ORIGINAL

Kimberly Caswell
Vice President and General Counsel, Southeast
Legal Department

01 APR 16 AM 10:04

verizon

FLTC0007
201 North Franklin Street (33602)
Post Office Box 110
Tampa, Florida 33601-0110

Phone 813 483-2606
Fax 813 204-8870
kimberly.caswell@verizon.com

April 18, 2001

Ms. Blanca S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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

Dear Ms. Bayo:

Please find enclosed an original and fifteen copies of Verizon Florida Inc.'s Posthearing Statement for filing in the above matter. Also enclosed is a diskette with a copy of the Posthearing Statement in Word 97 format. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this matter, please contact me at 813-483-2617.

Sincerely,

Kimberly Caswell

KC:tas
Enclosures

APP
CAF
CMP
COM 5
CTR
ECR
LEG 1
OPC
PAI
RGO
SEC 1
SER
OTH

RECEIVED & FILED
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
04752 APR 18 01
FPSC-RECORDS/REPORTING

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 Filed: April 18, 2001

VERIZON FLORIDA INC.'S POSTHEARING STATEMENT

Verizon Florida Inc. (Verizon) files its Posthearing Statement in accordance with Commission Order number PSC-01-0422-PHO-TP and Commission rule 28-106.215.

VERIZON'S BASIC POSITION

Under FCC decisions, traffic delivered to Internet service providers (ISPs) is primarily jurisdictionally interstate. This Commission, therefore, does not have jurisdiction to establish a compensation mechanism for this traffic. The FCC, moreover, is expected to address this issue in the very near future, and this Commission should therefore await the FCC's pending ruling before taking any action to establish a compensation mechanism for ISP-bound traffic.

If the Commission nevertheless moves forward to establish a compensation mechanism, its decision should take into consideration the special characteristics of ISP-bound traffic, as well as the ILECs' end user rates for local service. It should recognize that applying existing, usage-based reciprocal compensation rates to ISP-bound calls produces unambiguously anticompetitive and anticonsumer effects. These include discouraging alternative local exchange carriers (ALECs) from serving all customers—including residential customers—who originate dial-up traffic to ISPs and reducing ALECs' incentive to deploy advanced services.

To avoid creating these market distortions, any intercompany compensation structure should match the end user's rate structure. It is not possible to achieve this outcome in Florida with usage-based rates today, because the incumbent local exchange carriers' (ILECs') rate structures and levels are strictly constrained by statute. As such, it is necessary to conform the reciprocal compensation structure to the flat-rate end user structure. The only viable way to do this is to join the increasing number of states that have adopted a bill-and-keep approach.

If the Commission approves any intercarrier compensation mechanism in this docket, it cannot be automatically imposed upon carriers. This Commission cannot supersede the negotiation/arbitration structure Congress established in the Telecommunications Act of 1996 (Act). Therefore, the chosen mechanism should be deemed a policy preference to be considered only if carriers fail to agree on a reciprocal compensation scheme.

VERIZON'S SPECIFIC POSITIONS

Following are Verizon's positions on each of the specific issues identified for resolution in this docket.

Issue 1(a): Does the Commission have the jurisdiction to adopt an intercarrier compensation mechanism for delivery of ISP-bound traffic?

Verizon's Position: * No. Under longstanding FCC precedent, ISP-bound traffic is primarily jurisdictionally interstate, so the Commission lacks authority to establish a compensation mechanism for it. *

In February of 1999, the FCC ruled that ISP-bound traffic is largely jurisdictionally interstate. *Implementation of the Local Competition Provisions in the Telecomm. Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Declaratory Ruling and Notice of

Proposed Rulemaking, 14 FCC Rcd 3689 (1999) (Reciprocal Compensation Order), *vacated and remanded, Bell Atlantic v. FCC*, 206 F. 3d 1 (D.C. Cir. 2000). In reaching that conclusion, the FCC relied on its traditional, end-to-end analysis for determining the jurisdictional nature of communications. Consistent with its longstanding precedent, the FCC concluded that "the communications at issue here do not terminate at the ISP's local server, as CLECs and ISPs contend, but continue to the ultimate destination or destinations, specifically at a[n] Internet website that is often located in another state." (Reciprocal Compensation Order at para. 12.) Thus, the FCC explicitly rejected the "two-call theory" that ISP-bound traffic must be separated into an intrastate telecommunications service and an interstate information service. (Reciprocal Compensation Order at para. 13.) This conclusion comports with our common sense understanding of the Internet; it is called the World Wide Web for a reason. (Beauvais DT at 8-9.)

While the FCC's Reciprocal Compensation Order determined that ISP-bound traffic is interstate in nature, and thus subject to the FCC's jurisdiction, the FCC left the matter of establishing a compensation mechanism to a rulemaking. Pending adoption of its rule, the FCC declined to disturb state commission decisions on the applicability of reciprocal compensation provisions in carriers' interconnection agreements. (Reciprocal Compensation Order at para. 21.)

The Commission's Reciprocal Compensation Order was appealed to the D.C. Circuit Court. The Court ultimately vacated the FCC's Order for lack of a reasoned explanation as to why ISP calls are local within the meaning of the reciprocal compensation rules. *Bell Atlantic,* 206 F.3d 1. But it is important to understand that the

Court did *not* question the use of the FCC's end-to-end analysis for purposes of determining jurisdiction. In fact, the Court stated: "There is no dispute that the Commission has historically been justified in relying on this method when determining whether a particular communication is jurisdictionally interstate." *Id.* at 5. As e.spire witness Falvey testified, "[t]he jurisdictional analysis of the FCC was upheld by the D.C. Circuit. This is important." (Falvey, Tr. 295.)

Indeed, in a recent argument in another case, the Court corrected a party that suggested the Court had rejected the FCC's analysis that ISP-bound calls were interstate access. The Court clarified that it had merely decided that the FCC had not "adequately supported"[1] its prior decision to that effect in its declaratory ruling on reciprocal compensation.

On remand from the Reciprocal Compensation Order, the FCC is expected to supply the rationale the D.C. Circuit Court found lacking, and once again affirm that ISP-bound traffic is jurisdictionally interstate and subject to a federal compensation mechanism. (Tr. 192.) As to the compensation mechanism itself, the FCC is reportedly in the final stages of drafting its reciprocal compensation order. (*See* Falvey, Tr. 283.)

---

[1] *See WorldCom Inc. v. FCC*, DC Dir. Case No. 00-1002, Transcript of Proceedings at 14 (Feb. 21, 2001):

MR. BRADFORD:....The FCC cited the order of remand to this Court in Bell Atlantic. It made the same arguments in Bell Atlantic that it makes here. That is, at times noncarriers can be purchasers of exchange access, that the statement in nonaccounting safeguards order that ISPs do not use exchange access was wrongly decided, that historically, this has always been an interstate access service and the Court rejected them, rejected those arguments. First said in Bell—

THE COURT: Did we say they were wrong or simply that they were not adequately supported?

MR. BRADFORD: I think that the Court said that they were not adequately supported. I would go further and say they were wrong—

THE COURT: I understand you would go farther, but you're not saying we went farther?

MR. BRADFORD: No, I think—the way I look at it, Your Honor, is that this Court sets some hurdles—

THE COURT: And it may be good enough.

An FCC spokesman has stated that it will probably be released in a month or two. (Telecommunications Reports Daily, March 23, 2001.)

