BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Sprint Communications Company Limited Partnership for Arbitration with Verizon Florida Inc. f/k/a GTE Florida, Incorporated, Pursuant to Section 252(b) of the Telecommunications Act of 1996.	Docket No.: 010795-TP Filed: February 14, 2002

POST-HEARING BRIEF OF VERIZON FLORIDA INC.
APPENDIX OF ARBITRATION DECISIONS

California
In the Matter of the Petition of Sprint Communications Co., L.P., for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with Verizon California, dba GTE California Inc., Dec. No. 01-03-044 (2001).

Kentucky
In the Matter of Sprint Communications Company, L.P. for Arbitration with BellSouth Telecommunications Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, Order in Case No. 2000-480 (2001).

Maryland
In the Matter of the Arbitration of Sprint Communications Company, L.P. vs. Verizon Maryland Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, Maryland Public Utilities Commission, Case No. 8887, Order No. 77320 (2001).

Massachusetts
Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration of an Interconnection Agreement Between Sprint and Verizon-Massachusetts, Case No. 00-54, Decision (2000).

New York
Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc., Case No. 01-C-0095, Order Resolving Arbitration Issues (2001).

Pennsylvania
Petition of Sprint Communication Company, L.P. for an Arbitration Award of Interconnection Rates, Terms and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements With Verizon Pennsylvania, Inc., Case No. A-310183F002, Opinion and Order (2001)

Texas
Petition of Sprint Communications Company L.P. d/b/a Sprint for Arbitration with Verizon Southwest Incorporated (f/k/a/ GTE Southwest Incorporated) d/b/a Verizon Southwest and Verizon Advanced Data Inc. Under the Telecommunications Act of 1996 for Rates, Terms and Conditions and Related Arrangements for Interconnection, Docket No. 24306, Arbitration Award (January 22, 2002).

CALIFORNIA

ALJ/SRT/t93 Mailed 3/21/2001

Decision 01-03-044 March 15, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of Sprint Communications Company LP for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with Verizon California, dba GTE California Incorporated.	Application 00-09-031 (Filed September 7, 2000)

93306

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OPINION

1. Summary

We affirm the results reached in the February 23, 2001 Final Arbitrator's Report (FAR). Within 30 days of the date of this order, parties shall jointly file and serve a signed, complete Interconnection Agreement (IA) that conforms to the decisions herein. Parties shall simultaneously file and serve a statement that cross-references the issues with the adopted language. The conformed IA shall become effective five days after filing, unless suspended by the Director of the Telecommunications Division. The proceeding is closed.

2. Background

Sprint Communications Company LP (Sprint) and Verizon California Inc. (Verizon) exchange telecommunications traffic pursuant to an existing IA. On March 31, 2000, Sprint and Verizon began negotiating a successor IA. Having been only partly successful in their negotiations, Sprint filed an application for arbitration on September 7, 2000. The application sought arbitration of 7 issues. The parties stipulated to a schedule, and revisions thereto, that acknowledged that the Commission would not have time to resolve the disputed issues within 9 months from the date the parties commenced negotiations. That deadline would have been 9 months from March 31, 2000, or December 31, 2000. Therefore, the parties waived the 9-month deadline, and agreed to the schedule reflected below.[1]

[1] The DAR confirmed the parties' waiver of the 9-month rule, contained in 47 U.S.C. § 252(b)(4)(C).

On October 2, 2000, Verizon filed its response to Sprint's arbitration request. Subsequently, the parties settled all but 3 issues. The parties submitted two of these three issues on briefs, and sought hearing on the single remaining issue. The three issues are:

1) Sprint's contention that local calls include Verizon customer-originated calls that route over access trunks to the Sprint Operator Service (OS) platform, and then return to the called Verizon customer located in the same local calling area as the calling party (the "local over access" issue);

2) Sprint's contention that it should be allowed to purchase at wholesale vertical features (call waiting, forwarding and the like) without also purchasing the underlying dial tone line (the "resale of stand-alone vertical features" issue); and

3) Sprint's contention that it may order unbundled network elements (UNEs) from Verizon in combinations that do not currently exist in Verizon's network (the "new UNE combinations" issue).[2]

The assigned Arbitrator, Administrative Law Judge (ALJ) Sarah R. Thomas, held the arbitration hearing on November 28, 2000. Three witnesses testified, and 6 exhibits were received in evidence. The parties filed post-hearing briefs on December 6, 2000 on the 3 remaining issues not settled prior to hearing.

The Arbitrator filed and served her Draft Arbitrator's Report (DAR) on January 10, 2001. The parties filed opening comments on the DAR on January 24, 2001. At the Arbitrator's request, Verizon filed reply comments limited to one issue of contention on February 7, 2001. The Arbitrator denied

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[2] In the matrix Sprint filed with its original request for arbitration on September 7, 2000, Exhibit B thereto identified these three issues as issues 3, 5 and 7. Since there are so few issues in dispute, and for the sake of simplicity, we will refer to these issues as issues 1, 2 and 3 throughout this decision.

Sprint's request to file a surreply to Verizon's reply comments. The Arbitrator filed and served her FAR on February 23, 2001.

The FAR found in Verizon's favor on issue 1 above (the local over access issue), and in Sprint's favor on issues 2 and 3 above (the resale of vertical features issue and the new UNE combinations issue, respectively).

The parties then sought approval of their entire IA on March 3, 2001. With their March 3, 2001 filings, the parties (1) identified the criteria we must use to test the IA that would result from decisions in the FAR, (2) explained whether such IA would pass or fail each test, and (3) said whether we should approve or reject the resulting IA.

Each party reserved the right to challenge the FAR on the issues decided against it (Sprint on issue 1 and Verizon on issues 2 and 3). Otherwise, both Sprint and Verizon contended that assuming the Commission upholds the FAR's conclusions, the IA that would result from decisions made in the FAR would comply with the Telecommunications Act of 1996 (Act) and Commission rules. For the same reasons raised in their comments on the DAR, Sprint recommended reversal of the result on issue 1 (local over access), and Verizon recommended reversal of the outcome in the FAR on issues 2 (resale of vertical features) and 3 (new UNE combinations).

3. Discussion

3.1 Negotiated Portions of IA

Section 252(e)(2) of the Act provides that the Commission may only reject an IA (or any portion thereof) adopted by negotiation if we find that the IA (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement, or that implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity. Commission rules provide that the Commission may reject a negotiated agreement (or portion thereof) if it discriminates against a telecommunications carrier not a party to the agreement; its implementation would be inconsistent with the public interest, convenience, or necessity; or the agreement would not meet other rules, regulations, and orders of the Commission, including service quality standards.[3]

No party or member of the public alleges that any negotiated portion of the IA should be rejected. We find nothing in any negotiated portion which results in discrimination against a telecommunications carrier not a party to the IA; is inconsistent with the public interest, convenience and necessity; or does not meet other Commission rules, regulations and orders, including service quality standards. Thus, we approve the negotiated portions of the IA.

3.2 Arbitrated Portions of IA

Section 252(e)(2) of the Act, and our Rule 4.2.3 of Resolution ALJ-181, provide that we may only reject an IA (or any portion thereof) adopted by arbitration if we find that the IA does not meet the requirements of § 251 of the Act, including the regulations prescribed by the Federal Communications Commission (FCC) pursuant to § 251, or the standards set forth in § 252(d) of the Act.[4] Rule 4.2.3 also provides that we may reject agreements or portions thereof which violate any requirements of the Commission including, but not limited to, quality of service standards adopted by the Commission.

As noted above, neither party alleges that IA violates any of the foregoing statutory provisions or rules. Nonetheless, each party asks that we reverse the

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[3] Resolution ALJ-181, Rules 4.3.1, 4.3.2, 4.1.4, and 2.18.

[4] Section 251 covers interconnection standards. Section 252(d) identifies pricing standards.

Arbitrator on issues she decided against it. They repeat the arguments they made on the DAR, which the Arbitrator rejected. We believe the Arbitrator decided each issue correctly, and are not persuaded to make any changes in the FAR.

3.2.1 Issue 1: Local Over Access

The first issue, known as the "local over access" issue, arises because of Sprint's desire to implement a "new" service, and disputes over how it should compensate Verizon for using Verizon's network to facilitate that service. Sprint contends that the service should be compensated as local traffic pursuant to the reciprocal compensation scheme, while Verizon contends that since the service would use access lines Sprint leases from Verizon, the calling should be compensated at higher access charge rates. The Arbitrator agreed with Verizon that Sprint should pay Verizon access charge rates.

Sprint proposes a voice-activated dialing arrangement whereby a Verizon customer would pick up the phone, dial 00 or a Carrier Identification Code (CIC) such as 10-10-333, state "Call [name of called party residing in same local calling area]," and have the call automatically placed to that party.

During the arbitration hearing, the parties used an example of a Verizon customer named "Steve" who desired to call his mother ("Mom"), also a Verizon customer, who lived across the street in the same local calling area. Steve's chosen long distance carrier is Sprint. Steve would pick up the phone and dial 00 or the 10-10-333 CIC. This dialing pattern would direct the call over access trunks that Sprint leases from Verizon to the Sprint OS platform. Once the call reached the Sprint OS platform, Steve would say, "Call Mom," and Mom's telephone number would dial automatically from a stored list residing in Sprint's database. Because the voice activated dialing service would be a Sprint service, rather than a Verizon service, the information necessary to place the call would reside in Sprint's, not Verizon's, network. It is this detour to Sprint's OS platform that is fundamental to the Sprint-Verizon dispute on this issue.

Sprint contends that despite the OS detour, the call remains a local call and that Sprint should compensate Verizon only for a local call. Verizon contends, on the other hand, that the detour to the OS platform takes the call over access lines Sprint leases from Verizon, thereby rendering the call an access call, for which access charges are due.[5] Verizon similarly contends that any time a CIC code is used to gain access to an interexchange carrier (IEC) such as Sprint, the call is an access call for which access charges are due. Both parties agree that access charges are higher than charges for local calls.

The FAR found that Verizon should prevail on this issue. We will not repeat the Arbitrator's reasoning in detail here, but rather incorporate the FAR by reference as if fully set forth here. Briefly, the Arbitrator found that it made no sense for Verizon to receive no compensation for Sprint's extra use of its network. Indeed, the Arbitrator found that Sprint's offer during the hearing to pay Verizon certain out-of-the-ordinary compensation – for "incremental switching charges – constituted a concession that the ordinary reciprocal compensation scheme was inadequate. The Arbitrator also found that the "Call Mom" calling scheme was not functionally different from other calling patterns

[5] Generally speaking, access charges are charges long-distance carriers such as Sprint pay ILECs such as Verizon for use of the ILECs' local network. Since the break-up of the Bell System in 1984, ILECs have owned the poles, wires, switches and other infrastructure in the local calling areas, and charged others access charges to use those facilities. While the access charge scheme has changed significantly over the years, and especially since enactment of the 96 Act, long distance carriers continue to pay access charges to ILECs.

in which Sprint compensates Verizon for use of its network through access charges. Finally, the Arbitrator noted that Sprint has agreements in other states in which its position is inconsistent with its proposal for California.

We agree with the Arbitrator's reasoning and conclusion on the local over access issue, and adopt the same for purposes of this decision.

3.2.2 Issue 2: Resale of Vertical Features

This issue involves Sprint's contention that Verizon should sell it vertical features (call waiting, call forwarding, and the like) at wholesale prices without also requiring it to purchase the basic dial tone line. The FAR found in favor on Sprint on this issue, based on prior Commission precedent, the lack of factual distinctions between prior cases and this case, and the Arbitrator's belief that the precedent articulated the correct state of the law.

In Decision (D.) 00-10-031, the Commission resolved the identical issue in Sprint's favor in its arbitration with Pacific Bell. Thus, the only basis to decide the case here differently would be factual. However, Verizon's sole attempt to distinguish D.00-10-031 was not based on distinguishable facts. Rather, Verizon simply cited to its tariff, stating that "Verizon's tariff makes clear that vertical features are not offered on a stand-alone basis at retail to subscribers who are not telecommunications carriers."[6] However, Pacific Bell made – and the Commission rejected – precisely the same argument in the proceeding leading up to D.00-10-031. Thus, the FAR rejected Verizon's attempt to distinguish D.00-10-031. We agree with the FAR's conclusion.

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[6] *Id.* at 17.

The FAR also found that D.00-10-031 is legally correct. We agree with the Arbitrator that the Commission decided that decision properly. Thus, as we stated in D.00-10-031:

> Section 251(c)(4) [of the Act] requires the resale of vertical features, without purchase of the associated dial tone . . . . [I]t constitutes an unreasonable restriction under Rule 51.613(b)[7] for [Verizon] to require that Sprint purchase the dial tone, in order to have access to the vertical services for that line . . . . In this case, the law clearly requires resale of vertical features in the manner requested by Sprint.

We affirm the arbitrated outcome.

3.2.3 Issue 3: New UNE Combinations

This issue involves whether or not Verizon must provide Sprint UNEs in any combination "ordinarily and commonly combined" in the Verizon network. Sprint asserts that it should have the right to order these "new UNE combinations" without regard to whether the specific customer who is subject to the local service request has that precise combination with Verizon at the time of the order. Sprint contends that even if federal law on this issue is currently uncertain and in a state of flux, the Commission has "independent state authority" to require Verizon to provide new combinations to Sprint.

The Arbitrator found in Sprint's favor on this issue, once again based on the Commission's decision in Sprint's favor and against Pacific Bell on the identical issue.[8]

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[7] 47 C.F.R. § 51.613(b).

[8] D.00-10-031, *mimeo.*, at 17 ("We disagree with Pacific's conclusion and affirm our authority under Public Utilities Code § 709.2(c)(1) to order the combination of [new] UNEs.").

Once again, Verizon contended that the FAR was legally wrong, and once again, the Arbitrator rejected Verizon's contentions in favor of factually indistinguishable Commission precedent. We agree with the Arbitrator that we decided this issue correctly in D.00-10-031, and affirm the arbitrated result.

3.3 Preservation of Authority

Section 252(e)(3) of the Act provides that nothing shall prohibit a state Commission from establishing or enforcing other requirements of state law in its review of an agreement, including compliance with intrastate telecommunications service quality standards. Our Rules 4.2.3 and 4.3.1 provide that we may also reject agreements or portions thereof which violate other requirements of the Commission, including but not limited to, quality of service standards. Other than the matters addressed and disposed of above, no party or member of the public identifies any clause in the IA that potentially conflicts with any state law, or requirement of the Commission, including service quality standards, and we are aware of none.

3.4 Filing the Conformed IA

We affirm the order in the FAR that within 30 days of the date of this decision, parties shall file and serve an entire IA that conforms to the decisions herein. Parties should also serve a copy on the Director of the Telecommunications Division. Parties should sign the conformed IA before it is filed so that it may become effective without additional delay. Unless suspended by the Director of the Telecommunications Division, the signed IA should become effective five days after filing.

Parties should jointly file and serve a statement along with the IA for the purpose of assisting the Director confirm that the signed IA conforms to this order. The statement should cross-reference each issue resolved in the FAR with the relevant appendix and section number in the IA. The statement should also quote the language from the IA which parties adopt in compliance with the decisions in the FAR and this order.

4. Public Review and Comment

The Public Utilities Code and our Rules of Practice and Procedure generally require that draft decisions be circulated to the public for review and comment 30 days prior to the Commission's vote.[9] On the other hand, the Act requires that the Commission reach its decisions to approve or reject an arbitrated agreement within 30 days after submission by the parties.[10] This establishes a conflict.[11]

However, Rule 77.7(f)(5) provides that we may reduce or waive the period for public review and comment "for a decision under the state arbitration provisions of the Telecommunications Act of 1996." We consider and adopt this decision today under the state arbitration provisions of the Act.

The draft decision of Arbitrator Thomas was filed and served on March 9, 2001. The period for public review and comment was reduced. Comments, if any, were due by March 14, 2001. Verizon filed comments that asserted that the Commission's "independent state authority" to decide issues 2 and 3 is inconsistent with federal law. Both the FAR and prior Commission decisions on

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[9] *See* Pub. Util. Code §§ 311(g), and Rules 77.7 of the Commission's Rules of Practice and Procedure.

[10] 47 U.S.C. § 252(e)(4).

[11] *See* D.99-01-009 for a more thorough discussion and explanation. In this case, since Rule 4.2.1 (Resolution ALJ-181) was waived, we reasonably interpret this to mean within 30 days of the date statements were filed.

the same interconnection issues considered and rejected such arguments. We are likewise not persuaded by Verizon's claims.

Findings of Fact

1. No party or member of the public alleges that any negotiated portion of the IA must be rejected.

2. The negotiated portions of the IA results do not discriminate against a telecommunications carrier not a party to the IA; are consistent with the public interest, convenience and necessity; and meet other Commission rules, regulations, and orders, including service quality standards.

3. The arbitrated portions of the IA meet the requirements of § 251 of the Act, including FCC regulations pursuant to § 251, and the standards of § 252(d) of the Act.

4. The IA does not conflict with State law, including telecommunications service quality standards, or requirements of the Commission.

5. The Act requires that the Commission approve or reject an arbitrated IA within 30 days after the agreement is filed (47 U.S.C. § 252(e)(4)), which in this case is within 30 days of the date the parties filed statements in compliance with the FAR.

6. A draft decision must be subjected to 30 days' public review and comment prior to the Commission's vote; however Rule 77.7(f)(5) provides that the Commission may reduce or waive the period for public review and comment under Pub. Util. Code § 311(g) for a decision under the state arbitration provisions of the Act.

7. This is a proceeding under the state arbitration provisions of the Act.

Conclusions of Law

1. The FAR, along with the IA between Sprint and Verizon that conforms to the decisions in the FAR and this order, should be approved.

2. Sprint and Verizon should jointly file and serve within 30 days of the date of this order a signed IA that conforms to the decisions herein. Parties should also within 30 days jointly file and serve a statement which cross references each issue resolved in the FAR with the relevant appendix and section number in the IA, and quotes the language from the IA which parties adopt in compliance with the decisions in the FAR and this order.

3. The conformed, signed IA should be effective five days after filing, unless suspended by the Director of the Telecommunications Division.

4. The 30-day public review and comment period should be reduced pursuant to Pub. Util. Code § 311(g)(3) and Rule 77.7(f)(5).

5. This order should be effective today because it is in the public interest to implement national telecommunications policy as accomplished through the IA which results from the decisions in the FAR and this order as soon as possible.

O R D E R

IT IS ORDERED that:

1. We affirm the results reached in the February 23, 2001 Final Arbitrator's Report (FAR) and, pursuant to the Telecommunications Act of 1996, and Resolution ALJ-181, we approve the Interconnection Agreement (IA) between Sprint Communications Company, LP and Verizon California Inc. that results therefrom.

2. Within 30 days of the date of this order, parties shall sign and jointly file and serve an entire IA that conforms to the decisions in the FAR and this order. At the same time, parties shall jointly serve an entire, signed IA on the Director

of the Telecommunications Division. The signed IA shall become effective five days after filing, unless suspended by the Director of the Telecommunications Division.

3. Parties shall jointly file and serve a statement with the signed, conformed IA. The statement shall cross-reference each issue resolved in the FAR and this order with the relevant appendix and section number in the IA. Further, the statement shall quote the language from the IA which parties adopt in compliance with the decisions in the FAR and this order.

4. This proceeding is closed.

This order is effective today.

Dated March 15, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

KENTUCKY

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF SPRINT COMMUNICATIONS COMPANY, L.P. FOR ARBITRATION WITH BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO SECTION 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996	)))))	CASE NO. 2000-480

O R D E R

On October 24, 2000, Sprint Communications Company, L.P. ("Sprint") petitioned for arbitration concerning its proposed interconnection agreement with BellSouth Telecommunications, Inc. ("BellSouth"). BellSouth filed its response to the petition, and a public hearing was held April 12, 2001. The petition originally contained 71 issues to be resolved. However, the parties have now resolved all but 11 issues. The disputed issues, and the Commission's resolutions of each, are discussed below.

1. Provision of co-carrier cross connects.

By letter dated May 3, 2001, Sprint notified the Commission that a section of the draft interconnection agreement, previously negotiated and agreed to, had been unilaterally deleted by BellSouth. This issue regarding co-carrier cross connects was not submitted earlier by the parties, because Sprint had understood that the matter had been resolved. By letter received May 18, 2001, BellSouth explains that it omitted the previously agreed-upon portion from the arbitration agreement in response to GTE Service Corp. v. FCC, 205 F. 3d 416 (D.C. Cir. 2000), in which the court had vacated the Federal Communications Commission's ("FCC") rule requiring BellSouth to allow co-carrier cross connects between two or more competitive local exchange carriers' ("CLEC") collocation arrangements.

Cross connects, according to BellSouth, are pieces of wire or cable that are used in a central office to connect two facilities. Collocated CLECs may use these facilities to connect directly to each other within BellSouth's central office. From an engineering standpoint, carrier cross connects are highly efficient. This Commission believes that the physical collocation requirement of BellSouth should be extended to include the permissible connection of two collocated carriers. BellSouth may thereby be bypassed by the carriers. BellSouth has shown insufficient reason for prohibiting such carrier cross connects.

This Commission finds that co-carrier cross connects are not only efficient but are reasonable. BellSouth should be compensated for the use of its facilities and the performance of any necessary collocation functions for cross connects to be implemented. BellSouth shall reincorporate Section 5.6 and 5.61 of attachment 4 of its previously negotiated interconnection agreement with Sprint.

2. Should BellSouth make its custom calling features available for resale on a stand-alone basis? (Issue 2)

Sprint asks that it be permitted to purchase BellSouth's custom calling services, or vertical services, on a "stand-alone" resale basis at the applicable wholesale discount, without also purchasing the basic local service for resale. The parties agree that any BellSouth obligation in this regard arises under 47 U.S.C. § 251(c)(4), which requires BellSouth to "offer for resale at wholesale only rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." Since BellSouth does not provide custom calling features to end-users that do not take BellSouth service, then BellSouth reasons that this service need not be made available for resale on a stand-alone basis. To support its contention that the tariff restriction is not an unreasonable restriction upon resale in violation of 47 U.S.C. § 251 (c)(4), BellSouth asserts that the local competition order does not require wholesale offerings of any service that the incumbent local exchange carrier ("ILEC") does not offer to retail customers and does not impose on an ILEC the obligation to desegregate a retail service into more discreet services.[1] Thus, BellSouth contends that applicable law merely requires that any retail services offered to end-use customers be made available for resale.[2]

Sprint, on the other hand, declares that in the Local Competition Order the FCC held that resale restrictions are presumptively unreasonable, even if those restrictive conditions appear in the ILEC's tariff.[3] Sprint asserts that BellSouth's condition for the purchase of the vertical services, i.e. the purchase of the local line from BellSouth, is therefore unreasonable.

