis added).
>
> The term "telecommunications service" means the offering of *telecommunications* for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. (emphasis added).

These definitions make clear that a service that routinely changes either the form or the content of the transmission would fall outside of the definition of "telecommunications" and therefore would not constitute a "telecommunications service."

Whether a service pays access charges or end user charges is determined by 47 C.F.R. § 69.5, which states in relevant part as follows:

> (a) End user charges shall be computed and assessed upon end users ... as defined in this subpart, and as provided in subpart B of this part. (b) Carrier's carrier charges [i.e., access charges] shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities *for the provision of interstate or foreign telecommunications services.* (emphasis added).

As such, only telecommunications services pay access charges. The clear reading of the above provisions leads to the conclusion that a service that routinely changes either the form or the content of the telephone call is an enhanced service and an information service, not a telecommunications service, and therefore is required to pay end user charges, not access charges.

Based on the summary judgment evidence, the Court finds that Transcom's system fits squarely within the definitions of "enhanced service" and "information service," as defined above. Moreover, the Court finds that Transcom's system falls outside of the definition of "telecommunications service" because Transcom's system routinely makes non-trivial changes to user-supplied information (content) during the entirety of every communication. Such changes fall outside the scope of the operations of traditional telecommunications networks, and are not

necessary for the ordinary management, control or operation of a telecommunications system or the management of a telecommunications service. As such, Transcom's service is not a "telecommunications service" subject to access charges, but rather is an information service and an enhanced service that must pay end user charges. Judge Felsenthal made a similar finding in his order approving the sale of the assets of DataVoN to Transcom, that DataVoN provided "enhanced information services." *See* Order Granting Motion to Sell, 02-38600-SAF-11, no. 465, entered May 29, 2003. Transcom now uses DataVoN's assets in its business.

In the Counterclaim, paragraph 94 makes the following assertion:

> Under the Communications Agreement, the Debtor asserted that it was an enhanced service provider. Not only did the Debtor make this assertion, it agreed to indemnify GX Telecommunications in the event that assertion proved untrue.

The Counterclaim goes on to allege that Transcom failed to pay access charges, and that Transcom is therefore liable under the indemnification provision in the governing agreement to the extent that it does not qualify as an enhanced service provider. In response to the Counterclaim, Transcom asserted the affirmative defense that it does indeed qualify as an enhanced service provider, and therefore has no liability under the indemnification provision. The Motion seeks summary judgment on that specific affirmative defense.

The Court has previously ruled, and rules again today, that Transcom qualifies as an enhanced service provider. As such, it is the opinion of the Court that the Motion should be granted.

It is therefore ORDERED that the Motion is GRANTED, and Transcom is awarded summary judgment that the GX Entities take nothing by their Counterclaim.

###END OF ORDER###

EXHIBIT 3

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EXHIBIT 4

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHAL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the order of the Court.

Signed May 28, 2003.

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**CASE NO. 02-38600-SAF-11**
	§	**(Jointly Administered)**
DATAVON, INC., et al.,	§	**CHAPTER 11**
	§	
DEBTORS.	§	
	§	

ORDER GRANTING MOTION FOR ENTRY OF ORDERS (i) AUTHORIZING AND APPROVING SALE OF SUBSTANTIALLY ALL ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, INTERESTS AND EXEMPT FROM ANY STAMP, TRANSFER, RECORDING OR SIMILAR TAX; (ii) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (iii) ESTABLISHING AUCTION DATE, RELATED DEADLINES AND BID PROCEDURES; (iv) APPROVING THE FORM AND MANNER OF SALE NOTICES; AND (v) APPROVING BREAK-UP FEES IN CONNECTION WITH THE SOLICITATION OF HIGHER OR BETTER OFFERS

Upon the motion of DataVoN, Inc. ("DataVoN"), DTVN Holdings, Inc. ("DTVN"), Zydeco Exploration, Inc. ("Zydeco"), and Video Intelligence, Inc. ("VI") (collectively, the "Debtors") dated December 31, 2002, for, among other things, entry of an order under 11 U.S.C. §§ 105(a), 363, 365 and 1146(c), and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014 (i) authorizing

and approving the sale of substantially all of the assets of the estate free and clear of liens, claims, encumbrances, interests and exempt from any stamp, transfer, recording or similar tax; (ii) authorizing the assumption and assignment of various executory contracts and unexpired leases; (iii) establishing an auction date, related deadlines and bid procedures in connection with the asset sale; (iv) approving the form and manner of sale notices to be sent to potential bidders, creditors and parties-in-interest; and (v) approving certain break-up fees in connection with the solicitation of higher or better offers for the assets (the "Sales Motion");[1] and the Court having entered on February 20, 2003 an order with respect to the Sale (i) Establishing Auction Date, Related Deadlines and Bid Procedures; (ii) Approving the Form and Manner of Sales Notices; and (iii) Approving Break-up Fees in Connection with the Solicitation of Higher or Better Offers (the "Bid Procedures Order"), that scheduled a hearing on the Sale Motion (the "Sale Hearing") and set an objection deadline with respect to the Sale; and the Sale Hearing having been commenced on April 1, 2003; and the Court having reviewed and considered the Sales Motion, the objections thereto, if any, and the arguments of counsel made and the evidence proffered or adduced at the Sale Hearing; and it appearing that the relief requested in the Sales Motion is in the best interests of the Debtors, their estates, creditors and other parties in interest; and upon the record of the Sale Hearing and in this case; and after due deliberation thereon; and good cause appearing therefore; it is hereby

FOUND AND DETERMINED THAT:[2]

1. The Court has jurisdiction over the Sales Motion pursuant to 28 U.S.C. § 1334.

---

[1] Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Sales Motion.

[2] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought in the Sales Motion are §§ 105(a), 363(b), (f), (m), and (n), 365, and 1146(c) of the United States Bankruptcy Code (11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code")) and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014.

3. As evidenced by the certificates of service and publication previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the Sales Motion, the Sale Hearing, and the Sale has been provided in accordance with Bankruptcy Code §§ 105(a), 363, 365 and 1146(c), and Fed.R.Bankr.P. 2002, 6004, 6006 and 9014 and in compliance with the Bidding Procedures Order; (ii) such notice was good and sufficient, and appropriate under the particular circumstances; and (iii) no other or further notice of the Sales Motion, the Sale Hearing, or the Sale is or shall be required.

4. As evidenced by the certificates of service and publication previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the assumption and assignment of the Assumed Contracts and the cure payments to be made therefore has been provided in accordance with Bankruptcy Code §§ 105(a) and 365 and Fed.R.Bankr.P. 9014; (ii) such notice was good and sufficient; and (iii) no other or further notice of the assumption and assignment of the Assumed Contracts is or shall be required.

5. As demonstrated by: (i) the testimony and other evidence proffered or adduced at

the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtors and the Bid Selection Committee marketed the Assets and conducted the Sale process in compliance with the Bidding Procedures Order.

6. The Debtors: (i) have full corporate power and authority to execute the Agreement and all other documents contemplated thereby, and the sale of the Assets by the Debtors has been duly and validly authorized by all necessary corporate action of the Debtors; (ii) have all of the corporate power and authority necessary to consummate the transactions contemplated by the Agreement; and (iii) have taken all corporate action necessary to authorize and approve the Agreement and the consummation by the Debtors of the transactions contemplated thereby. No consents or approvals other than those expressly provided for in the Agreement are required for the Debtors to consummate such transactions.

7. Approval of the Agreement and consummation of the Sale at this time are in the best interests of the Debtors, their estates, their creditors, and other parties in interest.

8. The Debtors have demonstrated both (i) good, sufficient, and sound business purpose and justification and (ii) compelling circumstances for the Sale pursuant to Bankruptcy Code § 363(b) prior to, and outside of, a plan of reorganization in that, among other things:

a. The Debtors and the Bid Selection Committee diligently and in good faith marketed the Assets to secure the highest and best offer therefore. Further, the Debtors and the Bid Selection Committee published a notice substantially in the form of the Sale Notice in *The Wall Street Journal.* The terms and conditions set forth in the Agreement, and the transfer to Purchaser of the Assets pursuant thereto, represent a fair and reasonable purchase price and constitute the highest and best offer obtainable for the Assets.

b. A sale of the Assets at this time to Purchaser pursuant to Bankruptcy Code § 363(b) is the only viable alternative to preserve the value of the Assets and to maximize the Debtors' estates for the benefit of all constituencies. Delaying approval of the Sale may result in Purchaser's termination of the Agreement and result in an alternative

outcome that will achieve far less value for creditors.

c. Except as otherwise provided in this Sale Order, the cash proceeds of the Sale will be distributed to the Debtors' administrative and pre-petition creditors under the terms of a confirmed liquidating Chapter 11 plan.

d. The highest and best offer received for the purchase of the Assets came from Transcom Communications, Inc. ("Transcom" or "Purchaser").

9. On March 3, 2003, the Debtors filed their Notice of Cure Amounts Under Contracts and Leases that may be Assumed and Assigned to Purchaser of Substantially All of Debtors' Assets, detailing the executory contracts that may be assumed and assigned to the successful purchaser of the Debtors' assets (the "Assumed Contracts"). The Cure Notice not only fixed the Cure Amount for each contract for any non-objecting party, but also constituted a waiver by any non-objecting party to the assumption and assignment of the various contracts to the Purchaser. The Assumed Contracts are unexpired and executory contracts within the meaning of the Bankruptcy Code. Pursuant to the Agreement, the Purchaser shall cure all monetary defaults under the Assumed Contracts as provided for in the Notice or as agreed between the parties to any Assumed Contract. There are no non-monetary defaults requiring cure. The Sale satisfies the requirements of Bankruptcy Code § 365(b). The Debtors are not required to cure any defaults of the kind described in Bankruptcy Code § 365(b)(2). The Purchaser's excellent financial health and own expertise in the telecommunications industry provide adequate assurance of future performance to all non-debtor parties to Assumed Contracts. Pursuant to Bankruptcy Code § 365(f), all restrictions on assignment in any of the Assumed Contracts are unenforceable against the Debtors and all Assumed Contracts may lawfully be assigned to the Purchaser.

10. A reasonable opportunity to object or be heard with respect to the Sale Motion

and the relief requested therein has been afforded to all interested persons and entities, including: (i) each and every holder of a "claim" (as defined in Bankruptcy Code § 101(5)) against the Debtors; (ii) each and every holder of an equity or other interest in the Debtors; (iii) each and every contractor and subcontractor that has performed any services or otherwise dealt with any of the Assets; (iv) each and every Governmental Entity with jurisdiction over the Debtors or any of the Assets; (v) each and every holder of an Encumbrance on any of the Assets; (vi) the Office of the United States Trustee for the Northern District of Texas; (vii) the Official Committee of Unsecured Creditors appointed in the Debtors' cases under the Bankruptcy Code, if any; (viii) any and all other persons and entities upon whom the Debtors are required (pursuant to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or any order of the Court) to serve notice; (ix) any and all other persons and entities upon whom Purchaser instructed Seller to serve notice; and (x) any parties who are on the list of prospective purchasers maintained by CRP.

11. The Agreement was negotiated, proposed, and entered into by the Debtors, CRP, members of the Bid Selection Committee, and Purchaser without collusion, in good faith, and from arm's-length bargaining positions. None of the Debtors, CRP, members of the Bid Selection Committee, and the Purchaser has engaged in any conduct that would cause or permit the Agreement to be avoided under Bankruptcy Code § 363(n).

12. Purchaser is a good faith purchaser under Bankruptcy Code § 363(m) and, as such, is entitled to all of the protections afforded thereby. Purchaser will be acting in good faith within the meaning of Bankruptcy Code § 363(m) in closing the transactions contemplated by the Agreement at all times after the entry of this Sale Order.

13. The consideration provided by Purchaser for the Assets pursuant to the

Agreement: (i) is fair and reasonable, (ii) is the highest and best offer for the Assets, (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other practical, available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code.

14. The Sale must be approved promptly in order to preserve the value of the Assets.

15. The transfer of the Assets to Purchaser will be a legal, valid, and effective transfer of such Assets, and will vest Purchaser with all right, title, and interest of the Debtors to such Assets free and clear of all Interests, including those: (i) that purport to give any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtors' or Purchaser's interest in such Assets, or any similar rights, or (ii) relating to taxes arising under, out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the date (the "Closing Date") of the consummation of the Agreement (the "Closing").

16. Purchaser would not have entered into the Agreement, and would not have been willing to consummate the transactions contemplated thereby, if the sale of the Assets to Purchaser were not free and clear of all Interests, or if Purchaser would, or in the future could, be liable for any of the Interests. Thus, any ruling that the sale of Assets was not free and clear of all Interests, or that Purchaser would, or in the future could, be liable for any Interests would adversely affect the Debtors, their estates, and their creditors.

17. The Debtors may sell the Assets free and clear of all Interests because, in each case, one or more of the standards set forth in Bankruptcy Code §§ 363(f)(1)-(5) has been satisfied. Those holders of Interests who did not object, or who withdrew their objections, to the Sale or the Sales Motion are deemed to have consented pursuant to Bankruptcy Code § 363(f)(2).

Those holders of Interests who did object fall within one or more of the other subsections of Bankruptcy Code § 363(f) and are adequately protected by having their Interests, if any, attach to the cash proceeds of the Sale.

18. Except with respect to the payment of the Cure Amounts and the Assumed Liabilities, the transfer of the Assets to Purchaser will not subject Purchaser, prior to the Closing Date, to any liability whatsoever with respect to the operation of the Debtors' business or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equitable subordination or successor or transferee liability.

19. The valuations placed by the Bid Selection Committee on the Purchaser's bid are fair and reasonable and reflect fair and reasonable consideration for the sale of the Assets.

20. Through DataVoN, the primary operating subsidiary, the Debtors provide enhanced information services, including toll-quality voice and data services utilizing converged, Internet protocol (IP) transmitted over private IP networks. DataVoN, Inc., the primary operating subsidiary of the Debtors is a provider of wholesale enhanced information services. DataVoN provides toll quality voice and data communications services over private IP networks (VoIP) to carrier and enterprise customers. Companies who deploy soft switch equipment on an IP network can provide high quality video, voice, and data services while retaining flexibility, scalability, and cost efficiencies. DTVN is a holding company with no operations of its own. DataVoN's information services include voice origination, voice termination, 8xx origination and termination, utilizing voice over IP technology. VI formerly provided video services. That

line of business has been withdrawn. Zydeco, once the manager of DTVN's corporate oil and gas holdings, sold most of its assets in the third quarter of 2001 and retains only nominal activity.