The ALECs argue that the Court's vacatur of the FCC's Order somehow leaves the states free to determine that ISP-bound traffic is local and to establish intercarrier compensation mechanisms to apply to such traffic. This argument is legally unsound. If anything, the vacatur removed the only authority the states purportedly had to apply reciprocal compensation to ISP-bound traffic in the first place.

Despite its finding that ISP traffic is jurisdictionally interstate and thus ultimately subject to a federal compensation mechanism, the FCC purported to give the states the authority to apply reciprocal compensation to such traffic until it is able to adopt a compensation mechanism. Because the Court vacated the entire Reciprocal Compensation Order, however, the interim jurisdictional grant the FCC attempted to give the states was nullified, and the states remain without authority to apply reciprocal compensation to ISP-bound traffic.

Because it found that the FCC had not adequately explained the classification of ISP-bound traffic, the Court did not need to reach the ILECs' claims that the Act's section 251(b)(5) preempts state commissions from imposing reciprocal compensation for ISP traffic. *Bell Atlantic, 203* F. 3d at 9. Even though the Court made no preemption ruling, it confirmed that ILECs "are free to seek relief from state-authorized compensation that they believe to be wrongfully imposed." *Bell Atlantic* at 9. In other words, the lack of a preemption ruling does not affect the ILECs' ability to argue (before commissions or courts) that ISP-bound traffic is jurisdictionally interstate and not subject to the Act's reciprocal compensation obligations.

The ILECs, of course, have made that argument here. Given the Court's nullification of the FCC's interim jurisdictional grant to the states, the only way this Commission can assert jurisdiction over ISP-bound traffic is to approve the two-call theory the ALECs in this proceeding try to resurrect. This approach is at odds with existing federal law, including the long line of FCC decisions issued both before and after the Reciprocal Compensation Order. For instance, the FCC has repeatedly ruled that xDSL service, which is used to provide high-speed access to the Internet, is jurisdictionally interstate. *See, e.g., GTE Tel. Operating Cos. GTOC Tariff No. 1, GTOC Transmittal No. 1148*, 13 FCC Rcd 22466 (1998); *Bell Atlantic Tel. Cos., Bell Atlantic Tariff No. 1*, 13 FCC Rcd 23667 (1998). Those decisions rely on the same end-to-end analysis of ISP-bound communications the FCC used in its Reciprocal Compensation Order. The FCC's xDSL rulings were not challenged.

Further, in a decision released after the Reciprocal Compensation Order, the FCC explained that the fact that an ISP provides information service does not mean that the telecommunication initiated by an end user seeking to access the Internet somehow ends at the ISP. Rather, information service is provided on top of—or is carried by—a telecommunication. The telecommunication is not interrupted. (*See Deployment of Wireline Services Offering Advanced Telecomm. Capability*, FCC No. 99-413 (Dec. 23, 1999) (Advanced Services Order).) The D.C. Circuit acknowledged that the FCC had issued this clarifying precedent, but held that the Court could not rely upon it because it was not part of the reasoning supplied by the FCC in the ruling directly under review. (*Bell Atlantic*, 203 F. 3d at 9.)

As noted, while the Court vacated the Commission's Order, it did not disapprove the FCC's end-to-end method of traffic analysis, but instead recognized its continued vitality. *Id.* at 5. To the extent ALECs try to convince the Commission that "the Court rejected the FCC's end-to-end or one-call analysis," (Hoffman, Tr. 147), they are wrong. As explained above, that mode of analysis, developed over a number of years and embodied in numerous cases, including the xDSL tariffing cases, remains good law, and precludes a finding of state jurisdiction over ISP-bound traffic.

Issue 1(b): If so, does the Commission have the jurisdiction to adopt such an intercarrier compensation mechanism through a generic proceeding?

Verizon's Position: * As explained above, the Commission has no jurisdiction to adopt an intercarrier compensation mechanism through any kind of proceeding, generic or otherwise. *

As Verizon explained above, the Commission lacks the authority to establish an intercarrier compensation mechanism for ISP-bound traffic, which is not local. Even if the Commission did have such authority, it could not require all companies to adhere to a particular type of reciprocal compensation structure. The Act prescribes negotiation between the ILEC and the ALEC as the first-line means of arriving at local interconnection agreements. (Act sec. 252.) So the Commission cannot deny parties the ability to negotiate their own compensation mechanisms.

Indeed, Verizon does not believe the Commission intends to do so. Issue 9 is framed in terms of a default mechanism; it does not seem to contemplate automatic imposition of a specific compensation mechanism upon all carriers. If the Commission believes it has the authority to set an intercarrier compensation mechanism for ISP-bound traffic, then it may consider policy options in a generic proceeding, but such

options could apply only if carriers fail to negotiate their own reciprocal compensation arrangements.[2]

Issue 2: Is delivery of ISP-bound traffic subject to compensation under Section 251 of the Telecommunications Act of 1996?

Verizon's Position: * No. The FCC has interpreted the Act's reciprocal compensation obligations to apply only to local traffic. As explained, ISP-bound traffic is not local in nature, so there is no statutory obligation to pay reciprocal compensation on these calls. *

The Act requires local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." (Act sec. 251(b)(5).) The FCC has interpreted this requirement to apply only to "local telecommunications traffic," (47 C.F.R. sec. 51.701(a)), meaning traffic that both "originates and terminates within a local area" (*Implementation of the Local Competition Provisions in the Telecomm. Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (First Report and Order), at para. 1034). As Verizon explained in its response to Issue 1, ISP-bound calls do not meet this criterion. Therefore, there is no statutory obligation to pay reciprocal compensation on such calls.

Issue 3: What actions should the Commission take, if any, with respect to establishing an appropriate compensation mechanism for ISP-bound traffic in light of current decisions and activities of the courts and the FCC?

Verizon's Position: * Given the pending FCC decision establishing a reciprocal compensation mechanism for ISP-bound traffic, the Commission should decline to adopt any such mechanism in this docket. This will avoid the confusion and inefficiency of having to later conform any conflicting state action to the federal ruling. *

[2] Certainly, there is no obligation to undertake a proceeding to establish reciprocal compensation terms. In this regard, Verizon notes that the FCC's *Starpower* decision raised by the Staff at the hearing was an *enforcement* proceeding, not a generic docket *or* an arbitration. *Starpower Comm., LLC Petition for Preemption of Jurisdiction of the Virginia State Corp. Comm'n Pursuant to Section 252(e)(5) of the Telecomm. Act of 1996*, FCC 00-216 (June 14, 2000).

As explained in its response to Issue 1, the Commission does not have the legal authority to establish a reciprocal compensation mechanism for ISP traffic. Even if it did, such action would be ill-advised.

Even those who claim the states have authority to devise a reciprocal compensation structure admit that any decision this Commission makes will be superseded by the FCC's own ruling on the matter. (*See, e.g.*, Falvey, Tr. 262, 282, Rebuttal Testimony (RT) at 20.) Recent reports indicate that this will occur soon, perhaps within a month or two. Whatever the time frame, the fact remains that if this Commission makes a ruling that conflicts with the FCC's, the state ruling will be effectively overturned. In this regard, it is highly implausible that the FCC will, on remand, reject its longstanding method of analyzing traffic on an end-to-end basis in favor of the two-call theory that it has repeatedly rebuffed in the past and that is the only basis for reclassifying ISP-bound traffic as intrastate traffic.

