

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.

DOCKET NO. 000075-TP (Phase IIA)
ORDER NO. PSC-02-0602-PHO-TP
ISSUED: May 2, 2002

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on April 19, 2002, in Tallahassee, Florida, before Chairman Lila A. Jaber, as Prehearing Officer.

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PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

On January 21, 2000, this docket was established to investigate the appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996 (the Act). An administrative hearing regarding issues delineated for Phase I was conducted on March 7 - 8, 2001. An administrative hearing on the issues delineated for Phase II was held on July 5-6, 2001. At the Special Agenda Conference on December 5, 2001, for Phase II of this docket, we decided to defer a ruling on Issues 13 and 17 and directed that these issues be set for an additional one-day hearing. This administrative hearing has been set for May 8, 2002.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is

requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to

present evidence which is proprietary confidential business information.

- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct*</u>		
Elizabeth R.A. Shiroishi	BellSouth	13 and 17
Dennis B. Trimble	Verizon	13 and 17
Julie L. Ward	Sprint	13
Michael R. Hunsucker	Sprint	17
Alfred Busbee	ALLTEL	13
Paul E. Cain**	AT&T	13 and 17
William J. Barta***	FCTA	17
Joseph Gillan	MCI WorldCom	13 and 17
John J. McCluskey	FDN	13 and 17
<u>Rebuttal*</u>		
Elizabeth R.A. Shiroishi	BellSouth	13 and 17
Dennis Trimble	Verizon	13
Julie L. Ward	Sprint	13
Paul E. Cain**	AT&T	13 and 17
William J. Barta***	FCTA	17
Joseph Gillan	MCI WorldCom	13 and 17
John McCluskey	FDN	17

* Direct and Rebuttal Testimony will be taken up together.

**AT&T filed on behalf of several ALECs (collectively referred to as "Joint ALECs") including AT&T Communications of the Southern States, Inc., TCG of South Florida, and AT&T Broadband Phone Of Florida, LLC (formerly known as MediaOne Florida Telecommunications, Inc.).

*** Time Warner adopts the Direct and Rebuttal Testimony of witness William J. Barta.

VII. BASIC POSITIONS

BELLSOUTH:

The Commission's goal in this generic proceeding is to resolve each issue set forth below consistent with the requirements of Section 251 of the Telecommunications Act of 1996 ("1996 Act"), including the regulations prescribed by the Federal Communications Commission ("FCC"), as well as Florida law. BellSouth's positions on the individually numbered issues in this docket are reasonable and consistent with the Act, pertinent rulings of the FCC, and Florida law. Thus, the Commission should adopt BellSouth's positions on each of the issues in dispute.

VERIZON:

The Commission should encourage contracting parties to negotiate the definition of the local calling area for reciprocal compensation purposes. If negotiations are not successful, then the incumbent local exchange carrier's (ILEC's) tariffed local calling areas should be used as the default for determining reciprocal compensation obligations. All carriers are familiar with these Commission-approved areas, which have been used for years to define local calls for assessment of reciprocal compensation. Continued use of the ILEC's local calling areas is the most administratively simple approach and will not affect the alternative local exchange carriers' (ALECs') ability to define their own local calling areas for retail purposes.

The Commission should, likewise, allow carriers to negotiate their own reciprocal compensation mechanisms for traffic subject to Section 251 of the Telecommunications Act of 1996 (Act). It should defer any decision on a default compensation mechanism until the FCC has ruled in its Unified Intercarrier Compensation Rulemaking. In the meantime, the status quo—a per-minute reciprocal compensation rate—would remain in effect. While a properly designed bill-and-keep approach can have merit, the parties differ as to the specifics of that design and there is no assurance that any scheme this

Commission orders will track the FCC's. Waiting for the FCC to rule is the simplest and most efficient approach.

SPRINT:

The Commission has jurisdiction to specify the rates, terms and conditions governing compensation for transport and delivery of local traffic pursuant to federal and state law. Consistent with this authority, the Commission should adopt the ILEC's tariffed local calling scope as the default definition of local calling area for reciprocal compensation purposes. In addition, Sprint's analysis of traffic exchanged between Sprint and ALECs does not support the Commission's adoption of a rebuttable presumption that traffic subject to reciprocal compensation is "roughly balanced" or the imposition of "bill and keep" as the default reciprocal compensation mechanism. Instead, the Commission should follow the reciprocal compensation procedures already established by the FCC.

ALLTEL:

The local calling area for the purposes of reciprocal compensation should be defined as the retail local calling area of the ILEC. Neither the Florida Commission nor interconnecting companies have statutory authority to redefine or alter the ILEC's "local calling areas" for the purpose of determining the applicability of reciprocal compensation, especially to the extent it would change the jurisdictional separation of access and local traffic and alter the current amount of access charges to which the ILEC would otherwise be entitled.