The Commission finds that BellSouth's tariff restriction on the resale of vertical services as applied to CLECs should stand. Vertical services are a subset of offerings

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[1] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket Nos. 96-98, 95-185, FCC No. 96-325 (August 8, 1996)(Local Competition Order) at Paragraphs 872 and 877.

[2] Id. at Paragraph 977.

[3] Id. at Paragraph 939.

that involve line-side service that should not be available at a wholesale discount to CLECs on a stand-alone basis.

3. Should BellSouth be required to charge Sprint cost-based rates for dedicated OS/DA trunking? (Issue 3)

Sprint requests a determination that the rates for dedicated trunking from each BellSouth end-office identified by Sprint for the provision of operator services/director assistance ("OS/DA") should be cost-based rates for dedicated trunking rather than market-based rates. Sprint contends that BellSouth has not been relieved of its obligation to provide interoffice transmission facilities as an unbundled network element ("UNE") despite the fact that customized routing exempts it from having to provide unbundled OS/DA. The Commission has recently accepted BellSouth's assertion that customized routing is available and therefore does not currently require BellSouth to offer OS/DA access as a UNE.[4] BellSouth contends that, because it has avoided providing OS/DA on an unbundled basis, it need not provide unbundled interoffice transport facilities necessary for CLECs to reach its OS/DA platform. The Commission disagrees.

47 C.F.R. 51.319(d) requires that "an incumbent LEC shall provide non-discriminatory access, in accordance with Section 51.311 and Section 251(c)(3) of the Act. to interoffice transmission facilities on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service." Sprint correctly asserts that interoffice transmission facilities are a telecommunications service

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[4] Case No. 2000-465, Petition by AT&T Communications of the South Central States, Inc. and TCG Ohio for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252, Order dated May 16, 2001 at 10 and 11.

and, accordingly, must be provided as a UNE based on total element long-run incremental cost ("TELRIC") rates.

> 4. Should BellSouth be required to provide Sprint at TELRIC rates combinations of UNEs that BellSouth typically combines for its own retail customers, whether or not the specific UNEs have already been combined? (Issue 4) Should BellSouth be required to universally provide access to EELs that it ordinarily and typically combines in its network at UNE rates? (Issue 6)

Sprint requests that the Commission require BellSouth to provide it UNEs that BellSouth ordinarily combines in its own network rather than only those that are already actually combined. Sprint also requests that the specific combination of the loop and transport to provide enhanced extended loops ("EELs") should also be required of BellSouth. BellSouth, on the other hand, argues that "currently combined" means that it must supply combined UNEs only where the UNEs are actually combined in its own network to provide service to a particular customer.

This Commission has recently ruled that BellSouth must combine network elements for Sprint or any CLEC if BellSouth ordinarily or typically combines such elements for itself.[5] This same outcome is applicable to Sprint's request for EELs.[6] The rationale for the Commission's long-standing determination that BellSouth must combine previously uncombined UNEs for a cost-based glue charge (or other similar alternative) is that UNE combinations are necessary to the development of a

[5] Case No. 2000-465, Order dated May 16, 2001 at 5.

[6] Case No. 99-218, The Petition of ICG Telecom Group Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, Order dated March 2, 2000 at 6 and 9.

competitive market in Kentucky. "Currently combines," as set forth in FCC Rule 315(b), should be given the same meaning as "ordinarily combines," and BellSouth should combine for Sprint requested UNEs *if* those UNEs are ordinarily combined in BellSouth's network. In short, CLECs must be permitted to order from BellSouth UNE combinations even if the UNEs to serve a particular customer are not already combined, if such UNEs are the sort that BellSouth currently or typically combines in its network. We base this, as we have based our previous rulings, on the Act's clear expression of congressional intent to ensure that competition in local telecommunications moves forward. Provision of the UNE-P in ways that do not hobble new market entrants will effectuate that intent.

Otherwise, BellSouth would be able to force unnecessary costs on its competitors, thus impairing their ability to offer services. Absent the requirement that BellSouth combine network elements, Sprint or any competitor would be forced to collocate facilities with BellSouth in order to serve the customer. BellSouth is in no way harmed by combining elements that are typically combined in its network if it is compensated by the CLECs for combining the elements.

<u>5. Should BellSouth be able to designate the network point of interconnection for delivery of BellSouth's local traffic? (Issue 9)</u>

Sprint argues that it has a right to designate the point of interconnection ("POI") for both the receipt and the delivery of local traffic at any technically feasible location in BellSouth's network. BellSouth, on the other hand, asserts that it should be able to determine the POI for delivery of its originated local traffic. The Commission has recently addressed this issue.[7] Neither Sprint nor BellSouth has provided any evidence or arguments to alter the Commission's previous determinations. Thus, the Commission finds that Sprint has the right to designate the POI for both the receipt and delivery of local traffic of BellSouth at any technically feasible location within BellSouth's network. It appears undisputed at this point that Sprint has a right to establish a minimum of one POI per LATA. The Commission's decision complies with the standards set forth in 47 C.F.R. 51.703(b), which states that "[a] LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." It also complies with the standards of 47 U.S.C. § 251(c)(2)(B), which requires BellSouth to interconnect at any technically feasible point.

<u>6. Should BellSouth be required to provide Sprint with two-way trunks upon request and if so should BellSouth be required to use those two-way trunks for BellSouth originated traffic? (Issue 12)</u>

This arbitrated issue is not whether BellSouth should provide two-way trunking upon request, but whether BellSouth should be required to use two-way trunking. Both parties accept 47 C.F.R. 51.305(f), which states "[i]f technically feasible, an incumbent LEC shall provide two-way trunking upon request."

Sprint petitions this Commission to require BellSouth to use two-way trunks for BellSouth-originated traffic. Sprint considers two-way trunks to be the preferred

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[7] See Case No. 2000-404, The Petition of Level 3 Communications LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, Order dated March 14, 2001 at 1-4, and Order dated April 23, 2001 at 1-2.

trunking arrangement in many cases because of the efficiencies gained in switching ports and interconnecting facilities. BellSouth's position is that it must provide two-way trunking, but is not obligated to use it if BellSouth's traffic studies support one-way trunking.

The Commission supports Sprint's position that two-way trunks cease to be two-way if BellSouth chooses not to use them. As a practical matter, BellSouth's position renders 47 C.F.R. 51.305(f) a nullity. BellSouth does not demonstrate technical infeasibility; therefore, BellSouth must use two-way trunks.

7. Upon denial of a Sprint request for physical collocation, what justification, if any, should BellSouth be required to provide to Sprint for space that BellSouth has preserved for itself or its affiliates at the requested premises? (Issue 19)

Sprint requests that the Commission order BellSouth to justify to Sprint its denial of collocation space when based on BellSouth's claim that the space is reserved for BellSouth's own use. Sprint specifically requests that the justification include demand and facility forecasts with at least 3 years of historical data and forecasted growth in 12 month increments by type of equipment, such as switching or power. Sprint agrees that such information would be subject to appropriate protective agreement. Sprint asserts that the engineering drawings usually provided by BellSouth do not provide sufficient basis for Sprint to evaluate the reasonableness of BellSouth's space reservation.

BellSouth asserts that the information Sprint seeks is not necessary to resolve these issues. Procedures regarding space denial have been established by the FCC and, according to BellSouth, are adequate for Sprint. Moreover, BellSouth contends that these issues are matters for the Commission to address. BellSouth notes that it permits CLECs collocated in its facilities also to reserve space, but Sprint is only requesting the demand and facility forecast information from BellSouth and not from CLECs.

The Commission considers the information sought by Sprint to be extremely competitively sensitive. The provision of such information should not necessarily be disclosed to a CLEC on a routine basis. Moreover, the Commission finds that when such information is necessary it should be based on a complaint filed by a CLEC with this Commission to resolve the denial of collocated space. If in the future Sprint believes that such information is necessary in a specific instance, then it should file a complaint with this Commission, and this Commission will resolve denials of collocation space as expeditiously as possible.

8. Should Sprint be given space priority over other CLECs in the event that Sprint successfully challenges BellSouth's denial of space availability in a given central office, and the other CLECs who have been denied have not challenged? (Issue 22)

Sprint asks this Commission to establish a procedure whereby it would receive priority of assignment in collocated space over other CLECs if it successfully challenges BellSouth's denial of available space for a given central office. Sprint argues that "in the exceptional circumstances" where Sprint as a challenging party has not obtained space from BellSouth and then has successfully challenged BellSouth, then BellSouth's "first-come, first-served" method is inappropriate. BellSouth asserts that its position of always utilizing the "first-come, first-served" rule is consistent with the FCC determinations. 47 C.F.R. 51.323(f)(1) requires an ILEC to make "space available within or on its premises to requesting telecommunications carriers on a first-come, first-served basis."

The Commission believes that these issues should not be resolved here. They not only affect many more parties than those present in this proceeding; they are not ripe for review. Accordingly, we will not address them here. Should they arise in a specific complaint proceeding, we will revisit the issue.

9. Should Sprint and BellSouth have the ability to negotiate a demarcation point different from Sprint's collocation space, up to and including the conventional distribution frame? (Issue 23)

The demarcation point in a central office is the interconnection junction amidst individual carrier networks. Sprint petitions this Commission to allow Sprint the authority to determine the point in a central office where demarcation occurs.

BellSouth takes the position that to serve the plethora of CLECs in the market it must mark a position that is accessible to all competitors equally. BellSouth prefers to standardize the collocation process in order to timely and accurately provide collocation arrangements.

This Commission agrees with BellSouth that a standard distribution frame, accessible to all, provides the best overall service. This arrangement allows BellSouth and CLECs the opportunity to standardize construction needs when collocating in any given central office, while also addressing the sometimes capricious negotiation process.

10. When Sprint desires to add additional collocation equipment that would require BellSouth to complete additional space preparation work, should BellSouth be willing to commit to specific completion intervals for specific types of additions and augmentations to the collocation space? (Issue 24)

Sprint asks that BellSouth be required to comply with designated completion intervals for four categories of additions and augmentations to Sprint's collocation space. Sprint argues that additions and augmentations to collocation space should be handled by BellSouth in a shorter interval of time than the original collocation. Moreover, Sprint suggests that the case-by-case basis of addressing intervals would not allow parties certainty in addressing the issues. BellSouth asserts that the categories and time intervals proposed by Sprint are inappropriate because the tasks relating to additions and augmentations do not fit into categories per se. BellSouth also argues that Sprint's categories are not exhaustive though Sprint asserts that they are. BellSouth contends that the best solution is to allow it the maximum allowable time for a new collocation request with the understanding that BellSouth will endeavor to provide additions and augmentations in less time.

The Commission finds that the time intervals necessary to complete the provisions of additions and augmentations should reasonably be less than the maximum time needed to complete a new collocation request. The Commission declines, however, to implement the proposal of Sprint. The proposal does not apply to all circumstances. Collocation issues are varied and by their nature should be addressed on a case-by-case basis. This Commission expects BellSouth, however, to complete these requests in a reasonable period of time. If Sprint finds that additions and augmentations are not provided in a reasonable period of time, it should file a complaint, pursuant to KRS 278.160, to address these issues.

11. Are there situations in which Sprint should be committed to convert in place when transitioning to a virtual collocation arrangement to a cageless physical collation arrangement? (Issue 25)

Sprint requests that it be allowed to convert in place its virtual collocation arrangements to cageless physical collocation arrangements when it does not request any additional changes in its collocation arrangement. Sprint asserts that if BellSouth is allowed to require relocation of equipment, then Sprint will incur additional costs and administrative burden. BellSouth asserts that the circumstance referenced by Sprint does not, and is not likely to, exist in Kentucky.

The Commission finds that the issue should be evaluated on a case-by-case basis if it actually arises in Kentucky. Thus, if an in-place conversion occurs and the parties cannot agree to the conditions and rates for such conversion, then Sprint may utilize the Commission's complaint process to resolve the issue at that time. At this point, the issue is not ripe for review.

The Commission, having considered Sprint's petition, BellSouth's response thereto, and all other evidence of record, and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. BellSouth shall allow co-carrier cross connects and shall incorporate Sections 5.6 and 5.61 of Attachment 4 of its previously negotiated agreement with Sprint into the executed agreement herein ordered.

2. Custom calling features are not required to be available for resale on a "stand-alone" basis.

3. BellSouth shall provide interoffice transmission facilities associated with OS/DA on an unbundled basis at TELRIC rates.

4. BellSouth shall provide to Sprint at TELRIC rates combinations of UNEs, including EELs, that BellSouth typically combines for its own retail customers.

5. Sprint has the right to designate the POI for both receipt and delivery of the local traffic of BellSouth.

6. BellSouth shall both provide, and use, two-way trunking.

7. BellSouth may use a standard distribution frame as its demarcation point and need not allow Sprint to determine its own.

8. Within 30 days of the date of this Order, parties shall submit a signed agreement consistent with the mandates herein.

Done at Frankfort, Kentucky, this 13th day of June, 2001.

By the Commission

ATTEST:

Executive Director

MARYLAND

ORDER NO. 77320

IN THE MATTER OF THE ARBITRATION OF SPRINT COMMUNICATIONS COMPANY, L.P. VS. VERIZON MARYLAND INC., PURSUANT TO SECTION 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996.	* * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND CASE NO. 8887

Before: Catherine I. Riley, Chairman
Claude M. Ligon, Commissioner
Joel M. Bright, Hearing Examiner

Issued: October 24, 2001

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Appearances:

Craig Dingwall and Cathy Thurston, for Sprint Communications Company, L.P.

Kimberly A. Newman, Thomas Finan, David A. Hill, and David K. Hall, for Verizon Maryland, Inc.

Bernice C. Ammon, for the Staff of the Public Service Commission of Maryland.

BACKGROUND

On May 15, 2001, Sprint Communications Company, L.P. ("Sprint") filed with the Commission a Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 ("The Act").[1] In the Petition, Sprint asks the Commission to arbitrate certain terms, conditions and prices for its interconnection agreement and related arrangements with Verizon Maryland, Inc. ("Verizon"). On June 11, 2001, Verizon filed an answer to the petition for arbitration, and a pre-hearing conference was held by the Commission on June 12, 2001, in Baltimore, Maryland. At the pre-hearing conference, the Staff of the Public Service Commission of Maryland ("Staff") entered its appearance as a party, while requested intervention by AT&T Communications of Maryland, Inc. ("ATT") was denied.[2]

Pursuant to the procedural schedule developed at the pre-hearing conference, a "technical conference" was conducted on August 8 and 9, 2001, and hearings were held August 21, 22 and 23, 2001. The technical conference involved panel witnesses sponsored

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[1] 47 U.S.C. Section 252. The Act provides for the negotiation of interconnection agreements between local exchange carriers and other telecommunications carriers, with provision for arbitration of unresolved disputes by state regulatory authorities.

[2] While ATT's petition for intervention was denied as this matter concerns an arbitration dispute between Sprint and Verizon, ATT was allowed to be served copies of materials and could seek permission to file briefs in this matter as an *amicus curiae*. In addition to the denial of intervention at the pre-hearing conference for ATT, a similar request for intervention by WorldCom, Inc. was also denied at the initial technical conference hearing on August 8, 2001.

by the parties, whose testimony and comments were admitted into the record under oath, while the subsequent hearings were traditional hearings involving examination of witnesses who had filed pre-filed testimony and were then subject to cross-examination by all parties. At the technical conference and hearings, testimony was provided by the following witnesses on behalf of Sprint: Michael J. Nelson, Director-Local Market Development/Integration for Sprint; Thomas G. McNamara, Senior Manager-Regulatory Policy; James R. Burt, Director-Regulatory Policy for Sprint/United Management Company; Michael R. Hunsucker, Director-Regulatory Policy; Michael Maples, Senior Manager of Regulatory Policy; and Edward B. Fox, Senior Manager-Regulatory Policy. Testimony on behalf of Verizon was provided by the following witnesses: Paul Richard, Senior Specialist in the Wholesale Services Marketing Organization of Verizon Services Group; John White, Executive Director within Verizon's Wholesale Services Organization; Peter J. D'Amico, Senior Specialist in the Interconnection Product Management Group for Verizon Services Corporation; Gary Librizzi, Director of Negotiations; Rosemarie Clayton, Product Manager for DSL and Line Sharing for Verizon Communications; Susan Fox, Product Manager in Verizon's Wholesale Marketing Organization; Don Albert, Director-Network Engineering for Verizon Services Corporation; and Joseph P. Kristof, Group Product Manager in the Call Management Services Organization. While the Commission's Staff was a party in this proceeding, it did not present any witnesses but did participate in cross-examination and file briefs in this matter.[3]

All of the testimony and evidence on the record, and the briefs and arguments of the parties, have been carefully reviewed and considered in rendering a decision in this arbitration proceeding.

DISCUSSION

As noted, this case involves the Commission acting as an arbitrator pursuant to the Telecommunications Act of 1996 for determining disputed provisions in the interconnection negotiations between Sprint and Verizon. When initially filed on May 15, Sprint's petition included over 40 issues still in dispute between the parties. However, during the course of this proceeding, the parties have indicated substantial agreement has been reached on many of these issues so that approximately 15 issues remain in dispute at the time of the hearings in this matter.[4] However, while the hearings involved the approximately 15 specified issues

[3] Pursuant to the schedule determined at the pre-hearing conference, initial briefs were filed on September 11, 2001 and reply briefs on September 18, 2001, with the target date for final decision by the Commission set for October 11, 2001, although such date may be extended until October 26, 2001. In addition, by Order No. 77265 issued on September 26, 2001, portions of Verizon's brief in excess of the 60-page limit specified in COMAR 20.07.02.06(B) were stricken, and Sprint was granted leave to file a supplemental brief in light of Verizon's violation of the Commission's rules governing Practice and Procedure before the Commission. Sprint's Supplemental Brief was filed on October 5, 2001.

[4] In determining the number of issues in dispute, certain issues have been consolidated as similar issues were discussed together by all parties during the hearings in this matter.

noted by the companies to be in dispute during the course of the hearings, in its brief Verizon indicates several additional issues which were represented as settled by the parties apparently re-surfaced and were considered contested by Verizon, although no evidence has been taken upon these disputed issues. Accordingly, Verizon requested an additional 15-day period to address these disputed issues following the issuance of the decision in this case, and a Motion to Compel with respect to Issue No. 7 - Line-Sharing was filed on September 25, 2001 in this proceeding, which Motion was opposed by Sprint. However, by the subsequent Joint Stipulation dated October 5, 2001, in which the parties indicated Issue No. 7 has been partially resolved, it is our understanding that this issue is no longer contested except with respect to the extent it is affected by other issues.

In considering the matters that remain in dispute between the parties, the basic difference between Sprint and Verizon on many of these issues concerns their contrasting positions in this case as Verizon is an incumbent local exchange company ("ILEC") while Sprint in this proceeding is a competitive local exchange company ("CLEC") seeking to enter into local services in the Maryland area.[5] In general, Verizon predicates its position on certain issues as being in compliance with its duties as an ILEC under the Telecommunications Act, while it contends

[5] Sprint also notes that in other jurisdictions, it operates as an ILEC and states that its position taken in this proceeding is consistent with its function as an ILEC in certain jurisdictions and a CLEC in others.

Sprint seeks to impose additional requirements or responsibilities upon Verizon that are either prohibited by the Act or beyond the requirements which an ILEC must offer. In contrast, Sprint contends its position on many issues is based on the difficulties of a CLEC seeking to enter the local telecommunications marketplace, and its position seeks Commission directives that would promote efficiency and save costs for a CLEC, and would also promote competitive entry in conformance with the overarching policies of the Act. Sprint also has developed alternative technologies to Verizon offerings, and Sprint's position on certain issues would promote the use of the Sprint offering.[6] The record further reveals that these parties have been in similar negotiations in other states regarding the same contested issues as many of these issues are in fact negotiated on a regional basis between the two parties. The issues are negotiated by specified number, and the decision herein will utilize the designated number for each contested issue in the rendering of the decision. These contested issues will now be discussed.

Issue No. 1 - Capping Sprint's Rates at Verizon's Rates

This issue involves rates and charges that Verizon would pay for access to Sprint facilities in order for Verizon to

[6] Sprint alternative technologies in this proceeding include "Sprint ION" (Sprint's integrated voice, high-speed data and video service); "GSAM" and "Sapphyre" (Sprint's proposed loop qualification methodology); and "00-"(minus) (Sprint's voice-activated dialing product which utilizes "00-" dialing code to access the platform that is used to complete local or long-distance calls).

interconnect with Sprint. Verizon proposes that Sprint mirror Verizon's Commission-approved rates for the same services unless Sprint files cost studies which may justify a higher rate. Verizon contends it is a captive purchaser as it is required by law to interconnect with a CLEC and therefore requiring the CLEC to charge no more than the ILEC for certain services is reasonable and fair as well as consistent with law. Furthermore, Verizon claims that if Sprint fears its costs do in fact exceed the amount Verizon is permitted to charge, the Federal Communications Commission's ("FCC") Local Competition Order provides that it may submit a forward-looking economic cost study to rebut presumptive symmetrical rates.[7] Verizon notes that Sprint has not produced any such cost study and believes that Sprint's wholesale rates should therefore be capped similar to capping of Sprint's access rates at the Verizon level.[8]

Sprint vigorously opposes the artificial capping of its wholesale rates at Verizon charges, noting that its rates (as well as Verizon's) are governed by applicable approved tariffs. Staff, which as noted has not provided any testimony in this matter, has argued on brief in support of Sprint that the Commission previously indicated it would review rates, terms and conditions of new entrants on a case-by-case basis.[9] Staff notes the Commission

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[7] *Local Competition Order*, ¶1,089, which concerned rates for transport and termination, FCC 96-325, CC Docket Nos. 96-98 and 95-185, *First Report and Order*, ¶1,085, 11 FCC Rcd. 15,499 (August 8, 1996).