It would be particularly inadvisable for this Commission to issue a decision that would compel companies to revise their systems and operations. If such a decision were later invalidated, all of those changes—potentially very time-consuming and expensive ones—would need to be undone.

The only approach that will avoid this inefficiency and waste of resources is to decline to issue any decision in this proceeding, at least until the FCC has ruled. At that time, it will be clear if there is anything left for the states to do in this area. (Beauvais Direct Testimony (DT) at 5.)

If the Commission instead moves ahead in the absence of a federal ruling, it should at least consider the ease of implementation (and reversal) of alternative

mechanisms. For this reason and many others, bill-and-keep is the best option, as discussed in more detail in Verizon's position on Issue 9.

Issue 4: What policy considerations should inform the Commission's decision in this docket?

Verizon's Position: * The foremost policy consideration should be the competitive consequences of any proposed compensation scheme. It is not in the public interest to approve a mechanism that would fail to promote—or that would outright discourage—development of efficient competition in all local market segments. *

The Florida Legislature's 1995 revisions to Chapter 364 and Congress' subsequent adoption of the Telecommunications Act of 1996 fundamentally changed this Commission's regulatory role. Instead of applying the kind of direct regulation of companies that characterized traditional rate-base regulation, the Commission's principal mission has moved toward shepherding the transition to competition in local markets. To fulfill this task, the Commission must avoid actions that would confer non-market advantages on any industry participant or otherwise undermine efficient competition.

Keeping these objectives in mind, the Commission should recognize that the concept of reciprocal compensation—as its name implies—assumes that traffic between two networks will be roughly balanced, as the average user receives about as many calls as he makes. In the case of an ALEC serving an ISP, however, this expectation is wildly skewed; while ISPs do not generally make calls, they generate a huge volume of inbound calls. The publicly available aggregate usage data demonstrate that, on a per end-user basis, ISP-bound calls constitute vastly more minutes of use per month (or per day) than do traditional voice calls. Pre-Internet usage studies suggest monthly local usage for single-party residence and business customers to be in the range of 300-600

minutes per month. Studies of the demand for ISP-bound traffic show monthly estimates of from 1800 minutes per month (or an hour a day) to 3180 minutes per month (Beauvais DT at 16-18; Taylor, Tr. 502; Dr. Selwyn uses a 1500-minute-per-month figure, Selwyn DT at 23), with Internet usage growing at astonishing rates, both in terms of customers and minutes of use. (Beauvais DT at 19.)

In addition, the parties agree that the *duration* of ISP-bound calls is much longer than that of local voice traffic. (Hunsucker RT at 4, Tr. 388.) Dr. Beauvais discussed a number of studies, as well as Verizon's own observations, confirming that holding times for ISP-bound traffic exceed those of voice traffic by up to 10 times. (Beauvais DT at 11-16.) The average voice call is 3-5 minutes, while the call hold times for the typical Internet user appear to range between 25 and 45 minutes per call, with just under three calls a day from a typical dial-up connection.

Clearly, the reciprocal compensation prices for the exchange of local traffic relative to the price paid by the end user for that traffic never envisioned the volumes that the Internet would engender. (Beauvais DT at 8.) The ILECs' cost studies, which the ALECs use as proxies for their own call termination costs, are based on call volumes and holding times for traditional voice traffic. The existing prices that are based upon these costs, therefore, provide a windfall to ALECs serving ISPs, because they allow the ALECs to overrecover costs associated with terminating traffic on their networks. (*See* Fogleman, Tr. 877, DT at 6; Hunsucker DT at 13-14.) Applying usage-based reciprocal compensation to largely one-way traffic, while retail service remains flat-rated, produces results that are plainly anticompetitive and anticonsumer.

While there is significant competition for ILEC-provided services in some markets (primarily business markets), there is little evidence that ALECs are signing up large numbers of residential customers in Florida. ALECs are, however, signing up a relatively large number of ISP customers, which almost exclusively receive, rather than originate, traffic. This situation gives rise to a marked asymmetry in the costs each carrier might be expected to incur in providing local exchange service, if such service also includes ISP-bound usage. These costs, in relation to current prices, exacerbate existing disincentives to enter the local exchange market for residential customers who might be expected to utilize the Internet on a dial-up basis. (Beauvais DT at 19-20, Taylor, Tr. 824-25.) To the extent ILECs must pay ALECs usage-based compensation, as the ALECs advocate, the ALEC has no incentive to serve the large and ever-expanding class of local customers who are heavy Internet users via dial-up connections.

Dr. Beauvais illustrated this point with an example using Verizon's existing local residence rate, its call originating costs, the interconnection rate from a typical Verizon interconnection agreement, and call rates and holding times drawn from the existing public data. His analysis showed that the reciprocal compensation paid by Verizon to the ALEC serving the ISP could well exceed the revenues Verizon receives from the end user by $1.82 to $4.12 per line. (Beauvais DT at 25-27.) Obviously, no carrier will voluntarily serve a subscriber if it stands to pay more in reciprocal compensation than it receives in revenues from its end user. (Taylor, Tr. 821-22.) This effect is doubly troublesome to the extent that the ILEC retains a universal service obligation and

cannot—like its ALEC competitor—refrain from serving customers with high Internet usage profiles.

With the kinds of incentives usage-based compensation creates in Florida today, it is not surprising that ALECs openly admit that they have built their business plans around serving customers with high inbound call volumes, like ISPs, targeting what they call the "call termination market." (Shiroishi, Tr. 645, 690-91; Fogleman DT at 4-5; Selwyn DT at 6-7 ("many CLECs elected to pursue the market for call termination services needed by ISPs and other businesses with high volume of inbound traffic").) The ALECs' focus is on maximizing and protecting these regulatory gaming arrangements dependent on today's network, rather than developing the advanced data network of tomorrow.

In fact, ending usage-based compensation may well have the salutary effect of prompting the ALECs to change their business plan to focus on advanced technologies, rather than dial-up access. (*See* Shiroishi, Tr. 658; Taylor, Tr. 843; Fogleman, Tr. 895.) As Commissions elsewhere have correctly observed, the existing reciprocal compensation regime discourages ALECs from investing in and developing important broadband technologies, like xDSL. (*See, e.g., Petition of Sprint Comm. Co. for Arbitration to Establish an Interconnection Agreement with U.S. West Comm., Inc.*, Docket No. 00B-011T, Colorado P.U.C. Decision No. C00-479, at 16-17 (Ex. 2 at 40) (May 3, 2000) (imposing reciprocal compensation for ISP-bound traffic creates "disincentives for CLECs to offer either residential service or advanced services themselves"); *KMC Telecom, Inc. v. BellSouth Telecomm., Inc.*, Louisiana P.S.C. Docket No. U-23839, Order No. U-23839, at 20-21 (Ex. 2 at 182) (Oct. 13, 1999)

(rejecting reciprocal compensation for ISP-bound traffic based in part on observation that "[t]he negative impact on competition in the local market...from permitting such an arrangement is obvious").