JOINT ALECS:

Pursuant to the Federal Communications Act of 1996 ("Act") and Federal Communications Commission ("FCC") rules and orders, state commissions should develop policies that promote local exchange services competition between incumbent local exchange companies ("ILECs") and alternative local exchange telecommunications companies ("ALECs"). Each ALEC, competing for its desired position in the marketplace, should have the

opportunity to negotiate its local calling area with the ILEC. In the absence of the parties reaching agreement, the Commission should establish LATA-wide local calling for intercarrier compensation purposes. In order for the ALECs to meaningfully compete in the marketplace, it is imperative that they not be saddled with "cloning" the ILECs' historical networks and local calling areas in the provision of local communications services. ALECs seek the flexibility to differentiate their service from ILECs in the form of additional features, reduced prices, and expanded local calling areas. LATA-wide local calling for purposes of intercarrier compensation will give ALECs this flexibility, which will enhance competition and result in an overall benefit to the consumers.

The Commission should retain reciprocal compensation as the appropriate compensation mechanism governing the transport and delivery or termination of traffic subject to Section 251 of the Act, unless the parties agree otherwise. Section 252(d)(2)(A) of the Act states that an interconnection agreement between an ILEC and a new entrant cannot be found just and reasonable unless the agreement itself provides for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier. Reciprocal compensation appropriately imposes costs on the cost-causer, and allows the costs to be shared by both the originating company and the terminating company. Bill-and-keep, on the other hand, preserves objectionable aspects of the existing patchwork of intercarrier compensation. Bill-and-keep would be neither efficient nor competitively neutral and would result in significant unintended and undesirable consequences, including potential regulatory arbitrage, increased unwanted calls to consumers, and a considerable financial windfall to ILECs.

FCTA:

The Commission is seeking to establish the most appropriate compensation mechanism to govern the transport and delivery of traffic subject to Section 251 of the Telecommunications Act

of 1996 ("the 1996 Act") in the event that carriers cannot successfully negotiate an agreement. In its Order on Remand and Report and Order ("ISP Remand Order") released on April 27, 2001, the Federal Communications Commission ("the FCC"), asserted its jurisdiction over ISP-bound traffic by declaring such traffic to be interstate information access traffic under Section 251(g) of the 1996 Act. Since the ISP Remand Order is currently on appeal but still legally effective, it is not necessary for the Florida Public Service Commission to address the issue of the appropriate compensation mechanism for ISP-bound traffic at this time.

The Commission should require that a reciprocal compensation mechanism be used to govern intercarrier compensation of the local exchange traffic that remains under its jurisdiction. The reciprocal compensation, using symmetrical rates, should be based upon the forward-looking costs of the incumbent local exchange carriers ("the ILECs") as approved by the Commission.

The benefits of implementing reciprocal compensation as a default mechanism far outweigh the consideration of bill and keep regime as an alternative. Bill and keep may be a suitable arrangement only in limited circumstances; namely where the traffic flow between carriers is approximately even and the cost structures are essentially the same. The potential pitfalls of bill and keep are numerous. The introduction of bill and keep can foster market uncertainty as the financial impact upon alternative local exchange carriers ("ALECs") remains unknown until it is in effect. Bill and keep may also encourage new forms of regulatory gamesmanship in the form of network configuration and in the attempt to disguise the nature of traffic.

Most significantly, the use of bill and keep as a default compensation mechanism allows the ILECs to exercise their superior bargaining strength. The establishment of bill and keep as a default mechanism provides the ILECs the opportunity to capitalize upon their strong preference for bill and keep. The arms-length negotiations that should characterize the agreements between ILECs and ALECs will be undermined as the ILECs can hold steadfast, secure in the knowledge that a bill

and keep regime is the ultimate regulatory remedy to resolve any impasse between the parties.

Perhaps the most prudent course of action for the Commission to follow is to await the outcome of ISP Remand Order appeal and the federal rulemaking investigating the merits of a uniform intercarrier compensation mechanism. Each of the ILECs refers to the deliberations at the federal level and supports a wait and see approach. Sprint has also pointed out that when an ILEC has adopted the FCC's interim compensation mechanism for ISP traffic, it must apply reciprocal compensation to the rest of the local traffic by default. Thus, the need for a default billing mechanism in this proceeding may be moot.

TIME WARNER:

Time Warner adopts the Statement of Issues and Positions set forth in the Prehearing Statement filed by FCTA on March 28, 2002.

MCI WORLDCOM:

In order to promote competition and innovation in the provision of local service, the Commission should define the LATA as the default "local calling area" for the application of reciprocal compensation. The default compensation mechanism should be a cost-based rate, and should be applied to all calls within the LATA. The Commission should not adopt a presumption that traffic is "roughly in balance" because the facts indicate that traffic is clearly not roughly in balance.