21. Objections to the Sales Motion were filed by Cisco Systems, Inc. and Unipoint Holdings, Inc. with respect to certain aspects of the Sales Motion. Those objections were resolved by settlement terms announced on the record as follows: (1) the "Transcom Note" as set forth in section 9.32(g) of the Agreement shall be modified to provide that the original principal amount of the note may not be less than $1,282,539 and that such principal and accrued interest, if any, may be offset only by an allowed secured claim of Transcom as set forth in a final order; (2) the interest accuring on any allowed secured claim of Transcom, if any, will be equal to and shall not exceed an offsetting interest under the Transcom Note; (3) on the Closing Date of the Sale, Transcom shall wire transfer the sum of $100,000 to Unipoint, per Unipoint's instructions, in connection with that certain Reimbursement Agreement executed by and between Unipoint and Transcom; (4) Transcom will, at Closing, pay $440,000.00, to Hughes & Luce, LLC, to be held in Hughes & Luce, L.L.P.'s IOLTA Trust Account, in trust for the payment of Cisco's administrative claim in this case in accordance with the Term Sheet by and between Cisco and the Debtors as approved by the Court in its Order dated March 26, 2003, with such funds to be wire transferred by Hughes & Luce, L.L.P., pursuant to written instructions of Cisco, no later than 72 hours after the date of Closing of the Sale; and (5) Transcom shall amend the Agreement to reflect that Transcom is not acquiring net operating losses of the Debtors. Each of the foregoing terms shall be collectively referred to hereafter as the "Settlement Terms."

22. All cash consideration paid on the date of Closing of the Sale ("Sale Proceeds") shall be delivered to Hughes & Luce, L.L.P. ("H&L") and shall be placed in H&L's IOLTA

Trust Account. In addition to the Sale Proceeds, pursuant to the Settlement Terms, $440,000.00 shall be delivered to H&L, to be disbursed to Cisco pursuant to written instructions of Cisco, no later than 72 hours after the date of Closing of the Sale. Pursuant to the terms of that certain Order approving employee stay put bonuses, $344,860.54 of the Sale Proceeds, if delivered to H&L, shall be disbursed to the DataVoN, Inc. payroll account pursuant to written instructions from DataVoN, Inc., for the purpose of funding the employee stay put bonuses. After the aforesaid disbursements to Cisco and for the employee stay put bonuses, all remaining Sale Proceeds delivered to H&L shall be held in H&L's IOLTA Trust Account until the earlier to occur of (i) Confirmation of the Plan and creation of the Liquidating Trust, at which time H&L shall transfer such remaining Sale Proceeds to the Liquidating Trust by wire transfer, pursuant to the written instructions of the Liquidating Trustee, (ii) receipt by H&L of written Order of the Court ordering disbursement of the Sale Proceeds if the Plan is not Confirmed, or (iii) June 30, 2003, and petition by H&L to the Court requesting further direction of the Court regarding disbursement of remaining Sale Proceeds.

NOW THEREFORE, IT IS HEREBY:

General Provisions

ORDERED that the Sales Motion is granted, as further described herein; it is further

ORDERED that all objections to the Sales Motion or to the relief requested therein that have not been withdrawn, waived, or settled and all reservations of rights included in any objection to the Sales Motion are hereby overruled on the merits; it is further

ORDERED that the Court's findings and conclusions stated at the Sale Hearing are incorporated herein; it is further

EXHIBIT 4

Approval of the Agreement

ORDERED that the Agreement as modified by the Settlement Terms, and all of the terms and conditions thereof, are hereby approved; it is further

ORDERED that pursuant to Bankruptcy Code § 363(b), the Debtors are authorized and directed to consummate the Sale as modified by the Settlement Terms, pursuant to and in accordance with the terms and conditions of the Agreement as modified by the Settlement Terms; it is further

ORDERED that the Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate and implement, the Agreement as modified by the Settlement Terms, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement as modified by the Settlement Terms, and to take all further actions as may be requested by Purchaser for the purpose of assigning, transferring, granting, conveying and conferring the Assets to Purchaser or as may be necessary or appropriate to the performance of the obligations as contemplated by the Agreement as modified by the Settlement Terms; it is further

ORDERED that on the Closing Date of the Sale, the Debtors and Hughes & Luce, L.L.P. ("H&L") shall (i) refund the $50,000 deposit paid by Unipoint Holdings, Inc. ("Unipoint") and held by H&L in its IOLTA trust account by wire transfer per written instructions from Unipoint, (ii) refund the $50,000 deposit paid by CNM Network Inc. ("CNM") and held by H&L in its IOLTA trust account by wire transfer per written instructions from CNM, and (iii) provided Transcom substitutes the equivalent sum on the Closing Date of the Sale, refund the $50,000

deposit paid by Transcom and Sowell and held by H&L in its IOLTA trust account by wire transfer per written instructions from Transcom; it is further

Assignment and Assumption of Assumed Contracts

ORDERED that the Debtors are hereby authorized and directed, in accordance with § 365(b) of the Bankruptcy Code: (i) to assume and assign to the Purchaser the Assumed Contracts, with the Purchaser being responsible for the cure amounts specified in Exhibit "A" attached hereto (the "Cure Amounts") and (ii) to execute and deliver to the Purchaser such assignment documents as may be necessary to sell, assign, and transfer the Assumed Contracts. The Purchaser shall provide no adequate assurance of future performance under the Assumed Contracts, other than its promise to perform pursuant to the terms and conditions of the Assumed Contracts. Pursuant to Bankruptcy Code §§ 365(a), (b), (c) and (f), the Purchaser is directed to pay the Cure Amounts on the Closing Date, within a reasonable period of time thereafter, or as agreed by the Purchaser with the non-debtor party or parties to any Assumed Contract; it is further

ORDERED that upon the closing of the Agreement in accordance with this Order, any and all defaults under the Assumed Contracts shall be deemed cured in all respects; it is further

ORDERED that all provisions limiting the assumption and/or assignment of any of the Assumed Contracts are invalid and unenforceable pursuant to Bankruptcy Code § 365(f); it is further

Transfer of Assets

ORDERED that pursuant to Bankruptcy Code §§ 105(a) and 363(f), all Assets shall be transferred to Purchaser as of the Closing Date, and all Assets shall be free and clear of all

Interests, with all such Interests to attach to the net proceeds of the Sale in the order of their priority, with the same validity, force, and effect which they now have as against the Assets, subject to any claims and defenses the Debtors may possess with respect thereto; it is further

ORDERED that except as expressly permitted or otherwise specifically provided by the Agreement as modified by the Settlement Terms or this Sale Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors holding Interests against or in the Debtors or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under, out of, in connection with, or in any way relating to the Debtors, the Assets, the operation of the Debtors' businesses prior to the Closing Date, or the transfer of the Assets to Purchaser, are hereby forever barred, estopped, and permanently enjoined from asserting against Purchaser or its successors or assigns, their property, or the Assets, such persons' or entities' Interests; it is further

ORDERED that the transfer of the Assets to Purchaser pursuant to the Agreement as modified by the Settlement Terms constitutes a legal, valid, and effective transfer of the Assets and shall vest Purchaser with all right, title, and interest of the Debtors in and to all Assets free and clear of all Interests; it is further

Additional Provisions

ORDERED that the consideration provided by Purchaser for the Assets under the Agreement as modified by the Settlement Terms shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession thereof, or the District of Columbia; it is further

EXHIBIT 4

ORDERED that the consideration provided by Purchaser for the Assets under the Agreement as modified by the Settlement Terms is fair and reasonable and may not be avoided under Bankruptcy Code § 363(n); it is further

ORDERED that on the Closing Date of the Sale, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests in the Assets, if any, as such Interests may have been recorded or may otherwise exist; it is further

ORDERED that this Sale Order (a) shall be effective as a determination that, on the Closing Date, all Interests existing as to the Debtors or the Assets prior to the Closing have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets; it is further

ORDERED that each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement; it is further

EXHIBIT 4

ORDERED that if any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Interests in the Debtors or the Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Interests which the person or entity has with respect to the Debtors or the Assets or otherwise, then (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets and (b) Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Interests in the Assets of any kind or nature whatsoever; it is further

ORDERED that Purchaser shall not have any liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Assets, other than payment of the Cure Amounts, the amounts specified in the Settlement Terms and the Assumed Liabilities and its obligations to perform under the Assumed Contracts after the Closing Date. Without limiting the generality of the foregoing, Purchaser shall not be liable for any claims against the Debtors or any of their predecessors or affiliates, and Purchaser shall not have any successor or vicarious liabilities of any kind or character whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date except as specified in the Settlement Terms; it is further

EXHIBIT 4

ORDERED that under no circumstances shall Purchaser be deemed a successor of or to the Debtors for any Interest against or in the Debtors or the Assets of any kind or nature whatsoever. The sale, transfer, assignment and delivery of the Assets shall not be subject to any Interests, and Interests of any kind or nature whatsoever shall remain with, and continue to be obligations of, the Debtors. All persons holding Interests against or in the Debtors or the Assets of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Interests against Purchaser, its successors and assigns, its properties, or the Assets with respect to any Interest of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtors, their estates, officers, directors, shareholders, or the Assets. Following the Closing Date no holder of an Interest in the Debtors shall interfere with Purchaser's title to or use and enjoyment of the Assets based on or related to such Interest, or any actions that the Debtors may take in its chapter 11 case; it is further

ORDERED that subject to, and except as otherwise provided in, the Bidding Procedures Order, any amounts that become payable by the Debtors pursuant to the Agreement or any of the documents delivered by the Debtors pursuant to or in connection with the Agreement shall (a) constitute administrative expenses of the Debtors' estate and (b) be paid by the Debtors in the time and manner as provided in the Agreement without further order of this Court; it is further

ORDERED that this Court retains jurisdiction to enforce and implement the terms and provisions of the Agreement, the Settlement Terms, and all amendments thereto, any waivers and consents thereunder, and of each of the documents executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Assets

to Purchaser, (b) resolve any disputes arising under or related to the Agreement except as otherwise provided therein, (c) interpret, implement, and enforce the provisions of this Sale Order, and (d) protect Purchaser against any Interests in the Debtors or the Assets; it is further

ORDERED that nothing contained in any plan of liquidation confirmed in these cases or in any final order of this Court confirming such plan shall conflict with or derogate from the provisions of the Agreement, the Settlement Terms, or the terms of this Sale Order; it is further

ORDERED that the transfer of the Assets pursuant to the Sale shall not subject Purchaser to any liability with respect to the operation of the Debtors' business prior to the Closing Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equitable subordination or successor or transferee liability; it is further

ORDERED that the transactions contemplated by the Agreement as modified by the Settlement Terms are undertaken by Purchaser in good faith, as that term is used in Bankruptcy Code § 363(m), and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to Purchaser, unless such authorization is duly stayed pending such appeal. Purchaser is a purchaser in good faith of the Assets and is entitled to all of the protections afforded by Bankruptcy Code § 363(m); it is further

ORDERED that the terms and provisions of the Agreement, the Settlement Terms and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, and their creditors, Purchaser, and their respective affiliates, successors

and assigns, and any affected third parties including, but not limited to, all persons asserting Interests in the Assets, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code. The terms and provisions of the Agreement and of this Sale Order likewise shall be binding on any such trustee(s); it is further

ORDERED that the failure specifically to include any particular provisions of the Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement as modified by the Settlement Terms be authorized and approved in its entirety; it is further

ORDERED that the Agreement and related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates or impair the Settlement Terms; it is further

ORDERED that the transfer of the Assets pursuant to the Sale is a transfer pursuant to Bankruptcy Code § 1146(c), and accordingly shall not be taxed under any law imposing a stamp tax or a sale, transfer, or any other similar tax; it is further

ORDERED that as provided by Fed.R.Bankr.P. 6004(g), this Sale Order shall not be stayed for 10 days after the entry of the Sale Order and shall be effective and enforceable immediately upon entry; it is further

ORDERED that the provisions of this Sale Order and the Settlement Terms recited herein are non-severable and mutually dependent; and it is further

EXHIBIT 4

ORDERED that in the event that Purchaser fails to close the Sale Agreement as modified by the Settlement Terms on or before June 2, 2003, the Debtors shall close under the next highest bid from Unipoint Holdings, Inc. reflected in its Asset Purchase Agreement of April 25, 2003 (the "Unipoint APA"). In such event, this Order and all of its findings shall be automatically effective as to Unipoint Holdings, Inc. as "Purchaser" and the Unipoint APA as the "Sale Agreement" without further hearing or order of this Court.

END OF ORDER # #

EXHIBIT 4
EXHIBIT A TO SALE ORDER

Non-Debtor Contract Party	Agreement Name/Description	Proposed Cure Amount (as of April 4, 2003)
Broadwing Communication Services, Inc.	Master Service Agreement dated February 28, 2001 as amended and supplemented; Settlement Agreement as approved by Bankruptcy Court Order dated January 28, 2003	$ 60,000.00
Campbell Road Village (Ippolito)	Gross Standard Shopping Center Lease dated May 19, 2000	$ 1,455.17
Dell Financial Services	Lease dated August 1, 2001	$ 10,238.32
Electronic Data Systems Corporation (EDS)	Sublease Agreement September 27, 2002	$ -
Gulfcoast Workstation Corp	Equipment Lease Agreement dated February 2, 2002	$ 20,000.00
Illuminet, Inc.	Connectivity Service Agreement dated October 4, 2000	$ 18,116.95
IpVerse/Nexverse	Software Licenses Agreement dated April 11, 2001	$ 746,144.25
IX-2 Networks	License Agreement for Use of Collocation Space dated March 28, 2000	$ -
Looking Glass Networks	Looking Glass Service Agreement dated December 2001	$ 1,062.00
OneStar Long Distance	Wholesale Service Agreement dated November 12, 2002	$ -
Pae Tec Communications, Inc.	Wholesale Local Service Agreement dated July 2002	$ 27,289.38
RiverRock Systems, Ltd.	Application Service Provider Agreement date May 1, 2001	$ 86,029.48
Sun Microsystems, Inc.	Sun Microsystems, Inc. Customer Agreement dated March 28, 2001	$ 27,687.33
The CIT Group	Lease Agreement dated October 16, 2001	$ 1,076.50