As long as the gravy train of reciprocal compensation keeps running, carriers will have little incentive to undertake the kind of facilities-based competition Congress envisioned as the ultimate outcome of opening the local exchange. An ALEC will be reluctant to provide facilities-based services to residential and business customers if it must pay the same reciprocal compensation payments for ISP traffic that it demands of ILECs. (Beauvais DT at 19-20.) Ordering usage-based compensation for ISP traffic while end user rates remain constant does absolutely *nothing* to encourage competition for the average residential user, and no ALEC was able to claim otherwise.

Increasingly, state commissions are recognizing that there are no public interest benefits to be gained through the approach the ALECs recommend. In an arbitration between AT&T and BellSouth, for instance, the South Carolina Commission recently concluded that the payment of reciprocal compensation is not in the public interest and, in fact, creates disincentives for CLECs to offer residential or advanced services themselves. (*Petition of AT&T Comm. of the Southern States, Inc. for Arbitration of a Proposed Interconnection Agreement with BellSouth, Order on Arbitration*, S.C. P.S.C. Order No. 2001-079, at 11-12 (Ex. 1) (Jan. 30, 2001).)

The South Carolina decision drew on the logic of other utilities commissions, including those in Colorado, New Jersey, and Massachusetts. The Massachusetts Commission's reasoning, rejecting its former decisions, is particularly compelling:

> The unqualified payment of reciprocal compensation for ISP-bound traffic, implicit in our October Order's construing of the 1996 Act, does not promote real competition in telecommunications. Rather, it enriches competitive local exchange carriers, Internet service providers, and Internet users at the expense of telephone customers or shareholders. This is done under the guise of what purports to be competition, but is really just an unintended arbitrage opportunity derived from regulations that were designed to promote real competition. A loophole, in a word.

(*Complaint of MCI WorldCom, Inc. against New England Tel. and Tel. Co. d/b/a Bell Atlantic-Massachusetts for breach of interconnection terms entered into under Sections 251 and 252 of the Telecomm. Act of 1996*, Mass. D.T.E. 97-116-C, at 14 (July 6, 1999) (Ex. 2 at 95).)

The North Carolina Utilities Commission likewise found it necessary to reject reciprocal compensation as an "attempted exploitation of a perceived loophole to generate massive transfer payments from one entity and its shareholders to another entity and its shareholders." (*BellSouth Telecomm. v. US LEC of North Carolina,* Order Denying Reciprocal Compensation, Docket No. P-561, Sub 10 (Mar. 31, 2000) (Ex. 2 at 156).)

The market distortions these Commissions discussed are no more desirable in Florida than they were in Massachusetts, North Carolina, or any of the other states that have rejected reciprocal compensation. (*See, e.g., Petition of Sprint Comm. Co., L.P., for Arbitration to Establish an Interconnection Agreement with US West Comm., Inc.*, Initial Decision, Colo. P.U.C Decision No. C00-479 (May 3, 2000), Ex. 2 at 40,56 (Colorado Sprint/US West Order) ("reciprocal compensation would not improve overall social welfare; it would simply promote the welfare of some at the expense of others"); *Arbitration of Sprint Comm. Co., L.P. and U.S. West Comm., Inc.*, Arbitration Order (Iowa Sprint/US West Order), Iowa Utils. Board, Docket No. ARB-00-1 (Dec. 21, 2000), Ex. 2 at 62, 65 ("Reciprocal compensation would introduce a series of unwanted

distortions into the market: cross-subsidization of CLECs, ISPs, and Internet users by the ILECs' customers who do not use the Internet, excessive use of the Internet, excessive entry into the market by CLECs specializing in ISP traffic mainly for the purpose of receiving compensation from the ILECs, and disincentives for CLECs to offer either residential service or advanced services."); *Petition of Sprint Comm. Co., L.P., for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with US West Comm., Inc.*, Op. and Order, Ariz. Corp. Comm'n Decision No. 62650 (June 13, 2000) (Arizona Sprint/US West Order), Ex. 2 at 67, 73 ("We share U S WEST'S concern that establishing reciprocal compensation for ISP bound traffic would result in ratepayers subsidizing the Internet.").

By ensuring that a LEC is able to recover its actual costs of terminating local traffic originating on another ILEC's network (Act sec. 252(d)(2)(A)(i)), Congress sought to remove a barrier to the development of local competition. This is a far cry from creating a system of direct wealth transfers from ILECs to ALECs—a system that undermines, rather than enhances, local competition.

As Dr. Beauvais recognized, the aberrant consequences of approving a usage-based system of compensation could be allayed if the wholesale compensation structure were harmonized with the retail end user rate structure. (Beauvais DT at 9; Tr. 503-04.) If the ILECs could freely adjust their end-user rates, they could recover the reciprocal compensation payments they make to ALECs. In fact, this is the ALECs' answer to the ILECs' criticisms of their compensation proposal. They do not disagree with Dr. Beauvais that retail and wholesale rate structures should be consistent, but blithely ignore Florida law, which constrains price-cap carriers to only minor, inflation-

based local rate adjustments and which requires a flat-rate option for basic local service. (Fla. Stat. sec. 364.051(2)(c) & (3).) In Verizon's service areas, the overwhelming majority (probably 98-99%) of its customers, both residential and business, subscribe to flat-rate service. (Beauvais DT at 9, Tr. 505; Mr. Falvey's testimony that business customers typically pay usage rates (Falvey, Tr. 298, 334) was inaccurate.)

While the ALECs ignore these conditions, the Commission cannot. It is not in the public interest to establish a reciprocal compensation mechanism which leaves the ILECs with no reasonable means of recovering reciprocal compensation payments. Should the Commission elect to establish a compensation mechanism, it should use a non-traffic sensitive method of intercompany compensation, consistent with the flat-rate pricing structure for local end-user service. (Beauvais DT at 9.) Verizon's proposed bill-and-keep method, discussed in Issue 9, is the best way to meet this criterion.

Issue 5: Is the Commission required to set a cost-based mechanism for delivery of ISP-bound traffic?

Verizon's Position: * No. The Act's reciprocal compensation obligations apply only to local traffic, so the Commission is not required to establish any compensation mechanism, cost-based or otherwise, for non-local, ISP traffic. If it does, however, it should remain aware of cost considerations. *

As Verizon explained above, reciprocal compensation obligations apply only to local traffic. Because ISP-bound traffic is not local, the Commission cannot set any compensation mechanism for this traffic. However, if the Commission nevertheless moves forward with a compensation scheme, it should remain aware of cost considerations, especially those linked to network differences.

As Mr. Jones testified, ALECs' relatively new networks are different and often more efficient than the ILECs' networks for the traffic they carry. Verizon's network has evolved over decades in service of a very diverse customer base. Its network design grew from handling voice traffic for this customer base, so it has equivalent infrastructure at both the originating and terminating points. ALECs serving ISPs, on the other hand, have designed their networks to handle convergent traffic with widely dispersed points of origination, making the typical termination design for ISP traffic different than the line-side termination used for voice traffic. (Jones DT at 3-4, Tr. 561-62, 576.). Each network has been efficiently designed for the traffic it carries and the customer base it serves, but the infrastructure differences can be expected to lead to cost differences.