[8] *Re MFS Intelenet*, Case No. 8584, Phase II, 86 Md. PSC 467, 483 (1995).

[9] *Id.*

requires carriers to file tariffs which would apply to other carriers, and Verizon has the right to challenge Sprint's (and any other carriers') rates and charges before the Commission. Therefore, Staff recommends rejection of Verizon's proposed cap, as Verizon may seek appropriate relief if it believes the filed tariff rates are excessive.[10]

Upon consideration of this issue, we reject the Verizon proposal to cap Sprint's wholesale rates at Verizon's level of charges. We note Sprint's rates are governed by tariff, and the appropriate relief for Verizon, or any other interconnecting carrier who believes the tariff rates are excessive, is to challenge such tariffs or petition for review of such tariff rates on a case-by-case basis, as noted by Staff.

<u>**Issue No. 3 - Wholesale Discount for Verizon Vertical Features**</u>

This issue concerns whether Verizon should be directed to provide vertical services (i.e., optional custom calling features that are separate from basic local service, such as call waiting and call forwarding) at the Commission-approved 19.87 percent discount for provision of wholesale services to CLECs. Sprint argues it is entitled to the wholesale discount on such services and argues that it particularly needs certain of these call forwarding services to meet customer demand for unified messaging

[10] Staff further notes that rates for switched access are deemed just and reasonable if they are at or below Bell Atlantic's rate, and rates for local call termination are to be billed at the Commission-approved local call termination rates.

and Internet call waiting. Sprint contends Section 251(c) of the Telecommunications Act imposes upon ILECs the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers, and therefore argues there is no statutory basis for limiting the resale duty to basic telephone services. It contends that Verizon is legally required to offer such custom calling services for resale, just as it is required to offer basic local telephone service for resale, and that Sprint is entitled to purchase from Verizon at wholesale prices such telecommunications services. Sprint claims that other states, such as California, Texas, Florida and North Carolina, have recently ordered the ILEC to make vertical services available to Sprint on a stand-alone basis with full discount, and such decision has also been approved by the Administrative Law Judge in Pennsylvania on an interim basis until such time as Verizon files appropriate cost studies. Sprint also requests the Commission to order Verizon to provide electronic bulk ordering and billing for vertical features, and indicates that Verizon witness Kristof has agreed to provide such electronic ordering within the next several months.

Verizon notes this issue is not whether Sprint may obtain and resell vertical features, which Verizon concedes are available, but the issue is whether Sprint is entitled to the resale discount when it wants to sell such features on a stand-alone basis. Verizon contends that in instances where Sprint desires to purchase such services for resale on a stand-alone basis, in which instance Sprint is seeking to resell the feature to a Verizon retail customer, Sprint is not in such situations entitled to the wholesale discount. Verizon notes there is no dispute that if Sprint resells basic service to a customer it is also entitled to the wholesale discount when it resells any vertical feature to such customer, and therefore the dispute only arises when Sprint wants to resell an individual vertical feature to a Verizon customer. Verizon's primary argument is that the Act only requires it to offer for resale at wholesale rates telecommunications services that it provides at retail to subscribers who are not telecommunications carriers.[11] Accordingly, the obligation does not apply in the instance requested by Sprint, as Verizon does not offer such services on a stand-alone basis to its own customers. That is, Verizon only offers such features to retail customers in conjunction with basic dial tone service and notes that the services do not work without the underlying dial tone.

Verizon further contends that the Act does not require an incumbent local exchange company to make a wholesale offering of any service that the incumbent does not offer to retail customers, nor does the FCC require the ILEC to disaggregate a retail service into more discrete retail services. *Local Competition Order*, ¶¶ 872 and 877. Verizon claims that in instances where enhanced service providers ("ESPs") are permitted to purchase features on a stand-alone basis for resale, Verizon continues to provide the dial

[11] 47 U.S.C. § 251(c)(4)(a).

tone line. In such instances, Verizon claims the ESPs purchasing the feature for resale to end users are therefore operating as wholesalers, and the only situation in which Verizon provides such services on a stand-alone basis is at wholesale, not retail, and neither ESPs nor Sprint is entitled to the wholesale discount. Verizon claims that Massachusetts recently agreed that Verizon has no obligation under the Act to resell vertical features on a stand-alone basis to Sprint at wholesale discount as it concluded that Verizon in fact does not offer vertical features to retail customers on a stand-alone basis itself. Verizon contends that the California and Texas decisions are erroneous by relying on sales to ESPs, as such sales are not in fact retail and do not trigger the requirement under the Act to resell at a wholesale discount.[12]

The Commission's Staff has not commented on this issue.

Upon consideration of the testimony and arguments of the parties, we find that Verizon is obligated only to provide such services at wholesale discount that it does in fact offer itself, and in this instance there is no stand-alone provision of custom calling services. Accordingly, we find that Verizon is not obligated under the Act to separately offer such services at a

[12] Furthermore, Verizon contends that if the Commission were to conclude Sprint was entitled to a wholesale discount, which it argues it is not, it would be improper to utilize the standard wholesale discount established by the Commission, which was intended to reflect costs that Verizon would avoid if it were not providing the service at retail. If Verizon is continuing to provide the basic dial tone service, it claims it would avoid few, if any, costs, and it would be more appropriate for the Commission to determine a separate wholesale discount applicable to such situations.

wholesale discount as requested by Sprint, and the Verizon position is therefore accepted.

Issue No. 5 - Mandatory Use of the Verizon Loop Pre-qualification Database by Sprint

This issue concerns what loop pre-qualification database should be used by Sprint to qualify digital subscriber line ("DSL") loops. Verizon notes that it has been required to develop and maintain loop qualification information, necessary to identify the attributes of loop plant, and it must provide requesting carriers with such information. In New York, CLECs, including Sprint, participated in a collaborative process which specifically requested that Verizon enhance its electronic loop qualification database for CLEC use in the former Bell Atlantic territory, including Maryland. Verizon states that the enhancements were made at its own expense with the understanding that costs would be recovered by CLECs use of such database, and now Sprint wishes to avoid the CLEC-agreed cost by using its own alternate loop qualification tool, which Verizon states will create false readings and has other imperfections. Furthermore, Verizon claims that separating the Sprint orders from the thousands of CLEC orders submitted to Verizon will require Verizon to reconfigure its loop qualification system for Sprint's benefit and impose new costs upon Verizon for which there is no means of recovery, as well as lead to delays in loop provisioning.

Sprint contends this is an issue of fairness and efficiency, where the Commission should not require carriers to utilize ILEC tools when there is a satisfactory and less expensive alternative. Specifically, Sprint says it should have the choice of using Verizon's loop pre-qualification tool if it chooses, but should not be required to use or pay for the Verizon system when it chooses its own alternative. Sprint further claims that all carriers share the goals of improving efficiency and reducing costs, and a process that creates erroneous qualification is not in the best interests of Sprint or its customers. It claims that its own tools and processes, identified as the Geographic Service Availability Manager ("GSAM") is a tool developed by Sprint that provides a central entry point into the Sprint pre-qualification process, and that Sapphyre, a Telcordia-developed loop qualification tool, are both extremely effective in qualifying loops for DSL service as has been demonstrated during a 1999 Sprint field trial in Las Vegas. Sprint disputes Verizon's contentions that use of the Sprint tools could cause problems and additional expenses, and further disputes that the loop qualification processes of Verizon are the product of CLEC input at the New York collaborative. Furthermore, Sprint has a proposed "Sprint ION" service, which it claims has unique loop pre-qualification needs that Sapphyre and GSAM satisfy, whereas Verizon's loop pre-qualification tools may provide false readings.[13] Sprint concludes that it desires to use either Verizon's mechanized loop qualification database or its own proprietary system in advance of submitting a valid electronic transmittal service order for requested loop, and believes it is not fair and in fact anti-competitive to require Sprint to use only Verizon's database rather than have the option to also use the Sprint system.

On brief, Staff believes the primary issues involved in this proceeding concern false readings by Sprint's loop testing process and the issue of cost recovery for the Verizon system. With respect to false negatives that may be incurred upon using Sprint's system, Staff believes this is a risk that will affect Sprint but not Verizon as Sprint will be blamed if it erroneously tells a customer it can or cannot have DSL service. In regard to false positives that may not reveal potential problems by the testing process and result in additional costs when installation is attempted, Staff believes a mechanism for compensating Verizon can be developed for such problems. Staff also notes that the Verizon loop qualification process is not represented to be perfect, but Staff indicates the testimony suggests the Verizon process may have higher accuracy and return fewer false positives and false negatives than Sprint's.

[13] "Sprint ION" is Sprint's Integrated On-demand Network, which it claims will allow Sprint to meet customers local long-distance data and other telecommunications services needs with a single service. It is Sprint's facilities-based competitive entry plan.

With respect to the cost recovery issue, Staff notes that it is not clear how the costs for development of Verizon's loop qualification process break down, and in fact Verizon uses the loop qualification process for its own business purposes. Staff concludes that a compromise should be enacted in which Sprint will not be required to utilize the Verizon loop qualification processes, but when a loop qualified through the Sprint testing results in placement of an actual order, Verizon will verify the loop as qualified prior to commencing installation and may charge Sprint for such qualification effort. If Verizon's testing demonstrates that Verizon must condition loops to ensure avoidance of interference with other circuits, Sprint will be obligated to compensate Verizon for the costs, which costs could be avoided by Sprint if it utilizes the Verizon database initially. Staff proposes charges for use of the Verizon qualification process be assessed on a per-dip basis, at $0.45 per dip, in accordance with similar treatment in the arbitration of Rhythms Link and Covad Communications Co. vs. Bell Atlantic.[14] Staff also suggests that the issue of cost recovery for Verizon's loop qualification process be addressed more completely in pending Case No. 8879, the investigation into recurring rates for unbundled network elements.

Upon review of the record, we have serious concerns regarding the reliability of the Sprint qualification systems at this time, including problems regarding false readings. The

[14] Case No. 8842, Phase II, Order No. 76852 at 31 (April 3, 2001).

evidence indicates problems with the Sprint systems in prior years, and although Sprint argues enhancements have been made, we believe there is insufficient support to demonstrate the prior problems have been overcome or that the Sprint system has achieved a level of acceptance. We also believe the Staff suggestion which would not require mandatory use by Sprint of the Verizon system, but would allow charges to be imposed upon Sprint for false readings, may well have merit as a long-term solution. Furthermore, Staff's suggestion that the cost recovery for Verizon's loop qualification process be addressed more completely in Case No. 8879 may also be appropriate. However, the Staff suggestion was not broached until its briefs following the hearings in this matter, and we would have liked further exploration of this proposal during the course of the hearings, including reaction by the other parties, prior to adoption. At this time, we believe the record supports mandatory usage of the Verizon system as best for the public interest. However, we consider this an issue subject to future revision if cost recovery of the Verizon system is adequately resolved in Case No. 8879 and the Sprint GSAM/Sapphyre system's reliability concerns are adequately resolved so that customers are not harmed by use of these Sprint systems and Verizon does not suffer increased costs by false results from these systems.

Issue No. 8 - Provision of Unbundled Packet Switching to Sprint in the Central Office and Remote Terminal

This issue concerns Sprint's intention to offer advanced services in various markets in Maryland, which it says is impaired by Verizon's refusal to provide unbundled packet switching at both remote terminals (RT) and central offices (CO). Sprint has also offered to defer this issue to a generic proceeding to be initiated within 90 days, which would include both Verizon Maryland and the Verizon Advanced Data, Inc. ("VADI"), which is acknowledged to be a separate affiliate of Verizon that is in fact entitled to own advanced services equipment such as packet switches. Sprint argues that if the Commission does not defer this issue to a generic docket, then it should require Verizon to unbundle packet switching in both the CO and RT, as it claims the refusal to require unbundled packet switching will stifle competition. Sprint contends unbundled packet switching has been ordered by other Commissions, such as Texas, Illinois, and the recommended decision from the Pennsylvania Administrative Law Judge. Sprint further contends that Verizon's claims that such negotiations must occur with its affiliate VADI are an attempt by Verizon to hide behind its separate data affiliate, and notes the separate data subsidiary requirement may well be expiring in the near future. Sprint considers the Verizon position that such negotiations must occur with VADI rather than Verizon to be a "shell game" by which Verizon seeks to avoid its unbundling obligations, which should not be permitted by the Commission. Furthermore, Sprint contends that such packet switching should be required under FCC standards[15] as well as the "impairment" test, as residents in Maryland will be unable to enjoy benefits of competition without unbundled packet switching as it meets four conditions set out by the FCC and an impairment analysis. [16]

Verizon contends this is a legal issue whereby the FCC has preemptively decided that packet switching should not be unbundled unless the four-part test is met. Verizon argues it is undisputed that the test has not been met, especially as Verizon is prohibited from offering packet switching capability for its own use as only its affiliated company, VADI, is permitted to do so. Verizon notes that Sprint may negotiate with VADI for such service, but as of this time Verizon itself is prohibited from this offering. Verizon further claims that Sprint's impairment analysis is totally inadequate as it has provided no real cost studies, but only a letter setting forth alleged costs for collocation and related expenses in support of its request that such service be provided under an impairment analysis. Verizon further notes that

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[15] The FCC provides an exception to its general rule against unbundling of packet switching capability at remote terminals if four conditions are satisfied, including (1) the incumbent LEC has deployed digital loop carrier systems or other systems in which fiber optic facilities replace copper facilities, (2) there are no spare copper loops capable of supporting xDSL services, (3) the ILEC has not permitted a requesting carrier to deploy a digital subscriber line access multi-plexer ("DSLAM") at the remote terminal nor has the requesting carrier obtained a virtual collocation arrangement, and (4) the ILEC has deployed packet switching capability for its own use. 47 C.F.R. §51.319(c)(3)(b).

[16] Sprint has also provided an "impairment analysis" as rationale for the Commission determining to order the provision of such packet switching capability, as Sprint has raised costs it would incur that would impair Sprint's ability to provide service unless the packet switching is ordered.

the issue of unbundled packet switching capability is presently under active consideration by the FCC in various proceedings.

On brief, Staff confirms that the issue of packet switching is being debated in many jurisdictions, and states Sprint itself acknowledges that it is an issue with the FCC. Staff also states it appears that no ILEC is positioned to provide packet switching as an unbundled network element as none provide it for themselves. Staff further notes that the Commission has stated in connection with the new technologies that Verizon must make such equipment available on a non-discriminatory basis, but not until Verizon's network in a given geographical area can support the technology.[17] Staff concludes that Verizon should not be required to build or deploy a packet switching network for the purposes of supporting the packet switching unbundled network element needs of the CLEC community, but if circumstances change significantly, such as Verizon and VADI are re-integrated, then the Commission may wish to establish a generic proceeding to examine this issue in greater detail and set new policy.

Upon review of the record, it is clear that at this time Verizon does not offer packet switching, but its separate affiliate, VADI, does in fact offer such service. It further appears that such entities will be reintegrated in the future but are at this time separate by regulatory order. Based upon these facts, we believe that Sprint's request is not legally permissible at this

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[17] *E.g., Re Rhythm Links v. Bell Atlantic-Maryland*, Case No. 8842, Phase I, Order No. 76488, 91 Md PSC 441, 449-450 (2000).

time as Sprint must seek such packet switching from the separate VADI Company. We further find that Sprint has not satisfied any exceptions or tests (such as the four-prong unbundling test or impairment analysis) that would properly require Verizon to offer such service. In this respect, Sprint fails to satisfy the conditions as VADI, not Verizon, offered the service, among other failings of the test. Also, we do not find Sprint's impairment analysis sufficient in this proceeding, as the costs are not based on local conditions and other factors of alleged impairment are not adequately supported.

However, while we do not accept the Sprint analysis at this time, we note that by order issued September 26, 2001, the FCC granted the request of Verizon to reintegrate VADI immediately.[18] In that Order, the FCC noted that the reintegration of the two companies would allow CLECs, such as Sprint, to negotiate and conduct arbitrations immediately with only Verizon rather than both Verizon and VADI, and we expect the companies will be able to re-establish negotiations in light of this significant development. However, the Order also notes that it may take several months for completion of the reintegration as there will be interim steps necessary before the reintegration is completed. As of the date of this Order, we will not require the offering of packet switching to CLECs, for the reasons noted above, but we believe that the imminent reintegration of Verizon and VADI is a significant

[18] *See, Re Application of GTE Corporation and Bell Atlantic Corporation*, CC Docket No. 98-184 (September 26, 2001).

development that should encourage the parties to continue negotiations in this matter. Accordingly, in light of the FCC decision regarding reintegration, we further find that Sprint may request negotiation of this issue directly with Verizon with the understanding that should the parties be unable to reach agreement following the reintegration of VADI and Verizon, an arbitration with respect to this issue may be instituted in accordance with the Act.

<u>Issues Nos. 12, 13, 16 and 17 - Local Calling and Reciprocal Compensation Issues</u>

In this proceeding, disputes regarding issues of local calling and access facilities, including reciprocal compensation and Internet traffic and use of local calls over access trunks, have all been raised by the parties. These issues are enumerated as No. 12 - local traffic definition, No. 13 - reciprocal compensation and internet traffic, No. 16 - charges for local calls, and No. 17 - local calls over access trunks. However, these issues will be discussed together as they all involve common areas of local traffic and reciprocal compensation matters.

In this proceeding, Sprint proposes a definition for local traffic as well as other positions on these issues (Nos. 12, 13, 16 and 17), which are designed to promote an "end-to-end" analysis of local calling to enable Sprint to ubiquitously implement its 00-(minus) system. This proposal of Sprint's would allow calls within a local calling area to be considered local calls with no access charges applied, even when the call traverses facilities for which access charges would otherwise be imposed. Sprint advocates its definition and other conditions in an effort to have the Commission endorse an end-to-end analysis so that local calls that start and terminate in a local jurisdiction would be subject to reciprocal compensation and not access charges. In advocating its proposals for local traffic definition, Sprint argues that its proposal conforms with the previous Commission definition of local calling areas in the *MFS* decision,[19] whereby the Commission defined local calling areas as the total areas in which a local call may be placed and includes the total number of NXX code areas that any customer may call at local non-toll rates. Furthermore, Sprint contends that the recent FCC *ISP Remand Order*,[20] which arguably restricts state authority concerning reciprocal compensation, focused exclusively on inter-carrier compensation of traffic delivered to internet service providers and did not change the FCC's end-to-end analysis for determining jurisdiction of traffic.

In contrast to Sprint's advocacy of a local traffic definition and other terms which would allow the provision of its 00-(minus) system to avoid access charges, Verizon contends that access charges are applicable to such traffic and that reciprocal compensation is payable only for transport and termination on each

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[19] Case No. 8584, Phase II, Order No. 72348, *Re MFS Intelenet of Maryland*, 86 Md. PSC 467 (1995).

[20] *Re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98 and 99-68, *Order on Remand and Report and Order*, released April 27, 2001.

carrier's network facilities of traffic that originates on the network facilities of the other carrier. That is, Verizon notes that the 00-(minus) offering disputed in this proceeding does not involve the calls between Sprint and Verizon customers within local calling areas for which reciprocal compensation (and not access charges) would apply, but involves instances where the call may originate on the Verizon network, traverse through the Sprint operator service platform, and would then terminate on Verizon's network. Therefore, there are calls in which Sprint would be transporting the call between Verizon customers but over its facilities for which access charges should be applicable, as Verizon notes that the calls between Sprint and Verizon customers are not involved in this dispute. Verizon's proposals in these areas advocate a different approach from the Sprint "local traffic" analysis wherein the labeling of a call as "local" is not the defining factor but whether the call is "reciprocal compensation traffic." Furthermore, Verizon notes that the Commission's *MFS* decision pre-dated the FCC's *ISP Remand Order*, and Verizon claims under the FCC's new rules traffic must meet two requirements to be eligible for reciprocal compensation: (1) the traffic must be telecommunications traffic; and (2) it must be traffic that originates on the network of one carrier and terminates on the network of the other carrier.[21] Verizon also disputes Sprint's contention that other states have ruled in Sprint's favor on this

[21] *See* 47 C.F.R. § 51.701(e).

contested issue, noting that in certain states parties may have agreed to the Sprint position, but in every contested final decision of a state, the states have favored the Verizon proposal as applying access charges to traffic that utilizes access facilities.

On brief in this matter, Staff suggests an alternative approach whereby a new cost-based compensation should be developed rather than access charges for the traffic at issue. Staff advocates that a percentage of local usage calls ("PLU calls") be developed to determine the proper percentage of local usage, and this factor would be the basis for determining the new compensation regime. However, Staff also concedes that states no longer have authority to address inter-carrier compensation for ISP traffic in light of the FCC's *ISP Remand Order.*

Upon consideration of this issue, the Commission believes that at this time the Verizon proposals are most in conformance with the FCC *ISP Remand Order*, and therefore they will be adopted at this time. However, the Commission notes that the FCC decision, which involves issues regarding reciprocal compensation and ISP traffic, is currently on appeal.[22] While the FCC decision specifically involves Internet service providers, we believe the rationale and directives therein impact areas of reciprocal compensation and access charges that are intricately

[22] *PSC of Maryland vs. FCC*, No. 01-1313 (consolidated with *WorldCom, Inc., et al. vs. FCC*, No. 01-1218) currently in the United States Court of Appeals for the District of Columbia Circuit.

involved in the dispute between the parties in this proceeding. In light of the FCC's decision in this area, we believe that the Verizon proposals are in general conformance with the present FCC policy at this time, and we will therefore not accept the Sprint proposal advocated in this proceeding, but in the event the FCC decision is reversed or modified, we believe this area may then be ripe for further consideration. Accordingly, our acceptance of the Verizon proposal is not intended to foreclose revision in the event of future developments, and the parties are free to further negotiate on these matters as Verizon itself notes negotiations in other states have allowed the provision of local services without the imposition of access charges over what would traditionally be considered access facilities.