EXHIBIT 4
EXHIBIT A TO SALE ORDER

Focal Communications Corporation	Master Service Agreement dated June 14, 2001, as amended	As Agreed	
Transcom Communication Corporation	Master Service Agreement dated August 15, 2001, as supplemented	$	1,192,229.61
Barr Tel/ColoCentral	Master Services Agreement	$	-
C2C Fiber, Inc. n/k/a Capital Telecommunications, Inc.	Master Services Agreement dated August 31, 2001	$	-
Cytus Communication	Master Services Agreement dated December 20, 2002	$	-
ePhone Telecom, Inc.	Master Services Agreement dated April 3, 2002	$	-
Excel Telecommunications, Inc.	Master Services Agreement dated January 19, 2001	$	-
Florida Digital Network	Master Services Agreement dated September 7, 2001	$	-
Go-Comm, Inc.	Master Services Agreement dated April 1, 2002	$	-
Grande Communications Networks, Inc.	Master Services Agreement dated April 13, 2001	$	-
IDT Telecom LLC	Master Services Agreement dated February 12, 2002	$	-
IONEX Telecommunications, Inc.	Master Services Agreement dated October 28, 2002	$	-
ITC DeltaCom Communications, Inc.	Master Services Agreement dated September 25, 2002	$	-
ITXC Corporation	Master Services Agreement dated September 31, 2002	$	-
Linx Communications, Inc.	Master Services Agreement dated June 5, 2002	$	-
Macro Communications, Inc.	Master Services Agreement dated December 3, 2002	$	-

EXHIBIT 4
EXHIBIT A TO SALE ORDER

Novatel, Inc.	Reciprocal Services Agreement dated January 18, 2002	$	-
Novolink Communications, Inc.	Reciprocal Services Agreement dated January 10, 2002	$	-
Orion Telecommunications Corporation	Master Services Agreement dated August 13, 2001	$	-
TCAST Communications, Inc.	Master Services Agreement dated July 10, 2002	$	-
Telic Communications, Inc.	Master Services Agreement dated September 21, 2001	$	-
Transcom Communications, Inc.	Master Services Agreement dated February 16, 2001	$	-
TXU Communications Telecom Services Company	Master Services Agreement dated April 9, 2002	$	-
Voice Exchange, Inc.	Master Services Agreement dated May 2, 2002	$	-
Webtel Wireless, Inc.	Master Services Agreement dated July 19, 2002	$	-
WorldxChange Corporation	Master Services Agreement dated August 15, 2002	$	-
World Link Telecom, Inc.	Master Services Agreement dated October 9, 2002	$	-
XTEL	Master Services Agreement	$	-
TRC Telecom, Inc.	Master Services Agreement dated December 20, 2001	$	-
Capital Telecommunications, Inc.	Master Services Agreement dated March 19, 2001	$	-
SafeTel, Inc.	Master Services Agreement dated June 27, 2002	$	-
CT Cube LP	Master Services Agreement dated September 25, 2002	$	-

EXHIBIT 4
EXHIBIT A TO SALE ORDER

CGKC&H Rural Cellular #2	Master Services Agreement dated September 25, 2002	$	-
Dollar Phone Corporation	Master Services Agreement dated February 4, 2003	$	-
Pae Tec Communications, Inc.	Reciprocal Services Agreement dated July 15, 2002	$	-
MCI Worldcom Network Services, Inc.	Termination Services Agreement dated July 31, 2001	$	-
McGregor Bay Communications, Inc.	Agency Agreement dated March 18, 2002	$	-
Chip Greenberg Studios, Inc.	Agency Agreement dated July 25, 2002	$	-
CallNet, L.L.C.	Agency Agreement dated June 27, 2001	$	-
Barry L. Greenspan	Agency Agreement dated January 10, 2002	$	-
Brandon J. Becicka	Agency Agreement dated May 9, 2002	$	-
		$	2,191,328.99

EXHIBIT 5

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: October 27, 2011 **Released: November 18, 2011**

Comment Date on Sections XVII.A-K:	**January 18, 2012**
Reply Comment Date on Sections XVII.A-K:	**February 17, 2012**
Comment Date on Sections XVII.L-R:	**February 24, 2012**
Reply Comment Date on Sections XVII.L-R:	**March 30, 2012**

By the Commission: Chairman Genachowski and Commissioners Copps and Clyburn issuing separate statements; Commissioner McDowell approving in part, concurring in part and issuing a statement.

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EXHIBIT 5

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I. INTRODUCTION

1. Today the Commission comprehensively reforms and modernizes the universal service and intercarrier compensation systems to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation. We adopt fiscally responsible, accountable, incentive-based policies to transition these outdated systems to the Connect America Fund, ensuring fairness for consumers and addressing the communications infrastructure challenges of today and tomorrow. We use measured but firm glide paths to provide industry with certainty and sufficient time to adapt to a changed regulatory landscape, and establish a framework to distribute universal service funding in the most efficient and technologically neutral manner possible, through market-based mechanisms such as competitive bidding.

2. One of the Commission's central missions is to make "available ... to all the people of the United States ... a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."[1] For decades, the Commission and the states have administered a complex system of explicit and implicit subsidies to support voice connectivity to our most expensive to serve, most rural, and insular communities. Networks that provide only voice service, however, are no longer adequate for the country's communication needs.

3. Fixed and mobile broadband have become crucial to our nation's economic growth, global competitiveness, and civic life.[2] Businesses need broadband to attract customers and employees, job-seekers need broadband to find jobs and training, and children need broadband to get a world-class education. Broadband also helps lower the costs and improve the quality of health care, and enables people with disabilities and Americans of all income levels to participate more fully in society. Community anchor institutions, including schools and libraries, cannot achieve their critical purposes without access to robust broadband. Broadband-enabled jobs are critical to our nation's economic

[1] 47 U.S.C. § 151.

[2] *See generally* Federal Communications Commission, *Connecting America: The National Broadband Plan* (rel. Mar. 16, 2010), at xi (National Broadband Plan).

appears to be mixed.[1228] In balancing the need for a rule that covers all traffic with the technical limitations asserted in the record, we conclude that the approach most consistent with our policy objective is not to exclude the entire category of MF traffic. Such a categorical exclusion could create a disincentive to invest in IP technologies and invite additional opportunities for arbitrage. Although our rules will apply to carriers that use or pass MF signaling, we do not mandate any specific method of compliance. Carriers will have flexibility to devise their own means to pass this information in their MF signaling. Nevertheless, to the extent that a party is unable to comply with our rule as a result of technical limitations related to MF signaling in its network, it can seek a waiver for good cause shown, pursuant to section 1.3 of the Commission's rules.[1229]

717. *IP Signaling.* Consistent with the proposal in the *USF/ICC Transformation NPRM*, the rules we adopt today also apply to interconnected VoIP traffic. Failure to include interconnected VoIP traffic in our signaling rules would create a large and growing loophole as the number of interconnected VoIP lines in service continues to grow.[1230] Many commenters supported application of the proposed requirements to VoIP traffic.[1231] Therefore, VoIP service providers will be required to transmit the telephone number of the calling party for all traffic destined for the PSTN that they originate. If they are intermediate providers in a call path, they must pass, unaltered, signaling information they receive indicating the telephone number, or billing number if different, of the calling party. Because IP transmission standards and practices are rapidly changing, we refrain from mandating a specific compliance method and instead leave to service providers using different IP technologies the flexibility to determine how best to comply with this requirement.

718. In extending our call signaling rules to interconnected VoIP service providers, we acknowledge that the Commission has not classified interconnected VoIP services as "telecommunications services" or "information services." We need not resolve this issue here, for we would have authority to impose call signaling on interconnected VoIP providers even under an information service classification.[1232] This Order adopts intercarrier compensation requirements for the

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[1228] *Compare* AT&T Section XV Comments at 25 ("Multi Frequency signaling was not designed in many instances to forward originating CN or CPN data to a terminating carrier in the MF Automatic Number Identification (ANI) field. Rather, the MF ANI standards and technology were developed to provide IXCs with the data they need to bill end user customers that originate calls."); Verizon *2008 ICC/USF NPRM* Comments at 65 n.97 ("MF trunks are configured to signal ANI only on the originating end of a Feature Group D access call. . . . MF trunks do not signal ANI on non-access calls or on the terminating leg of an access call."); *with* Participating Wyoming Rural Independents Missoula Plan Comments at 17 (an exception for MF signaling relating to non-Feature Group D traffic is unnecessary, because "[c]urrent technology and methods do exist to enable carriers to identify MF signaling protocol. Thus, to allow for an unnecessary exception would exacerbate phantom traffic problems").

[1229] *See infra* para. 723; 47 C.F.R. § 1.3.

[1230] Total business and residential interconnected VoIP service connections have increased from 21.7 million in December 2008 to 31.7 million in December 2010. *See* Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition Report: Status as of December 2010*, at 2 (Oct. 2011). *See also e.g.*, Blooston Section XV Comments at 5; ITTA Section XV Comments at 3; CenturyLink Section XV Comments at 7.

[1231] Frontier Section XV Comments at 12 ("Failure to apply these rules equally to VoIP traffic would leave a gaping hole in the Commission's rules for the fastest-growing segment of traffic"); *see also* Consolidated Section XV Comments at 34-36.

[1232] *See* 47 U.S.C. §§ 151, 152, 154(i); *Comcast Corp. v. FCC*, 600 F.3d 642, 646 (D.C. Cir. 2010) (quoting *Am. Library Ass'n v. FCC*, 406 F.3d 689, 691-692 (D.C. Cir. 2005)) ("The Commission ... may exercise ancillary jurisdiction only when two conditions are satisfied: (1) the Commission's general jurisdictional grant under Title I [of the Communications Act] covers the regulated subject; and (2) the regulations are reasonably ancillary to the (continued...)

exchange of VoIP-PSTN traffic between a LEC and another carrier.[1233] Applying our call signaling rules to interconnected VoIP service providers will enable service providers terminating interconnected VoIP traffic to receive signaling information that will help prevent this traffic from terminating without compensation,[1234] contrary to the prospective intercarrier compensation regime we adopt for that traffic under section 251(b)(5). In addition, under the intercarrier compensation reform framework we adopt today, traffic terminating without compensation could create a need for recovery that shifts costs created by phantom traffic to end-user rates or the Connect America Fund, undermining the transitional role for intercarrier compensation charges established as part of that framework. Our new call signaling rules are necessary to address these concerns.

3. Prohibition of Altering or Stripping Call Information

719. In the *USF/ICC Transformation NPRM*, we also sought comment on a proposed rule that would prohibit service providers from altering or stripping relevant call information. More specifically, we proposed to require all telecommunications providers and entities providing interconnected VoIP service to pass the calling party's telephone number (or, if different, the financially responsible party's number), unaltered, to subsequent carriers in the call path.[1235] Commenters overwhelmingly supported this proposal.[1236] We believe that a prohibition on stripping or altering information in the call signaling stream serves the public interest. The prohibition should help ensure that the signaling information required by our rules reaches terminating carriers. Therefore, we adopt our proposal to prohibit stripping or altering call signaling information with the modifications discussed below.

720. In response to comments in the record, we make several clarifying changes to the text of the proposed rules in this section. First, commenters objected to the use of the undefined term "financially responsible party" in the proposed rules.[1237] We agree with the concerns and clarify that providers are required to pass the billing number (e.g., CN in SS7) if different from the calling party's number. For similar reasons, for purposes of this rule, we add the following definition of the term "intermediate provider" to the rules: "any entity that carries or processes traffic that traverses or will traverse the PSTN at any point insofar as that entity neither originates nor terminates that traffic." We find that adding this definition will eliminate potential ambiguity in the revised rule.[1238] As provided in Appendix A, we also make modest adjustments to the rules proposed in the *USF/ICC Transformation*

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Commission's effective performance of its statutorily mandated responsibilities."). Additionally, as the Commission has previously found, section 706 provides authority applicable in this context. *See generally Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905, 17968-72, paras. 117-23 (2010).

[1233] *See infra* Section XIV.

[1234] Carriers are generally prohibited from blocking calls. *See Establishing Just and Reasonable Rates for Local Exchange Carriers; Call Blocking by Carriers*, WC Docket No. 07-135, 22 FCC Rcd 11629 (2007) (*Call Blocking Declaratory Ruling*). Therefore, there may be situations where a carrier is forced to complete a call even though it is unable to bill for that call due to lack of identifying information in its signaling. *See* Core Section XV Reply at 2; *see also infra* para 973.

[1235] *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4793, App. B.

[1236] *See, e.g.*, ATA Section XV Comments at 4; Comcast Section XV Comments at 9; Leap Wireless and Cricket Section XV Comments at 8.

[1237] *See* AT&T Section XV Comments 25; Verizon Section XV Comments at 51.

[1238] *See, e.g.*, Verizon Section XV Comments at 50 (noting that the term "intermediate provider" was undefined).

no persuasive evidence that existing enforcement mechanisms and complaint processes are inadequate.[1267] We therefore decline to adopt these enforcement proposals. Parties aggrieved by violations of our phantom traffic rules have a number of options, such as filing an informal or formal complaint.[1268] In addition, the Commission has broad authority to initiate proceedings on its own motion to investigate and enforce its phantom traffic rules.[1269]

731. Some commenters suggest that the Commission impose financial responsibility on the last carrier sending traffic with incomplete billing data.[1270] Under this proposal, the terminating carrier would be allowed to charge its highest rate to the service provider delivering the phantom traffic to it. In turn, an intermediate provider would be able to charge that rate to the service provider that preceded it in the call path until ultimately the carrier that improperly labeled the traffic would be penalized.[1271]

732. We decline to adopt additional measures related to enforcement of our phantom traffic rules. Proposals to impose upstream liability or financial responsibility on carriers threaten to unfairly burden tandem transit and other intermediate providers with investigative obligations. Instead, we agree that the "responsibility – and liability – should lie with the party that failed to provide the necessary information, or that stripped the call-identifying information from the traffic before handing it off."[1272] Moreover, the phantom traffic rules we adopt herein are not intended to ensnare providers that happen to receive incomplete signaling information.[1273] Imposing upstream liability on all carriers in a call path would be likely to generate confusion and result in the unintended consequence of yielding additional phantom traffic disputes.

733. Commenters also advocated for imposition of a "penalty rate" for unidentifiable traffic or treble damages for willful and repeated action, suggesting that this approach will provide "strong

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30; USTelecom Section XV Comments at 5-6; Windstream Section XV Comments at 17-19. We address these issues in Sections XII.C.5 and XVII.N.

[1267] In response to suggestions that the Commission encourage use of the complaint process to combat phantom traffic, we reiterate that allegations of violations of our rules will be subject to the Commission's existing enforcement and complaint mechanisms. *See* CenturyLink Section XV Comments at 22; ITTA Section XV Comments at 21-22; Time Warner Cable Section XV Comments at 13-14.

[1268] *See* 47 C.F.R. § 1.711. Parties can file an informal complaint by contacting the Enforcement Bureau, which will seek to facilitate a resolution to the issue. *See* 47 C.F.R. §§ 1.716-18. Additionally, parties can avail themselves of the Commission's formal complaint process, if they were not satisfied with the outcome of their informal complaint. 47 U.S.C. § 208; 47 C.F.R. §§ 1.718, 1.720-36. Formal complaint proceedings are similar to court proceedings and are generally resolved on a written record. *See* 47 C.F.R. § 1.720. We note, under the Act, that section 208 complaints can only be brought against common carriers. *See* 47 U.S.C. § 208(a). Parties seeking relief against an interconnected VoIP provider for alleged violations of our signaling rules could seek relief against that interconnected VoIP provider's partnering or affiliated LEC. If this proves to be insufficient, the Commission could reevaluate whether a different approach is appropriate.