Indeed, the ALECs' own promotional materials tout their networks' superior efficiencies and cost savings. On its website, Global Naps, a participant in this proceeding, reported that it has moved to an all-packet-based broadband network, allowing it to "deliver four times the capacity in one-tenth the space and at one-tenth the cost." (Ex. 4 at 178.) Mr. Frank Gangi, Global Naps' President and CEO has stated: "'Our next-generation broadband network is an order of magnitude more efficient than any other carrier's circuit switch network." *Id.* Even the ALECs must acknowledge the self-evident fact that these very efficient networks likely produce cost savings for termination of ISP-bound calls. (Falvey, Tr. 289, 324.) Because these new generation technologies generate significant cost savings and efficiencies for the ALECs that use them in their networks, there can be no reasonable doubt that they increase the relative size of the windfall they receive when paid compensation for ISP-bound traffic.

The ALECs urge the Commission to ignore these kinds of cost differences. They argue that because the FCC permitted the ALECs to rely on the ILECs' transport and termination costs as proxies for their own, this Commission is forbidden from considering network cost differences unless the ALEC wishes to produce a study proving its costs are higher than the ILECs' costs. (Falvey, Tr. 281, 291-92.) Indeed, they would have us believe that the FCC intended for ALECs to benefit from using the ILECs' rates, no matter how far they diverged from the ALECs' true costs. (*See* Falvey, Tr. 341; Selwyn DT at 67-68.)

Verizon disagrees. Although it is true the FCC did not require the ALECs to produce cost studies unless they were claiming higher costs, there is nothing precluding this Commission from considering the likelihood that ALECs' networks costs are lower than the ILECs' costs. When the FCC adopted symmetrical rates for the ALECs and ILECs, it never considered the question of reciprocal compensation for *ISP traffic*, so it never examined the effect of network cost differences in that context, as this Commission is asked to do here. The FCC's relative lack of concern about the potential cost disparities between networks grew from assumptions that do not hold true for an ALEC serving an ISP. The FCC assumed ILECs would be terminating much more traffic than the ALECs (First Report and Order at para. 1086), which is just the opposite of the situation discussed in this docket, where ALECs serving ISPs terminate all of the traffic. And the FCC assumed the ILEC's and CLEC's costs would be similar (*Id.* at 1085.) It did not contemplate the kind of super-efficient technologies new entrants (like Global Naps) might use.

Clearly, the FCC did not intend ALECs to benefit from marked cost disparities. Indeed, it condemned this effect with regard to paging carriers: "Using incumbent LECs' costs for termination of traffic as a proxy for paging providers' costs, when the LECs' costs are likely higher than paging providers' cost, might create uneconomic incentives for paging providers to generate traffic simply in order to receive termination compensation." (*Id.* at para. 1092.) Verizon submits that these same uneconomic incentives are just as unacceptable for ALECs as they are for paging companies.

From a policy perspective, then, the Commission cannot ignore the network differences that drive cost differences. If the Commission is reluctant to ask the ALECs to produce cost studies allowing it to verify the similarity or dissimilarity of the ALECs' and ILECs' costs, then it must rely on the empirical evidence indicating that the ALECs' costs are lower.

While Verizon is not necessarily advocating asymmetrical rates, it does believe the Commission is obliged to consider the likely cost differences between ALECs' and ILECs' networks if it seeks to avoid market inefficiencies. The best way to do so and still comply with the symmetrical rate structure concept is to approve the bill-and-keep method of compensation, discussed in Verizon's response to Issue 9.

Issue 6: What factors should the Commission consider in setting the compensation mechanisms for delivery of ISP-bound traffic?

Verizon's Position: * The Commission should consider the characteristics of ISP-bound traffic; the differing ILEC and ALEC network infrastructures and associated costs; end user rate structures; and the economic and competitive consequences of any proposed compensation mechanism. *

Verizon has already discussed the most important factors for the Commission's consideration in its positions in Issues 4 and 5, so Verizon will just summarize them here.

If the Commission determines it has the authority to establish a compensation mechanism for ISP-bound traffic, it must consider the characteristics of Internet traffic. Internet traffic has much longer average holding times than traditional voice traffic. The usage-based reciprocal compensation reflected in most interconnection contracts assumes the shorter voice holding times, so this structure is not appropriate for Internet traffic.

Likewise, the Commission should be skeptical of assumptions that the ILECs' network costs are appropriate proxies for the ALECs' network costs. The ALECs' relatively new networks will tend to display lower cost characteristics than the ILECs' networks. Approving a usage-based compensation system founded on the assumption that ILEC and ALEC costs are very similar only exacerbates the windfall effect of such a compensation scheme.

Indeed, a usage-based compensation method is never appropriate unless it is consistent with end user rate structures. While it is theoretically possible for the ILEC to recover usage-based reciprocal compensation payments from its end users, this ability assumes the ILECs can impose measured service on end users and freely determine their rates. This is not the case in Florida, where price-cap ILECs must continue to offer flat-rate service at capped rates that may be adjusted annually by the change in inflation less 1%. (Fla. Stat. ch. 364.051(1)(c) & (3).)

Applying the existing usage-based reciprocal compensation structure to ISP traffic, while keeping end user rates the same, is inequitable and distorts local markets. ALECs have openly admitted targeting ISP customers precisely to obtain reciprocal compensation revenues from the ILECs. As a number of Commissions have recognized, this effect produces no real competitive benefits; it just transfers money from the ILEC to the ALEC, and does not enhance residential competition at all. Moreover, it may suppress the implementation of advanced technologies. An ALEC whose business plan is based on receiving reciprocal compensation for dial-up traffic will have little incentive to market more advanced technologies.

After considering all of the principal factors in this inquiry, it is clear that a usage-based compensation structure is not in the public interest, at least as long as retail and wholesale rate structures remain inconsistent. The only viable alternative, should the Commission decide to move forward despite the pending FCC decision, is to approve a bill-and-keep method as a policy preference. Under this method, each carrier covers its own costs of terminating traffic. Both the ILECs and the ALECs would be expected to recover their costs of call termination from their own end users. The bill-and-keep method is discussed in more detail in Verizon's Position on Issue 9.

Issue 7: Should intercarrier compensation for delivery of ISP-bound traffic be limited to carrier and ISP arrangements involving circuit-switched technologies?

Verizon's Position: * Yes. Reciprocal compensation assumes a carrier performs switching functions and needs to recover switching costs. Because non-circuit-switched traffic involves no switching, there are no associated costs to recover. Reciprocal compensation in this case would be a pure subsidy. *

As ALEC witness Selwyn admits, the Act's reciprocal compensation obligations "apply to the 'transmission and routing of telephone exchange service and exchange

access,' which traditionally has been achieved through circuit-switched technologies" (Selwyn DT at 52); "to the extent that ISP-bound traffic is handled via non-circuit-switched arrangements, these arrangements have not generally been of the sort that would call for inter-carrier compensation, and ILECs and CLECs are not making inter-carrier payments relative to this traffic today." (Selwyn DT at 53) Dr. Selwyn concludes that there is no reason for the Commission to take action at this time on this Issue. (Selwyn DT at 53.)