FDN:

Florida consumers would receive a tremendous benefit from competitive pricing for IntraLATA calling services. Today, lower retail IntraLATA rates are not possible because the high intrastate access charges assessed on IntraLATA calls pose a cost barrier to those who would offer such rates. Therefore, the Commission should order a default reciprocal compensation mechanism whereby calls within the LATA will be deemed "local" calls for reciprocal compensation purposes, provided the

originating carrier delivers calls to the terminating carrier at least as far as the tandem switch serving the end user. This proposal would promote both competitive pricing for IntraLATA services and facilities-based competition, whereas a default definition of "local" that mirrors the ILEC's local calling area only serves to protect the ILECs' control and definition of the market.

The Commission should also approve a default bill and keep mechanism for reciprocal compensation for those cases where (1) each party's traffic exchanged exceeds a minimum monthly threshold (2) the parties' traffic exchanges are roughly balanced (within 10%) and (3) the originating carrier delivers calls to the terminating carrier at least as far as the tandem switch serving the end user. Otherwise, a reciprocal rate should apply.

US LEC OF FL:

The Federal Communications Commission's ("FCC") rules and orders, in accordance with the Federal Communications Act of 1996 ("Act"), encourages state commissions to develop policies to promote competition among incumbent local exchange companies ("ILECs") and alternative local exchange companies ("ALECs"). ALECs should have an opportunity to meaningfully negotiate their local calling areas with the ILECs. The establishment of a reasonable default "local calling area" for parties unable to agree on a definition would assist in meaningful negotiations. The Commission should not establish the ILECs' traditional local calling areas as the default local calling area, as that would stifle a meaningful negotiating process, hamper meaningful competition, and restrict the consumers' options. If carriers are unable to reach agreement, the Commission should establish LATA-wide local calling as the default definition of local calling area for purposes of intercarrier compensation.

The Commission should establish a compensation mechanism governing transport and delivery or termination of traffic subject to Section 251 of the Act to be used in the absence of the parties reaching agreement or negotiating a compensation mechanism. US LEC encourages the Commission to retain

reciprocal compensation as the appropriate default compensation mechanism. Reciprocal compensation is competitively neutral and appropriately imposes costs on the cost-causer; the calling party. On the other hand, bill-and-keep is neither efficient nor competitively neutral and inappropriately imposes costs on the receiver of telephone calls, even if those calls are unwanted. Bill-and-keep may also trigger arbitrage and produce a financial windfall to ILECs.

STAFF:

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

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

- a) What is the Commission's jurisdiction in this matter?
- b) Should the Commission establish a default definition of local calling area for the purpose of intercarrier compensation, to apply in the event parties cannot reach a negotiated agreement?
- c) If so, should the default definition of local calling area for purposes of intercarrier compensation be: 1) LATA-wide local calling, 2) based upon the originating carrier's retail local calling area, or 3) some other default definition/mechanism?

POSITIONS

BELLSOUTH:

a) The Commission has jurisdiction under the FCC's Local Competition First Report and Order issued August 8, 1996 to determine geographic areas for reciprocal compensation purposes. However, whatever geographic area the Commission establishes must not conflict with Florida Law, including but not limited to Section 364.16(3)(a), Florida Statutes.

b) No. Based on BellSouth's experience, a default definition of local calling area for the purposes of reciprocal compensation is not necessary because this issue has not been highly contested or arbitrated. If, however, the Commission decides to establish a default definition, that definition must be in compliance with federal and Florida law.

c) The Commission should adopt as the default definition the originating party's local calling area, if it finds that such a proposal is administratively manageable. If the Commission determines that the originating party's local calling area is not manageable, then the default definition should be the ILEC's local calling area.

VERIZON:

The local calling area for reciprocal compensation purposes should be defined by the parties in their interconnection agreement.

a) The Commission has the authority to define the local calling area, consistent with its historical practice.

b) Yes.

c) The default definition should be the ILEC's tariffed local calling areas. All carriers are familiar with these areas, which are used today for purposes of assessing reciprocal compensation. Using the ILEC's local calling areas for reciprocal compensation purposes is also the most administratively simple option. In no event should the Commission adopt as a default either a

LATA-wide local calling area for reciprocal compensation purposes or a system where the originating carrier's retail calling areas determine what calls are subject to reciprocal compensation. These methods are not competitively neutral; would undermine universal service goals; would cause undesirable arbitrage; and are not in consumers' best interests.

SPRINT:

The FCC has recognized a state commission's authority to determine what geographic areas are "local areas" for the purposes of applying reciprocal compensation obligations for wireline carriers under section 251 (b) (5) of the Federal Telecommunications Act. The Commission should establish the default local calling area consistent with the Commission's authority under Florida law. Sprint believes that chapter 364, F.S., limits the Commission's authority to alter the ILEC's local calling area and change an ILEC's rates.