Issue No. 14 - Geographically Relevant Interconnection Points ("GRIP")

Issue No. 14 concerns network architecture issues regarding the interconnection between Sprint and Verizon and cost responsibility for choices of interconnection. In the *MFS* decision[23] the Commission established certain rules and policies governing interconnection between CLECs and Verizon. Among these policies, the Commission determined that co-carriers must establish a minimum of one point of interconnection ("POI") per Verizon access tandem serving area when the co-carrier terminates local calls to customers within that serving area, and each carrier is responsible for providing its own facilities to the point of interconnection. Also, all points of interconnection must be located within the State of Maryland for the purpose of exchanging traffic originating and/or terminated within Maryland, and the carriers may mutually negotiate additional points of interconnection.

In this proceeding, Verizon contends that, while it concedes it is required to provide interconnection at any technically feasible point, it argues that a CLEC that desires an expensive interconnection may be required to bear the costs of such interconnection under the FCC's *Local Competition Order*.[24] Verizon therefore proposes its GRIP and VGRIP[25] proposals, which provide that Sprint bears certain expenses when it selects a distant point of interconnection. Verizon claims that its VGRIP proposal mitigates Sprint's concerns that Sprint's interconnection points would have to be located within the rate center in which the CLEC assigns telephone numbers. VGRIP provides that Sprint establish a collocated interconnection point at a Verizon tandem switch, or in a LATA where Verizon operates only one tandem, at host end-offices or other designated locations. Therefore, Sprint would establish fewer interconnection points at centralized locations that would cover a larger geographic area than any one rate center. The

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[23] Case No. 8584, Phase II, Order No. 72348, *Re MFS Intelenet of Maryland, Inc.*, 86 Md. PSC 467, 493 (1995).

[24] *Local Competition Order* at ¶ 1099 (August 8, 1996).

[25] "GRIP" refers to geographically relevant interconnection points while "VGRIP" refers to virtual geographically relevant interconnection points.

effect of the VGRIP proposal would be to increase costs of Verizon with transporting calls while maintaining Sprint's responsibility for carrying the call from the central aggregation point to the Sprint customer location. Verizon also notes that states such as South Carolina and North Carolina have supported the Verizon proposal, noting that the CLEC should be required to compensate the ILEC for transport beyond the local calling area.

Sprint asserts that its position on this issue merely supports the Commission's existing rules of one POI per Verizon tandem serving area, and there is no need for the Commission to take any action other than to reject Verizon's proposed GRIP, VGRIP, and non-distance-sensitive transport charge proposals. Sprint contends Verizon's proposals effectively result in the establishment of interconnection points at Verizon tandems and end-offices solely at Verizon's discretion, and the VGRIP proposal calculates when Sprint would be charged for transport under the GRIP and imposes transport costs onto interconnecting CLECs, which costs should be borne by Verizon. Furthermore, Sprint contends Verizon's proposals would require Sprint to pay a non-distance-sensitive entrance facility charge contrary to the *MFS* decision while Verizon would continue to charge Sprint distance-sensitive transport charges. Sprint also notes other states, including California, Kansas, New York, and Massachusetts, have rejected the

Verizon GRIP proposal.[26] In acknowledgement of the cost concerns that may result upon Verizon for distantly located points of interconnection, Sprint has offered a compromise proposal during the course of this proceeding. In that compromise proposal, Sprint would grandfather existing Verizon-Sprint interconnection locations, but any new Sprint facilities would be established within five miles of Verizon's switching center (either tandem or end-office switch). Furthermore, Sprint would be required to establish additional interconnection locations if traffic exceeds 8.9 million minutes per month and is greater than 20 miles and not in a local calling area. The effect of such proposal would be to insulate Verizon from the full cost responsibility for distant transport, as CLECs would be responsible for transport costs once the traffic reaches the threshold and distance points.

On brief, Staff presents its own proposal for interconnection responsibility. Staff acknowledges that it is reasonable for Verizon to ask Sprint to interconnect at geographically relevant interconnection points once the Sprint customer base is large enough for traffic to justify dedicated facilities to those GRIPS. However, Staff further notes it may not be reasonable to require such dedicated facilities as a prerequisite for local service capability. Staff proposes a threshold of 24 or more

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[26] Sprint further contends the FCC is considering Verizon's GRIP proposal in a Rulemaking that will address inter-carrier compensation issues, and Verizon has withdrawn its GRIP proposals elsewhere due to the FCC consideration. *See, Re Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92 (April 27, 2001).

trunks as the point at which Sprint will be required to provide its own transport, which Staff states is consistent with treatment found in the SBC Communications (SBC) interconnection agreements. Staff further notes the Commission has established rules and policies for interconnection points in the *MFS* decision and supports Sprint using its existing points of interconnection in access tandem serving areas as the interim standard to foster local competition until the threshold of 24 or more trunks is reached.

Upon consideration of this issue, we believe that the policies established in the *MFS* decision govern this area and that Verizon's GRIP and VGRIP would subvert such prior decision, and effectively penalize CLECs for their right to choose the point of interconnection in the access tandem serving area. During the testimony in this case, it became clear that Verizon disagrees with the provisions of the *MFS* decision that co-carriers are required to establish only one interconnection point within the tandem serving area, and that there was no requirement to pay for transport beyond such interconnection point. Verizon argues that the requirement for a minimum of one point of interconnection per access tandem serving area is a minimum, and CLECs may be required to bear transport costs if they choose only the minimum one POI. However, part of the rationale for such policy was to encourage competition, whereas the shifting of costs to CLECs envisioned by the Verizon proposals would be a disincentive to many carriers and to competition in the provision of local telecommunications services. Accordingly, we reaffirm our prior interconnection policies contained in the *MFS* decision, including the requirement of one point of interconnection per access tandem serving area, with the general policy that carriers are responsible for their own traffic up to the point of interconnection. However, in recognition of Verizon's concerns that distantly located points of interconnection could result in high costs, we will accept the Sprint compromise proposal as a reasonable measure to protect Verizon from absorbing unreasonably high costs for transport of traffic. The Sprint compromise would require the establishment of additional interconnection locations once traffic reaches certain volumes and distances, while also requiring new facilities to be established within a reasonable proximity of Verizon's switching centers. We believe this proposal strikes a reasonable compromise to protect Verizon from the cited fear of long (and expensive) interconnection points chosen by Sprint, while preserving the right of CLECs to choose interconnection points, which right we believe is necessary to enhance the competitive environment and establishment of new companies.

Issue No. 14(a) - Distance-Sensitive Charges

Verizon contends that if its GRIP proposal is rejected, then Sprint should not charge Verizon distance-sensitive charges for entrance facilities that Verizon would be forced to purchase from Sprint in order to interconnect with Sprint (Issue No. 14(a)). Furthermore, Verizon objects to Sprint's proposals regarding obligations to pay for non-recurring charges associated with trunks on

Sprint's side of the interconnection point (Issue No. 14(b)). We believe that our affirmation of the interconnection principles in the *MFS* decision discussed above, along with the acceptance of the Sprint compromise, resolves these issues regarding interconnection, and mitigate the fears expressed by Verizon concerning lengthy interconnections. However, while we reiterate the general policy that CLECs may choose the point of interconnections and that each party is responsible to pay for its own charges and costs on their respective side of the interconnection points, if Verizon believes Sprint is seeking to impose excessive charges, it may seek appropriate relief. Furthermore, from the Joint Stipulation filed on October 5, 2001, it appears 14(B) regarding non-recurring charges of trunks has been resolved.

<u>Issues Nos. 14(c) and 14(d) - Verizon Tandem Transit Proposals</u>

These issues concern the scenario whereby Verizon provides transit service to Sprint for the exchange of Sprint local traffic with other carriers. Issue No. 14(c) concerns the Verizon proposal that Sprint has an obligation to make commercially reasonable efforts to directly interconnect with third-party carriers, while issue No. 14(d) concerns reimbursement of charges where Verizon provides the transit service. Verizon notes that it has voluntarily agreed to carry traffic between Sprint and other carriers, but Verizon seeks to insulate itself from disputes between Sprint and such carriers. Verizon therefore proposes specific language that Sprint exercise commercially reasonable efforts to enter into its own interconnection agreements and for reimbursement of charges levied by the receiving carrier to ensure that Verizon is made whole for any charges assessed for such traffic that does not involve Verizon customers. Verizon notes that it is providing such service as an accommodation to Sprint and that Sprint has the option to interconnect directly with such carriers if it desires better rates, terms or conditions. Verizon asserts that if it is not so insulated, then it should not be obligated to provide this service pursuant to the interconnection agreement.

Sprint contends that the issue of CLECs negotiating individual tandem transit agreements with other CLECs is an industry issue that involves all CLECs, and therefore opposes resolution of this issue through the interconnection contract process. Sprint opposes the Verizon proposals, objecting to provisions that Verizon may send Sprint a notice to initiate termination of tandem transit traffic service when Sprint traffic reaches a certain volume if Sprint does not enter into its own agreements, while also objecting to the reimbursement provisions stating that it does not have any ability to refute an erroneous or inaccurate charge.

Staff has not commented on this issue.

Upon consideration of the disputes concerning tandem transit proposals, we believe that Verizon's proposals are reasonable and as such will be accepted. Verizon is merely seeking to protect itself from becoming a third party in disputes that involve traffic between Sprint and other carriers, but which do not in fact involve Verizon customers. It would be manifestly unfair for Verizon, which is carrying this traffic as an accommodation to Sprint and other carriers, to bear losses in the event of disputes between Sprint and the other carrier, and we believe its proposals represent a reasonable attempt to remove Verizon from disputes which do not involve its own customers or services. As to Sprint's objection that Verizon may terminate such traffic, it is clear that Verizon must first send Sprint a notice to initiate such termination of tandem transit service and in such event Sprint or the other carrier may seek appropriate action if it believes Verizon is being unreasonable or otherwise improper. Furthermore, with respect to Sprint's complaint that it would not have any ability to refute erroneous or inaccurate charges, these charges involve Sprint and the other carrier and Verizon should not be caught in the middle of such disputes. Also, dispute resolution procedures can be availed by Sprint and the other carrier, but Verizon should not be the party who suffers any loss for disputes involving other carriers and should be insulated to the extent possible from any such disputes. As noted, Sprint also has the option to interconnect directly with such carriers if it desires and can cover such disputes in its own interconnection agreements.

Issue No. 18 - Metropolitan Area Networking ("MAN") Commingling

This issue involves Sprint's proposal that it be allowed to transmit unbundled network elements and access traffic over the same facilities. According to Sprint, a commingling of traffic would result in efficiencies and cost savings to Sprint as it would enable Sprint to avoid unnecessary duplication of facilities for each type of traffic and the associated costs of operating and maintaining separate facilities. Sprint contends that to the extent it can offer services to customers at lower costs based on engineering efficiencies, Maryland consumers will derive the ultimate benefit and therefore it seeks to commingle access and unbundled network element ("UNE") services on the same Verizon facilities. Sprint also contends that it is not seeking to subvert the current FCC access policy under the "CALLS"[27] plan, which requires carriers to pay access charges for access services. Sprint contends it is willing to pay access charges for access services (and TELRIC rates for unbundled network element services) if allowed to commingle its traffic on the same facilities. Sprint further states that SBC Communications Corporation and Qwest Interconnection Agreements provide for this arrangement, and states that it has reached agreement with these ILECs regarding commingling access and UNE services on an operational level.

In its final arguments on reply brief in this matter, Verizon contends Sprint reveals a fundamental misunderstanding of the FCC's prohibition against commingling of switched access with UNE services or is engaged in a deliberate attempt to mislead the Commission as to applicable law. Verizon argues that the FCC

[27] Coalition for Affordable Local and Long-Distance Service ("CALLS").

Supplemental Order Clarification[28] reaffirmed the FCC's prohibition against commingling special access and UNE services as well as the FCC's general prohibition against commingling all forms of access (including the switched access function Sprint seeks) with UNE services. Verizon notes that the FCC stated:

> Permitting the use of combinations of unbundled network elements in lieu of special access services could cause substantial market dislocations and would threaten an important source of funding for universal service. For example, in the absence of completed implementation of access charge reform, allowing the use of combinations of unbundled network elements for special access could undercut universal service by inducing IXCs to abandon switched access for unbundled network element-based special access on an enormous scale. (Supplemental Order Clarification at ¶ 9.)

Verizon therefore interprets this provision as relating not only to special access, but also the importance of maintaining a regime for switched access. Verizon argues that the Commission may not in this arbitration modify the application of access charges, noting that the Telecommunications Act specifies the maintenance of access services until restrictions and obligations are explicitly superceded by regulations prescribed by the FCC.[29]

Verizon further notes that the FCC revision has begun to take form in the interstate access reform and universal service

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[28] Re Implementation of Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order Clarification; CC Docket No. 96-98, FCC 00-183, June 2, 2000.

[29] Telecommunications Act, §251(g).

plan proposed by the Coalition for Affordable Local and Long Distance Services ("CALLS"), which proceeding and plan presents an integrated and cohesive proposal to resolve major outstanding issues concerning access charges, according to Verizon.[30] Verizon contends that allowing Sprint to evade the interstate switched access through the use of local service facilities effectively tampers with the rate calculations and therefore the Federal access reforms. Verizon further denigrates Sprint's contention that it is willing to pay access charges for access services and TELRIC rates for UNE services if allowed to commingle traffic, as Verizon contends Sprint would be paying UNE transport rates instead of switched access rates once Sprint connects switched access traffic to a UNE. Verizon argues that this would allow Sprint to "game" the access regimes governed by this Commission and the FCC. Verizon further contests Sprint's representation that such commingling is allowed by other regional Bell Operating Companies, specifically SBC and Qwest. Verizon contends that both the Qwest and the SBC Interconnection Agreements refuse to permit such commingling of switched access and special access and UNE facilities and that Sprint has failed to provide any documented evidence of the so-called "operational" side agreements with these ILECs.

On brief, Staff recommends the same solution as to other traffic situations whereby Sprint should be allowed to use the

[30] *See, In re Access Charge Reform, Etc.*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in Docket No. 99-249 and Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd. 12962 (2000).

existing Feature Group D trunk group routing solution that already interconnects the Sprint network with Verizon's network until a traffic volume is reached that provides reasonable economies of scale. Accordingly, Staff reiterates its recommendation that when traffic generated from an individual end-office switch reaches the level of 24 trunks, Sprint would be expected to purchase or lease dedicated facilities from that end-office directly to its own switching facility, but until such time it would be able to commingle traffic as this would merely result in a small additional traffic on the existing facilities.

Upon consideration of this issue, we are aware of Sprint's intentions to combine such traffic to reduce costs and achieve efficiencies, but we have serious reservations regarding the permissibility and appropriateness of its proposal at this time. A review of the record clearly shows that the Sprint proposal is an attempt to bypass the access schemes contemplated between the parties, whereas such revision of access schemes has commenced in the CALLS plan, and there are clear consequences if alternative measures, such as the Sprint proposal, would be utilized to evade the access charges contemplated by the FCC. As noted by the FCC, alternative schemes could have consequences such as undercutting universal service, and as such we have serious reservations regarding the legality and propriety of the Sprint proposal at this time.

Furthermore, while Sprint vigorously disputes that its proposal is prohibited by the FCC, as contended by Verizon, Sprint's allegation that such proposal is allowed by "operational" agreements with other ILECs has not been adequately supported on the record in this case, as well as raising questions regarding the propriety of such alleged operational agreements. In addition, while Sprint contends its proposals to bypass access charges have been allowed by other ILECs, following the filing of briefs in this matter, Sprint has submitted a letter dated September 13, 2001 in which it acknowledges that it recently discovered that SBC and Sprint do not interpret their interconnection contract language and its application to 00-(minus) calls in the same manner, thereby calling into question Sprint's representations regarding interpretation of the contract with respect to bypassing of access charges. While Sprint is commended for presenting this information, we believe it raises into question the interpretation of the SBC Interconnection Agreement with regard to the dispute concerning the allowance of combining switched access with UNE as well as the issue of providing local service over access lines without the access charges (which is the subject of Issue Nos. 16 and 17). Accordingly, we are not persuaded of the propriety of adopting either the Sprint or Staff proposals at this time, as they would clearly affect the access schemes in effect, although future developments with regard to the reform of access charges may make this area more amenable to revision in the future. At this time, however, we will accept the Verizon position prohibiting such commingling.

Issue No. 19 - MAN UNE MultiPlexing ("MUX") Services

Sprint also requests in this proceeding that Verizon provide UNE multiplexing services in order to gain engineering efficiencies. Sprint contends that its collocation cages, as they currently exist, do not have sufficient space for multiplexing equipment and that it desires Verizon to terminate loop and transport facilities to a multiplexing UNE and provide connectivity between the UNE and Sprint's collocation cage. Sprint notes that if it is compelled to purchase and install its own MUX equipment at each collocation site, its costs of providing services would be significantly increased, not only due to the equipment but also because additional collocation space would be necessary. Sprint also contends that as multiplexing has been identified by the FCC as a part of a UNE, Verizon has an obligation to offer multiplexing as requested by Sprint, thereby contesting Verizon's claims that it has no legal obligation to provide such service. Sprint contends there is no technical impediment to Verizon offering Optical Carrier number ("OCn") multiplexing, and requests Verizon be directed to provide such multiplexing capabilities to the extent technically feasible.

In response to the Sprint arguments, Verizon on reply brief argues that Sprint is seeking to unbundle a network functionality that has not been deployed in the Verizon network. It contends Sprint's proposal to terminate loop and transport facilities to a MUX UNE and provide connectivity between the UNE and Sprint's collocation cage is an attempt to circumvent restrictions imposed by law on loop transport combinations, and Sprint seeks to connect loop transport combinations to a multiplexer and then connect the multiplexer to its collocation cage. Verizon contends that such request for connectivity is actually a request for an enhanced extended loop ("EEL"), which is a combination of loop transport and multiplexing if required. Verizon contends that in order to access an EEL, Sprint must meet local use restrictions set forth in the FCC Supplemental Order Clarification and is in effect an attempt to disguise as an unbundled network element what has already been defined by the FCC as a combination and should not be tolerated. Verizon notes that it does not offer multiplexing in combination with an unbundled transport facility, and multiplexing is offered by Verizon on a stand-alone basis separate and apart from unbundled loops and unbundled inter-office transport. Verizon concludes that the Sprint proposal would violate federal court restrictions prohibiting the ordering of new combinations, noting the Telecommunications Act requires unbundled access only to an existing network and not to an unbuilt superior one.[31] Verizon also contends that the type of OCn multiplexing capability that Sprint desires in this proceeding, that is OCn multiplexing separate from transport, does not exist on Verizon's network. In addition, if Verizon were to alter its current network to include such OCn multiplexing separate from transport, Verizon would then have to purchase new equipment.

[31] Section 251(c)(3) of the Telecommunications Act.

Staff does not address this issue on brief.

Upon reviewing the record with respect to this issue, we find the weight of the evidence supports Verizon's position that such multiplexing is not currently offered as an unbundled network element at the present time as requested by Sprint, and there is therefore no obligation to create the multiplexing in combination with an unbundled transport facility as desired by Sprint. Furthermore, the record reflects that the Sprint proposal would require Verizon to purchase additional equipment and place it in the office to satisfy Sprint's request, which requirement would violate the intent of the Telecommunications Act that requires unbundled access only to an existing network and not an unbuilt superior one. Accordingly, for these reasons, we deny Sprint's proposals to require such multiplexing in combination with unbundled transport facilities and accept the Verizon position.

Issue No. 20 - Collocation

Issue No. 20 concerns matters regarding the ability of Sprint to reserve space in Verizon's offices under collocation arrangements required for allowing CLECs to collocate and have space in ILEC facilities. Sprint contends it seeks a space reservation policy wherein Verizon may reserve unused space for a maximum of two years for all types of equipment. Sprint claims that the two-year reservation is a reasonable period of time within which a carrier will be allowed to hold space in the central office or remote terminal for future equipment use, and that Sprint follows such a two-year reservation policy in areas where it is in fact the incumbent local exchange company. Sprint further requests that it be given an opportunity to conduct walk-throughs every six months to verify a lack of space for closed offices, and further requests that Verizon be required to provide blueprints or floor plans of its central offices where space has been denied within five days of a facility tour. In addition, Sprint requests demand and facility forecast reports when Verizon denies collocation because of unavailability of space, which information is necessary to ensure that Verizon is not warehousing space at its facility use beyond the two-year period.

In its reply brief in this proceeding, Verizon notes that its collocation tariff is currently pending before the Commission in Case No. 8766. Verizon further notes that a joint settlement agreement has been filed in that proceeding, although several issues remain open, including collocation reservation periods. As that proceeding involves collocation issues, including a request for the Commission to determine reservation periods, and as that proceeding involves the interest of all Maryland CLECs, Verizon recommends the Commission defer Issue No. 20 in this proceeding as a consistent approach in Case No. 8766 would be beneficial.

On brief, Staff notes that Sprint seeks a two-year reservation period, while Verizon proposes to continue a five- to ten-year reservation period that has been used in the past, although it is willing to change its tariff to a maximum five-year self-reservation period. Staff recommends as an appropriate solution, a three-year maximum planning period for Verizon for which it can reserve space for itself, with a reservation maximum for 50 percent available space. Staff specifically notes such recommendation is an interim solution that may be altered pending the disposition that is ultimately ordered in Case No. 8766.

Upon consideration of this issue, we believe that the issues regarding collocation, including space reservation, are more appropriately handled in the generic proceeding, Case No. 8766, in which all interested stakeholders have had an opportunity to participate. However, while we anticipate that a decision in such proceeding should occur within a reasonable time, we will adopt Staff's compromise proposal to allow a three-year reservation period as an interim measure pending a final decision in Case No. 8766. Furthermore, we are very concerned regarding security aspects of collocation offices and facilities, and believe that Verizon is entitled to maintain reasonable measures to ensure the security and integrity of its facilities. Accordingly, at this time when the security of infrastructure is a heightened issue, we reject the Sprint proposals to provide floor plans prior to the office tour and outside of the security of the facility. While Sprint believes a confidentiality order may constitute sufficient protection, we reject such proposal and Verizon may continue its existing security measures and require floor plans be returned at the conclusion of the tour and also restrict any plans leaving their direct supervision and control. We also reject Sprint's position seeking walk-throughs of facilities every six months as excessive, as the current procedures regarding annual certifications and space exemptions appear adequate at this time. However, the decisions in this specific arbitration are interim as noted above, and subject to revision depending on the final decision in Case No. 8766.