[1269] *See* 47 U.S.C. §§ 403, 503.

[1270] *See* Rural Associations Section XV Comments at 26-27; XO Section XV Comments at 38; NASUCA and NJ Rate Counsel Section XV Reply at 11.

[1271] *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6647-49 App. A, paras 336-42; *id.* at 6846-48 App. C, paras. 332-38.

[1272] Comcast Section XV Comments at 10.

[1273] AT&T Section XV Reply at 16; *see also* Level 3 Section XV Reply at 10; CenturyLink Section XV Reply at 20.

financial incentives to ensure compliance."[1274] We note that commenters advocating for additional enforcement measures such as financial penalties provide no sufficient reason that the Commission's existing enforcement mechanisms are inadequate to address any rule violations.[1275] We also note that a phantom traffic-specific penalty rate or other financial penalty provision would likely divert additional industry and Commission resources to disputes over the applicability and enforcement of the penalty rate. Based on the availability of the Commission's existing enforcement mechanisms, we think it is unlikely that any benefits of an additional phantom-traffic specific enforcement mechanism will outweigh its costs. Therefore, we decline to adopt a "penalty rate" or other financial punishment in connection with phantom traffic.

734. Parties also proposed that the Commission allow selective call blocking, which would permit carriers in the call path to block traffic that is unidentified or for which parties refuse to accept financial responsibility.[1276] We decline to adopt any remedy that would condone, let alone expressly permit, call blocking.[1277] The Commission has a longstanding prohibition on call blocking.[1278] In the *2007 Call Blocking Order*, the Wireline Competition Bureau emphasized that "the ubiquity and reliability of the nation's telecommunications network is of paramount importance to the explicit goals of the Communications Act of 1934, as amended" and that "Commission precedent provides that no carriers, including interexchange carriers, may block, choke, reduce or restrict traffic in any way."[1279] We find no reason to depart from this conclusion. We continue to believe that call blocking has the potential to degrade the reliability of the nation's telecommunications network.[1280] Further, as NASUCA highlights in its reply comments, call blocking ultimately harms the consumer, "whose only error may be relying on an originating carrier that does not fulfill its signaling duties."[1281]

735. *Other Proposals*. Finally, parties proposed that the Commission should impose rules surrounding the proper look-up[1282] and routing for traffic.[1283] Because these proposals are unrelated to the Commission's limited phantom traffic objectives related to signaling, and because we find little evidence

[1274] GVNW Section XV Comments at 6; *see also* Frontier Section XV Comments at 12; WGA Section XV Comments at 5.

[1275] *See supra* note 1267. Although we decline to adopt any specific enforcement mechanism related to phantom traffic and continue to believe our existing enforcement mechanisms are adequate, we will monitor this issue and, if necessary, may determine that additional measures are appropriate.

[1276] *See, e.g.*, Frontier Section XV Reply at 9; Missouri Commission Section XV Comments at 9; RNK Communications Section XV Comments at 9.

[1277] We note that at least two states currently allow for blocking of intrastate traffic in certain circumstances. *See* Missouri Commission Section XV Comments at 9; Ohio Commission Section XV Comments at 11-12.

[1278] *See Call Blocking Declaratory Ruling*, 22 FCC Rcd at 11629, 11631 paras. 1, 6; *see also Blocking Interstate Traffic in Iowa*, Memorandum Opinion and Order, 2 FCC Rcd 2692 (1987) (denying application for review of Bureau order, which required petitioners to interconnect their facilities with those of an interexchange carrier in order to permit the completion of interstate calls over certain facilities).

[1279] *Call Blocking Declaratory Ruling*, 22 FCC Rcd at 11631, para. 6.

[1280] *Id.* at 11631, para. 5 (internal citation omitted).

[1281] NASUCA and NJ Rate Counsel Section XV Reply at 11.

[1282] *See, e.g.*, CenturyLink Section XV Comments at 24.

[1283] *See, e.g.*, Aventure Section XV Comments at 7-9; Rural Associations Section XV Comments at 29-30.

745. Moreover, the subscription decisions of the called party play a significant role in determining the cost of terminating calls to that party.[1305] A consequent effect of the existing intercarrier compensation regime is that it allows carriers to shift recovery of the costs of their local networks to other providers because subscribers do not have accurate pricing signals to allow them to identify lower-cost or more efficient providers.[1306] By contrast, a bill-and-keep framework helps reveal the true cost of the network to potential subscribers by limiting carriers' ability to recover their own costs from other carriers and their customers,[1307] even as we retain beneficial policies regarding interconnection, call blocking, and geographic rate averaging.[1308]

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Based" Regulation of Mobile Termination Rates, 10 REV. OF NETWORK ECON. (2010). This means that so long as overall costs can be recovered through other charges, such as a fixed fee, the efficient termination charge is less than the carrier's incremental cost (so that retail prices, after markups, reflect underlying resource costs). *See, e.g.*, Jean-Jacques Laffont & Jean Tirole, COMPETITION IN TELECOMM., Section 2.5 (2000). Similarly, in an analysis of dynamic investment incentives, it was shown that access charges (both origination and termination) should be set below incremental cost. *See* Carlo Cambini and Tommaso Valletti, *Investments and Network Competition*, 36 RAND J. OF ECON., 446 (2005); *see also* Carlo Cambini and Tommaso Valletti, *Network Competition with Price Discrimination: 'Bill and Keep' Is Not So Bad After All*, 81 ECON. LETTERS 205 (2003).

[1305] It is the called party that chooses the carrier that will be used for originating calls from, and terminating calls to, that user.

[1306] This was made possible by virtue of the interrelationship of the tariffed access charge regime, mandatory interconnection and policies against blocking or refusing to deliver traffic and statutory requirements for nationwide averaging of long distance rates. *See, e.g.*, *CLEC Access Reform Order*, 16 FCC Rcd at 9935–36, para. 31; *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long-Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962 (*CALLS Order*), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Util. Counsel et al. v. FCC*, 265 F.3d 313 (5th Cir. 2001) (subsequent history omitted).

[1307] *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4787-88, App. C. Bill-and-keep "rewards efficient carriers and punishes inefficient ones by forcing carriers to incorporate their costs into their own retail rates – which, unlike regulated intercarrier compensation, are subject to competition." AT&T *USF/ICC Transformation NPRM* Reply at 23.

[1308] Under geographic rate averaging, long-distance providers are precluded from charging customers of an interstate service in one state a rate different from that in another state. *See* 47 U.S.C. § 254(g).

We therefore reject the contentions of some parties that the cost of completing calls to their customers from other providers' networks are being imposed on them by the customers of those other networks. *See, e.g.*, NASUCA *USF/ICC Transformation NPRM* Reply at 125; PAETEC et al. *USF/ICC Transformation NPRM* Reply at 27. To the extent that these commenters in reality are contending that both calling and called parties benefit from a call, but not to an equal degree in all cases, they have not provided evidence demonstrating the relative benefit to each party, how that should be factored in to any intercarrier compensation payment owed, nor how the benefits arising from such an approach outweigh the regulatory costs associated with its implementation. *See, e.g.*, Core *USF/ICC Transformation NPRM* Comments at 13-14; State Members *USF/ICC Transformation NPRM* Comments at 152. Some carriers contending that the calling party is the cost causer have acknowledged that, even in the face of non-payment of intercarrier compensation, "it may be self-defeating to 'turn off' a large IXC and leave one's own customers unable to place *or receive* calls carried via that long distance provider." Rural Associations Section XV Comments at 37 (emphasis added).

arrangements to the default rates specified in the tariffs.[1568] In addition, the FNPRM seeks comment on the appropriate long-term implementation framework, including whether even the transitional role for tariffing should be replaced, with carriers relying solely on interconnection agreements.[1569]

829. Notably, interconnection, and the associated intercarrier compensation, has evolved since the passage of the 1996 Act in a manner different than originally anticipated. The Act contemplated that competitive carriers would obtain reciprocal compensation arrangements with incumbent LECs by request, leading to negotiation and, if necessary, arbitration.[1570] The 1996 Act included an implementation framework in section 252, which "introduced a mechanism by which CMRS providers may compel LECs to enter into bilateral interconnection arrangements."[1571] The Act also provides specific legal standards for reciprocal compensation that states are required to apply in resolving disputes, and these statutory standards help to define the scope of the obligations in question.[1572] Section 252 also provides that parties may enter into arrangements without regard to these standards, but specifically contemplates that such arrangements would be the product of a negotiation process.[1573] Section 252 did not expressly impose the same obligations on CMRS providers, or other non-incumbent LECs, to ensure payment of the associated intercarrier compensation, however. With respect to intercarrier compensation in particular, experience has not borne out prior views presuming a limited need for regulatory protections for incumbent LECs. In particular, given mandatory interconnection and restrictions on blocking traffic, LECs have been unable to avoid terminating traffic delivered to them even absent a compensation agreement, and experience has shown that even incumbent LECs thus can be at a negotiating disadvantage in particular circumstances.

830. Consequently, the Commission found in the *T-Mobile Order*, terminating LECs had difficulty getting other carriers, such as CMRS providers, to enter into agreements for compensation for non-access traffic absent a legal compulsion for those carriers to do so.[1574] Although certain states, in response, allowed the filing of wireless termination tariffs, the Commission prohibited those on a prospective basis as inconsistent with the framework established in sections 251 and 252 of the Act.[1575] That prohibition of tariffs, standing alone, would have left incumbent LECs with no meaningful way to obtain an arrangement for the receipt of compensation from CMRS providers that complied with the relevant default requirements under the Act and Commission rules. Thus, the *T-Mobile Order* adopted section 20.11(e) of the Commission's rules, which authorizes incumbent LECs to request interconnection and requires CMRS providers to comply with "the negotiation and arbitration procedures set forth in section 252 of the Act."[1576] The *T-Mobile Order* also required CMRS providers to "negotiate in good faith" and follow the Commission's interim transport and termination pricing rules once a request for

[1568] *See supra* Section XII.C (discussion of the transition period).

[1569] *See infra* Section XVII.N (seeking comment on interconnection).

[1570] *See* 47 U.S.C. §§ 251(b)(5), 252(a).

[1571] *T-Mobile Order*, 20 FCC Rcd at 4861, para. 11.

[1572] *See* 47 U.S.C. § 251(b)(5), 252(d)(2).

[1573] 47 U.S.C. § 252(a)(1).

[1574] *T-Mobile Order*, 20 FCC Rcd at 4864, para. 15.

[1575] *T-Mobile Order*, 20 FCC Rcd at 4863-64, para. 14.

[1576] *T-Mobile Order*, 20 FCC Rcd at 4863-65, paras. 14-16. *See also* 47 C.F.R. § 20.11(e).

the Act.[1594] Ancillary jurisdiction may be employed, at the Commission's discretion, when two conditions are satisfied: "(1) the Commission's general jurisdictional grant under Title I of the Act covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities."[1595] Both incumbent LECs and CMRS providers are telecommunications carriers, over which we have clear jurisdiction. Further, to meaningfully implement intercarrier compensation requirements established pursuant to sections 201, 332, and 251(b)(5) against the backdrop of mandatory interconnection and prohibitions on blocking traffic under sections 201 and 251(a)(1), it was appropriate for the *T-Mobile Order* to impose requirements on CMRS providers beyond those expressly covered by the language of section 252.

838. As discussed above, pursuant to the authority of sections 201 and 332, the Commission required interconnected LECs and CMRS providers to pay mutual compensation for the non-access traffic that they exchange.[1596] Even if sections 201 and 332 were not viewed as providing direct authority to require that CMRS providers negotiate interconnection agreements with incumbents LECs for the exchange of non-access traffic under the section 252 framework, such action clearly is reasonably ancillary to the Commission's authority under those provisions, including the associated requirement to pay mutual compensation. Likewise, although section 251(b)(5) does not itself require CMRS providers to enter reciprocal compensation arrangements, the Commission brought intraMTA LEC-CMRS traffic within that framework.[1597] CMRS providers received certain benefits from this regime,[1598] and the Commission likewise anticipated that they would enter agreements under which they would both "receive reciprocal compensation for terminating certain traffic that originates on the networks of other carriers, and . . . pay such compensation for certain traffic that they transmit and terminate to other carriers."[1599] Further, when carriers are indirectly interconnected pursuant to section 251(a)(1), as is often the case for LECs and CMRS providers, the carriers' interconnection arrangements can be relevant to addressing the appropriate reciprocal compensation, as the Commission recently recognized.[1600]

839. Given that the Commission prohibited tariffing of wireless termination charges for non-access traffic on a prospective basis, LECs needed to enter into agreements with CMRS providers providing for compensation under those regimes. Because LEC-CMRS interconnection is compelled by section 251(a)(1) of the Act, and section 201 of the Act also generally restricts carriers from blocking

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[1594] *See, e.g.*, SBC Opposition, CC Docket No. 01-92 (filed June 30, 2005) (citing the Commission's "authority under 47 U.S.C. § 154(i) to 'make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions'").

[1595] *Comcast Corp. v. FCC*, 600 F.3d 642, 646 (D.C. Cir. 2010) quoting *Am. Library Ass'n v. FCC*, 406 F.3d 689, 691-692 (D.C. Cir. 2005).

[1596] *See supra* para. 834.

[1597] *See infra* Section XV.

[1598] *See, e.g., Local Competition First Report and Order*, 11 FCC Rcd at 16016, para. 1042 ("We therefore conclude that section 251(b)(5) prohibits charges such as those some incumbent LECs currently impose on CMRS providers for LEC-originated traffic. As of the effective date of this Order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge.").

[1599] *See, e.g., Local Competition First Report and Order*, 11 FCC Rcd at 16018, para. 1045.

[1600] *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended, et al.*, WC Docket No. 10-143, CC Docket No. 01-92, GN Docket No. 09-51, Declaratory Ruling, 26 FCC Rcd 8259, 8270, para. 21 (2011) (*Interconnection Clarification Order*).

traffic,[1601] experience revealed that incumbent LECs would have limited practical ability to ensure that CMRS providers negotiated and entered such agreements because they could not avoid terminating the traffic even in the absence of an agreement to pay compensation. To ensure that the balance of regulatory benefits intended for each party under the LEC-CMRS interconnection and compensation regimes was not frustrated, it was necessary for the Commission to establish a mechanism by which incumbent LECs could request interconnection, and associated compensation, from CMRS providers, and ensure that those providers would negotiate those agreements, subject to an appropriate regulatory backstop. Thus, the Commission's section 4(i) authority also supports the *T-Mobile Order* requirement that CMRS providers negotiate interconnection agreements with incumbent LECs in good faith under the section 252 framework.