The ILEC's tariffed local calling scope should define the appropriate local calling scope for reciprocal compensation purposes for wireline carriers. This should not affect the ability of the ALEC to designate its own flat-rated calling scope for its retail services provided to its end user customers.

ALLTEL:

- a) No. The Florida Commission does not have the statutory authority to redefine the ILEC's "local calling areas" for the purpose of determining the applicability of reciprocal compensation, especially to the extent it would change the jurisdictional separation of access and local traffic and alter the current amount of access charges to which the ILEC would otherwise be entitled.
- b) No. Interconnecting companies do not have the authority under state or federal law to redefine or alter the ILEC's "local calling areas" for the purpose of determining the applicability of reciprocal compensation, especially to the extent it would change the

jurisdictional separation of access and local traffic and alter the current amount of access charges to which the ILEC would otherwise be entitled.

- c) The local calling area should be defined as the retail local calling area of the ILEC for the purposes of reciprocal compensation.

JOINT ALECS:

- a) The Commission has jurisdiction to define its local calling areas for determining the applicability of reciprocal compensation pursuant to Section 251(b)(5) of the Act, Section 120.80(13), Florida Statutes, and Florida Interexchange Carriers v. Beard, 624 So.2d 248 (Fla. 1993).

In paragraph 1035 of its Local Competition Order (FCC 96-325), the FCC specifically addressed the authority of state commissions to define local calling areas for purposes of determining the applicability of reciprocal compensation. Paragraph 1035 states:

With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under Section 251(b)(5), consistent with the state commission's historical practice of defining local service areas for wireline LECs. We expect the states to determine whether intrastate transport and termination of traffic between competing LECs, or a portion of their local service areas are not the same, should be governed by Section 251(b)(5)'s reciprocal compensation obligations or whether intrastate access charges should apply to the portions of their local service areas that are different.

Additionally, Section 120.80(13)(d), Florida Statutes, grants the Commission the authority to carry out its duties as a state commission pursuant to the Act, and states:

(d) Notwithstanding the provisions of this chapter, in implementing the Telecommunications Act of 1996, Pub. L. No. 104-104, the Public Service Commission is authorized to employ procedures consistent with that Act.

Finally, the Florida Supreme Court has held that the Commission has statutory authority to modify local calling areas:

The exclusive jurisdiction in section 364.01 to regulate telecommunications gives the Commission the authority to determine local routes.

Florida Interexchange Carriers v. Beard, 624 So.2d 248, 251 (Fla. 1993).

- b) Yes. The Commission should establish a default definition of local calling area for the purpose of intercarrier compensation in the event parties cannot reach a negotiated agreement. A default definition of local calling area would serve the two-fold purpose of assisting carriers in negotiating their local calling area in their agreements as the carriers would know the parameters of the default mechanism, and would result in a consistent statewide default definition of local calling area for the purpose of intercarrier compensation.
- c) The default definition of local calling for purposes of intercarrier compensation should be LATA-wide local calling. The ILECs' proposal to define a default local calling area as the ILECs' local calling area must be rejected. ILECs have the flexibility, based upon their ubiquitous networks, to extend their local calling areas beyond the boundaries of the basic local calling areas on

file with the Commission. BellSouth's tariffs, for example, specify extended area service (EAS) exchanges and extended calling service (ECS) exchanges. BellSouth's (and the other ILECs') ability to offer their customers local calling area options is in effective marketing tool and should be equally available to the ALECs. Yet, under the ILECs' proposal, it is not. Establishing a default definition of local calling area as LATA-wide local calling would enhance competition and result in overall benefits to consumers.

FCTA:

No position.

TIME WARNER:

Time Warner adopts the Statement of Issues and Positions set forth in the Prehearing Statement filed by FCTA on March 28, 2002.

MCI WORLDCOM:

The Commission has jurisdiction to define local calling areas and has seen the incumbents' local calling area steadily expand towards the LATA boundary for the last decade. The Commission should continue this policy by adopting the LATA boundary as the default local calling area for application of reciprocal compensation rates. This would be an important step toward adopting a unified compensation scheme.

FDN:

- a) FDN proposes that "local calling area" be defined as calls within the LATA, where the originating carrier delivers such calls are at least as far as the tandem switch serving the end user. (McCluskey)
- b) The Commission has jurisdiction to decide this matter. Section 364.01(4), Florida Statutes, directs the Commission to exercise its exclusive jurisdiction to encourage and promote competition and to ensure the

widest possible range of consumer choices in the provision of all telecommunications services. FDN's proposal for LATA-wide local is unquestionably pro-competitive. Further, based on the facts of this case, nothing in Chapter 364, Florida Statutes, the Federal Telecommunications Act of 1996, the FPSC's rules, or the FCC's rules restricts the ability of the Commission to approve FDN's proposal.