Issue No. 21 - Reallocation of Facilities

This issue concerns Sprint's desire to transition unbundled network loops to line-sharing loops to further its business objectives. Sprint states its desire to reallocate its investment in DSO cross-connects from the collocation cage to Verizon's main distribution frame without incurring excessive and unnecessary costs. Sprint is requesting a process of re-stenciling a cable block for each ordered DSO cross-connect and claims no additional cable work is needed; and therefore, no additional costs for re-cabling should be incurred. It claims it is willing to pay a reasonable charge, noting this is allowed by Verizon West for approximately $200 for re-stenciling the DSO pairs, whereas it claims Verizon proposes to charge Sprint a fee of $2,050 per occurrence as well as approximately a quarter of a million dollars in installation charges in the total system. In addition, Sprint notes that Verizon states it will take approximately 76 business days to make the conversions to line-sharing loops, whereas Sprint proposes the transition within a 30-day time frame as a reasonable period.

In its reply brief, Verizon disputes the effectiveness of the Sprint request to use existing cabling to transition UNE loops to line-sharing loops. Verizon contends that the parties to a line collaborative in New York rejected the Sprint proposal as it did not work effectively or efficiently and lead to more CLEC errors, more Verizon errors, and ultimately greater quantities of customers out of service, as well as a longer duration of out of service issues. Verizon claims it has been using collaborative procedures regarding tie-cable design and cut-over processes in Maryland for all CLECs, including Sprint, for over a year. It further states that if Sprint's proposal is accepted, then Sprint would be using one set of line-sharing cut-over processes in their 70 central offices, while a different set of processes would be utilized in other central offices. During the course of this proceeding, Verizon has also indicated compromise proposals in which Sprint would pay Verizon $550, while Sprint could engage its own vendors to perform cabling work using Verizon's cut-over design. Verizon witness, Donald Albert, also indicated that he believes this issue may largely be moot as Verizon has in fact already constructed or is in the process of constructing line-sharing arrangements for Sprint in a large number of instances. He further states that the proposed collocation settlement includes provisions for receiving credit for returning loops, and he also reiterated opposition to the reuse of cable as inadequate which he states was the decision of the New York collaborative regarding the Verizon Service area.

Staff has not commented on this issue.

In reviewing the record on this issue, we note that Sprint emphasizes that its proposed line-sharing cut-over design is allowed in other regions, at a significantly lower fee than Verizon proposes to charge, while the record reflects that the Verizon East area, which includes Maryland, specifically addressed these technical issues in the New York collaborative and rejected the use of plain UNE loop tie-cable and cross-connect block design for line-sharing as proposed by Sprint in Maryland. We believe the record demonstrates serious concerns regarding the reliability of the Sprint proposal, and also the record supports advantages to utilizing a uniform process in the Verizon area. We therefore accept the Verizon position on this issue and reject Sprint's proposal. While mention has been made in this proceeding that problems from the Sprint proposal would only affect Sprint customers, we believe that as a public policy measure it is incumbent upon all carriers to produce the greatest reliability and efficiency to customers of telecommunication services throughout the State to the greatest extent possible, and such customers would not be well served to allow systems to be implemented which may impact reliability. As the record indicates there are serious concerns regarding the reliability of the Sprint proposal, which concerns were accepted by the New York collaborative and also the Administrative Law Judge in the Pennsylvania Sprint/Verizon arbitration, we are reluctant to accept the Sprint proposal while these concerns exist. Therefore, with respect to this issue, the Commission accepts the Verizon position.

Issue No. 22 - Timing of Transport Availability

This issue concerns the timing of Sprint ordering DSLAM[32] Transmission facilities with respect to ordering collocation cages. Sprint notes that Verizon causes undue delay by requiring Sprint to order DSLAM transmission facilities after a collocation is completed, while it desires to order transport in parallel with the ordering of collocation cage so that the transport is available within 15-days of the completion of the cage. Otherwise, Sprint contends it must wait an inordinate amount of time, often several months for transport while the collocation cage is left idle. Sprint contends that other ILECs offer parallel provisioning of collocation cage and transport, and further complains that Verizon is unwilling to commit to a date certain it will change its processes to accommodate Sprint's request.

During the course of this proceeding Verizon disputes Sprint's contention regarding parallel provisioning of collocation and transport offered by other ILECs. In its reply brief, Verizon contends that the voluntary undertakings by other ILECs involve special access rather than the unbundled transport that Sprint seeks with respect to this issue In addition, Verizon witness

[32] Digital Subscriber Line Access Multi-plexers ("DSLAM").

Albert testified that while Verizon does not currently provide parallel provisioning of DSLAM transport and collocation cage construction for any carrier, it is willing to undertake a trial in an attempt to accommodate Sprint's request. He further states that Verizon will agree to conduct a trial within 90 days, and at the end of such period Verizon will inform Sprint whether parallel provisioning of collocation and DS-3 transport is possible. Mr. Albert further states that if it is in fact possible, Verizon will then provide Sprint with intervals for start and completion of the manual process and subsequent progression to mechanize electronic process, while if not possible Verizon will seek to negotiate an interim solution. He concludes that Verizon has no way of knowing what problems may be encountered in attempting to accommodate Sprint without such a trial, nor can Verizon predict or commit to a date for implementation.

Staff has not commented on this issue.

Upon consideration of the record, the Commission will not require Verizon to provide parallel provisioning as the record supports the continuation of the Verizon trial offer at this time. The Verizon trial recommends a 90-day period following which Verizon will inform Sprint whether parallel provisioning is possible, and we therefore direct the trial to proceed with a report back to Sprint and the Commission by the end of December 2001 on this issue. At the conclusion of the trial and following Verizon's report, Sprint may request negotiation on this issue from Verizon in accordance with the Telecommunications Act.

Issue No. 28 - Collocation Obligations

This issue concerns the Verizon proposal that Sprint must provide to Verizon collocation at rates no higher than Verizon chargès Sprint.

Sprint opposes Verizon's request to extend ILEC collocation obligations as contrary to the Telecommunications Act. Sprint notes that the Act imposes on incumbents the duty to provide physical collocation of equipment for interconnection or access to unbundled network elements on rates, terms and conditions that are reasonable and non-discriminatory, while no equivalent obligation is imposed upon CLECs. However, Sprint states that if it receives a favorable ruling on Issues 16 and 17 regarding treatment of local calls over access trunks, it would agree to provide certain collocation obligations to Verizon.

Staff has not commented on this issue.

Our review of this issue leads us to conclude that Verizon is essentially seeking an extension of collocation obligations upon CLECs which is not contained in the Telecommunications Act, and we therefore reject the Verizon proposal. Witness D'Amico states Verizon is merely seeking to have available to it the same types of interconnection choices that are available to CLECs so as to provide the most efficient type of interconnection. However, we believe that Verizon is seeking to impose obligations upon CLECs beyond those required by the Act, and we therefore reject the Verizon proposal at this time.

CONCLUSION

As noted earlier, this proceeding is before the Commission pursuant to the provisions of the Telecommunications Act which provide that disputes between the incumbent local exchange company and interconnecting carriers may be presented for arbitration. We have conducted evidentiary proceedings in this matter with respect to those issues brought before us as matters in dispute, and direct the parties to file any interconnection agreement in accordance with our decisions rendered herein with respect to the disputed issues. We find that our decisions on such disputes constitute a fair and reasonable resolution on these disputed issues, and are hereby adopted as in the public interest and in conformance with the provisions of the Telecommunications Act and our independent authority regarding matters in dispute concerning the provision of telecommunication service in Maryland.

IT IS, THEREFORE, this 24th day of October, in the year Two Thousand One, by the Public Service Commission of Maryland,

ORDERED: (1) That the parties, Sprint Communications Company, L.P. and Verizon Maryland, Inc., are directed to enter into an interconnection agreement in accordance with their negotiations and the findings and decisions of this Order, and submit the agreement to the Commission within 30 days of this Order.

(2) That Verizon shall report by December 31, 2001 on the trial regarding Issue No. 21 -- Timing of Transport Availability.

CATHERINE I. RILEY

CLAUDE M. LIGON

Commissioners

JOEL M. BRIGHT

Hearing Examiner

MASSACHUSETTS

December 11, 2000

D.T.E. 00-54

Petition of Sprint Communications Company L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of an interconnection agreement between Sprint and Verizon-Massachusetts.

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I. INTRODUCTION

This arbitration proceeding between Sprint Communications, L.P. ("Sprint") and Verizon New England, Inc. d/b/a Verizon-Massachusetts[1] ("Verizon" or "Company") (collectively, "Parties") is held pursuant to the Telecommunications Act of 1996, 47 U.S.C. § 252 ("Act").[2] By this Order, the Department of Telecommunications and Energy ("Department") makes findings necessary to finalize an interconnection agreement ("Agreement") between the parties.

Verizon is an incumbent local exchange carrier ("ILEC"), as defined by the Act, within the Commonwealth of Massachusetts. Sprint is a competitive local exchange carrier ("CLEC") authorized to provide local exchange service to residential and business customers throughout Massachusetts.

II. PROCEDURAL HISTORY

On June 16, 2000, Sprint filed a Petition for Arbitration of an interconnection agreement with Verizon.[3] Verizon responded to Sprint's Petition on July 11, 2000. ("Petition"). On July 19, 2000, the Department held a procedural conference and technical session. On September 8, 2000, Sprint filed the testimony of Angela L. Oliver, regulatory manager-access planning, and Michael J. Nelson,

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1 Formerly, Bell Atlantic-Massachusetts.

2 Section 252(b) of the Act permits a carrier to petition a state commission to arbitrate any issues left unresolved after voluntary negotiations between the carriers have occurred. 47 U.S.C. § 252(b)(1).

3 As a result of the resolution of several issues outlined in its petition, Sprint revised the date that it requested the negotiation of the interconnection agreement from January 8, 2000 to February 9, 2000 (Sprint Letter, August 25, 2000). On November 17, 2000, the Parties agreed that the Department would issue its decision on this matter by December 11, 2000 (Sprint/Verizon letters, November 17, 2000).

director-local market development/integration. Also on that date, Verizon filed its Final Position Statement.

On October 6 and 13, 2000, the Parties filed their initial and reply briefs, respectively.

The issues for the Department's consideration are related to: (1) the definition of local traffic; (2) calling party number billing adjustments; (3) use of access trunk facilities for local traffic; (4) access to digital line concentrators, line sharing, and unbundled network elements ("loop query") information; (5) interconnection rates for access to Sprint's facilities; and (6) resale of vertical features.

III. STANDARD OF REVIEW

47 U.S.C. §252(c) sets out the standards for arbitrations by state commissions. Section 252(c) states, in relevant part, that a state commission shall:

> (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [Federal Communications Commission ("FCC")] pursuant to section 251;
> (2) establish any rates for interconnection, services, or network elements according to [section 252(d).]

Section 251(c)(2) of the Act defines the obligations for ILECs to interconnect with other carriers. Each ILEC has the duty

> to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network -- (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in

accordance with the terms and conditions of the agreement and the requirements of [section 251] and section 252.

Furthermore, § 252(e)(3) provides that "nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards and requirements."

IV. UNRESOLVED ISSUES

A. Definition of Local Traffic (Arbitration Issue No. 15)

1. Introduction

The parties disagree on whether Internet service provider ("ISP")-bound traffic should be included in the definition of local traffic.

2. Positions of the Parties

a. Sprint

Sprint states that the issue of whether Internet traffic is local, and thus subject to reciprocal compensation, is unsettled and currently pending at the FCC (Exh. Sprint-2, at 20; Sprint Brief at 28-29; Sprint Reply Brief at 18). Sprint argues that until the FCC defines "local traffic," Verizon's definition of "local" traffic should not be included in the interconnection agreement (Sprint Brief at 28).

Until the time that the FCC issues a decision on reciprocal compensation, Sprint has affirmed its intent to abide by the Department's decisions concerning reciprocal compensation (id. citing Internet Traffic Order; MCI World Technologies, Inc., D.T.E. 97-116-E, at 1 (2000)).

b. Verizon

Verizon states that the Department has found that "local traffic" excludes ISP-bound traffic, and argues that because ISP traffic is non-local, interstate traffic, ISP-bound calls are not subject to reciprocal compensation under § 251(b)(5) of the Act (Verizon Brief at 9, citing Internet Traffic Order; MCI WorldCom Technologies, Inc., D.T.E. 97-116-E, at 1 (2000)). Verizon contends that, given the Department's rulings, traffic to ISPs should be expressly excluded from the definition of "local traffic" as contained in the parties' interconnection agreement (Verizon Brief at 9).

3. Analysis and Finding

The FCC has found that ISP-bound traffic is not local, but interstate, for purposes of the Act's reciprocal compensation provisions. Inter-Carrier Compensation: Internet Traffic Order 99-68, at ¶¶ 12 and 26 n.87. In the MCI WorldCom Order, the Department found, based on the FCC's ruling that ISP traffic is interstate, that no reciprocal compensation need be made for ISP-bound traffic. Internet Traffic Order; MCI WorldCom Order at 13. The Department determined to maintain that status quo pending the remand of the issue to the FCC.

Therefore, the Department finds that the definition of "local traffic" that states that ISP-bound traffic is not local, but interstate, for purposes of the 1996 Act's reciprocal compensation provisions, is reasonable. Accordingly, the Department adopts the language as proposed by Verizon. If the FCC reverses itself on remand, the Department may require modification of this provision in the parties' interconnection agreement.

B. Calling Party Number (Arbitration Issue No. 16)

1. Introduction

The transmission of calling party numbers ("CPN") by the originating carrier to the terminating carrier is necessary for both parties to determine whether the calls should be billed at local, intraLATA, or interLATA rates. This issue concerns the appropriate minimum requirements for the transmission of CPN and the rates to be applied should the originating carrier fail to transmit CPN to the terminating carrier at defined minimum levels.

2. Positions of the Parties

a. Sprint

Sprint proposes that each carrier should be required, under the terms of the Agreement, to transmit CPN for at least 90 percent of its originating calls (Exh. Sprint-2, at 21; Sprint Brief at 31; Sprint Reply Brief at 21). Further, Sprint proposes that failure to meet the 90 percent threshold would require a "true up" of the erroneous invoices that occurred as a result of the originating carrier's failure to transmit the appropriate CPN information (Sprint Reply Brief at 21; Exh. Sprint-2, at 21). Sprint acknowledges that with the automated technology available to both parties, failure to transmit CPN is an unlikely occurrence (Sprint Brief at 30; Sprint Reply Brief at 21). However, it argues that the Agreement must recognize that unintended technology breakdowns do occur and, therefore, its proposed contractual provisions to allow for these infrequent events are necessary (Exh. Sprint-2, at 22).

b. Verizon

In contrast to Sprint's proposed 90 percent minimum requirement for the transmission of CPN, Verizon proposes that both companies be held to a more stringent threshold of providing CPN on no less than 95 percent of the calls they deliver (Verizon Brief at 13). Also contrary to Sprint's proposal, Verizon proposes that if its proposed 95 percent threshold is not met, the terminating carrier would have the option to bill any calls lacking CPN at the interstate switched exchange access rate, regardless of the jurisdictional nature of the calls (id. at 29). Verizon contends that Sprint's proposal is unreasonable as it would force one party to bear the consequences of the other party's system failures (id. at 13). Verizon cites a recent New York Public Service Commission order as support for approval of the Company's position concerning CPN (id. at 13-14 citing Petition of Sprint Communications Company, L.P./Bell Atlantic-New York, Case 99-C-1389, at 15 (January 12, 2000).

3. Analysis and Findings

The resolution of this issue requires a finding on two sub-issues. First, we must determine a threshold for the transfer of CPN information. While Sprint states that it is willing to accept a 90 percent minimum for the transfer of CPN, Verizon proposes a minimum level of 95 percent. However, in other Department proceedings, Verizon stated that interconnection agreements generally require CLECs to provide originating call CPN on 90 percent of their calls, and the Deparmtent found such a threshold was reasonable. See Verizon Tariff No. 17 Order, D.T.E. 98-57-Phase III (September 29, 2000) at 179. Verizon has given no reason for the Department to impose a more stringent requirement on the transfer of CPN. Accordingly, the Department finds that a 90 percent threshold for the transmission of CPN is reasonable, and we accept Sprint's proposal that each party shall be required to provide CPN for at least 90 percent of the calls originating on its network.

The second CPN issue which must be addressed is whether or not the carriers should be allowed to "true up" invoices when local calls are billed at access rates due to one party's failure to transmit CPN information. The Department recognizes Sprint's concern that there may be rare occasions where CPN is not transferred between carriers due to technical failures that are unattributable to either carrier's actions. Given the unlikelihood of these events, the Department finds that requiring either carrier to perform a manual review of alternate calling records when the other carrier fails to meet its CPN requirements is unduly burdensome. Therefore, the Department denies Sprint's proposal to allow for "true up" reconciliation of invoices when a carrier's CPN transmission falls below the 90 percent threshold. If either carrier fails to transmit CPN on less than 90 percent of its originating calls, the other carrier has the right to bill calls without CPN at the interstate switched exchange access rate.

C. Local Calls Over Access Trunks (Arbitration Issue No. 17).

1. Introduction

This issue concerns Sprint's ability to combine local and toll traffic over access trunk facilities. Moreover, if the access trunk facilities can be used for combined traffic, the Department must determine whether local calls carried over access facilities will be subject to reciprocal compensation or interexchange access rates.

2. Positions of the Parties

a. Sprint

Sprint contends that, although it is technically feasible to combine local, intraLATA toll, and interLATA toll traffic on existing access trunk facilities between Sprint's end office and Verizon's tandem offices, Verizon proposes to limit Sprint's use of access trunk facilities to long distance traffic (Exh. Sprint-2, at 4; Sprint Brief at 32). Sprint contends that by sending local calls over otherwise underutilized trunks, Sprint would have lower operating costs, which, in turn, would benefit Massachusetts consumers through lower prices (Exh. Sprint-2, at 4). To alleviate Verizon's concerns of misreported billing information, Sprint states that proper billing of access and reciprocal compensation charges can be accomplished by call recording (e.g., detailed information on the number called, number billed, etc.), the use of Percent Interstate Usage ("PIU") and Percent Local Usage ("PLU") factors,[4] or post-billing adjustments (Sprint Reply Brief at 22).

Further, Sprint contends that it should be allowed to pay reciprocal compensation charges when it transports local calls, rather than the higher interexchange access rates normally applied to toll traffic carried on access trunk facilities (Sprint Brief at 32-33). Sprint argues that transporting local calls on access trunks at reciprocal compensation rates is necessary for its business development plans, which include utilizing existing long distance equipment and circuits to provide local calling (Sprint Reply Brief at 24-25). Specifically, Sprint states that it intends to offer customers the ability to "dial-around

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[4] The PIU factor is the carrier's estimate of the amount of interstate traffic carried on a given service. Similarly, the PLU factor is the carrier's estimate of the amount of local exchange traffic carried on a given service (Sprint Reply Brief at 22; Exh. Sprint-2, at 3).

Verizon local service and select Sprint to switch and route their local calls on a call-by-call basis via a specified dialing pattern" (id. at 23). Sprint contends that Verizon's proposal acts "to avoid allowing this local service [by] unilaterally classify[ing] these local calls as interexchange service calls" (id. at 25). Sprint argues that subjecting its customers to paying higher access rates for what are, effectively, local calls, would prevent Sprint from offering dial-around local service to its customers (id.). Sprint proposes that it should be responsible for paying only reciprocal compensation charges when it handles these local calls through its dial-around mechanism (id.).

b. Verizon

Verizon argues that it has made no attempts to limit Sprint's ability to combine local, intraLATA toll, and interLATA toll traffic over its access trunk facilities (Verizon Reply Brief at 12; Verizon Final Position at 12). Verizon contends that this issue is limited only to whether reciprocal compensation applies when Sprint routes certain local calls through its access trunks and long distance switches (id.). Verizon further states that this dispute affects only calls placed between two Verizon customers in the same local calling area that are transported over Sprint's access facilities via a dial-around mechanism (Verizon Brief at 14). This dispute does not affect calls placed between a Sprint customer and a Verizon customer located in the same local calling area (id.).

Verizon contends that Sprint's proposal to pay reciprocal compensation charges rather than access charges for calls between two Verizon customers in the same local calling area in which the originating caller uses a dial-around mechanism to access Sprint's facilities does not comply with the existing rules governing reciprocal compensation (Verizon Final Position at 13). Verizon notes that reciprocal compensation rules allow only for the "recovery by each carrier of the costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."[6] Accordingly, Verizon argues that Sprint is not entitled to pay reciprocal compensation for the type of calls described above "because the call both originated and terminated on Verizon's network" (id.). Rather, Verizon contends that, for such calls, Sprint should be required to pay the applicable access charges (id.).

3. Analysis and Findings

First, the Department finds no basis for Sprint's contention that Verizon refuses to allow Sprint to combine local/intraLATA and interLATA traffic on the same trunk facilities. Verizon has stated affirmatively that it "has not proposed restrictions on the type of traffic that Sprint can place on specific trunk groups" (Verizon Brief at 14), and that "CLECs may combine interLATA toll traffic, intraLATA toll traffic, and local traffic on a single trunk group" (Exh Sprint IR 3-5). Therefore, the Department finds it unnecessary to rule on whether Sprint should be able to combine local and toll traffic over its existing trunk groups.