(ii) Consistency with the Communications Act and the Administrative Procedures Act

840. In response to the concerns of some Petitioners, we clarify that the negotiation and arbitration requirements adopted for CMRS providers in the *T-Mobile Order* did not impose section 251(c) on CMRS providers.[1602] As commenters observe, with one exception, the requirements of section 251(c) expressly apply to incumbent LECs, and nothing in the *T-Mobile Order* attempts to extend those statutory requirements to CMRS providers.[1603] Nor does the reference to "interconnection" in section 20.11(e) of the Commission's rules apply to CMRS providers the statutory interconnection obligations governing incumbent LECs under section 251(c)(2).[1604] As the *T-Mobile Order* makes clear, the primary focus of that rule is to provide a mechanism to implement mutual compensation for non-access traffic between incumbent LECs and CMRS providers.[1605] However, the Commission's mutual compensation rules were adopted in the context of addressing LEC-CMRS interconnection, against a backdrop where "interconnection" regulations were understood to encompass not only the physical connection of networks, but also the associated intercarrier compensation.[1606] In addition, as the Commission recently

[1601] Although the Commission's prohibitions on blocking under section 201 generally apply to interstate traffic, *see, e.g., Call Blocking Declaratory Ruling*, 22 FCC Rcd 11629, given LECs' indirect interconnection with CMRS providers, and the fact that CMRS providers' telephone numbers are not tied to particular geographic locations, it is unclear that a LEC that undertook to block intrastate CMRS traffic could avoid blocking interstate traffic.

[1602] *See generally* AAPC Petition at 4; RCA Petition at 2, 5-6, 8-11. *But see, e.g.*, MetroPCS Communications Petition for Limited Clarification or Partial Reconsideration, CC Docket No. 01-92 at 2 n.8 (filed Apr. 29, 2005) (MetroPCS Petition) ("The *Order* was not intended to impose upon other CMRS carriers the panoply of duties under Section 251(c) of the Act - - e.g., the duty to provide direct interconnection under § 251(c)(2), the duty to provide unbundled access under § 251(c)(3), the duty to offer resale under § 251(c)(4), the duty to provide notice of changes under § 251(c)(4) or the duty to allow collocation under § 251(c)(5)."); T-Mobile Opposition and Comments, CC Docket No. 01-92 at 5 (filed June 30, 2005) ("T-Mobile does not read the *WTT Order* as having imposed interconnection obligations on CMRS providers pursuant to the Commission's authority to implement Section 251(c) of the Communications Act.").

[1603] *See, e.g.*, AllTel Opposition, CC Docket No. 01-92, at 2-3 (filed June 30, 2005); Leap Comments, CC Docket No. 01-92 at 4 (filed June 30, 2005). Section 251(c)(1) also requires "requesting telecommunications carriers . . . to negotiate in good faith the terms and conditions of" interconnection agreements. 47 U.S.C. § 251(c)(1).

[1604] *See, e.g.*, RCA Petition at 3, 5-6, 9.

[1605] *See, e.g., T-Mobile Order*, 20 FCC Rcd at 4864-65, 15-16.

[1606] *See supra* para 835. We thus conclude that the definition of "interconnection" in section 51.5 of the Commission's rules is not dispositive of the interpretation of that term here. *See, e.g.*, RCA Petition at 4 (citing the definition of "interconnection" in 47 C.F.R. § 51.5, which is focused on "the linking of two networks" and excluding "transport and termination of traffic"). This rule was codified in Part 20, not Part 51.

251(b)(5).[1635] Under a bill-and-keep methodology, carriers still will need to address issues such as the "edge" for defining the scope of bill-and-keep, subject to arbitration where they cannot reach agreement.[1636] These issues do not lend themselves well to one-size-fits-all approaches as would be required under a tariffing regime. Imposing a duty to negotiate, subject to arbitration, will negate the need for Commission intervention in this context and will facilitate more market-based solutions.[1637] Because we also maintain our existing requirements regarding interconnection and prohibitions on blocking traffic, our experience suggests that carriers under no legal compulsion to come to the table may have no incentive to do so, thus frustrating the efforts of interconnected carriers to resolve open questions. The section 252 framework—already in place in other contexts under the terms of the Act—may be a reasonable mechanism to use to address these situations.

XIII. RECOVERY MECHANISM

A. Introduction

847. In this section, we adopt a transitional recovery mechanism to facilitate incumbent LECs' gradual transition away from ICC revenues reduced as part of this Order. This mechanism allows LECs to recover ICC revenues reduced as part of our intercarrier compensation reforms, up to a defined baseline, from alternate revenue sources: incremental, and limited increases in end user rates and, where appropriate, universal service support through the Connect America Fund. The recovery mechanism is limited in time and carefully balances the benefits of certainty and a gradual transition with our goal of keeping the federal universal service fund on a budget and minimizing the overall burden on end users.

848. The recovery mechanism is not 100 percent revenue-neutral relative to today's revenues, but it eliminates much of the uncertainty carriers face under the existing ICC system, allowing them to make investment decisions based on a full understanding of their revenues from ICC for the next several years. Absent reform, price cap and rate-of-return carriers alike face an increasingly unpredictable revenue stream from ICC, which will only get worse as demand for traditional telephone service continues to decline. For price cap carriers, under the current system, access rates remain constant as demand declines, so declining MOUs have led to rapid and significant revenue declines. Rate-of-return carriers are experiencing similar declines in intrastate access revenues, because most states do not perform regular true ups of intrastate access rates to reflect declining demand. And while rate-of-return carriers' interstate access rates do increase today as demand declines, in theory holding their interstate access revenues constant, in practice the rapid decline in demand has caused large rate increases that incent other communications providers to develop and use access avoidance schemes.[1638] Such schemes, along with phantom traffic, uncertainty about payment for VoIP, and resulting litigation, have placed significant additional strain on the reliability of intercarrier compensation as a revenue stream for all types

[1635] *See supra* XV. We hold above that the mutual compensation owed for purposes of section 20.11 of the Commission's rules is coextensive with the reciprocal compensation requirements between LECs and CMRS providers, and we also adopt bill-and-keep as the default reciprocal compensation arrangement in this context. *See supra* XV.C. For convenience, this discussion uses the phrases "mutual compensation" and "reciprocal compensation" interchangeably, without prejudging the appropriate compensation level prior to this Order.

[1636] *See supra* Sections XII.A and XV.

[1637] *See, e.g.*, RNK Communications Section XV Comments at 8 (citing benefits that can arise from a framework that allows parties to negotiate mutually agreeable outcomes, rather than all parties being categorically bound to a single regime); Verizon Section XV Comments at 13-14 (same); Bandwidth.com Reply at 11, 15-17 (same).

[1638] *See, e.g.*, Letter from Jerry Weikle, ERTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, 07-135, 05-337, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 1, 3 (filed July 8, 2011) (ERTA July 8, 2011 *Ex Parte* Letter)(describing arbitrage concerns with respect to Halo Wireless).

compensation reforms.[1867] The jurisdictional separations process, which has been frozen for some time, is currently the subject of a referral to the Separations Joint Board.[1868] Any carrier seeking additional recovery will be required to conduct a separations study to demonstrate the current use of its facilities. Although this is a burdensome requirement, it is not unduly so given the importance of protecting consumers and the universal service fund.

XIV. INTERCARRIER COMPENSATION FOR VOIP TRAFFIC

933. Under the new intercarrier compensation regime, all traffic—including VoIP-PSTN traffic—ultimately will be subject to a bill-and-keep framework. As part of our transition to that end point, we adopt a prospective intercarrier compensation framework for VoIP traffic. In particular, we address the prospective treatment of VoIP-PSTN traffic by adopting a transitional compensation framework for such traffic proposed by commenters in the record.[1869] Under this transitional framework:

- We bring all VoIP-PSTN traffic within the section 251(b)(5) framework;
- Default intercarrier compensation rates for toll VoIP-PSTN traffic are equal to interstate access rates;
- Default intercarrier compensation rates for other VoIP-PSTN traffic are the otherwise-applicable reciprocal compensation rates; and
- Carriers may tariff these default charges for toll VoIP-PSTN traffic in the absence of an agreement for different intercarrier compensation.

We also make clear providers' ability to use existing section 251(c)(2) interconnection arrangements to exchange VoIP-PSTN traffic pursuant to compensation addressed in the providers' interconnection agreement, and address the application of Commission policies regarding call blocking in this context.

934. Although we adopt an approach similar to that proposed by some commenters, our approach to adopting and implementing this framework differs in certain respects. For one, we are not persuaded on this record that all VoIP-PSTN traffic must be subject exclusively to federal regulation, and as a result, to adopt this prospective regime we rely on our general authority to specify a transition to bill-and-keep for section 251(b)(5) traffic.[1870] As a result, tariffing of charges for toll VoIP-PSTN traffic can occur through both federal and state tariffs.[1871] In addition, given the recognized concerns with the use of telephone numbers and other call detail information to establish the geographic end-points of a call, we decline to mandate their use in that regard, as proposed by some commenters.[1872] We do, however, recognize concerns regarding providers' ability to distinguish VoIP-PSTN traffic from other traffic, and,

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[1867] *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4730, para. 563. *See also, e.g., 2008 Order and USF/ICC FNPRM*, 24 FCC Rcd at 6632, App. A, para. 304 (seeking comment on an approach that would refer certain recovery questions to the Separations Joint Board give the cross-jurisdictional implications of the possible approach to recovery).

[1868] *See, e.g., Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 26 FCC Rcd 7133 (2011)

[1869] ABC Plan, Attach. 1 at 10; Joint Letter at 3; NCTA July 29, 2011 *Ex Parte* Letter at 2; New York PSC *August 3 PN* Comments at 18-19; TCA *August 3 PN* Comments at 10-11.

[1870] *See infra* paras. 954-955..

[1871] *See infra* paras. 961-963.

[1872] *See infra* para. 962.

leverage.[2008] These concerns arise in part based on the variations in size and make-up of the customers of different networks, and in part based on certain underlying legal requirements, including the general policy against blocking traffic and the lack of a statutory compulsion for certain entities to enter interconnection agreements.[2009]

967. Our transitional regime for VoIP-PSTN intercarrier compensation accommodates these disparities in several ways. For one, the ability to tariff these charges ensures that LECs have the opportunity to obtain the intercarrier compensation provided for by our rules. In addition, the section 252 framework applicable to interconnection agreements provides procedural protections. For example, it provides carriers the opportunity, outside the tariffing framework, to specify a mutually-agreeable approach for determining the amount of traffic that is VoIP-PSTN traffic.[2010] To this end, carriers could include an alternative approach in a state-approved SGAT or negotiate such an approach as part of an interconnection agreement. To the extent that the parties pursue a negotiated agreement but cannot agree upon the particular means of determining the amount of traffic that is VoIP-PSTN traffic, this can be subject to arbitration. Although most incumbent LECs are subject to this duty by virtue of the Act, while other carriers, such as competitive LECs, are not,[2011] we note that the Commission's rules already

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[2008] *See, e.g.*, Cox Section XV Reply at 5 n.10; Nebraska Rural Independent Companies Section XV Reply at 16-17; PAETEC *et al.* Section XV Reply at 18-19.

[2009] *See, e.g.*, NECA *et al.* Section XV Comments at 30; Cox Section XV Reply at 5 n.10; Nebraska Rural Independent Companies Section XV Reply at 16-17; PAETEC *et al.* Section XV Reply at 18-19; XO *USF/ICC Transformation NPRM* Comments at 27. For example, IXCs, which pay access charges today, are not compelled to negotiate interconnection agreements subject to state arbitration under the terms of section 252 of the Act. *See* 47 U.S.C. § 252.

[2010] The record reveals a variety of alternatives for how providers might identify such traffic, including some in place in arrangements between particular providers today. For example, XO reports that, pursuant to some agreements addressing intercarrier compensation for VoIP traffic, it uses the JIP field on the call record to identify VoIP traffic. XO Section XV Comments at 33. *See also* Vonage Section XV Comments at 13-14 (noting possibility of including an indicator in signaling or billing information to identify VoIP traffic); *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4743-44, para. 133 n.384 (noting Level 3's proposal to use "the Originating Line Information (OLI), also known as ANI II, SS7 call set-up parameter to identify IP-enabled services traffic"). Alternatively, commenters also identify the potential to use factors or ratios—much as is done for jurisdictional purposes today—as a means of identifying the portion of overall traffic that is (or reasonably is considered to be) VoIP-PSTN traffic. *See, e.g.*, XO Section XV Comments at 33 (observing that factors could be used to indicate the percentage of terminated traffic that is VoIP, much as is done in the industry for jurisdictional purposes today); Verizon Section XV Reply at 24 (citing "standard and reliable traffic factoring methods already used today for intercarrier compensation billing purposes" as well as "certifications" and "audits"); Comcast Section XV Reply at 11 (providers could certify the percentage of traffic that is VoIP, subject to auditing). To the extent that these approaches would not identify all variations in traffic in real time, *see* Cox Section XV Reply at 3-4, the record does not demonstrate this to be a more significant issue in the case of identification of VoIP-PSTN traffic than it would be with respect to the identification of the jurisdiction of traffic today. Further, to the extent that some commenters are concerned about the burden of implementing particular approaches, *see, e.g.*, Time Warner Comments at 16, they are free to negotiate alternatives that they view as less burdensome. *See, e.g.*, Vonage Section XV Reply at 14 (observing that although "[t]o date, there has not been a business, regulatory or other reason to justify developing a universal method for identifying VoIP traffic," the industry likely will be able to identify "viable solutions that would make the identification of VoIP traffic relatively easy without requiring onerous or costly billing system changes" once it undertakes to do so).