- c) Yes. A fair and reasonable default mechanism would promote efficiencies in negotiations, administration and arbitration of interconnection matters. (McCluskey)

US LEC OF FL:

- a) Sections 251 and 252 of the Act and Section 120.80(13), Florida Statutes, both clearly grant the Commission jurisdiction to define a "local calling area" for purposes of determining the applicability of reciprocal compensation. See also Florida Interexchange Carriers v. Beard, 624 So.2d 248 (Fla. 1998).

Section 251(b)(5) of the Act imposes on each carrier the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications. The FCC has interpreted Section 251(b)(5) to authorize state commissions to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under Section 251(b)(5). In the FCC's Local Competition Order (FCC 96-325), the FCC stated that it expects the states to determine whether interstate transport and termination of traffic should be governed by Section 251(b)(5) reciprocal compensation obligations or whether intrastate access charges should apply to the portions of their local service areas that are different.

Section 120.80(13)(d), Florida Statutes, grants the Commission the authority to carry out its duties pursuant to the Act and authorizes the Commission to employ procedures consistent with the Act.

- b) In the event parties cannot reach a negotiated agreement, the Commission should establish a default definition of local calling area for the purpose of intercarrier compensation.
- c) LATA-wide local calling should be the default definition of local calling area for purposes of intercarrier compensation.

STAFF:

No position at this time.

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

- a) Does the Commission have jurisdiction to establish bill and keep?
- b) What is the potential financial impact, if any, on ILECs and ALECs of bill and keep arrangements?
- c) If the Commission imposes bill and keep as a default mechanism, will the Commission need to define generically "roughly balanced?" If so, how should the Commission define "roughly balanced?"
- d) What potential advantages or disadvantages would result from the imposition of bill and keep arrangements as a default mechanism, particularly in comparison to other mechanisms already presented in Phase II of this docket?

POSITIONS

BELLSOUTH:

- a) Yes. Under the FCC rules, the Commission has the authority to establish bill and keep arrangements.

b) Bill and Keep will allow carriers to recover their costs from end users rather than through subsidies received from other carriers.

c) Not necessarily. The Commission could presume that traffic is roughly balanced, subject to a carrier rebutting such a presumption. If a carrier attempts to rebut the presumption, the Commission should find that traffic below a 3:1 ratio of originating to terminating traffic is "roughly balanced" in compliance with the FCC's April 27, 2002 Order on Remand.

d) One benefit that would result from the adoption of bill and keep is that it resolves the issue of whether an ALEC is entitled to be compensated at the ILEC's tandem interconnection rate. Even with bill and keep, however there could still be disputes over the jurisdiction of traffic, whether or not traffic is roughly balanced, and other tangential issues.

VERIZON:

No, the Commission should not establish any compensation mechanism governing traffic subject to Section 251 of the Act. It should instead defer any decision on this issue until the FCC has ruled in its Unified Intercarrier Compensation Rulemaking. Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92. All comments have been filed in that proceeding, which will address the same issue raised in this case. Until the FCC rules, the most efficient approach is to maintain the status quo (a per-minute rate).

- a) Yes. The FCC has given States explicit authority to impose bill-and-keep arrangements. (FCC Rule 51.713.)
- b) It is impossible to determine the financial impact of a bill-and-keep arrangement on individual ILECs or ALECs without knowing their particular circumstances. In addition, it is difficult to estimate the impact of a bill-and-keep mechanism on ALEC and ILEC industry segments without knowing the details of that mechanism.

- c) The Commission need not define generically "roughly in balance," but Verizon would recommend doing so. Verizon suggests that the Commission define traffic as roughly in balance if the traffic imbalance is less than 10% in any three-month period.
- d) A carefully designed bill-and-keep regime can have merit. An appropriate default bill-and-keep mechanism must produce the correct incentives for the development of an efficient network that minimizes the overall costs of interconnection; discourage game-playing and arbitrage; contain a rational geographic limit on the obligation to deliver traffic, and reasonably assign the cost of transport between interconnecting carriers in a symmetrical manner that does not penalize any carrier. Verizon has proposed a mechanism that meets these criteria at the FCC, and has outlined the same approach in this proceeding, should the Commission be inclined to establish a compensation mechanism before the FCC rules.

SPRINT:

Under the Federal Telecommunications Act and FCC rules, the Commission has jurisdiction in limited circumstances to establish bill and keep in the state of Florida for local traffic. FCC rules allow states to impose bill and keep arrangements if the state commission determines that the traffic subject to reciprocal compensation exchanged between two carriers is roughly balanced and is expected to remain so. The state commission may presume that traffic is roughly balanced and a party is entitled to rebut that presumption.