Next, we address the issue of whether reciprocal compensation rates should apply when Sprint routes local calls through its long distance facilities. This issue affects a small percentage of calls, specifically those calls in which a Verizon customer uses a Sprint dial-around option to place a call to

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6 Verizon Final Position at 13, citing In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, FCC 96-325, at ¶ 1034 (Verizon emphasis omitted).

another Verizon customer in the same local calling area.[6] The question, therefore, is whether Sprint should pay reciprocal compensation or exchange access rates when Verizon terminates such calls. The FCC has stated that

> reciprocal compensation for transport and termination of calls is intended for a situation in which in which two carriers collaborate to complete a call. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call.[7]

It is clear that the situation addressed in this dispute does not fall within the limits of reciprocal compensation as defined by the FCC. Because Sprint is not the originating carrier for calls between two Verizon customers who use a Sprint dial-around mechanism, the Department finds that Sprint is not entitled to pay reciprocal compensation rates. Therefore, the Department agrees with Verizon that Sprint is required to pay applicable access rates when it handles such calls through dial-around methods.

D. Loop Query Information (Arbitration Issues Nos. 11, 12, and 18)

1. Introduction

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6 The issue is limited to this scenario because any call placed between a Verizon customer and a Sprint customer in the same local calling area (except ISP-bound traffic) would be subject automatically to reciprocal compensation regardless of the facilities over which the call is carried (In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, FCC 96-325, at ¶ 1034). Further, calls between two Sprint customers in the same local calling area over Sprint's network facilities would not be subject to reciprocal compensation (or any type of inter-carrier compensation). Id.

7 In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, FCC 96-325, at ¶ 1034.

The Parties have resolved most issues related to loop query information. The one remaining issue in dispute pertains to digital loop concentrators ("DLC"), which are field-located terminals that concentrate subscriber loops onto a high speed connection to the central office. Sprint proposes contract language that would require Verizon to provide Sprint with parity access to all DLC information.

2. Positions of the Parties

a. Sprint

Sprint contends that it must collocate inside of or adjacent to Verizon's DLC terminals in order to provide high speed xDSL services (Exh. Sprint-2 at 22). Sprint argues that, because most DLCs are not technically capable of carrying high speed xDSL services, it must have detailed information on Verizon's DLCs before it can justify the cost of collocation (id.). Sprint seeks access to detailed information on DLCs, including the technical parameters of the DLC, the technical parameters of the plant, and the potential number of customers that could be offered xDSL services (Sprint Reply Brief at 15). Sprint contends that the UNE Remand Order[8] requires incumbent LECs to provide requesting carriers with information contained in its own databases and internal records, including information on DLCs (Sprint Brief at 26).

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[8] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. November 5, 1999).

b. Verizon

Verizon argues that the UNE Remand Order does not require Verizon to provide "unfettered" access to all information it may possess concerning digital loop carrier facilities (Verizon Brief at 16). Verizon contends that the UNE Remand Order is concerned with loop qualification information, not information on digital loop carrier facilities, and that Verizon has already agreed to provide Sprint with all of the information needed to use its loops (id. at 16-17). In addition, Verizon argues that Sprint's request for "any and all information" is vague, and does not adequately advise Verizon of its obligations under the interconnection agreement (id. at 19). Verizon asserts that unless Sprint identifies the information it seeks, Verizon cannot determine whether such information is available, how it might be provided, or what the cost of providing the information might be (id.). Verizon contends that Sprint seeks access to DLC information for market analysis, and that the Act does not require Verizon to provide information for that purpose (id.).

3. Analysis and Findings

The Department notes that the issue of parity access to DLC information was not raised by Sprint in its Petition or at the technical session, but was raised for the first time on September 8, 2000, in the testimony of Michael J. Nelson. As a result, the record on this issue is not well developed. Although Sprint argues that it has provided Verizon with a detailed list of the information sought (Sprint Reply Brief at 17), Sprint has not provided this list to the Department. Therefore, the Department is forced to decide this issue based on a limited record.

Verizon is not currently required to maintain detailed information on DLCs (i.e., the technical parameters of the DLC, the technical parameters of the plant, and the potential number of customers) in either the mechanical, manual, or engineering loop query databases. See Tariff No. 17, D.T.E. 98-57-Phase III (September 29, 2000). Sprint states that it requires this information in order to "...evaluate the feasibility of entering new markets within Verizon's territory" (Sprint Brief at 25). Sprint's own witness concedes that the UNE Remand Order "...did not contemplate the importance of the DLC in providing advanced telecommunications services ..." (Exh. Sprint-2 at 23). The UNE Remand Order states in relevant part:

> "...the incumbent LEC must provide to requesting carriers the following: (1) the composition of the loop material, including, but not limited to, fiber optics, copper; (2) the existence, location, and type of any electronic or other equipment on the loop, including but not limited to, *digital loop carrier or other remote concentration devices*, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, distributers in the same or adjacent binder groups ..." (Emphasis added)

UNE Remand Order at ¶ 427.

While the FCC explicitly contemplated that CLECs would require some information about DLCs and other remote concentration devices, the FCC appears to have limited access to information concerning the "...existence, location, and type" of remote concentration devices. The Department finds that the information sought by Sprint goes beyond what is required by the UNE Remand Order. Accordingly, the Department will not require Verizon to provide Sprint with additional information. Therefore, the Department directs the parties to strike Sprint's proposed language concerning parity access to DLC information from the interconnection agreement.

E. Interconnection Rates for Access to Sprint's Facilities (Arbitration Issue No. 6)

1. Introduction

This issue concerns the rates that Verizon must pay Sprint to interconnect with Sprint's facilities. The parties' positions on this issue focus on whether: (1) the rates proposed by Sprint are reasonable; (2) the rates should be capped at the level that Verizon charges for the same services; and (3) Sprint should be permitted to unilaterally change the rates during the term of the interconnection agreement.

2. Positions of the Parties

a. Sprint

Sprint argues that the rates proposed in the interconnection agreement are presumed to be competitive because, CLECs, unlike Verizon, have no market power (Sprint Brief at 7). In response to Verizon's statements that Sprint's rates are too high, and should be subject to a rate cap, Sprint is adamant that imposing such a cap would be anti-competitive (Sprint Brief at 8; Sprint Reply Brief at 2-3). Sprint contends that if its rates were capped at the level that Verizon is allowed to charge for similar services, the entire industry would be tied to Verizon's rates, and Sprint would likely be unable to compete in the marketplace (Sprint Reply Brief at 8; Exh. Sprint-2 at 6).

Moreover, Sprint contends that there is no basis on which the Department can impose Verizon's rates on Sprint (Sprint Reply Brief at 8). Specifically, Sprint argues that there have been no cost studies submitted for the Department to review and determine whether Sprint's rates are reasonable (id.).

Finally, Sprint argues that it should be permitted to revise the rates contained in the interconnection agreement through Department-approved tariff changes (Sprint Reply Brief at 4). Sprint contends that Verizon can change the rates contained in the interconnection agreement provided the changes are approved by the Department and that Sprint should have the ability to change rates contained in the interconnection agreement (id.).

b. Verizon

Verizon argues that the rates to purchase or collocate facilities[9] that Sprint proposes to include in the agreement are unreasonable (Verizon Brief at 2). Moreover, Verizon argues that no increase in rates should be permitted during the life of the agreement without advance notice (id. at 3).

Verizon contends that because Sprint's tariffed rates would supersede the rates set forth in the interconnection agreement, the Department should either limit, or cap Sprint's rates to that of Verizon's for similar services, or require Sprint to file the necessary cost justification for its tariff filing (id. at 4).

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[9] Sprint's proposed rates include a monthly recurring charge ("MRC") of $1500 per bay of collocation real estate; an MRC of $275 per facility for DS-1; and an MRC of $450 per facility for DS-3 (Petition, Exh. 1, Schedule 1.3).

3. Analysis and Findings

a. Proposed Rates

The Department rejects Sprint's assertion that CLEC interconnection rates are presumptively reasonable and competitive because CLECs lack market power. Contrary to Sprint's belief, the Act has given CLECs significant leverage because ILECs are required to interconnect with any CLECs that request interconnection (Telecommunciations Act of 1996, § 251(c)(2)). Therefore, the Department affords no presumption of reasonableness to Sprint's proposed interconnection rates.[10]

Under the Act and state telecommunications statutes, the Department is required to determine the reasonableness of CLEC interconnection rates as well as the reasonableness of ILEC interconnection rates. 47 U.S.C. §§ 251(a)(1); 252 (d)(1); G.L. c. 159, §§ 12, 14, and 17. Each carrier's rates must either be agreed-to through negotiation, or be cost-justified. Id.; 47 U.S.C. § 252(a)(1). Hence, to avoid a protracted investigation of their costs, most CLECs simply use the Verizon's rates as a proxy (See e.g., Interconnection Agreement between WorldCom and Verizon, Attachment IV, §2.4.4). However, where a CLEC fails to negotiate a rate with Verizon and refuses to use Verizon's rates as a proxy, the Department notes that the CLEC must submit supporting documentation for its rates. See D.P.U. 94-185, at 50 (1996) (Department held that CLECs that

10 In contrast, the Department has found CLECs' retail rates to be presumptively reasonable and competitive, because of the lack of CLEC market power. D.P.U. 94-185, at 49 (1996),

intend to charge higher termination rates than NYNEX must file cost support to demonstrate the reasonableness of those rates).

The Department also rejects Sprint's argument that the proposed rates should be allowed because Verizon has the opportunity to challenge Sprint's rates through a separate tariff complaint proceeding. Sprint does not currently have an interconnection tariff on file with the Department. Instead, the reasonableness of Sprint's interconnection rates was raised in this arbitration and should therefore be resolved in this proceeding. Accordingly, unless Sprint either uses Verizon's rates as a proxy or negotiates with Verizon for other rates, the Department finds that it is necessary to investigate Sprint's proposed interconnection rates, and directs Sprint to file the cost information on which its rates are based within 20 days of this Order. In the meantime, the parties shall include a placeholder in their agreement requiring Sprint to use the same rate as Verizon for any disputed rate, until the Department concludes the investigation of Sprint's cost support.

2. Finality of Proposed Rates

Sprint argues that it should be permitted to alter its interconnection rates during the term of the agreement. However, the Department has previously sustained the finality of interconnection agreements. See Tariff No. 17, D.T.E. 98-57, at 18-19 (March 24, 2000). In that Order, the Department stated that competition cannot flourish in a climate where carriers (CLECs and ILECs alike) are unable to retain the benefits of their bargains. Id. Just as the Department found in D.T.E. 98-57 that CLECs should never have to worry that Verizon would eviscerate their contracts with a tariff filing, so should Verizon not be concerned that CLECs will unilaterally change terms contained in an interconnection agreement.

The Department finds that while the parties remain free to renegotiate the terms of their interconnection agreements at any time, they are not permitted to unilaterally change the terms of an agreement while that agreement is in effect.

F. Resale of Vertical Features

1. Introduction

This issue concerns whether Sprint may purchase vertical features [11] from Verizon at the wholesale avoided-cost discount.

2. Positions of the Parties

a. Sprint

Sprint contends that it is prevented from receiving the wholesale discount rate offered by Verizon for vertical features because Verizon restricts the availability of the discount to those services purchased in conjunction with Verizon's basic local service (Sprint Reply Brief at 5). Sprint argues that, to the extent Verizon does not allow Sprint to purchase or resell vertical features without the local loop. Sprint cannot provide a competitive offering (Sprint Brief at 13). Instead. Sprint argues that Verizon should be required to offer these services on a stand-alone basis as Verizon does with its

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11 Vertical features. also referred to as "Custom Calling Services" by Verizon. are services that include, among other things, call waiting, call forwarding and three way calling. See DTE MA No 10, Part A. Section 9, Page 28.

Enhanced Service Providers ("ESPs")[12] (id. 13). According to Sprint, § 251(c)(4) of the Act requires Verizon to make vertical features available to Sprint at wholesale prices without imposing unreasonable or discriminatory conditions or limitations (id. at 14). Moreover, states Sprint, the FCC's First Report and Order found that resale restrictions are presumptively unreasonable given the ILEC's ability to impose resale restrictions and limitations to preserve their market position (id.). Sprint contends that Verizon's bundling provision of local dial tone service with the sale of vertical features, represents a clear attempt by Verizon to preserve its market position in Massachusetts (id.).

Sprint argues that there is no reason that the dial tone and vertical features must be provided by the same carrier, especially since these services are sold, priced, and billed separately (id. at 18). In support of its argument, Sprint contends that there is precedent to allow for the purchase of vertical features on a stand-alone basis at the wholesale discount (Sprint Reply Brief at 12). Specifically, Sprint stated that, in a recent decision, the California Public Service Commission required Pacific Bell to provide Sprint with the option to purchase vertical features at the wholesale discount (Sprint Reply Brief at 12, citing Application 00-05-053, Opinion, October 5, 2000 (California Opinion)). Furthermore, Sprint indicates that other ILECs allow Sprint to purchase unbundled vertical features on a stand-alone basis, at the wholesale discount (Sprint Reply Brief at 13).

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12 An Enhanced Service Provider is a Verizon subscriber whose telecommunications service application involves computer processing that acts on format, code or protocol, provides additional, different or restructured information, or offers end-user interaction with the stored information. DTE MA No. 10, Part A, Section 9, Page 28.

To determine the amount that Sprint should pay Verizon for vertical features, Sprint requests that the Department require Verizon to provide an avoided costs study that would indicate the costs incurred by Verizon to offer vertical features (Sprint Brief at 24). In the interim, Sprint requests that the Department require Verizon to apply the loop discount approved by the Department in Verizon's Tariff No. 14, the Company's resale tariff (id.).

b. Verizon

Verizon argues that its resale tariff provides that vertical services are sold to the Company's end users only in conjunction with the purchase of basic dial tone line service and not on a stand-alone basis (Verizon Brief at 5). The Company indicates that although ESPs may purchase Call Forwarding Busy Line/Don't Answer in order to resell those services to an end user in connection with a service such as voice messaging, Verizon does not offer the feature on a stand-alone basis (id. at 6). Accordingly, Verizon states that, similar to ESPs, Sprint is not entitled to the wholesale discount for the purchase of vertical features (Verizon Reply Brief at 5-6).

Verizon contends that Sprint's reliance on an arbitrator's report from a California proceeding is inappropriate (Verizon Brief at 6-7). First, Verizon states that the arbitrator erroneously concluded that Pacific Bell sold vertical features on a stand-alone basis, at retail (id.). According to Verizon, such sales are not at retail rates, and therefore do not trigger the requirement under the Act that the Company provide telecommunications services at wholesale rates for services that that the Company provides at retail to subscribers (id. at 7). Moreover, Verizon claims that the submission of an avoided cost study for the Department's review is unnecessary because the Company would continue to incur the costs to market and provide the services to retail customers (id.).

3. Analysis and Findings

Verizon is required under the Act to resell its retail telecommunications services to CLECs at the wholesale discount. 47 U.S.C. § 251(c)(4)(A). Verizon does provide Custom Calling Features on a stand-alone basis to its retail customers, but such services are offered only in conjunction with its basic exchange service. See D.T.E. MA No. 10. The Department notes that, based on the information provided to us by the Parties on this issue, Verizon's refusal to offer vertical features on a stand-alone basis to Sprint at the wholesale discount does not violate the Act or the FCC's Local Competition rules. Therefore, we find that Verizon is not required to offer vertical features at the wholesale discount rate, on a stand-alone basis.

V. ORDER

After due consideration, it is

ORDERED: That the issues under consideration in this Order be determined as set forth in this Order; and it is

FURTHER ORDERED: That the parties incorporate these determinations into a final agreement, setting forth both the negotiated and arbitrated terms and conditions, to be filed with the Department pursuant to Section 252(e)(1) of the Act, within 21 days of the date herein.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

NEW YORK

At a session of the Public Service
Commission held in the City of
Albany on July 26, 2001

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin

CASE 01-C-0095 - Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.

ORDER RESOLVING ARBITRATION ISSUES

(Issued and Effective July 30, 2001)

BY THE COMMISSION:

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In November 1996, pursuant to the Telecommunications Act of 1996 (the Act), the Commission resolved various interconnection disputes presented to it by AT&T Communications of New York, Inc. and New York Telephone Company (currently doing business as Verizon New York Inc.)[1] More recently, AT&T and Verizon attempted to negotiate a new interconnection agreement, but they were not entirely successful.

Consequently, on January 19, 2001, AT&T and two affiliates petitioned to arbitrate their current disputes with Verizon.[2] On February 13, 2001, Verizon answered AT&T's petition and confirmed that many issues remained unresolved among the carriers.

The presiding officer assigned to this case conducted arbitration conferences on February 21 and 22, March 13, April 30, and May 3, 2001. Over this period, the parties continued to negotiate, and they managed to narrow their disputes. However, several interconnection issues remained in dispute, and the parties addressed them in briefs.[3] Our resolution of the contested issues is presented below.

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1 Cases 96-C-0723 and 96-C-0724, AT&T Communications of New York, Inc. and New York Telephone Company - Interconnection, Opinion No. 96-31 (issued November 29, 1996); Order Denying Petition For Rehearing (issued February 14, 1997).

2 In addition to AT&T, these proceedings involve TCG New York Inc. and ACC Telecom Corp. All three companies are referred to as "AT&T". AT&T's arbitration petition was filed 135 days subsequent to its request to Verizon for negotiations pursuant to §252 of the Act. While this case was being arbitrated, AT&T and Verizon agreed to extend the time period for a Commission decision pursuant to §252(4)(C) so as to provide themselves more time to conduct negotiations.

3 On April 18 and 27, 2001, the companies briefed an initial set of eight issues. The remainder was addressed in subsequent briefs submitted on May 25 and June 6, 2001.

Verizon Tariffs

During the first agreement, AT&T became distressed by the operation of Verizon's intrastate tariffs. In an instance involving a $19.56 per amp charge for the collocation power carriers use, Verizon attempted to apply the charge on a per feed basis to AT&T's detriment. AT&T filed a complaint which led to Verizon agreeing to amend the tariff to comport with AT&T's and Staff's view of the application of the charge.

In a second instance, also pertaining to collocation power rates, Verizon's tariff included a dispute resolution process AT&T considered to be inferior to the commercial arbitration and alternative dispute resolution provisions discussed below.

In another instance, involving the purchase and use of T1.5 circuits for local traffic usage, AT&T complained about Verizon's application of its tariff in an anti-competitive manner to restrict competitors' use of such circuits.[4]

Finally, AT&T complained about Verizon tariff provisions covering building risers. According to AT&T, Verizon unduly restricted its access to such risers and imposed excessive time and material charges that cost it a contract.

For these and other reasons, AT&T wants an all-inclusive agreement that contains no references to Verizon's tariff and does not rely on tariff provisions for any significant purpose. Further, should there be any tariff changes during the term of the new agreement, AT&T believes they should not alter its agreement with Verizon.

According to AT&T, Verizon should not be able to use its tariff to frustrate the Act's objective that carriers engage in good faith negotiations and enter into commercial agreements.

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[4] AT&T complained specifically about Verizon's efforts to require CLECs to measure the actual amount of the local traffic carried on a T1.5 circuit and to impose restrictions on the commingling of special access circuits and local service circuits. It also complained about Verizon's provision of overly expensive maintenance and repair services.

the results of the parties' mutual negotiations, and because they are within Verizon's control. According to AT&T, the tariff provisions place an improper burden on it to justify any departures. The company also complains that it does not have the resources necessary to be immersed in the tariff process. Instead, it prefers the facility and definiteness of a self-contained and self-executing agreement.

According to Verizon, there are valid reasons for applying its Tariff Nos. 8 and 916 to AT&T.[5] It maintains that the tariffs provide equal treatment for all carriers, they comply with all applicable laws, and they were derived from extensive regulatory scrutiny. Verizon considers them superior to any contract provisions the parties could produce here.

Verizon contends that its tariffs provide it no advantage over any other carrier due to the public review process and the Commission requirements that have been imposed on it. It also denies that the tariffs are one-sided, given the airing of public and regulatory concerns in advance of their adoption. Verizon points out that AT&T has commented on various tariffs it has filed and has sought amendments in various instances. Verizon also observes that it provides AT&T notice of all its tariff amendments and claims that no ambush is possible. According to Verizon, the inputs provided by the public, other carriers, and regulators simply do not permit it to have unilateral control of the tariff process.

This issue concerns the essential relationship between Verizon's tariff and the new interconnection agreement to be executed with AT&T. This matter permeates many of the points in dispute between the parties, and it appears to have negatively influenced the course of this proceeding. Rather than find acceptable means to resolve their issues, the parties' negotiations languished, and they remained polarized on matters that should not have defied a consensual resolve.

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[5] Tariff No. 8 contains Verizon's collocation terms and rates for competitive carriers. Tariff No. 916 provides terms and rates for unbundled network elements (UNEs).

tariff process, its arguments are not persuasive. We find that the tariff approach is entirely suitable for implementing many of the interconnection and access requirements Verizon should bear under the Act. Not only does the tariff process promote comparable interconnections for competitive carriers and unbundled access on similar terms, the Commission previously approved this approach to assist parties and reduce the matters they must truly negotiate or arbitrate on a case-by-case basis. The tariff process permits ample opportunity for interested persons to participate and seek changes (or even the rejection) of proposed tariffs before they become effective. Moreover, AT&T has made substantial use of this process over the years despite any assertions otherwise.

We also note that the examples AT&T cites to demonstrate the harm it suffered from the tariff process are all instances that were ultimately resolved in AT&T's favor. Moreover, in numerous instances, AT&T states that it would include provisions in the new agreement as they are currently found in the existing tariffs. However, upon review, it appears that AT&T seeks to change the existing tariff provisions in material ways, notwithstanding that many of those provisions were filed in compliance with Commission orders issued after extensive proceedings. AT&T's proposals, in effect, seek to revisit and revise Commission-approved tariffs.

We are persuaded on the record presented that as a general matter the tariff provisions provide a reasonable basis for establishing a commercial relationship. Consequently, we will not adopt AT&T's proposal. Instead, we will conform the new agreement to Verizon's tariff where it is possible to do so. In general, we are requiring that the pertinent provisions of Verizon's tariff be incorporated by reference into the new contexts in which the parties have raised it.[6]

Tariff Amendments and Updated Documents

Not only does Verizon want the new agreement to rely on its tariffs, it believes the agreement should be subject to tariff changes as implemented. Therefore, it proposes that the references to tariffs (and other documents) refer to them as amended from time to time. It claims this flexibility will help to keep the new agreement current with competitive changes and growth in the telecommunications market.