[2011] *See, e.g., Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended et al.*, WC Docket No. 10-143, GN Docket No. 09-51, CC Docket No. 01-92, Declaratory Ruling, 26 FCC Rcd 8259 (2011); 47 U.S.C. § 252 (expressly addressing only state arbitration of interconnection agreements involving incumbent LECs).

compensation arrangements for this traffic through interconnection agreements, and to define the scope of charges by mutual agreement or, if relevant, arbitration.

d. Other Issues

(i) Interconnection and Traffic Exchange

972. *Use of Section 251(c)(2) Interconnection Arrangements.* Although we bring all VoIP-PSTN traffic within section 251(b)(5), and permit compensation for such arrangements to be addressed through interconnection agreements, we recognize that there is potential ambiguity in existing law regarding carriers' ability to use existing section 251(c)(2) interconnection facilities to exchange VoIP-PSTN traffic, including toll traffic. Consequently, we make clear that a carrier that otherwise has a section 251(c)(2) interconnection arrangement with an incumbent LEC is free to deliver toll VoIP-PSTN traffic through that arrangement, as well, consistent with the provisions of its interconnection agreement. The Commission previously held that section 251(c)(2) interconnection arrangements may not be used solely for the transmission of interexchange traffic because such arrangements are for the exchange of "telephone exchange service" or "exchange access" traffic – and interexchange traffic is neither.[2030] However, as long as an interconnecting carrier is using the section 251(c)(2) interconnection arrangement to exchange some telephone exchange service and/or exchange access traffic, section 251(c)(2) does not preclude that carrier from relying on that same functionality to exchange other traffic with the incumbent LEC, as well. This interpretation of section 251(c)(2) is consistent with the Commission's prior holding that carriers that otherwise have section 251(c)(2) interconnection arrangements are free to use them to deliver information services traffic, as well.[2031] Likewise, it is consistent with the Commission's interpretation of the unbundling obligations of section 251(c)(3), where it held that, as long as a carrier is using an unbundled network element (UNE) for the provision of a telecommunications service for which UNEs are available, it may use that UNE to provide other services, as well.[2032] With respect to the broader use of section 251(c)(2) interconnection arrangements, however, it will be necessary for the interconnection agreement to specifically address such usage to, for example, address the associated compensation.[2033]

973. *No Blocking.* In addition to the protections discussed above to prevent unilateral actions disruptive to the transitional VoIP-PSTN intercarrier compensation regime, we also find that carriers' blocking of VoIP calls is a violation of the Communications Act and, therefore, is prohibited just as with the blocking of other traffic.[2034] As such, it is appropriate to discuss the Commission's general policy

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[2030] *Local Competition First Report and Order*, 11 FCC Rcd at 15598-99, paras. 190-91.

[2031] *Id.* at 15990, para. 995 ("We also conclude that telecommunications carriers that have interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3), may offer information services through the same arrangement, so long as they are offering telecommunications services through the same arrangement as well.").

[2032] *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533, 2550, para. 29 n.83 (2005) (*Triennial Review Remand Order*).

[2033] For example, this would include provisions addressing the intercarrier compensation for any toll VoIP-PSTN traffic delivered via a section 251(c)(2) interconnection arrangement. We note that some carriers appear to have implemented such an approach already. *See, e.g.*, Level 3 Aug. 18, 2008 *Ex Parte* Letter, Attach. 1, Part C at 2 (Level 3-Embarq interconnection agreement providing that: "After the Parties implement interconnection arrangements for the exchange of Local Traffic, ISP-Bound Traffic, interLATA traffic and intraLATA traffic over the same interconnection trunks, Level 3 may also send VOIP Traffic, as defined below, over those trunks").

[2034] *See supra* Section XI.B, para. 734.

against the blocking of such traffic.[2035] As the Commission has long recognized, permitting blocking or the refusal to deliver voice telephone traffic,[2036] whether as a means of "self-help" to address perceived unreasonable intercarrier compensation charges or otherwise, risks "degradation of the country's telecommunications network."[2037] Consequently, "the Commission, except in rare circumstances[,] . . . does not allow carriers to engage in call blocking"[2038] and "previously has found that call blocking is an unjust and unreasonable practice under section 201(b) of the Act."[2039] Although the Commission generally has not classified VoIP services, as discussed above, the exchange of VoIP-PSTN traffic implicating intercarrier compensation rules typically involves two carriers.[2040] As a result, those carriers are directly bound by the Commission's general prohibition on call blocking with respect to VoIP-PSTN traffic, as with other traffic.

974. We recognize, however, that blocking also could be performed by interconnected VoIP providers, or by providers of "one-way" VoIP service that allows customers to receive calls from, or place calls to the PSTN, but not both. Just as call blocking concerns regarding interexchange carriers and wireless providers arose in an effort to avoid high access charges, VoIP providers likewise could have incentives to avoid such rates, which they would pay either directly or through the rates they pay for wholesale long distance service.[2041] If interconnected VoIP services or one-way VoIP services are telecommunications services, they already are subject to restrictions on blocking under the Act. If such services are information services,[2042] we exercise our ancillary authority and prohibit blocking of voice traffic to or from the PSTN by those providers just as we do for carriers.[2043]

[2035] The Commission has sought comment on whether a shift from a tariffing regime to a regime relying on commercial arrangements for intercarrier compensation could create incentives for blocking. *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9656-57, para. 130.

[2036] By this, we mean "block[ing], chok[ing], reduc[ing] or restrict[ing] traffic in any way." *Call Blocking Declaratory Ruling*, 22 FCC Rcd 11629, 11631, para. 6.

[2037] *Access Charge Reform Seventh R&O and NPRM*, 16 FCC Rcd at 9932-33 para. 24.

[2038] *Call Blocking Declaratory Ruling*, 22 FCC Rcd at 11632, para. 7. As the Commission noted, the *Call Blocking Declaratory Ruling* had " no effect on the right of individual end users to choose to block incoming calls from unwanted callers." *Id.* at para. 7 n.21.

[2039] *Call Blocking Declaratory Ruling*, 22 FCC Rcd at 11631, para. 5.

[2040] *See supra* note 1969 and accompanying text.

[2041] *See, e.g., Call Blocking Declaratory Ruling*, 22 FCC Rcd at 11629.

[2042] We do not decide the classification of such services in this Order.

[2043] For example, an interexchange carrier that is a wholesale partner of such a VoIP provider could evade our directly-applicable restrictions on blocking under section 201 of the Act by having the blocking performed by the VoIP provider instead. An IXC generally would be prohibited from refusing to deliver calls to telephone numbers associated with high intercarrier compensation charges. If that IXC's VoIP provider wholesale customer were free to block calls to such numbers, the IXC thus could evade the directly-applicable restrictions on blocking (and the VoIP provider would benefit from lower wholesale long distance costs to the extent that, for example, its agreement provided for a pass-through of the intercarrier compensation charges paid by the IXC). In addition, blocking or degrading of a call from a traditional telephone customer to a customer of a VoIP provider, or vice-versa, would deny the traditional telephone customer the intended benefits of telecommunications interconnection under section 251(a)(1).

compensation between LECs and CMRS providers.[2116] Indeed, in *Iowa Utilities Board*, the Eighth Circuit specifically upheld Commission rules regulating LEC-CMRS reciprocal compensation based on these provisions.[2117]

1002. In the *North County Order*, the Commission found that any decision to reverse course and regulate intrastate rates under section 20.11 at the federal level was more appropriately addressed in a general rulemaking proceeding.[2118] Now that we are considering the issue in the context of this rulemaking proceeding, we find it appropriate to take this step for the reasons discussed above, and we conclude that our decision to establish a federal default pricing methodology for termination of LEC-CMRS intraMTA traffic as part of our broader effort in this proceeding to reform, modernize, and unify the intercarrier compensation system is consistent with our authority under the Act.

D. IntraMTA Rule

1003. In the *Local Competition First Report and Order*, the Commission stated that calls between a LEC and a CMRS provider that originate and terminate within the same Major Trading Area (MTA) at the time that the call is initiated are subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges.[2119] As noted above, this rule, referred to as the "intraMTA rule," also governs the scope of traffic between LECs and CMRS providers that is subject to compensation under section 20.11(b). The *USF/ICC Transformation NPRM* sought comment, *inter alia*, on the proper interpretation of this rule.

1004. The record presents several issues regarding the scope and interpretation of the intraMTA rule. Because the changes we adopt in this Order maintain, during the transition, distinctions in the compensation available under the reciprocal compensation regime and compensation owed under the access regime, parties must continue to rely on the intraMTA rule to define the scope of LEC-CMRS traffic that falls under the reciprocal compensation regime. We therefore take this opportunity to remove any ambiguity regarding the interpretation of the intraMTA rule.

1005. We first address a dispute regarding the interpretation of the intraMTA rule. Halo Wireless (Halo) asserts that it offers "Common Carrier wireless exchange services to ESP and enterprise customers" in which the customer "connects wirelessly to Halo base stations in each MTA."[2120] It further

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[2116] *See supra* para. 779 .

[2117] In *Iowa Utilities Board v. FCC*, the Eighth Circuit found that "[b]ecause Congress expressly amended section 2(b) to preclude state regulation of entry of and rates charged by [CMRS] providers . . . and because section 332(c)(1)(b) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue the rules of special concern to the CMRS providers." *Iowa Utils Bd. v. FCC*, 120 F. 3d 753, 800 n.21 (8th Cir. 1997) (vacating the Commission's pricing rules for lack of jurisdiction except for "the rules of special concern to CMRS providers" based in part upon the authority granted to the Commission in 47 U.S.C. § 332(c)(1)(B)). *See also Qwest v. FCC*, 252 F.3d 462, 465-66 (D.C. Cir. 2001) (describing the Eighth Circuit's analysis of section 332(c)(1)(B) in *Iowa Utils. Bd. v. FCC* and concluding that an attempt to relitigate the issue was barred by the doctrine of issue preclusion). On this basis, the court upheld several rules relating to reciprocal compensation for LEC-CMRS traffic, including rules governing charges for intrastate traffic. For example, the court upheld on this basis the adoption of section 51.703(b) of our rules, which prohibits LECs from assessing charges on any other telecommunications carrier for non-access traffic that originates on the LEC's network. 47 C.F.R. § 51.703(b).

[2118] *North County Order*, 24 FCC Rcd at 14039-40, para. 10, 14042, para. 16 (internal quotations omitted).

[2119] *Local Competition First Report and Order*, 11 FCC Rcd at 16014, para. 1036; 47 C.F.R. § 51.701(b)(2). The definition of an MTA can be found in section 24.202(a) of the Commission's rules. 47 C.F.R. § 24.202(a).

[2120] Halo Aug. 12, 2011 *Ex Parte* Letter, Attach. at 7; *see also* Halo Oct. 17, 2011 *Ex Parte* Letter. Halo is a nationwide licensee of non-exclusive spectrum in the 3650-3700 MHz band.

asserts that its "high volume" service is CMRS because "the customer connects to Halo's base station using wireless equipment which is capable of operation while in motion."[2121] Halo argues that, for purposes of applying the intraMTA rule, "[t]he origination point for Halo traffic is the base station to which Halo's customers connect wirelessly."[2122] On the other hand, ERTA claims that Halo's traffic is not from its own retail customers but is instead from a number of other LECs, CLECs, and CMRS providers.[2123] NTCA further submitted an analysis of call records for calls received by some of its member rural LECs from Halo indicating that most of the calls either did not originate on a CMRS line or were not intraMTA, and that even if CMRS might be used "in the middle," this does not affect the categorization of the call for intercarrier compensation purposes.[2124] These parties thus assert that by characterizing access traffic as intraMTA reciprocal compensation traffic, Halo is failing to pay the requisite compensation to terminating rural LECs for a very large amount of traffic.[2125] Responding to this dispute, CTIA asserts that "it is unclear whether the intraMTA rules would even apply in that case."[2126]

1006. We clarify that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Where a provider is merely providing a transiting service, it is well established that a transiting carrier is not considered the originating carrier for purposes of the reciprocal compensation rules.[2127] Thus, we agree with NECA that the "re-origination" of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo's contrary position.[2128]

1007. In a further pending dispute, some LECs have argued that if completing a call to a CMRS provider requires a LEC to route the call to an intermediary carrier outside the LEC's local calling area,[2129] the call is subject to access charges, not reciprocal compensation, even if the call originates and

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[2121] Halo Aug. 12, 2011 *Ex Parte* Letter, Attach. at 8.

[2122] *Id.* Attach. at 9.

[2123] ERTA July 8, 2011 *Ex Parte* Letter, at 3.

[2124] NTCA July 18, 2011 *Ex Parte* Letter at 7.

[2125] NTCA July 18, 2011 *Ex Parte* Letter at 1; ERTA *Ex Parte* Letter at 1, 3 (traffic from Halo includes "millions of minutes of intrastate access, interstate access, and CMRS traffic originated by customers of other companies;" one day study of Halo traffic showed traffic was originated by customers of "176 different domestic and Canadian LECs and CLECs and 63 different Wireless Companies").

[2126] CTIA *August 3 PN* Comments at 9.

[2127] *See Texcom, Inc. d/b/a Answer Indiana v. Bell Atlantic Corp,* Order on Reconsideration, 17 FCC Rcd 6275, 6276 para. 4 (2002) ("Answer Indiana's argument assumes that GTE North receives reciprocal compensation from the originating carrier, but our reciprocal compensation rules do not provide for such compensation to a transiting carrier."); *TSR Wireless, LLC v. U.S. West Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 11166, 11177 n.70 (2000).

[2128] *See* NECA Sept. 23, 2011 *Ex Parte* Letter Attach. at 1; Halo Aug. 12, 2011 *Ex Parte* Letter at 9. We make no findings regarding whether any particular transiting services would in fact qualify as CMRS. *See* CTIA *August 3 PN* Comments at 9 & n.29 ("the information available does not reveal whether [Halo's] offering is a mobile service").

[2129] This occurs when the LEC and CMRS provider are "indirectly interconnected," i.e. when there is a third carrier to which they both have direct connections, and which is then used as a conduit for the exchange of traffic between them.

terminates within the same MTA.[2130] One commenter in this proceeding asks us to affirm that such traffic is subject to reciprocal compensation.[2131] We therefore clarify that the intraMTA rule means that all traffic exchanged between a LEC and a CMRS provider that originates and terminates within the same MTA, as determined at the time the call is initiated, is subject to reciprocal compensation regardless of whether or not the call is, prior to termination, routed to a point located outside that MTA or outside the local calling area of the LEC.[2132] Similarly, intraMTA traffic is subject to reciprocal compensation regardless of whether the two end carriers are directly connected or exchange traffic indirectly via a transit carrier.[2133]

1008. Further, in response to the *USF/ICC Transformation NPRM*, T-Mobile proposed that we expand the scope of the intraMTA rule to reflect the fact that CMRS licenses are now issued for REAGs, geographic areas that are larger than MTAs.[2134] T-Mobile notes that the intraMTA rule was promulgated

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[2130] *See, e.g.*, Letter from Sylvia Lesse, Counsel to the Missouri Companies, to William F. Caton, Acting Secretary, Federal Communications Commission, WT Docket No. 01-316 and CC Docket No. 01-92, Attach. (filed Mar. 22, 2002) (Missouri Companies Mar. 22 *Ex Parte* Letter); Letter from W.R. England, III, Counsel for Citizen Telephone Company of Missouri, *et al*, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, and 95-116 (filed Oct. 31, 2003) (Citizen Oct. 31, 2003 *Ex Parte* Letter). *See also* Letter from Glenn H. Brown, Counsel to Great Plains Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Attach. at 8 (filed Sept. 23, 2003) (stating that the local exchange is the incumbent LEC's local service area rather than the MTA). We also sought comment on this issue in 2005 but have not since taken action to address it. *See Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4745-46 paras. 137-38.