Verizon agrees. The ILEC cost studies that are the basis of existing, usage-based reciprocal compensation rates include circuit switching functions and associated costs. (Falvey, Tr. 299-300.) If an ALEC is not performing circuit switching—as is the case with non-circuit-switched traffic—then it does not deserve cost recovery for switching functions. (Jones DT at 7-8; Shiroishi DT at 25.) To the extent that Mr. Falvey claims that there is any identity of costs between carriers using circuit-switched and non-circuit-switched technologies to deliver traffic, (Falvey DT at 12), Verizon vigorously disagrees. The packet routers or ethernet hubs used by data ALECs have nothing whatsoever to do with circuit switching. Indeed, under cross-examination by the Staff, Mr. Falvey could not state that the costs of circuit-switched and non-circuit-switched technologies were the same. (Falvey, Tr. 324-25.) There is simply no need to compensate a carrier for traffic that never hits a switch. (Jones, Tr. 55.) Mr. Falvey's and Mr. Hunsucker's argument that companies would somehow be penalized by not receiving reciprocal compensation for non-switched traffic seems simply an attempt to receive an unwarranted subsidy from the ILEC—and to share in the reciprocal

compensation windfall that other ALECs have received for handling traffic on a switched basis. (Jones DT at 3-4.)

In addition, it is not clear from the record whether parties supporting compensation for non-circuit-switched traffic have even decided what this policy would mean in practice. In his Direct Testimony, for example, Mr. Hunsucker seemed to indicate that compensation would apply for Sprint's packet-switched ION (Integrated On-demand Network) technology. (Hunsucker DT at 18.) But then at the hearing, he stated that reciprocal compensation would not apply to DSL service, which is a packet service, or to Sprint's DSL-like products like ION. (Hunsucker, Tr. 419-20.) It appears that other carriers take a broader, but still vaguely defined, view of application of reciprocal compensation to non-circuit-switched technologies. (Falvey, Tr. 320-25, DT at 12.)

Particularly given this confusion, Verizon agrees with Dr. Selwyn that, before taking any action, the Commission would need to have "a clearer factual understanding of the particular serving arrangements within which reciprocal compensation would arguably apply in a non-circuit-switched context." (Selwyn DT at 53.) Use of non-circuit-switched arrangements for exchange and exchange access services is negligible today, anyway, so there is certainly no pressing need for the Commission to act on this matter. (Selwyn DT at 53.) No state has awarded reciprocal compensation for non-switched traffic.

To the extent that separation of circuit-switched and non-circuit-switched traffic may be raised as a problem, it is an illusory one. If the Commission rules that no reciprocal compensation is warranted for non-circuit-switched traffic, then the ALECs

simply won't be permitted to submit reciprocal compensation invoices for such traffic. If the ILEC suspects that the ALEC is including non-circuit switched traffic in its invoices, it can challenge the invoices and lodge a Commission complaint. (*See* Jones, Tr. 574.)

Of course, if the Commission chooses to implement a bill-and-keep compensation structure, this Issue will become moot, because there will be no positive payments for any type of traffic, circuit- or non-circuit-switched.

Issue 8: Should ISP-bound traffic be separated from non-ISP bound traffic for purposes of assessing any reciprocal compensation payments? If so, how?

Verizon's Position: * Although there are ways of separating ISP-bound traffic from non-ISP-bound traffic, Verizon has not recommended any traffic separation. Verizon's bill-and-keep recommendation, if adopted, would avoid the traffic separation issue. *

If the Commission settles on a usage-based reciprocal compensation structure specific to ISP-bound traffic, then it must confront the question of how to measure dial-up ISP-bound traffic for purposes of assessing the correct compensation. There are ways to do such traffic separation, albeit with less than exact precision. The most obvious method is to establish separate trunks for the delivery of dial-up traffic to the ISPs. This approach would require identification of ISP numbers in a centralized database on a real-time basis, and would likely require the Commission to order all ALECs and ILECs to provide a list of ISP names and numbers to a centralized authority for such purposes. (Beauvais DT at 10.)

A second option would be to use call holding times to distinguish between voice and ISP-bound traffic. We know that traditional voice mean holding times for local calls from residential customers can be expected to be between 3 and 6 minutes. Holding times for ISP-bound calls are on the order of 25 to 45 minutes to an hour per call. Thus,

even if voice and ISP-bound traffic share a trunk between the ALEC and the ILEC, it is possible to apply the holding time data to arrive at assumptions for estimating the percentage of total "local" traffic that can be classified as ISP-bound. (Beauvais DT at 10, RT at 14-16.)

BellSouth has also described how its billing systems can separate ISP-bound traffic from non-ISP-bound traffic. (*See generally* Scollard DT.)

Verizon, however, would not recommend that the Commission pursue a compensation solution requiring segregation of ISP-bound traffic from other "local" traffic. While it is possible to measure dial-up traffic, the preferable solution is to align the relative prices for intercompany compensation. But until it is possible to rebalance rates based on the traffic generated by Internet usage, the short-run solution is a bill-and-keep approach to reciprocal compensation for all "local" traffic, not just ISP-bound calls. (Beauvais DT at 11.) This approach obviates the need for any traffic measurement. (Hunsucker, Tr. 397-98.) This is a particularly appealing feature in view of the fact that any mechanism this Commission establishes will necessarily be interim in nature, as explained in Verizon's position on Issue 3. It makes no sense to implement a whole new system of traffic measurement when that system will likely need to be changed when the FCC issues its order establishing a compensation mechanism for ISP-bound traffic.

Issue 9: Should the Commission establish compensation mechanisms for delivery of ISP-bound traffic to be used in the absence of the parties reaching an agreement or negotiating a compensation mechanism? If so, what should be the mechanism?

Verizon's Position: * No. As explained, the Commission lacks authority to establish a compensation mechanism for non-local, ISP-bound traffic. If it nevertheless decides to implement one, it should be a bill-and-keep system. *

As Verizon explained in its response to Issue 1, the Commission lacks the legal authority to establish a reciprocal compensation mechanism for ISP-bound traffic, because that traffic is interstate in nature. The FCC is due to establish a compensation mechanism, in any event, so it would be a waste of industry and Commission resources to implement a system that will likely need to be revised later.

Contrary to Mr. Falvey's apparent view (Falvey DT at 262), this Commission has never established any "rules" governing reciprocal compensation. Rather, it has issued rulings in specific arbitration proceedings, based on the language of the interconnection contracts at issue. Parties are paying reciprocal compensation only where they have been ordered to in the context of arbitration (Tr. 187)[3]

If the Commission now intends to make generic determinations about an intercarrier compensation mechanism, it still cannot supersede the negotiation/arbitration framework the Act establishes. If the Commission decides to implement a reciprocal compensation mechanism, it should be designated a policy preference to be considered only if the parties are not able to successfully negotiate a compensation arrangement.

In terms of substance, if the Commission moves forward with a compensation structure for ISP-bound traffic, it must be consistent with end user rates. Ideally, Verizon would recommend a usage-based approach, provided that usage-sensitive pricing (that is, measured-rate service) is also adopted for end user customers. In this way, the

[3] The Commission has only ordered Verizon to do so in one instance. *Request for arbitration concerning complaint of Intermedia Comm., Inc. against GTE Florida Inc. for breach of Florida partial interconnection agreement*, Order No. PSC-99-1477-FOF-TP (July 30, 1999.)

ILEC has the opportunity to recover reciprocal compensation payments from its end users.