Sprint's analysis of traffic exchanged between Sprint and ALECs shows that, even taking into account the elimination of ISP-bound traffic from 251 (b) (5) traffic pursuant to the FCC's ISP Remand Order, traffic is generally not roughly balanced between Sprint and individual ALECs in Florida. Therefore, Sprint believes there is little benefit in the Commission adopting a presumption that traffic is roughly balanced, or a definition of roughly balanced, and establishing bill and keep as a default mechanism for reciprocal compensation in Florida. Such a ruling would

likely lead to an increase in the Commission's workload to resolve disputes concerning the balance of traffic. Instead, the Commission should follow the FCC's reciprocal compensation procedures, specifically as set forth in FCC Rule 51.711.

ALLTEL:

- a) No position.
- b) No position.
- c) No position.
- d) No position.

JOINT ALECS:

- a) Yes, the Commission has jurisdiction to establish bill-and-keep, if local traffic between the carriers is roughly balanced. Pursuant to FCC Rule 51.713(b), the Commission may impose bill-and-keep arrangements if the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction, and is expected to remain so.
- b) A bill-and-keep arrangement would cause major adverse financial impact without a concomitant reduction in administrative costs. ALECs in particular will lose a source of income that is necessary to cover the costs for transporting and terminating calls originating on an ILEC network. Further, depending on how the Commission was to define the term "roughly balanced" to establish the parameters of a bill-and-keep arrangement, the carrier that originates more calls than it terminates obviously would receive a financial windfall.
- c) Yes, if the Commission imposes bill-and-keep as a default mechanism, it will need to define generically "roughly balanced." Traffic should be considered "roughly balanced" when the difference between the amounts of traffic terminated by each carrier is almost insignificant.

- d) Bill-and-keep has many potential disadvantages as it preserves objectionable aspects of the existing patchwork of compensation. Bill-and-keep would discourage good faith negotiations between parties as the party that expects to originate more traffic than it terminates would have the incentive to avoid any agreement knowing that the default bill-and-keep mechanism would be triggered. Bill-and-keep would create new opportunities for both regulatory arbitrage and monopoly abuse by encouraging carriers to seek customers who make more calls than they receive. Bill-and-keep also requires recipients of unwanted telephone calls to pay for terminating those calls. Consequently, consumers who make few calls or those who subscribe to phone service primarily for safety reasons would likely see their phone rates increase, while customers who make a large number of calls (e.g., telemarketers) would likely see their rates decline.

Only when the exchange of local traffic is precisely in balance does bill-and-keep offer any advantage. Even then, the only advantage to bill-and-keep would be that administrative work would be less burdensome as the parties would not need to render bills and checks to each other each month. Of course, this benefit could easily be achieved between the parties by negotiating bill-and-keep.

The Commission should retain the current reciprocal compensation mechanism unless the parties agree otherwise as it is cost based, consistent with the Act and competitively neutral.

FCTA:

The Commission should continue its policy of requiring reciprocal compensation for the local traffic (i.e. non-ISP-bound traffic) that remains under its jurisdiction. The Commission's current rules require that symmetrical rates, based upon the ILECs' Commission-approved forward-looking costs, serve as the default reciprocal compensation mechanism.

As an alternative, the Commission could await the outcome of the ISP Remand Order appeal and the federal rulemaking investigating the merits of a uniform intercarrier compensation mechanism. This position is consistent with the recommendation of the ILECs that the Commission adopt a wait and see approach based upon the proceeding at the federal level.

- a) The Commission has jurisdiction to establish bill and keep for non-ISP-bound local traffic under certain circumstances. The Commission can establish bill and keep if neither carrier has rebutted the presumption of symmetrical rates and if the flow of traffic between the carriers' networks is approximately equal. Furthermore, as Sprint has pointed out, if an ILEC has opted-in to the FCC's intercarrier reciprocal compensation mechanism for ISP-bound traffic, then reciprocal compensation must be applied to the remaining local traffic by default.
- b) The ILECs should receive an immediate and substantial stream of cash flow, because they no longer have the obligation to compensate the ALECs for terminating calls that are originated on their networks. On the other side of the coin, the ALECs will not recover the revenue earned for transporting and terminating the local traffic that is originated by the ILECs' customers.
- c) If bill and keep is imposed by the Florida Public Service Commission as a default mechanism, then the carriers' non-ISP-bound local traffic must be measured for "roughly balanced" traffic loads. A percentage or dollar threshold could be established where a carrier would not be obligated to compensate the interconnecting carrier unless the net minutes-of-use for terminating traffic resulted in an amount that exceeded the prescribed threshold. The non-ISP-bound local traffic flows between interconnecting carriers should be measured as accurately as possible for each six-month period the interconnection agreement remains in effect.
- d) Several disadvantages are likely to result from a Commission decision to impose a bill and keep

arrangement. New administrative and marketing costs will be borne by both the ILECs and the ALECs. In addition, the market uncertainty that may accompany a shift to bill and keep carries its own set of cost burdens.