AT&T is opposed to the agreement changing when Verizon's tariffs are altered. It contends that this practice would destabilize the parties' rights and deprive them of the bargains they reached. AT&T fears Verizon will implement self-serving and parochial tariff revisions, and it will not disclose their purposes nor identify their effects on carriers. It insists Verizon cannot be relied upon to provide adequate notice of detrimental tariff revisions, and it claims not to have the resources necessary to scrutinize the tariff changes.

The Commission finds it is better to allow the new agreement between AT&T and Verizon to absorb tariff amendments and changes that are intended to implement substantial telecommuniations policy initiatives than to freeze it at its inception. There are several significant collaborative proceedings pending, and federal developments emerging, that will make alterations for the benefit of competitors and consumers. On the other hand, it is just as likely that the Commission, acting in the public interest, may decide issues contrary to AT&T's liking. Thus, it is not desirable to forestall or preclude the applicability of tariff amendments as AT&T's proposal would do.

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[6] This is not to say that CLECs are prohibited from negotiating terms, conditions and rates that are different from Verizon's tariff where circumstances may require a divergence (i.e., where the tariff does not address the unique needs of a given CLEC).

be instances in which a tariff filing's generic resolution represents a significant change or does not adequately address specific provisions in interconnection agreements. Therefore, during the tariff review process, for good cause shown, the Commission reserves the right to treat a tariff filing, or discrete portions thereof, as being subject to the change of law provision of the new agreement, allowing the parties to negotiate appropriate terms for the interconnection agreement.

Pending Proceedings

Verizon proposes that the new agreement contain references to pending Commission proceedings to permit them to run their course. Rather than prematurely decide any such matters here and now, Verizon would apply the results of the proceedings to AT&T and itself when they become known. Verizon states this approach was used in the first agreement, and AT&T has agreed to it in other states. It knows of no reason why it should not continue to apply here as well. Its use could avoid discrimination among carriers, save time from examining the same matters twice, and avoid the confusion that any differing results may engender.

AT&T responds specifically to Verizon's proposal as it pertains to digital subscriber line (DSL) issues. It prefers that the new agreement govern all matters, and that no items be left open for future resolution.

The Commission intends to proceed with the various collaborative and other pending proceedings that are certain to produce results for Verizon, AT&T and other carriers. The new agreement shall not preclude, nor forestall, any such results from being implemented at the time the Commission renders its decisions, or when it adopts the results and terms achieved in any such proceeding. The parties are on notice that Commission resolution of the arbitration issues presented to it here does not preclude it from otherwise exercising its regulatory authority.

Verizon and AT&T recognize that legal requirements may change during the term of the new agreement. According to AT&T, the parties' respective provisions differ in four significant ways:

1. The parties will attempt to negotiate new terms when changes in law occur. AT&T would provide 30 days for the negotiations; Verizon has proposed 60 days.

2. Verizon and AT&T recognize that judicial and regulatory decisions may reduce or eliminate Verizon's obligations. AT&T urges Verizon not to unilaterally relieve itself of any obligation to furnish services, facilities, or arrangements in questionable circumstances.

3. When a change of law triggers regulatory action, AT&T proposes that the status quo prevail until a commercial arbitrator resolves any disputes. AT&T also urges that Verizon's position not enjoy any presumptive validity while a dispute is pending.

4. AT&T believes that tariff revisions made subsequent to the new agreement should not change the agreement or trigger any further negotiations. According to it, a tariff amendment should not be considered a change of law.

Overall, Verizon observes that AT&T has accepted the Verizon proposal elsewhere.[7] In response, AT&T insists that its experience in New York warrants the use of different provisions. In greater detail, Verizon insists that it should not be limited to a commercial arbitrator's decision, nor should the status quo operate after any significant regulatory decision is rendered. It also believes more time is needed for negotiations than does AT&T, and that tariffs should not be excluded from the change in law provisions. Verizon denies that it can unilaterally impose its view on AT&T, and it observes that legal changes are usually made explicit and are self-implementing.

[7] In Pennsylvania, Virginia, New Jersey, Maryland, Delaware and the District of Columbia.

parties' proposals is appropriate. Thus, Verizon's §27.4 is adopted subject to two modifications. Further negotiations shall occur within the thirty days proposed by AT&T before the parties may pursue other appropriate remedies. Also, we adopt AT&T's proposal permitting the parties to seek other available remedies without waiting thirty days when active negotiations have ceased for a continuous, 15-day period. The parties may extend this time period if they mutually agree to do so.

AT&T's §7.4 is also adopted for the agreement. It provides suitable procedures for continuing services when further negotiations and disputes occur. The interconnection agreement provisions shall continue to operate unless the FCC, the Commission, or a court of competent jurisdiction mandates a differing obligation. We also clarify that the Commission may treat significant judicial or FCC developments as being subject to the change of law provision, notwithstanding that tariff amendments might flow from such decisions. In other words, the Commission will retain authority to prevent certain tariff changes from flowing through to the AT&T interconnection agreement, absent compliance with the change of law provision.

Commercial Arbitration and
Alternative Dispute Resolution

The 1997 agreement encouraged the parties to use commercial arbitration and alternative dispute resolution (CAADR) procedures which, to date, have only been used twice. AT&T is satisfied with the results achieved in both instances, and it supports comparable provisions for the new agreement.

Verizon is dissatisfied with the CAADR procedures and wants them omitted from the new agreement. It rejects the 1997 agreement's provisions as a precedent for this case. It claims that the dynamic forces at work in the telecommunications industry require a fresh examination for this generation of interconnection agreements and that CAADR procedures should not be imposed on unwilling parties. It considers any such mandate to be an infringement of the company's right to use the State's to obtain its legal redress from either the Commission or the FCC and, if necessary, the courts.

Verizon considers AT&T's CAADR proposal to be ambiguous, unrealistic, and burdensome. For example, the company states that AT&T's proposed remedies are unclear and that an inter-company review board requires more than two days to operate properly. It faults AT&T's proposal for lacking discovery provisions and objective standards for the use of expedited procedures. Verizon also claims AT&T's expedited and routine ADR proposals are inconsistent, and neither of them provide adequate time for the Commission to review an arbitrator's award. Verizon opposes the implementation of an arbitrator's decision pending an appeal, or allowing it to become final were the Commission not to act. Verizon also seeks to preserve its right to appeal any arbitrator's award that is deemed to be a Commission decision. Verizon complains also about the excessive cost of retaining an arbitrator for the term of the new agreement.

Alternatively, if the Commission finds that CAADR should be included in the new agreement, Verizon urges acceptance of its proposal. Under it, not all disputes are candidates for CAADR, nor would CAADR substitute for other procedures. CAADR would be available to complement other processes, and its use would not preclude court actions.

AT&T dislikes Verizon's CAADR proposal because it applies to too few disputes. Many of the categories Verizon would remove from CAADR, AT&T would retain. And, contrary to Verizon's contention that CAADR cannot be forced on an unwilling party, AT&T insists that the Commission has ample authority to require parties to use arbitration, subject to our review. AT&T sees no need to modify the 1997 provisions, nor does it favor the selection of a different arbitrator for each dispute. It sees advantages to keeping an arbitrator on retainer, as has been the practice. Finally, AT&T would retain the schedules and deadlines that were used in the first agreement. In sum, AT&T claims all of Verizon's objections are trivial and lack merit.

require CAADR provisions in interconnection agreements established pursuant to the Act. These procedures are a typical feature in the interconnection agreements the Commission has approved in the past, including the existing AT&T/NYNEX. We find that the considerations stated in the order approving the first agreement apply with equal force here:

> [A]n ADR process makes sense for disputes arising out of the interconnection agreement affecting the obligations and performance of the parties, and we include one in this interconnection agreement.... This process is intended to provide for the expeditious resolution of all disputes between the parties arising under this agreement. Dispute resolution under the procedures provided in this agreement shall be the exclusive remedy for all disputes between the parties arising out of this agreement or its breach.[8]

From our review of the parties' proposals, we find that AT&T's preference for a single arbitrator under a retainer is not essential, and that such an approach can produce unwarranted expenses. The fact that the arbitrator retained for the first agreement was only used twice supports this decision. We are also concerned about such a provision in the agreement being adopted by other CLECs, as it would be impractical and costly for Verizon to secure and retain arbitrators potentially for each CLEC with an interconnection agreement.

On the other hand, the Commission finds Verizon's proposals to exclude matters from the arbitration process and to set limits on discovery unduly restrictive. Because the company has not shown a valid basis to exclude the matters identified in its §28.11.1, such exclusions are not acceptable. Accordingly, AT&T's proposal to include the existing provisions in the new

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[8] Cases 96-C-0723 and 96-C-0724, supra Opinion No. 96-31, mimeo p. 62.

clarifications discussed here.

To eliminate any claim that the first agreement's provisions are ambiguous or uncertain in their application, the following clarifications are provided:

- The dispute resolution process is the exclusive remedy for the parties. However, in the event that a state or federal agency should address some or all of the issues decided as a result of the CAADR process, the agency decision will take precedence.

- If an agency determination does not cover all the issues raised in the CAADR process, arbitrated determinations shall survive to the extent they can be reconciled with the agency decision.

- The Commission will have 15 days in a regular ADR, and 7 days in an expedited ADR, to determine whether or not it will review an arbitrator's decision, and if so, when it will issue a decision. The arbitrator's decision becomes a final and binding Commission order, if the Commission decides to take no action in the requisite period.

- Either party may appeal a final and binding Commission decision, and if necessary, either party may request a stay of the effect of the order.[9]

Thus, the provisions in the first agreement shall continue, except, as discussed above, the single arbitrator provisions in §17.1 shall be deleted. Should the parties' negotiations on disputed issues prove to be unsuccessful, they shall follow the standard rules for selecting an arbitrator set forth in the Commercial Arbitration Rules of the American

[9] Additionally, to the extent the parties believe there are other ambiguities in the existing agreement, they may address them prior to submitting the new interconnection agreement.

other rules for selecting an arbitrator.

Definitions In The Agreement

Verizon prefers definitions derived from its tariff. In support of tariff-based definitions, it claims they represent the carriers' collective efforts to provide common meaning to the language governing their relations. According to Verizon, their use promotes consistency and non-discrimination.

Verizon claims AT&T's definitions are inadequate, inconsistent with industry standards, and not readily ascertainable. It also prefers a single section in the agreement providing a glossary of terms.[10] Verizon also states that only its definitions encompass the new technology and current network services. It notes that the following words and phrases have been particularly contentious: interconnection point, reciprocal compensation traffic, line sharing, line splitting, collocation tariff, and bona fide request. As elsewhere, AT&T opposes the incorporation of any tariff provisions into the new agreement.

There is no disagreement between the parties that the new interconnection agreement should contain clear definitions for its most significant terms. The Commission finds that the most suitable definitions for the new agreement are those available from Verizon's tariff. In the instances that the tariff does not provide defined terms for the new agreement, the FCC's or the Commission's applicable rules, regulations, or orders shall define the terms.

GTE/Bell Atlantic Merger Conditions

Verizon proposes to include in the new agreement a provision governing any conflicts that may emerge between its terms and the GTE/Bell Atlantic merger conditions adopted by the

[10] AT&T appears to have conceded this point in its latest draft of a new agreement. Nevertheless, the parties continue to dispute the definitions included in this section of the new agreement.

conditions, and it would subject the agreement's measurement and billing provisions (among others) to the merger obligations. In support of its proposal, Verizon points out that AT&T has agreed to a similar, if not identical, provision in Virginia.

Inasmuch as no particular conflicts have been identified, this issue may well be academic. In any event, we find no need to establish a general rule of construction at this time. Accordingly, Verizon's proposed provision is not adopted.

UNE Performance Standards and Remedies

AT&T proposes to keep the unbundled network element (UNE) performance standards from the first agreement. Verizon claims there should be no other performance standards than those included in the Performance Assurance Plan (PAP)[11] and the New York Carrier-to-Carrier (C2C) Guidelines,[12] as they are amended from time to time. In the event metrics and remedies are incorporated into the new agreement, Verizon recommends that modifications be made to the standards from the first agreement.

According to AT&T, the 1997 provisions have worked well, and they are fair. It believes they are still needed to give Verizon a proper incentive to provide quality performance. AT&T faults Verizon for not presenting a counter-proposal in negotiations, and it therefore urges the Commission to reject the proposals in Verizon's brief.[13]

AT&T also claims that Verizon made concessions to enter the long distance market that should stop its opposition to the continued use of the 1997 performance standards. AT&T

11 Case 99-C-0949, Bell Atlantic-New York - Performance Assurance Plan Proceeding, Order Adopting the Amended Performance Assurance Plan and Amended Change Control Plan (issued November 3, 1999).

12 Case 97-C-0139, Telephone Company Service Quality Standards Proceeding, Order Establishing Permanent Rule (issued June 30, 1999).

13 AT&T acknowledges that Verizon presented a counter-proposal during the negotiations, but it claims the company prematurely withdrew it before AT&T could consider it.

proceeding:

> [U]ntil such time as the Public Service Commission determines they are no longer necessary, where an existing interconnection agreement with a competitive local exchange carrier (CLEC) in New York State incorporates performance standards and remedies, such performance standards and remedies will not be unilaterally withdrawn by [Verizon]. Such standards and remedies will continue to be offered by [Verizon] in subsequent negotiations with those CLECs upon expiration of the existing agreements and similarly will be negotiated in good faith with other CLECs who request negotiation of such terms and conditions.[14]

Verizon considers the PAP/C2C Guidelines to be the better service quality measures, standards, and incentives for carriers operating in New York, including AT&T. Verizon claims the 1997 provisions are outdated, and they did not contemplate the regulatory framework established by the PAP/C2C Guidelines. Verizon urges that AT&T receive but one incentive payment and no double recovery whenever the company's performance falls short of standard. In response to this, AT&T claims the PAP/C2C Guidelines are intended to coexist with the 1997 provisions. It denies that the multiple remedies available to it under the two sets of standards provide any windfall. AT&T points to instances where the Commission and the FCC have recognized cumulative and multi-faceted systems to assure a high quality performance.

Were we to re-adopt the 1997 provisions, Verizon insists that they should be modified to exclude outdated measurements and unfair penalties. It proposes that all updates conform to the C2C Guidelines, and that the measurements not included in the C2C Guidelines be deleted. Verizon would also

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[14] Case 97-C-0271, Pre-Filing Statement, dated April 6, 1998, p. 2.

financial incentive exists.

In particular, Verizon would modify various average measures that do not assess well its performance for AT&T,[15] and it would reform the calculation of remedies. Credit calculations would be based only on the number of service failures,[16] and there would not be disproportionately large penalty escalations for small increases in failure rates.[17] Overall, Verizon believes the aggregate amount of bill credits available to AT&T should be reduced and precautions should be adopted to avoid erroneous assessments.

In response to Verizon's dissection of the 1997 provisions, AT&T claims no piecemeal attack should be heard that was not presented first in negotiations. Moreover, AT&T insists such an approach is contrary to Verizon's §271 commitments. Further, AT&T denies that the 1997 provisions are stale; instead, it asserts that they were custom tailored for its circumstances, and metrics without financial consequences are useful for diagnostic purposes.

AT&T states that Verizon has provided no data to demonstrate that the different mix of services ordered by Verizon's retail customers and AT&T's customers caused it to fail the §3.1.1 and §3.1.2 provisioning metrics. AT&T also observes that Verizon previously challenged, without success, the bill credit remedies it is challenging here.

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[15] These include metrics measuring the average intervals offered for completion of orders, the average intervals in which orders are actually completed, and the percentage of orders completed within specified intervals. Verizon states that the orders cover a wide range of services (within both POTS and special services) that may differ from those ordered by Verizon's retail customers. Thus, the parity comparisons may be invalid.

[16] In this category, Verizon points to the calculations of credits for installations, maintenance and ordering.

[17] Verizon notes that a 1% miss results in a 10% credit while a 6% miss results in a 25% credit.

to extend metrics to resale and interconnection.[18] According to it, AT&T's move from the existing contract language relieved Verizon of any obligation to continue to offer the prevailing metrics and remedy provisions. Verizon also presents, for the first time, data and charts purporting to demonstrate the unfairness of the current methodology used to calculate penalties.

The Commission finds that the parties have not attempted to negotiate this matter in earnest, nor have they presented any other mutual efforts to arrive at a consensus framework for performance metrics and remedies. Thus, the basic and direct options before the Commission are either to continue the terms of the current agreement, as AT&T proposes, or to exclude metrics and remedies from the new agreement as Verizon requests. We find that AT&T has made the better case.

The metrics and remedy terms of the first agreement were in place before Verizon agreed to implement the PAP. Verizon was clearly aware of its potential financial obligations to AT&T (and tens of other competitors) when it consented to the PAP's additional financial consequences.[19] Verizon cannot now argue against nor can it avoid the cumulative commitments it made in the PFS, PAP and the §271 proceeding.

While Verizon is correct that some metrics and standards duplicate those in the PAP, unlike the PAP's, the first agreement's metrics and remedies provide AT&T various geographic protections, and they address product disaggregation. Verizon is also correct that the PAP/C2C performance metrics have evolved over time, and it might be administratively

[18] Generally, negotiation discussions, concessions, and offers to settle are afforded confidentiality protection. However, both Verizon and AT&T, in effect, consented to waiver of confidentiality with respect to these negotiations. See, 16 NYCRR 3.9(d).

[19] The PAP contemplated three financial prongs for CLEC relief when receiving poor performance from Verizon. The first two, Mode of Entry and Critical Measures, are included in the PAP. The third is in the interconnection agreement.

Nevertheless, because the parties were unable to do this in negotiations, the Commission finds that Verizon's continued reporting of the first agreement's metrics does not present an undue burden.[20]

The other modifications to the metrics, standards, and calculations of remedies proposed by Verizon lack sufficient support and cannot be adopted. Verizon did not demonstrate satisfactorily that the installation intervals for the mix of products ordered by its retail customers are shorter than the intervals for the products ordered by AT&T's customers. The Commission finds the data Verizon provided in its briefs (to show that the remedy calculation methodology is unfair) was presented too late and without adequate support for it to be useful in this proceeding. We agree with AT&T that Verizon should have presented its positions, and its support, during negotiations.

Accordingly, the existing performance metrics and remedies contained in the first agreement shall continue in effect, except to the extent the parties may mutually agree otherwise before they are to submit an executed agreement.

Liability Provisions

Verizon has proposed that AT&T implement tariff and contract provisions to limit Verizon's potential liability to AT&T customers. AT&T objects to Verizon's attempt to influence the contents of its tariffs and contracts, and it claims Verizon's terms are too burdensome to administer. Instead, it believes Verizon should defend suits brought by third parties by cross-claiming AT&T in appropriate instances.

Verizon points out that it has no legal relationship to AT&T's customers but that may not stop them from bringing suit against it. Verizon is confident that AT&T can easily include its proposed terms in the company's contracts, and it

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[20] If the parties are able to reach any agreement on this matter, they may amend the metrics before they submit their final agreement.

are subject to the same terms, conditions, and limitations that apply to Verizon's customers who purchase the services. Verizon states that AT&T has accepted its proposal in Virginia and elsewhere, and these terms apply to the UNEs that CLECs obtain from Verizon.[21] Verizon insists that standard commercial practices allow carriers that are not involved in a transaction to limit their liability.

In another liability-related matter, AT&T proposes to retain the terms in the first agreement that recognize Verizon's potential liability for below standard UNE performance and its potential liability from adverse commercial arbitration rulings. Verizon's opposition to these provisions comes from its substantive position on the matters. As discussed above, Verizon is opposed to the inclusion of UNE performance standards in the new agreement, and it is opposed to an arbitrator imposing sanctions on it.

The Commission finds that Verizon's proposal to limit its liability to AT&T customers is a proper and valid commercial practice. We are not persuaded that AT&T would incur any insurmountable difficulties from including these provisions in its tariff and contracts. Verizon's proposed §24.5 provides Verizon the same protection AT&T receives from Verizon, since a comparable provision appears in Verizon's tariff for AT&T's benefit. This provision also benefits ratepayers by avoiding liabilities that could affect the rates customers pay.[22] Accordingly, Verizon §24.5 is adopted.

As to AT&T's proposal that §25.5 (exclusions from the limits of liability) maintain potential liability for UNE performance standards and the results of commercial arbitration,

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[21] AT&T points out that the result of its negotiations with Verizon in Virginia is distinguishable from the contested matter presented in New York. AT&T also complains that Verizon provides no citations or details for the terms applicable to CLECs.

[22] Lauer v. New York Telephone Co., 231 A.D.2d 126, 129; 659 N.Y.S.2d 359, 361 (1997).

contain performance standards and CAADR procedures. Accordingly, AT&T is correct that these items should be excluded from the new agreement's liability limitation provisions.

Advanced Services

AT&T wants the new agreement to contain provisions for the resale of advanced services. It objects to Verizon's proposal calling for AT&T to obtain them from its affiliate, Verizon Advanced Data Inc.(VADI). AT&T insists that the Act requires ILECs to provide advanced services to CLECs at a discount, and it points to a recent court decision that has required an ILEC to provide advanced services to a CLEC.[23]

Verizon states that it does not provide advanced services, because the FCC required it to establish a separate affiliate for this purpose. It therefore claims that such services should not be addressed in the new agreement. Verizon is aware of the D.C. Circuit decision but claims it has no direct application to it, because Verizon was not a party to the proceeding.

In any event, in recognition of this decision, Verizon's affiliate is prepared to offer DSL services at a discount pursuant to the FCC's rules. Verizon points out that its affiliate has amended its federal tariff, so eligible carriers can obtain its offerings at a discount.[24] Thus, Verizon states that AT&T has access to advanced services as required by law.[25] Furthermore, Verizon points out, if its affiliate does not negotiate with AT&T in good faith, AT&T can seek recourse from the Commission.

Although VADI appears to be willing to provide advanced services through resale and has taken steps to do so,

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23 Association of Communications Enterprises v. FCC, 235 F. 3d 662 (D.C. Cir. 2001).