The ALECs suggest that if an ILEC's local service revenues from end users are insufficient to generate adequate revenues to cover the usage costs associated with that customer's dial-up ISP calls, the ILEC should adjust its local exchange rate structure. (Selwyn DT at 15-16; Falvey RT at 14, 17-18.) In theory, Dr. Beauvais agrees with the ALECs--reciprocal compensation is an issue of relative price levels and relative rate structures, not simply the matter of the level of the intercompany compensation rate. (Beauvais RT at 6.) In fact, however, the ILECs cannot so easily adjust their end user rates to cover reciprocal compensation payments. As discussed, existing statutory constraints prevent attainment of retail and wholesale rate consistency in the near term. That is, price-cap carriers are required to offer flat-rate local service and they do not have meaningful ability to adjust rates for that service.

When Dr. Selwyn recommends the same "sent-paid framework" for ISP-bound traffic that has long existed for local traffic, he ignores the fact that the current local exchange rates were not established with Internet usage in mind. (Beauvais RT at 3-4; Shiroishi, Tr. 636-37, 643.) Indeed, when Verizon's rates were set in Florida, the Internet did not even exist commercially. Thus, given the current monthly recurring flat rates for Verizon's residential customers, Verizon is not receiving any incremental compensation it can use to cover reciprocal compensation payments to ALECs serving ISPs. (Beauvais RT at 3.-4.)

While the ALECs may ignore these facts, the Commission cannot responsibly do so. Accordingly, the Commission should *not* approve a usage-based compensation system, because it will automatically result in prices for local usage that are set below the incremental cost of providing an end-to-end call. (Beauvais DT at 21-23.)

Because there is no feasible way the Commission can order usage-based intercarrier compensation and measured end user rates in the short-term basis, it should instead adjust the reciprocal compensation structure to end user rates. The only way to do so is through a bill-and-keep mechanism. (Beauvais, Tr. 512.) This approach recognizes that as long as end users are billed on a flat-rate basis for their local service, then the intercompany exchange of traffic should also be billed on a non-traffic sensitive basis. A bill-and-keep approach meets this criterion. (Beauvais DT at 28.) Bill-and-keep is procompetitive because it would reduce the ability of carriers to target customers solely for expected reciprocal compensation revenues (Fogleman DT at 14); reduce the current disincentive for ALECs to serve residential customers; and assure that market success is due to superior marketing skills and/or to service quality than artificial regulatory advantages (Beauvais RT at 13, Tr. 505-06). Bill-and-keep would, moreover, ease the upward pressure on residential rates caused by reciprocal compensation payments that were not factored into existing local rates. (Beauvais, Tr. 505-06.)

Verizon's bill-and-keep is also easy and inexpensive to implement. Because it would apply to all traffic the Commission deemed local, it would not require traffic monitoring. (Beauvais, Tr. 525, Fogleman, DT at 13-14.) If anything, it will reduce administrative expenses, as carriers will no longer need to invoice each other for

reciprocal compensation. (Fogleman, Tr. 878, DT at 13-14.) Adoption of bill-and-keep should not even require any follow-up proceedings—in contrast to any new positive price system, which would require another (inevitably contentious) proceeding to devise specific rates. (Fogleman, Tr. 874, 893.)

Contrary to the ALECs' implications, a bill-and-keep system does not deny any carrier cost recovery, but simply means that each carrier must recover its own costs from its customers. (Jones, Tr. 578; Shiroishi, Tr. 654; Taylor, Tr. 838; Fogleman, Tr. 878.) It is not at all a novel or unusual approach. In fact, this Commission itself has recommended to the FCC that if it deems a uniform recovery mechanism for ISP traffic necessary, then it should encourage states to require bill-and-keep for all traffic. (Fogleman, Tr. 888-90; Ex. 27, F.P.S.C. Comments in FCC Docket Nos. 96-98 and 99-68, at 10 (Apr. 9, 1999).) Sprint has also recommended bill-and-keep at the national level. (Hunsucker, Tr. 422.) Bill-and-keep was also the approach most ALECs originally favored for exchange of all local traffic. (Beauvais RT at 17.) And the FCC's Office of Plans and Policy has issued two working papers strongly suggesting a movement to such a regime for interconnection purposes. (*See* Beauvais RT at 17-18 and Exs. ECB-1 and ECB-2.)

By Staff's count, 11 states have approved a bill-and-keep system. (Fogleman, Tr. 879, DT at 14.) (*See, e.g., Petition of Sprint Comm. Co., L.P., for Arbitration to Establish an Interconnection Agreement with U.S. West Comm., Inc.*, Decision Denying Application for Rehearing, Reargument, or Reconsideration, Colo. P.U.C. Decision No. C00-685 (June 7, 2000), Ex. 2 at 25, 34 ("We adopt bill-and-keep...not as a last resort, but rather as the best compensation scheme under the circumstances."); *Petition of*

Sprint Comm. Co., L.P., for Arbitration to Establish an Interconnection Agreement with U.S. West Comm., Inc., Initial Decision, Colo. P.U.C Decision No. C00-479 (May 3, 2000), Ex. 2 at 40; *Arbitration of Sprint Comm. Co., L.P. and U.S. West Comm., Inc.*, Order, Iowa Utils. Board, Docket No. ARB-00-1 (Dec. 21, 2000), Ex. 2 at 62; *Petition of Sprint Comm. Co., L.P., for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with U.S. West Comm., Inc.*, Op. and Order, Ariz. Corp. Comm'n Decision No. 62650 (June 13, 2000), Ex. 2 at 67; *MCI WorldCom/New England Tel. Order, supra*, Ex. 2 at 82; BellSouth Telecomm., Inc. v. U.S. LEC of North Carolina, Inc., N.C.U.C. Docket No. P-561, Sub 10, Ex. 2 at 113; *KMC Telecom, Inc. v. BellSouth Telecomm., Inc.*, Louisiana P.S.C. Order No. U-23839 (Oct. 13, 1999), Ex. 2 at 182; *Petition of ITC^DeltaCom Comm., Inc. for Arbitration with BellSouth Telecomm., Inc.*, Order on Arbitration, S.C. P.S.C. Order No. 1999-690, Ex. 2 at 203; *Petition of Global Naps Inc. for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Bell Atlantic-New Jersey, Inc.*, Decision and Order in Docket No. TO98070426 (July 7, 1999), Ex. 2 at 109.)

The Commission need make no finding that traffic be in balance before it concludes that a bill-and-keep approach is justified. The FCC's rule 51.713(b), which ALECs have raised as a potential barrier to bill-and-keep, does require that traffic be roughly balanced, but it applies only to *local* traffic. If this Commission declines to make any jurisdictional holding (but perhaps decides only to *treat* ISP-bound traffic as local without determining that it is, in fact, local—as has been its practice in arbitration decisions (Fogleman Tr. 875-76, DT at 7, *citing* Order No. PSC-00-1680-FOF-TP (Sept. 19, 2000)), then the FCC's rule is no hurdle to bill-and-keep. Other states did not find it

necessary to make a definitive finding of the jurisdictional nature of traffic in order to impose bill-and-keep. (*See, e.g.*, Iowa Sprint/U.S. West Order, *supra*, Ex. 2 at 66 ("Without reaching any decision as to whether ISP-bound traffic is "local" or "interstate" in nature, the Board will not order the payment of reciprocal compensation on ISP-bound traffic."); Colorado Sprint/US West Order, *supra*, Ex. 2 at 55 ("While ISP calls appear to be interstate in nature, our conclusion is not necessarily based upon that determination. Even if this traffic were considered to be local in nature, the Commission still would not embrace reciprocal compensation with a positive rate.") In any case, if the Commission removes the financial incentive to service ISPs, traffic might then become balanced over time (Fogleman, Tr. 881), thus meeting the FCC's requirement even if the Commission declares that ISP-bound traffic is local.