Bill and keep is also likely to promote new forms of regulatory gamesmanship. Most importantly, bill and keep arrangements play right into the hands of the superior bargaining power that the ILECs hold. The ILECs strongly support a bill and keep regime. Thus, if bill and keep is imposed as the default mechanism, then one can expect the ILECs to rely upon this regulatory tool to resolve impasses that would be more equitably dealt with in true arms-length negotiations.

TIME WARNER:

Time Warner adopts the Statement of Issues and Positions set forth in the Prehearing Statement filed by FCTA on March 28, 2002.

MCI WORLDCOM:

The default compensation mechanism should be a cost-based rate. That rate should be applied to as much traffic as the law allows, i.e., all calls within the LATA. The facts in this case -- including those presented by the ILECS -- clearly show that traffic is not roughly in balance. Bill-and-keep is therefore inappropriate. In light of these facts, the Commission should not adopt a presumption that traffic is roughly in balance. Such a presumption would be of no benefit and could generate unnecessary work for the Commission because individual carriers would be able to rebut it.

FDN:

Yes. A fair and reasonable default mechanism would promote efficiencies in negotiations, administration and arbitration of interconnection matters. The default mechanism should be bill and keep, provided (1) each party's traffic exchanged exceeds a minimum monthly threshold (499,999 minutes per month), (2) the parties' traffic exchanges are roughly

balanced (within 10%) and (3) the originating carrier delivers calls to the terminating carrier at least as far as the tandem switch serving the end user. Otherwise, a reciprocal rate should apply. (McCluskey)

- a) Yes, aside from state law authority, 47 C.F.R. § 51.713 grants the Commission authority to establish bill and keep arrangements and authority to presume traffic exchanges are roughly in balance.
- b) Assuming that the traffic exchange conditions FDN proposes are approved, facilities based competition will be promoted, LEC expenses for the monitoring, billing and collection of intercarrier compensation will be reduced, and ALECs may be able to reallocate resources to end-user focused, competitive activities. (McCluskey)
- c) If bill and keep is the approved default mechanism, the Commission will need to define "roughly balanced." The evaluation should be on a per LATA basis where "roughly balanced" means there is a 10% or less variation in the volume of traffic exchanged between carriers over a reasonable period. (McCluskey)
- d) The disadvantages to a bill and keep regime would only result where traffic is not over a minimum threshold and/or not roughly in balanced or where there are unfair or unreasonable rules on interconnection architecture. The advantages to a properly established bill and keep regime, such as that FDN proposes, are as stated in FDN's position to Issue No. 17(b) above. (McCluskey).

US LEC OF FL:

- a) FCC Rule 51.713 grants the Commission jurisdiction to establish bill-and-keep, but limits the Commission's discretion to impose a bill-and-keep compensation regime to situations wherein "the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so, and

no showing has been made pursuant to Section 51.711(b) of this part."

- b) A bill-and-keep arrangement would have significant financial impact as the cost-causer (originating caller) would not be responsible for the cost of the call. That cost would be unfairly incurred by the recipient of the phone call. Additionally, the LEC that originates more calls than it terminates would receive a financial windfall from the arrangement.
- c) The Commission will need to define generically "roughly balanced" if the Commission imposes bill-and-keep as a default mechanism. Traffic should be considered "roughly balanced" when the difference between the amount of traffic terminated by each carrier is statistically insignificant and is expected to remain so. Once the traffic meets a threshold of 1 million minutes per month, and is out of balance by more than 5%, then traffic should no longer be considered in balance, and reciprocal compensation should apply. For the last 5 years, traffic balance has not occurred between US LEC and any ILEC in Florida. Therefore, US LEC would object to the Commission creating a rebuttable presumption in this generic docket that traffic is roughly balanced.
- d) Bill-and-keep only offers any advantage to carriers when the exchange of local traffic is statistically balanced. The parties would still need to calculate their local minutes of use (MOU) on a monthly basis to ensure that the traffic is statistically balanced. When traffic is statistically balanced, the advantage would be that carriers would not bill and pay each other every month for terminating the other party's traffic. However, the parties could achieve the same result simply by negotiating a bill-and-keep reciprocal compensation arrangement.
A default bill-and-keep reciprocal compensation mechanism is disadvantageous for a number of reasons. Bill-and-keep inappropriately imposes costs on the recipient of a phone call, whether the recipient wants the call or not. Additionally, a bill-and-keep default

mechanism would not encourage carriers to negotiate as a carrier that originates more calls than it terminates would want bill-and-keep as it would create a financial windfall for that carrier. Bill-and-keep encourages carriers to seek customers that originate more telephone calls than they receive, and discourages carriers from seeking customers that terminate more phone calls than they originate.

Reciprocal compensation should be the default mechanism as it encourages parties to reach agreement, is cost based and competitively neutral.