[2131] T-Mobile *August 3 PN* Comments at 11.

[2132] In a letter filed on Oct. 21, 2011, Vantage Point Solutions alleged "difficulties associated with the implementation of intraMTA local calling" between LECs and CMRS providers, and, while not advocating repeal of the rule, urged the Commission to "proceed with substantial caution" when "handling the rating and routing of intraMTA calls" that involve an interexchange carrier. Letter from Larry D. Thompson, Vantage Point Solutions, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 1-2 (filed Oct. 21, 2011) (Vantage Point Oct. 21, 2011 Ex Parte Letter). We find that the potential implementation issues raised by Vantage Point do not warrant a different construction of the intraMTA rule than what we adopt above. Although Vantage Point questions whether the intraMTA rule is feasible when a call is routed through interexchange carriers, many incumbent LECs have already, pursuant to state commission and appellate court decisions, extended reciprocal compensation arrangements with CMRS providers to intraMTA traffic without regard to whether a call is routed through interexchange carriers. *See, e.g., Alma Communications Co. v. Missouri Public Service Comm'n*, 490 F.3d 619, 623-34 (8th Cir. 2007) (noting and affirming arbitration decision requiring incumbent LEC to compensate CMRS provider for costs incurred in transporting and terminating land-line to cell-phone calls placed to cell phones within the same MTA, even if those calls were routed through a long-distance carrier); *Atlas Telephone Co. v. Oklahoma Corp. Comm'n*, 400 F.3d 1256 (10th Cir. 2005). Further, while Vantage Point asserts that it is not currently possible to determine if a call is interMTA or intraMTA, Vantage Point Oct. 21, 2011 Ex Parte Letter at 2-3, the Commission addressed this concern when it adopted the rule. *See Local Competition First Report and Order*, 11 FCC Rcd at 16017, para. 1044 (stating that parties may calculate overall compensation amounts by extrapolating from traffic studies and samples).

[2133] *See* Sprint Nextel Section XV Comments at 22-23 (arguing that the Commission should reaffirm that all intraMTA traffic to or from a CMRS provider is subject to reciprocal compensation). This clarification is consistent with how the intraMTA rule has been interpreted by the federal appellate courts. *See Alma Communications Co. v. Missouri Public Service Comm'n*, 490 F.3d 619 (8th Cir. 2007); *Iowa Network Services, Inc. v. Qwest Corp.*, 466 F.3d 1091 (8th Cir. 2006); *Atlas Telephone Co. v. Oklahoma Corp. Commission*, 400 F.3d 1256 (10th Cir. 2005).

[2134] *See* T-Mobile *August 3 PN* Comments at 11-14. T-Mobile's proposal is also supported by MetroPCS. *See* MetroPCS *August 3 PN* Reply at 6-7.

at a time the MTA was the largest CMRS license area.[2135] T-Mobile argues that the REAG is currently the largest license being used to provide CMRS and that this change would move more telecommunications traffic under the reciprocal compensation umbrella pending the unification of all intercarrier compensation rates.[2136] We decline to adopt T-Mobile's proposal. Given the long experience of the industry dealing with the current rule, the very broad scope of the changes to the intercarrier compensation rules being made in this Order that will, after the transition period, make the rule irrelevant, and the limited support in the record for the suggested change even from CMRS commenters, we do not believe it is either necessary or appropriate to expand the scope of this rule as proposed by T-Mobile.

XVI. INTERCONNECTION

1009. Interconnection among communications networks is critical given the role of network effects.[2137] Historically, interconnection among voice communications networks has enabled competition and the associated consumer benefits that brings through innovation and reduced prices.[2138] The voice communications marketplace is currently transitioning from traditional circuit-switched telephone service to the use of IP services, and commenters observe that many carriers "apparently are equipped to receive IP voice traffic but are taking the position they will not use this equipment for years (until a prohibition on current per-minute charges takes effect)."[2139] These parties thus propose that in the immediate future the Commission "should (a) encourage all TDM network operators to investigate the steps they need to take to support IP-IP interconnection, and (b) put all TDM network operators on notice that they will be likely required to support IP-IP interconnection before any phase down of current ICC rates is complete."[2140]

1010. We anticipate that the reforms we adopt herein will further promote the deployment and use of IP networks. However, IP interconnection between providers also is critical. As such, we agree with commenters that, as the industry transitions to all IP networks, carriers should begin planning for the transition to IP-to-IP interconnection, and that such a transition will likely be appropriate before the completion of the intercarrier compensation phase down. We seek comment in the accompanying FNPRM regarding specific elements of the policy framework for IP-to-IP interconnection. We make clear, however, that our decision to address certain issues related to IP-to-IP interconnection in the FNPRM should not be misinterpreted to suggest any deviation from the Commission's longstanding view

[2135] *See* T-Mobile *August 3 PN* Comments at 12.

[2136] *Id.* at 13.

[2137] *See, e.g., Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket Nos. 04-70, 04-254, 04-323, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21578, para. 143 (2004) (citing Carl Shapiro and Hal Varian, *Information Rules*, Harvard Business School Press, Boston, 1999, at 13).

[2138] *See, e.g., Interconnection Clarification Order*, 26 FCC Rcd at 8265-66, paras. 12-13; *Local Competition First Report and Order*, 11 FCC Rcd at 15506, para. 4; *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Third Report and Order, Transport Phase II, 9 FCC Rcd 2718, 2724, para. 25 (1994).

[2139] Sprint Nextel *USF/ICC Transformation NPRM* Comments at 28. *See also, e.g.*, Letter from Howard J. Symons, counsel for Cablevision, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket No. 01-92, 96-45, GN Docket No. 09-51, Attach. at 1-4 (filed Oct. 20, 2011); Letter from Thomas Jones, counsel for Cbeyond et al., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-119, 10-90, 07-135, 05-337, 03-109, CC Docket No. 01-92, 96-45, GN Docket No. 09-51, Attach. A at 5 (filed Oct. 3, 2011).

[2140] Sprint Nextel *USF/ICC Transformation NPRM* Comments at 28.

charges such as tandem switching and transport charges could become "obsolete" in an all-IP world.[2365] Is this correct? If so, how should it impact possible reform?

1311. *Transit.* Currently, transiting occurs when two carriers that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediary carrier's network.[2366] Thus, although transit is the functional equivalent of tandem switching and transport, today transit refers to non-access traffic, whereas tandem switching and transport apply to access traffic. As all traffic is unified under section 251(b)(5), the tandem switching and transport components of switched access charges will come to resemble transit services in the reciprocal compensation context where the terminating carrier does not own the tandem switch. In the Order, we adopt a bill-and-keep methodology for tandem switched transport in the access context and for transport in the reciprocal compensation context. The Commission has not addressed whether transit services must be provided pursuant to section 251 of the Act; however, some state commissions and courts have addressed this issue.[2367]

1312. Commenters also express concern that, as a result of the reforms adopted in the Order, transit providers will have the ability and incentive to raise transit service rates both during the transition and at the end state of reform.[2368] Specifically, one commenter alleges that without regulation of transit, ILECs would have opportunities to "exploit their termination dominance."[2369] Commenters also express concern with the end state for tandem switching and transport for price cap carriers when the tandem

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[2365] EarthLink *USF/ICC Transformation NPRM* Comments at 9 ("EarthLink anticipates that IP interconnections will make tandem/end office connections obsolete and carriers may prefer to interconnect at one point per state for the exchange of all traffic, without establishing separate trunk groups for previously distinct categories of traffic such as interstate access and local.").

[2366] *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4776-77, para. 683; *see also Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4737-44, paras. 120-33; *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6650, App. A., para. 347; *id.* at 6849, App. C, para. 344. The term transport is often used interchangeably with transit service. These are two different services. Transport service is a tariffed exchanged access service. *See, e.g.*, 47 C.F.R. § 69.4. Transit service is typically offered via commercially-negotiated interconnection agreements rather than tariffs.

[2367] *See, e.g., Qwest Corp. v. Cox Nebraska Telcom, LLC*, 2008 WL 5273687 (D. Neb. 2008) (finding that an ILEC must provide transit pursuant to its interconnection obligations under section 251); *Brandenburg Tel. Co. v. Windstream Kentucky East, Inc.*, Case No. 2007-0004, Order, 2010 WL 3283776 (Ky PSC Aug. 16, 2010) (cancelling a transit tariff and requiring the parties to negotiate an interconnection agreement for transit pursuant to sections 251 and 252); *compare* Letter from J.G. Harrington, Counsel to Cox Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 1-2, 4 (filed Oct. 19, 2011) (Cox October 19, 2011 *Ex Parte* Letter), and Letter from J.G. Harrington, Counsel to Cox Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 1-3 (filed Oct. 21, 2011), *with* Letter from John R. Harrington, Senior Vice President, Regulatory & Litigation, Neutral Tandem, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, GN Docket No. 09-51, CC Docket No. 01-92, at 2-3 (filed Oct. 20, 2011) (Neutral Tandem Oct. 20, 2011 *Ex Parte* Letter).

As noted in Section XII.C, our Order does not intend to affect existing agreements not addressed by its reforms, including for transit services. *See* Letter from Mary McManus, Senior Director FCC and Regulatory Policy, Comcast, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket No. 01-92. 96-45, at 1-2 (filed Sept. 22, 2011).

[2368] *See, e.g.*, Comcast *August 3 PN* Comments at 8-10; Cox *August 3 PN* Comments at 13-15; NCTA *August 3 PN* Comments at 19-20.

[2369] T-Mobile *August 3 PN* Comments at 8.

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gain greater than 9 dBi are used, both the maximum conducted output power and the peak power spectral density should be reduced by the amount in decibels that the directional gain of the antenna exceeds 9 dBi. However, high power point-to-point and point-to-multipoint operations (both fixed and temporary-fixed rapid deployment) may employ transmitting antennas with directional gain up to 26 dBi without any corresponding reduction in the maximum conducted output power or spectral density. Corresponding reduction in the maximum conducted output power and peak power spectral density should be the amount in decibels that the directional gain of the antenna exceeds 26 dBi.

(b) Low power devices are also limited to a peak power spectral density of 8 dBm per one MHz. Low power devices using channel bandwidths other than those listed above are permitted; however, they are limited to a peak power spectral density of 8 dBm/MHz. If transmitting antennas of directional gain greater than 9 dBi are used, both the maximum conducted output power and the peak power spectral density should be reduced by the amount in decibels that the directional gain of the antenna exceeds 9 dBi.

(c) The maximum conducted output power is measured as a conducted emission over any interval of continuous transmission using instrumentation calibrated in terms of an RMS-equivalent voltage. If the device cannot be connected directly, alternative techniques acceptable to the Commission may be used. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, etc., so as to obtain a true maximum conducted output power measurement conforming to the definitions in this paragraph for the emission in question.

(d) The peak power spectral density is measured as conducted emission by direct connection of a calibrated test instrument to the equipment under test. If the device cannot be connected directly, alternative techniques acceptable to the Commission may be used. Measurements are made over a bandwidth of one MHz or the 26 dB emission bandwidth of the device, whichever is less. A resolution bandwidth less than the measurement bandwidth can be used, provided that the measured power is integrated to show total power over the measurement bandwidth. If the resolution bandwidth is approximately equal to the measurement bandwidth, and much less than the emission bandwidth of the equipment under test, the measured results shall be corrected to account for any difference between the resolution bandwidth of the test instrument and its actual noise bandwidth.

(e) The ratio of the peak excursion of the modulation envelope (measured using a peak hold function) to the maximum conducted output power shall not exceed 13 dB across any 1 MHz bandwidth or the emission bandwidth whichever is less.

[70 CFR 28467, May 18, 2005, as amended at 74 FR 23803, May 21, 2009; 74 FR 27455, June 10, 2009]

§ 90.1217 RF Hazards.

Licensees and manufacturers are subject to the radiofrequency radiation exposure requirements specified in §§ 1.1307(b), 2.1091 and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

Subpart Z—Wireless Broadband Services in the 3650–3700 MHz Band

SOURCE: 70 FR 24726, May 11, 2005, unless otherwise noted.

§ 90.1301 Scope.

This subpart sets out the regulations governing wireless operations in the 3650–3700 MHz band. It includes licensing requirements, and specific operational and technical standards for wireless operations in this band. The rules in this subpart are to be read in

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conjunction with the applicable requirements contained elsewhere in the Commission's rules; however, in case of conflict, the provisions of this subpart shall govern with respect to licensing and operation in this band.

§ 90.1303 Eligibility.

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part.

§ 90.1305 Permissible operations.

Use of the 3650–3700 MHz band must be consistent with the allocations for this band as set forth in part 2 of the Commission's Rules. All stations operating in this band must employ a contention-based protocol (as defined in §90.7).

§ 90.1307 Licensing.

The 3650–3700 MHz band is licensed on the basis of non-exclusive nationwide licenses. Non-exclusive nationwide licenses will serve as a prerequisite for registering individual fixed and base stations. A licensee cannot operate a fixed or base station before registering it under its license and licensees must delete registrations for unused fixed and base stations.

§ 90.1309 Regulatory status.

Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis. A licensee may render any kind of communications service consistent with the regulatory status in its license and with the Commission's rules applicable to that service.

§ 90.1311 License term.

The license term is ten years, beginning on the date of the initial authorization (non-exclusive nationwide license) grant. Registering fixed and base stations will not change the overall renewal period of the license.

§ 90.1312 Assignment and transfer.

Licensees may assign or transfer their non-exclusive nationwide licenses, and any fixed or base stations registered under those licenses will remain associated with those licenses.

§ 90.1319 Policies governing the use of the 3650–3700 MHz band.

(a) Channels in this band are available on a shared basis only and will not be assigned for the exclusive use of any licensee.

(b) Any base, fixed, or mobile station operating in the band must employ a contention-based protocol.

(c) Equipment incorporating an unrestricted contention-based protocol (i.e. one capable of avoiding co-frequency interference with devices using all other types of contention-based protocols) may operate throughout the 50 megahertz of this frequency band. Equipment incorporating a restricted contention-based protocol (i.e. one that does not qualify as unrestricted) may operate in, and shall only tune over, the lower 25 megahertz of this frequency band.

(d) All applicants and licensees shall cooperate in the selection and use of frequencies in the 3650–3700 MHz band in order to minimize the potential for interference and make the most effective use of the authorized facilities. A database identifying the locations of registered stations will be available at *http://wireless.fcc.gov/uls.* Licensees should examine this database before seeking station authorization, and make every effort to ensure that their fixed and base stations operate at a location, and with technical parameters, that will minimize the potential to cause and receive interference. Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements.