In no event should the Commission accept the ALECs' advocacy of existing interconnection rates for ISP-bound traffic. Again, such an approach does nothing to encourage efficient local competition; the anticompetitive and anticonsumer effects of such an approach are detailed above, in Verizon's Position on Issue 1.

The Commission should not be unduly concerned that ending usage-based compensation for ISP-bound traffic will put ALECs out of business. The transition away from high, usage-based rates has already been going on for some time. (Beauvais, Tr. 527-28; Shiroishi, Tr. 646-47.) As explained, a number of Commissions have denied positive-priced reciprocal compensation and, where usage-based rates persist, they are declining anyway. (Falvey, Tr. 335; Beauvais, Tr. 527.) Ms. Shiroishi cited independent evidence supporting the conclusion that "ALECs "have known for years now that this was basically a windfall that was coming to an end. And at this point that is a

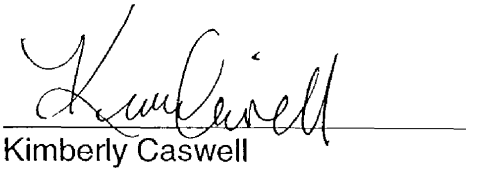
realization." (Shiroishi, Tr. 647.) Any ALEC whose business plan still substantially depends on reciprocal compensation revenues should not be rewarded for acting irresponsibly.

The Commission should likewise be skeptical of ALEC claims that terminating reciprocal compensation payments will necessarily force rates up for dial-up Internet users. A September 2000 report prepared by Morgan Stanley Dean Witter analysts shows that reciprocal compensation payments for dial-up traffic could be entirely eliminated without forcing the ALECs to raise per line charges to their ISP customers. (Ex. 2 at 331-53.)

To the extent that the Commission insists on a usage-based compensation system between companies for "local" traffic, Verizon would agree that a rate structure containing separate set-up and duration elements, such as that proposed by Staff, is preferable to a rate structure based solely on minutes of use. However, there is no evidence in the record as to how difficult, expensive, and time-consuming it might be for carriers to develop the capacity to bill under the Staff's two-part pricing structure, which would have to be established in a separate proceeding. (Fogleman, Tr. 892). And while adopting a set-up and duration rate structure is, indeed, more consistent with the likely usage-sensitive cost characteristics, as Mr. Fogleman points out (DT at 17-18), the same can be said as to how costs are incurred by the end user placing the call. While adopting the two-part rate structure alleviates the problem associated with the longer holding times of ISP-bound calls relative to voice calls, it does not address the mismatch between end user rates and levels relative to the intercompany compensation rate structures and levels.

Again, Verizon urges the Commission to keep in mind that reciprocal compensation is an issue involving relative prices, not simply the prices for intercompany compensation in isolation. (Beauvais RT at 20.) Keeping this concept of relativity in mind, the only feasible approach, given today's end user rates, is bill-and-keep. This approach would eliminate the disincentives for ALECs to serve residential customers and to deploy advanced Internet access technologies, and will ensure that competition for ISPs will take place on the merits alone.

Respectfully submitted on April 18, 2001.

By: 

Kimberly Caswell
P. O. Box 110, FLTC0007
Tampa, FL 33601
(813) 483-2617

Attorney for Verizon Florida Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Posthearing Statement in Docket No. 000075-TP were sent via U.S. mail on April 18, 2001 to the parties on the attached list.

Kimberly Caswell

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Nancy White c/o Nancy Sims
BellSouth Telecomm. Inc.
150 S. Monroe Street, Suite 400
Tallahassee, FL 32301-1556

Marsha Rule
AT&T
101 N. Monroe Street
Suite 700
Tallahassee, FL 32301-1549

Michael Gross
Florida Cable Telecomm. Assn.
246 East 6th Avenue
Tallahassee, FL 32303

Charles Rehwinkel
Sprint-Florida
1313 Blairstone Road
MC FLTLHO0107
Tallahassee, FL 32301

Kenneth Hoffman
Martin McDonnell
Rutledge Law Firm
P. O. Box 551
Tallahassee, FL 32302

Peter Dunbar
Karen Camechis
Pennington Law Firm
P. O. Box 10095
Tallahassee, FL 32302

Mark Buechele
Supra Telecom
1311 Executive Center Drive
Suite 200
Tallahassee, FL 32301

Wanda Montano
US LEC of Florida Inc.
6801 Morrison Blvd.
Charlotte, NC 28211

Charles J. Pellegrini
Patrick Wiggins
Katz Kutter Law Firm
106 E. College Avenue
12th Floor
Tallahassee, FL 32301

Jon C. Moyle, Jr.
Cathy M. Sellers
Moyle Flanigan et al.
The Perkins House
118 N. Gadsden Street
Tallahassee, FL 32301

Norman H. Horton Jr.
Messer Law Firm
215 S. Monroe Street
Suite 701
Tallahassee, FL 32301-1876

James C. Falvey
e.spire Communications Inc.
133 National Business Parkway
Suite 200
Annapolis, Junction MD 20701

Donna Canzano McNulty
MCI WorldCom, Inc.
325 John Knox Road
The Atrium, Suite 105
Tallahassee, FL 32303

Brian Sulmonetti
MCI WorldCom, Inc.
Concourse Corp. Center Six
Six Concourse Parkway
Suite 3200
Atlanta, GA 30328

Scott A. Sapperstein
Intermedia Communications Inc.
One Intermedia Way
MC FLT-HQ3
Tampa, FL 33647-1752

Paul Rebey
Focal Communications Corp.
200 N. LaSalle Street, Suite 1100
Chicago, IL 60601-1914

Robert Scheffel Wright
Landers & Parsons P.A.
310 West College Avenue
Tallahassee, FL 32302

Jill N. Butler
Cox Communications
4585 Village Avenue
Norfolk, VA 23502

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter Law Firm
117 S. Gadsden Street
Tallahassee, FL 32301

Michael R. Romano
Level 3 Communications LLC
1025 Eldorado Boulevard
Broomfield, CO 80021-8869

Dana Shaffer, Vice President
XO Florida, Inc.
105 Molly Street, Suite 300
Nashville, TN 37201-2315

Elizabeth Howland
Allegiance Telecom Inc.
1950 Stemmons Freeway
Suite 3026
Dallas, TX 75207

Jeffry Wahlen
Ausley Law Firm
P. O. Box 391
Tallahassee, FL 32302

Global NAPS, Inc.
10 Merrymount Road
Quincy, MA 02169

Genevieve Morelli
Kelley Law Firm
1200 19th Street N.W.
Suite 500
Washington, DC 20036

John McLaughlin
KMC Telecom, Inc.
1755 North Brown Road
Lawrenceville, GA 33096

Richard D. Melson
Hopping Law Firm
P. O. Box 6526
Tallahassee, FL 32314

Herb Bornack
Orlando Telephone Co.
4558 S.W. 35th Street
Suite 100
Orlando, FL 32811-6541

Carolyn Marek
Time Warner Telecom of Florida
233 Bramerton Court
Franklin, TN 37069

Morton Posner
Allegiance Telecom, Inc.
1150 Connecticut Ave. N.W.
Suite 205
Washington, DC 20036