STAFF: No position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered</u> <u>By</u>	<u>I.D. No.</u>	<u>Description</u>
Elizabeth R.A. Shiroishi	BellSouth	<hr/> (ERAS-1)	Diagram A - BST is Toll Provider (LPIC)
			Diagram B - IXC is Toll Provider (LPIC)
			Diagram C - ALEC is Toll Provider (LPIC)
		<hr/> (ERAS-2)	Diagram A - ILEC is Toll Provider (LPIC)

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Dennis B. Trimble	Verizon	_____ (DBT-2)	Verizon's r e p l y comments to the FCC regarding unified intercarrier compensation
Michael R. Hunsucker	Sprint	_____ (MRH-1)	Sprint ILEC to CLEC Traffic Analysis
		_____ (MRH-2)	S p r i n t Adjusted ILEC to CLEC T r a f f i c Analysis
William J. Barta	FCTA	_____ (WBJ-1)	Qualifications
Joseph Gillan	MCI WorldCom	_____ (JPG-1)	Comparing the R e l a t i v e T r a f f i c Flows: ALECs, C M R S Providers and Interexchange C a r r i e r s (Florida - 2000)
		_____ (JPG-2)	C o m p a r i n g Traffic to Revenue
		_____ (JPG-3) (Rebuttal Testimony)	D e c l i n i n g Importance of i n t r a L a t a Calling

<u>Witness</u>	<u>Proffered</u> <u>By</u>	<u>I.D. No.</u>	<u>Description</u>
John J. McCluskey	FDN	_____ (JJM-1)	Segment - LATA 460 ILEC R e t a i l Calling Areas

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

I note that although FCTA and Time Warner referenced the Joint Parties' Stipulation, filed on March 27, 2002, for Phase I, the stipulation addresses only issues delineated in Phase I of this proceeding. We approved the stipulation at our April 23, 2002 Agenda Conference.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

Sprint's April 16, 2002, Request for Confidential Treatment of Document No. 04253-02, and Verizon's April 18, 2002, Request for Confidential Treatment of Document No. 04251-02 Are pending. Also, BellSouth has filed a Notice of Intent to Request Confidential Classification of its responses to Staff's First Request for Production of Document Nos. 1, 3 and 4. Separate orders will be issued on the pending confidentiality requests prior to hearing.

XIII. DECISIONS THAT MAY IMPACT COMMISSION'S RESOLUTION OF ISSUES

The parties have stated in their prehearing statements that the following decisions have a potential impact on our decision in this proceeding:

VERIZON:

Notice of Proposed Rulemaking to address intercarrier compensation issues generally, Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92 (Released April 27, 2001).

SPRINT:

1. Order on Remand and Report and Order, FCC 01-131, In the matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68 (released April 27, 2001).

2. Notice of Proposed Rulemaking to address intercarrier compensation issues generally, Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92 (Released April 27, 2001).

FCTA:

As noted above, the FCC's ISP Remand Order is currently under court review and the outcome of the appeal may affect many of the issues being deliberated by the Florida Commission. In addition, the FCC rulemaking on uniform intercarrier compensation (Notice of Proposed Rulemaking, CC Docket No. 01-92, April 27, 2001) may ultimately affect the extent of the Commission's authority in this area.

TIME WARNER:

The ISP Remand Order, as well as FCC NRPM on intercarrier compensation (FCC Docket 01-92, April 27, 2001).

MCI WORLDCOM:

The Commission's ability to resolve the issues in this case is limited by the requirements of FCC Rules 51.701, 51.705 and 51.713.

FDN:

FDN is not aware of any decision or pending FCC or court decision that has or may preempt or otherwise impact the Commission's ability to resolve any of the above issues. FDN acknowledges that the FCC has an open proceeding to consider changes to inter-carrier compensation schemes. No decision has been announced in that proceeding, and FDN does not believe a decision in that case will be forthcoming in the near future. Additionally, FDN notes that the FCC's ISP Remand Order is on appeal before the D.C. Circuit Court of Appeals. Though a decision in that case is expected soon, it is unknown if that decision will have any impact on the two issues addressed in this matter, since the focus of that appeal was the treatment of ISP-bound traffic.

XIV. RULINGS

On April 12, 2002, e.spire Communications, Inc. (e.spire) filed a request for permission to be excused from attendance at the remainder of the proceedings in this docket. Noting no objection, e.spire's request is granted.

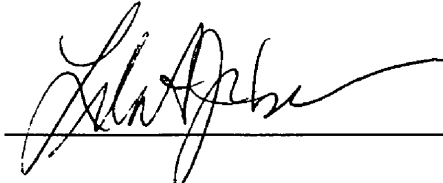
Opening statements, if any, shall not exceed 5 minutes per party.

It is therefore,

ORDERED by Chairman Lila A. Jaber, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

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By ORDER of Chairman Lila A. Jaber, as Prehearing Officer,
this 2nd Day of May, 2002.



LILA A. JABER
Chairman and Prehearing Officer

(S E A L)

FRB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial

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review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.