[72 FR 40722, July 25, 2007]

§ 90.1321 Power and antenna limits.

(a) Base and fixed stations are limited to 25 watts/25 MHz equivalent isotropically radiated power (EIRP). In any event, the peak EIRP power density shall not exceed 1 Watt in any one-megahertz slice of spectrum.

(b) In addition to the provisions in paragraph (a) of this section, transmitters operating in the 3650–3700 MHz band that emit multiple directional beams, simultaneously or sequentially, for the purpose of directing signals to

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individual receivers or to groups of receivers provided the emissions comply with the following:

(1) Different information must be transmitted to each receiver.

(2) If the transmitter employs an antenna system that emits multiple directional beams but does not emit multiple directional beams simultaneously, the total output power conducted to the array or arrays that comprise the device, *i.e.*, the sum of the power supplied to all antennas, antenna elements, staves, etc. and summed across all carriers or frequency channels, shall not exceed the limit specified in paragraph (a) of this section, as applicable. The directional antenna gain shall be computed as follows:

(i) The directional gain, in dBi, shall be calculated as the sum of 10 log (number of array elements or staves) plus the directional gain, in dBi, of the individual element or stave having the highest gain.

(ii) A lower value for the directional gain than that calculated in paragraph (b)(2)(i) of this section will be accepted if sufficient evidence is presented, *e.g.*, due to shading of the array or coherence loss in the beam-forming.

(3) If a transmitter employs an antenna that operates simultaneously on multiple directional beams using the same or different frequency channels and if transmitted beams overlap, the power shall be reduced to ensure that the aggregate power from the overlapping beams does not exceed the limit specified in paragraph (b)(2) of this section. In addition, the aggregate power transmitted simultaneously on all beams shall not exceed the limit specified in paragraph (b)(2) of this section by more than 8 dB.

(4) Transmitters that emit a single directional beam shall operate under the provisions of paragraph (b)(2) of this section.

(c) Mobile and portable stations are limited to 1 watt/25 MHz EIRP. In any event, the peak EIRP density shall not exceed 40 milliwatts in any one-megahertz slice of spectrum.

§ 90.1323 Emission limits.

(a) The power of any emission outside a licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, by at least 43 + 10 log (P) dB. Compliance with this provision is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or less, but at least one percent of the emission bandwidth of the fundamental emission of the transmitter, provided the measured energy is integrated over a 1 MHz bandwidth.

(b) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

§ 90.1331 Restrictions on the operation of base and fixed stations.

(a)(1) Except as provided in paragraph (a)(2) of this section, base and fixed stations may not be located within 150 km of any grandfathered satellite earth station operating in the 3650–3700 MHz band. The coordinates of these stations are available at *http://www.fcc.gov/ib/sd/3650/*.

(2) Base and fixed stations may be located within 150 km of a grandfathered satellite earth station provided that the licensee of the satellite earth station and the 3650–3700 MHz licensee mutually agree on such operation.

(3) Any negotiations to enable base or fixed station operations closer than 150 km to grandfathered satellite earth stations must be conducted in good faith by all parties.

(b) (1) Except as specified in paragraph (b)(2) of this section, base and fixed stations may not be located within 80 km of the following Federal Government radiolocation facilities:

St. Inigoes, MD—38° 10′ N., 76°, 23′ W.
Pascagoula, MS—30° 22′ N., 88°, 29′ W.
Pensacola, FL—30° 21′ 28″ N., 87°, 16′ 26″ W.

NOTE: Licensees installing equipment in the 3650–3700 MHz band should determine if there are any nearby Federal Government radar systems that could affect their operations. Information regarding the location and operational characteristics of the radar systems operating adjacent to this band are provided in NTIA TR–99–361.

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(2) Requests for base or fixed station locations closer than 80 km to the Federal Government radiolocation facilities listed in paragraph (b)(1) of this section will only be approved upon successful coordination by the Commission with NTIA through the Frequency Assignment Subcommittee of the Interdepartmental Radio Advisory Committee.

§ 90.1333 Restrictions on the operation of mobile and portable stations.

(a) Mobile and portable stations may operate only if they can positively receive and decode an enabling signal transmitted by a base station.

(b) Any mobile/portable stations may communicate with any other mobile/portable stations so long as each mobile/portable can positively receive and decode an enabling signal transmitted by a base station.

(c) Airborne operations by mobile/portable stations is prohibited.

§ 90.1335 RF safety.

Licensees in the 3650–3700 MHz band are subject to the exposure requirements found in §1.1307(b), 2.1091 and 2.1093 of our Rules.

§ 90.1337 Operation near Canadian and Mexican borders.

(a) Fixed devices generally must be located at least 8 kilometers from the U.S./Canada or U.S./Mexico border if the antenna of that device looks within the 160° sector away from the border. Fixed devices must be located at least 56 kilometers from each border if the antenna looks within the 200° sector towards the border.

(b) Fixed devices may be located nearer to the U.S./Canada or U.S./Mexico border than specified in paragraph (a) of this section only if the Commission is able to coordinate such use with Canada or Mexico, as appropriate.

(c) Licensees must comply with the requirements of current and future agreements with Canada and Mexico regarding operation in U.S./Canada and U.S./Mexico border areas.

Subpart AA—700 MHz Public/Private Partnership

SOURCE: 72 FR 48863, Aug. 24, 2007, unless otherwise noted.

§ 90.1401 Purpose and scope.

The purpose of this subpart, in conjunction with subpart N of part 27, is to establish rules and procedures relating to the 700 MHz Public/Private Partnership entered between the winning bidder for the Upper 700 MHz D Block license, the Upper 700 MHz D Block licensee, the Network Assets Holder, the Operating Company, the Public Safety Broadband Licensee, and other related entities as the Commission may require or allow. Pursuant to this partnership, the Upper 700 MHz D Block licensee and the Operating Company will be responsible for constructing and operating a nationwide, shared interoperable wireless broadband network used to provide a commercial service and a broadband network service for public safety entities. The shared network assets will be held by the Network Assets Holder, and the Shared Wireless Broadband Network will operate on both the commercial spectrum licensed to the Upper 700 MHz D Block licensee and the public safety broadband spectrum licensed to the Public Safety Broadband Licensee. This subpart of the part 90 rules sets forth specific provisions relating to the Public Safety Broadband License and the Public Safety Broadband Licensee with respect to the 700 MHz Public/Private Partnership. Subpart N of the part 27 rules sets forth related provisions applicable to the Upper 700 MHz D Block license, the Upper 700 MHz D Block licensee and other related entities as the Commission may require or allow, with respect to the 700 MHz Public/Private Partnership.

§ 90.1403 Public safety broadband license conditions.

(a) The Public Safety Broadband Licensee shall comply with all of the applicable requirements set forth in this subpart and shall comply with the terms of the Network Sharing Agreement and such other agreements as the Commission may require or allow.

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SUBCHAPTER B—COMMON CARRIER SERVICES

PART 20—COMMERCIAL MOBILE RADIO SERVICES

AUTHORITY: 47 U.S.C. 154, 160, 201, 251-254, 303, and 332 unless otherwise noted.

SOURCE: 59 FR 18495, Apr. 19, 1994, unless otherwise noted.

§ 20.1 Purpose.

The purpose of these rules is to set forth the requirements and conditions applicable to commercial mobile radio service providers.

§ 20.3 Definitions.

Appropriate local emergency authority. An emergency answering point that has not been officially designated as a Public Safety Answering Point (PSAP), but has the capability of receiving 911 calls and either dispatching emergency services personnel or, if necessary, relaying the call to another emergency service provider. An appropriate local emergency authority may include, but is not limited, to an existing local law enforcement authority, such as the police, county sheriff, local emergency medical services provider, or fire department.

Automatic Number Identification (ANI). A system that identifies the billing account for a call. For 911 systems, the ANI identifies the calling party and may be used as a call back number.

Automatic Roaming. With automatic roaming, under a pre-existing contractual agreement between a subscriber's home carrier and a host carrier, a roaming subscriber is able to originate or terminate a call in the host carrier's service area without taking any special actions.

Commercial mobile radio service. A mobile service that is:

(a)(1) provided for profit, *i.e.*, with the intent of receiving compensation or monetary gain;

(2) An interconnected service; and

(3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or

(b) The functional equivalent of such a mobile service described in paragraph (a) of this section.

Designated PSAP. The Public Safety Answering Point (PSAP) designated by the local or state entity that has the authority and responsibility to designate the PSAP to receive wireless 911 calls.

Incumbent Wide Area SMR Licensees. Licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz service, either by waiver or under Section 90.629 of these rules, and who offer real-time, two-way voice service that is interconnected with the public switched network.

Handset-based location technology. A method of providing the location of wireless 911 callers that requires the use of special location-determining hardware and/or software in a portable or mobile phone. Handset-based location technology may also employ additional location-determining hardware and/or software in the CMRS network and/or another fixed infrastructure.

Home Carrier. For automatic roaming, a home carrier is the facilities-based CMRS carrier with which a subscriber has a direct contractual relationship. A home carrier may request automatic roaming service from a host carrier on behalf of its subscribers.

Home Market. For automatic roaming, a CMRS carrier's home market is defined as any geographic location where the home carrier has a wireless license or spectrum usage rights that could be used to provide CMRS.

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Host Carrier. For automatic roaming, the host carrier is a facilities-based CMRS carrier on whose system a subscriber roams when outside its home carrier's home market.

Interconnection or Interconnected. Direct or indirect connection through automatic or manual means (by wire, microwave, or other technologies such as store and forward) to permit the transmission or reception of messages or signals to or from points in the public switched network.

Interconnected Service. A service:

(a) That is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network; or

(b) For which a request for such interconnection is pending pursuant to section 332(c)(1)(B) of the Communications Act, 47 U.S.C. 332(c)(1)(B). A mobile service offers interconnected service even if the service allows subscribers to access the public switched network only during specified hours of the day, or if the service provides general access to points on the public switched network but also restricts access in certain limited ways. Interconnected service does not include any interface between a licensee's facilities and the public switched network exclusively for a licensee's internal control purposes.

Location-capable handsets. Portable or mobile phones that contain special location-determining hardware and/or software, which is used by a licensee to locate 911 calls.

Manual Roaming. With manual roaming, a subscriber must establish a relationship with the host carrier on whose system he or she wants to roam in order to make a call. Typically, the roaming subscriber accomplishes this in the course of attempting to originate a call by giving a valid credit card number to the carrier providing the roaming service.

Mobile Service. A radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes:

(a) Both one-way and two-way radio communications services;

(b) A mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and

(c) Any service for which a license is required in a personal communications service under part 24 of this chapter.

Network-based Location Technology. A method of providing the location of wireless 911 callers that employs hardware and/or software in the CMRS network and/or another fixed infrastructure, and does not require the use of special location-determining hardware and/or software in the caller's portable or mobile phone.

Private Mobile Radio Service. A mobile service that is neither a commercial mobile radio service nor the functional equivalent of a service that meets the definition of commercial mobile radio service. Private mobile radio service includes the following:

(a) Not-for-profit land mobile radio and paging services that serve the licensee's internal communications needs as defined in part 90 of this chapter. Shared-use, cost-sharing, or cooperative arrangements, multiple licensed systems that use third party managers or users combining resources to meet compatible needs for specialized internal communications facilities in compliance with the safeguards of §90.179 of this chapter are presumptively private mobile radio services;

(b) Mobile radio service offered to restricted classes of eligible users. This includes entities eligible in the Public Safety Radio Pool and Radiolocation service.

(c) 220–222 MHz land mobile service and Automatic Vehicle Monitoring systems (part 90 of this chapter) that do not offer interconnected service or that are not-for-profit; and

(d) Personal Radio Services under part 95 of this chapter (General Mobile

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Services, Radio Control Radio Services, and Citizens Band Radio Services); Maritime Service Stations (excluding Public Coast stations) (part 80 of this chapter); and Aviation Service Stations (part 87 of this chapter).

Pseudo Automatic Number Identification (Pseudo-ANI). A number, consisting of the same number of digits as ANI, that is not a North American Numbering Plan telephone directory number and may be used in place of an ANI to convey special meaning. The special meaning assigned to the pseudo-ANI is determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system.

Public Safety Answering Point. A point that has been designated to receive 911 calls and route them to emergency service personnel.

Public Switched Network. Any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers, that use the North American Numbering Plan in connection with the provision of switched services.

Statewide default answering point. An emergency answering point designated by the State to receive 911 calls for either the entire State or those portions of the State not otherwise served by a local PSAP.

[59 FR 18495, Apr. 19, 1994, as amended at 61 FR 38402, July 24, 1996; 61 FR 40352, Aug. 2, 1996; 62 FR 18843, Apr. 17, 1997; 63 FR 2637, Jan. 16, 1998; 64 FR 60130, Nov. 4, 1999; 67 FR 1648, Jan. 14, 2002; 72 FR 50073, Aug. 30, 2007]

§ 20.5 Citizenship.

(a) This rule implements section 310 of the Communications Act, 47 U.S.C. 310, regarding the citizenship of licensees in the commercial mobile radio services. Commercial mobile radio service authorizations may not be granted to or held by:

(1) Any foreign government or any representative thereof;

(2) Any alien or the representative of any alien;

(3) Any corporation organized under the laws of any foreign government;

(4) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country; or

(5) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(b) The limits listed in paragraph (a) of this section may be exceeded by eligible individuals who held ownership interests on May 24, 1993, pursuant to the waiver provisions established in section 332(c)(6) of the Communications Act. Transfers of ownership to any other person in violation of paragraph (a) of this section are prohibited.

[59 FR 18495, Apr. 19, 1994, as amended at 61 FR 55580, Oct. 28, 1996]

§ 20.6 CMRS spectrum aggregation limit.

(a) *Spectrum limitation.* No licensee in the broadband PCS, cellular, or SMR services (including all parties under common control) regulated as CMRS (*see* 47 CFR 20.9) shall have an attributable interest in a total of more than 55 MHz of licensed broadband PCS, cellular, and SMR spectrum regulated as CMRS with significant overlap in any geographic area.

(b) *SMR spectrum.* To calculate the amount of attributable SMR spectrum for purposes of paragraph (a) of this section, an entity must count all 800 MHz and 900 MHz channels located at any SMR base station inside the geographic area (MTA or BTA) where there is significant overlap. All 800 MHz channels located on at least one of those identified base stations count as 50 kHz (25 kHz paired), and all 900 MHz channels located on at least one of those identified base stations count as 25 kHz (12.5 kHz paired); provided that any discrete 800 or 900 MHz channel shall be counted only once per licensee within the geographic area, even if the licensee in question utilizes the same