24 A model agreement has been provided to the carriers to implement this provision.

25 Verizon Reply Brief, p. 35.

services obligations by passing them on to an affiliate. Therefore, the Commission finds that AT&T is entitled to a provision in the new agreement that ensures the availability of advanced services on a resale basis, whether offered by Verizon or its affiliate. AT&T's §12.5.10 is not acceptable. The parties are directed to draft a provision for the new agreement that is consistent with this determination.

Vertical Services

AT&T has sought vertical services from Verizon (custom calling, call forwarding, and call waiting, among others) that it wants to resell on a stand-alone basis. It objects to Verizon's insistence that vertical services be purchased in conjunction with dial tone service. AT&T claims it is discriminatory and unduly restrictive for Verizon to bundle the vertical features with local dial tone. Pointing to regulatory decisions in California and Texas, AT&T states that it is possible for ILECs to offer them separately.

Verizon insists the public interest is not served by AT&T purchasing stand-alone vertical features at wholesale rates. It points out that enhanced service providers do not receive a price discount and, were AT&T to obtain one, it would have an unfair competitive advantage in the voice messaging market.[26] Verizon also claims the standard discount in New York is excessive for vertical features, because it does not avoid any costs by providing local dial tone separate from the vertical features.

Verizon claims the Act does not require ILECs to provide any service at wholesale that they do not offer to retail customers, and the Act does not require that any retail service be disaggregated into discrete services. It points to a

[26] Verizon admits that enhanced service providers can purchase one vertical feature (call forward busy line/don't answer) at wholesale rates on a stand-alone basis. It distinguishes this situation by noting that Verizon does not provide this feature as a discrete retail offering.

features need not be provided on a stand-alone basis at a wholesale price.

It is not at all clear that it is technically feasible for ILECs to offer all vertical features on a stand-alone basis. Indeed, the more popular features such as call waiting and call forwarding are technically tethered to the underlying ILEC voice port. We will not require that vertical features be made available on a stand-alone basis. However, CLECs using Verizon's UNE-Platform offering (which uses Verizon's underlying voice port) can obtain most vertical features on an unbundled network element basis, but they cannot obtain voice mail on such a basis. This is because the FCC considers voice mail to be an enhanced service and did not require that it be unbundled. We, on the other hand, continue to regulate voice mail, and it is available for resale at the wholesale discount. We see no reason why voice mail, or any other vertical feature of a CLEC's choosing, should not be available for resale, at the wholesale discount, along with Verizon's voice UNE-Platform offering.

Software Licensing

Verizon must use its best efforts to obtain for CLECs the same access it has to the intellectual property and software that is embedded in Verizon's network but is owned by other parties.[27] AT&T and Verizon differ on how this requirement should be enforced and the consequences that could result should Verizon fail to obtain comparable rights for AT&T.

Verizon states it will use commercially reasonable best efforts to negotiate extensions of its licensing agreement with vendors. It points out, however, that vendors are not

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[27] Two recent court and regulatory decisions clearly establish this responsibility. AT&T Communications of Virginia, Inc. v. Bell-Atlantic-Virginia, Inc. 197 F. 3d 663 (4th Cir. 1999) and CC Docket No. 96-98, In the Matter of Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-use Agreements Before Purchasing Unbundled Elements, Memorandum Opinion and Order (released April 27, 2000) (FCC Licensing Order) 15 FCC Rcd 13896.

copyrights. Should it be unsuccessful, Verizon believes it should not be required to hold AT&T harmless, nor should it provide AT&T any warranty, indemnification, or guarantee. In support of its position, Verizon points out that the Fourth Circuit acknowledged that ILEC efforts may not succeed in every instance and the court refrained from imposing an absolute duty on ILECs to provide CLECs the same licensing terms that they have. Verizon insists that the new agreement should not include any such remedies given the UNE remedies it will contain and the protection the Act provides to AT&T.

AT&T insists, however, that strong enforcement provisions are needed to ensure its access to UNEs on the same terms Verizon has. To obtain Verizon's best efforts to renegotiate the existing licenses, AT&T believes that warranty and guarantee provisions are necessary. According to AT&T, Verizon's proposal improperly absolves the company, permits non-identical access, and restricts use of UNEs. Thus, AT&T urges that this matter be firmly addressed in the agreement.[28] As an alternative to Verizon providing an explicit warranty, AT&T is willing to accept a notice when Verizon is unable to renegotiate an existing license and a commitment to indemnify AT&T in any case where it can be shown that the company did not use its best efforts.

The Commission has the same expectations of Verizon as does the FCC of all ILECs. In its Licensing Order, the FCC stated that, in nearly all cases, requesting carriers should be able to access UNEs without needing additional licenses. In general, no additional licenses or fees should be required when competing carriers obtain access to UNEs under the existing contracts where their use is within the scope of the original license.[29] Indeed, the parties have not demonstrated here any

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[28] As to the recovery of the costs Verizon incurs to obtain license rights for CLECs, AT&T acknowledges that they may be included in UNE rates established in an appropriate rate proceeding and using the FCC-mandated cost recovery model.

[29] FCC Licensing Order, ¶8.

York. Nonetheless, the Commission finds that the new agreement should contain an appropriate provision concerning this matter. Accordingly, in any instance where Verizon is unsuccessful in negotiating co-extensive terms for AT&T, Verizon should immediately and explicitly notify AT&T of any such results.[30] Thereafter, Verizon must continue to use its best efforts to negotiate terms that are, at least, comparable to those it achieved for itself.

AT&T's proposed language is not entirely acceptable, because it would, in effect, have Verizon guarantee the performance of third party vendors to AT&T, which is unnecessary. The new agreement will contain other, sufficient remedies to redress any failure by Verizon to fulfill its obligations. Nor are we adopting Verizon's proposed provision, as presented, having found merit in AT&T's proposal for specific notice when any negotiations for extensions of the existing licenses are unsuccessful. Thus, we are directing the parties to include in the new agreement Verizon's proposed §28.16.4(a) modified to incorporate the notice provision specified here.

Asset Transfers

AT&T has proposed §22.17 addressing the possible transfer of telephone operations to a third party. In the event of a transfer, this provision would require the transferee, among other things, to be bound by the interconnection agreement and to ensure that the transfer would not have an adverse impact on the operations or services provided to AT&T. Moreover, AT&T would examine the transfer agreement to the extent it pertains to the interconnection agreement, and it would have to find it

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[30] The notice Verizon provides to AT&T should identify the specific facilities or equipment (including software) that it is unable to provide pursuant to the license, as well as identify any and all related facilities or equipment, affected by such failure; the extent to which Verizon asserts AT&T's use has exceeded the scope of the license; and the specific circumstances that prevented Verizon from obtaining the revised provisions.

to guarantee the transferee's performance.

Verizon objects to this provision fearing it would provide AT&T the right to veto a future sale or transfer of the company's assets. It maintains that no rule of law requires Verizon to continue its interconnection obligations were it to sell the firm or cease to provide service. Thus, Verizon believes it should not be required to obligate a future transferee.

Verizon notes, as well, that a transfer of its assets would have to comply with applicable state requirements and federal law.[31] Accordingly, it contends that an asset sale has little to do with the interconnection agreement or the Act's requirements. Given the regulatory requirements applicable to asset transfers, Verizon believes AT&T requires no such provision in the new agreement.

AT&T states that it needs such assurances to enter and compete in the local exchange market. It claims a transfer of Verizon's assets could undermine its ability to serve residential and business customers if it could not rely on continuous wholesale services pursuant to the terms of the agreement. AT&T is particularly concerned about a sale to a telephone provider that may introduce different electronic interfaces, new modes of interconnection, and have rural exemptions that could render its capital investment obsolete.

In support of its proposal, AT&T states that the first agreement covered asset transfers, and BellSouth has accepted a comparable provision in its interconnection agreement with AT&T in Mississippi.[32] And, rather than rely on PSL §99(2) to determine AT&T's rights, the company prefers a service continuity provision in the new agreement.

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[31] In New York, PSL §99(2) applies to such transactions.

[32] According to Verizon, relatively few interconnection agreements contain the kind of provision that AT&T seeks here, and the one to which AT&T points was the result of the parties' negotiations.

basis for AT&T to enter and compete in the local exchange market. Its terms are critical to the company's competitive growth and to its provision of stable and reliable service. Accordingly, the Commission finds that AT&T has a valid interest in the continuing performance of the terms in the agreement in the event of a transfer. However, AT&T's interests are best addressed in the context of the Commission review of any proposed transfer of Verizon's assets that would occur pursuant to PSL §99(2). Were any such transfer to be proposed, we would expect Verizon to discuss the matter with AT&T and other CLECs. It is also reasonable to expect that Verizon would negotiate terms to ensure continued performance under existing interconnection agreements. The actions available to the Commission pursuant to PSL §99(2) provide an adequate forum for the presentation and consideration of any such matters by the affected parties. Accordingly, the Commission finds that other regulatory practices apply to asset transfers, and AT&T proposed language need not be adopted.

Interconnection Points/Network Architecture

AT&T states that the Act permits it to interconnect with Verizon at any technically feasible point, and the FCC has ruled that a CLEC has the option to designate a single point of interconnection (POI) in each LATA.[33] AT&T proposes that its financial responsibility for local calls be consistent with its physical interconnections. It insists that Verizon should bear the cost of local traffic originating from its customers and, as a corollary, that AT&T should not be charged any of Verizon's costs. AT&T maintains this is consistent with the financial responsibilities it bears for the traffic it originates and delivers to Verizon.

AT&T objects to Verizon's proposal to transfer local traffic at Verizon tandems and at the end offices where it is

[33] CC Docket No. 00-65, Application by SBS Communications, Inc. etc. for Provision of In-Region InterLATA Services in Texas (released June 30, 2000), ¶78.

costs. In support of its position, AT&T points to a FCC decision and to state regulatory decisions in Indiana, Wisconsin and Michigan. AT&T contends that Verizon's proposal penalizes it for establishing 250 collocation facilities in New York and discourages it from providing any other competitive facilities.

If AT&T has the right to designate POIs, Verizon insists that it should have the right to designate the interconnection points for financial purposes. Verizon points to §252(d)(1) of the Act as requiring AT&T to compensate it for added interconnection costs. According to Verizon, AT&T's position has been rejected in North and South Carolina and elsewhere. Consequently, to the extent AT&T's POIs and Verizon's interconnection points do not coincide, Verizon believes AT&T should be financially responsible for transporting traffic between them. It observes that the rates AT&T currently pays only cover certain costs, and AT&T's interconnection proposal involves other costs for which it makes no provision. Were AT&T's proposal to be adopted, Verizon believes new interconnection rates would be needed.

While there are a number of unresolved matters relating to interconnection, the most significant issues involve where the carriers interconnect and how the costs of the facilities will be allocated between them. Verizon has proposed a fundamental change by seeking to separate the physical point of interconnection (POI) from the financial responsibility, or the interconnection point (IP). If this were to occur, AT&T would have to pay to have traffic originated by Verizon customers on Verizon's network hauled to the physical point of interconnection. AT&T is strongly opposed to this and it proposes to keep the existing arrangement. While not raised explicitly by either party, Verizon's proposal appears to be designed to address internet traffic issues. CLECs are permitted to use "virtual NXXs" that allow a CLEC to activate a telephone number (NXX) in an exchange where it has no physical where the NXX is addressed are rated as local calls, even though this traffic is terminated to a CLEC customer (invariably an internet service provider) at a location outside the local calling area. Verizon considers this unfair, because it must haul what is essentially a toll call without receiving compensation from the originating customer or the CLEC, and it must pay reciprocal compensation when the call is terminated on the CLEC's network. Thus, Verizon raises a legitimate issue, and under its proposal, AT&T would pay for the transport of this traffic. The problem with this, however, is that not only would AT&T pay for the transport of traffic associated with virtual NXX calls, it would also pay for the transport of traffic associated with its facilities-based local exchange business.[35] This Commission and the FCC have taken steps to equitably address the costs and compensation of internet traffic. We are inclined to allow such measures to take hold before going any further, especially with any proposal that has significant consequences for the development of facilities-based competition.

Our orders establishing the framework for competition,[36] recognize that CLEC networks would, in all likelihood, not mirror the incumbent's. This has proven to be correct, as most CLEC network designs use a single central office switch and long loops to serve a region, rather than the more traditional design of many switches and short loops. The policy established in our Competition II proceeding, that remains applicable, assumes that a carrier is responsible for the costs to carry calls on its own network.

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[34] Case 00-C-0789, Omnibus Proceeding to Investigate the Interconnection Agreements Between Telephone Companies, Order Establishing Requirements for the Exchange of Local Traffic (issued December 22, 2000).

[35] The carriage, terms, conditions and charges associated with AT&T's UNE-Platform business are not affected by this issue.

[36] Case 94-C-0095 - Proceeding Concerning Universal Service and the Competitive Framework for the Local Exchange Market.

decision to require CLECs to pay for the transport of internet traffic on similar calls originated from the customers of independent telephone companies.[37] However, that decision had no significant impact on the full service, facilities-based operations of the CLECs, because in this instance, the CLEC is not directly competing for customers within the independent telephone company.

We reject Verizon's proposal and shall keep in place the existing framework that makes each party responsible for the costs associated with the traffic that their respective customers originate until it reaches the point of interconnection. AT&T's language in this regard is adopted. However, AT&T's proposal to interconnect at any technically feasible point on Verizon New York's network (including tandems, end offices, outside plant and customer premises) is too broad and vague, particularly with respect to Verizon's outside plant. Verizon's language provides an acceptable list of possible interconnection points and methods, and it is therefore adopted, provided it is amended to allow bona fide requests for additional points and methods of interconnection beyond those specified on the list.

Other Network Architecture and Interconnection Issues

Verizon claims that AT&T's proposed interconnection methods are incomprehensible, and that AT&T seeks preferential treatment. It objects to an AT&T proposal to use intra-building interconnections where both companies have a presence. It claims AT&T could obtain an unfair competitive advantage where its switches are located in the same buildings as Verizon's, or where they both have entrance facilities. However, AT&T insists that the intra-building connections it seeks are not discriminatory, as it is entitled to interconnect at any technically feasible point. We find that AT&T's proposal to use

[37] Case 00-C-0789, Order Establishing Requirements for the Exchanged Local Traffic (issued December 22, 2000).

and it is adopted.

Verizon objects to AT&T's proposals for converting existing interconnections to the new arrangement.[38] It complains that AT&T is not willing to pay all the transition costs for new network architecture, and the AT&T transition process includes a timeline for which neither party is currently prepared. Verizon also objects to AT&T's proposal to grandfather existing arrangements for indefinite periods, while AT&T pursues new architecture in other instances.

Verizon objects further to AT&T's term "exchange access trunks", which it says is confusing and conflicts with other interconnection principles to which AT&T subscribes. It believes AT&T's transition strategy will prolong the interconnection process at Verizon's expense, and the initial, high-usage trunk groups AT&T has proposed adds unnecessary trunking. Instead, it believes existing two-way trunk groups should be converted to one-way use, and new trunk groups should be constructed for the other carrier to use. Verizon also objects to making any billing changes before the trunk groups are changed, and it insists on full compensation for the services it provides.

Both parties have proposed language for the transition to a new network architecture. We find that AT&T should pay for all relevant, incremental costs triggered by AT&T's actions during the transition. The parties are directed to develop a schedule that accomplishes the transition of existing arrangements, including the conversion of two-way trunks, within one year, unless they mutually agree to another timeframe.

Finally, the parties disagree about interconnections at locations other than intermediate hubs on Verizon's network. According to Verizon, AT&T should only use DS-3 interface facilities at offices designated in the National Exchange Carriers Association (NECA) tariff as intermediate hub

[38] Verizon objects specifically to AT&T's proposed Section 4.1.4.

offices not properly equipped, there may not be sufficient interoffice facilities to handle the traffic. AT&T claims that Verizon cannot legally deny it such a connection, especially if it is a more efficient than other interconnections.

We are requiring the parties to cooperate and forecast the traffic that passes between them. As discussed below, Verizon has proposed that AT&T connect directly to its end offices when AT&T's traffic reaches a specified threshold. In view of that proposal, which we are accepting with certain modifications, it is unreasonable to deny AT&T the use of the most efficient interconnections at any given Verizon end office. The parties are therefore directed to include language in the interconnection agreement permitting AT&T DS-3 connections at any end office, provided however, that AT&T gives Verizon adequate notice of its needs in the forecasting process.

AT&T's Originating Traffic

AT&T objects to Verizon's proposal calling for it to deliver originating traffic to the company's end offices rather than to POIs of its own choosing. In instances where it has small amounts of originating traffic volumes for a particular end office, AT&T plans to deliver its traffic instead to a Verizon tandem switch. In these cases, AT&T believes Verizon should charge it UNE-based rates for transport between the Verizon tandem and the end office. This would permit AT&T to avoid construction of facilities to Verizon end offices when it does not have sufficient traffic to warrant such action.

In Case 00-C-0789, a proceeding in which we investigate telephone company interconnection agreements, we addressed a similar issue involving traffic between independent telephone companies and CLECs. We found that if the call volumes between an independent and a CLEC exceeded the capacity of a DS-1 channel, the CLEC was responsible for arranging for direct trunking. We find that the same approach is reasonable here. If the traffic between AT&T and any given Verizon end office exceeds the DS-1 level, AT&T shall be responsible for

Verizon's facilities, Verizon shall offer AT&T the UNE rates for the facilities requested.

AT&T's Reciprocal Compensation Rate

AT&T proposes to charge the tandem reciprocal compensation rate for Verizon's originating traffic that terminates at an AT&T switch. This rate is higher than the end office reciprocal compensation rate Verizon believes should apply. AT&T points out that the Commission has applied the tandem rate to carriers that have an incoming traffic to outgoing traffic ratio of 3 to 1 or less. Carriers with higher traffic ratios are permitted to demonstrate that the tandem rate should apply above the threshold.

In support of its position, Verizon points out that carriers pay end office rates for convergent traffic, for local traffic that does not pass through an AT&T tandem, and when a substantial imbalance exists in the carriers' traffic flows and revenue streams. According to it, AT&T should not receive the tandem switched rate for traffic routed directly to an end office. It also contends that, before an AT&T switch can qualify for the tandem rate, it should meet both a functional and geographic comparability test.[39]

AT&T does not dispute the use of a geographic comparability test.[40] However, it disagrees as to whether a CLEC should also meet a functional equivalency test.[41] AT&T insists that the FCC has adopted the former but not the latter test, and it points to regulatory decisions in Indiana, North Carolina and

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[39] Verizon urges us to follow the approach adopted by the Texas Commission that requires a CLEC without a hierarchical, two-tier switching system to demonstrate that it is actually serving a given area using tandem-like functionality and actual geographic comparability.

[40] This test requires the CLEC switch to serve a geographic area comparable to the area served by the ILEC's tandem switch.

[41] This test requires that the switch aggregate traffic between customers calling outside of the immediate exchange.

equivalency test applicable, AT&T contends that its switches could meet this requirement as well. It states that they perform the same functions as do Verizon's tandem switches, and it points to regulatory decisions in Georgia and North Carolina as its support.

In April 2001, the FCC issued an order that sets forth the terms, conditions, and prices for intercarrier compensation of telecommunications traffic delivered to internet service providers (ISPs). In addition to setting rates for ISP-bound traffic, the FCC adopted a rebuttable presumption that traffic exchanged between carriers exceeding a 3:1 ratio of terminating to originating traffic is ISP-bound traffic. There can be no doubt that the FCC's order applies to ISP-bound traffic and to traffic greater than the 3:1 ratio.

The issue here also concerns the full service traffic, or traffic below the 3:1 ratio, that the Commission fully addressed in an August 1999 order which states:

> If a carrier's incoming to outgoing traffic ratio exceeds 3:1 for the most recent three-month period, it is fair to presume that a substantial portion of its traffic is convergent, costing less to terminate, and that delivery of that traffic therefore should be compensated at end-office (in the Bell Atlantic-New York context, Meet Point A) rather than tandem (Meet Point B) rates. The end-office rate should apply to the portion of the traffic that exceeds the stated ratio, <u>and the tandem rate should continue to apply to the portion of the traffic below that ratio</u>. (Emphasis added.)[42]

AT&T is correct and is entitled to the tandem rate for traffic below the 3 to 1 ratio, as long as the traffic is not internet traffic covered by the FCC's rules.

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[42] Case 99-C-0529, <u>Reciprocal Compensation Proceeding</u>, Opinion No. 99-10, 1999 (issued August 26, 1999) pp. 56 and 57.

Like AT&T, Verizon wants a carrier originating local calls to pay it the proper amount of reciprocal compensation--the tandem rate for traffic delivered to a tandem switch and the end office rate for calls delivered to an end office. It points out that the end office rate only compensates receiving carriers for end office switching. Verizon states that traffic delivered to a tandem (even if delivered on an end-office trunk) requires compensation for the additional functions performed at the tandem switch and for transport costs. It is concerned that AT&T may seek to pay only the end office rate for traffic delivered to a tandem. Rather than include any formula for calculating tandem and end office reciprocal compensation rates in the new agreement, Verizon prefers that the rates be derived from its tariff.

Verizon is correct that its tariff, filed to comply with the results of our Competition II Proceeding, should apply here.[43] The tariff subjects traffic delivered to the end office only to the end office rate, and it applies the tandem rates (i.e., transport and end office) to traffic delivered to the tandem. The tariff rates reflect the costs for network components we approved in the Unbundled Network Elements Proceeding.

Calling Party Number Identification

Originating carriers provide terminating carriers calling party number (CPN) information that identifies the jurisdictional nature of the telephone calls and permits them to apply the correct rates. The FCC requires common carriers that use SS7 technology for interstate calls to transmit this information. Without it, a carrier does not know when to apply switched exchange access service charges.

Verizon has proposed to bill traffic that lacks CPN information (up to 10 percent of the total volume) at rates

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[43] Case 94-C-0095, Order Instituting Framework for Directory Listings, Carrier Interconnection, and Intercarrier Compensation, (issued September 27, 1995).

only up to the DS-1 level that it uses as a benchmark to limit congestion on Verizon tandems.

AT&T doubts the validity of Verizon's congestion concerns. It states that tandem congestion is unsubstantiated and Verizon has not provided any proof. It reasons that congestion concerns cannot be attributed to CLECs that would add their own tandem trucks, or make other interconnection arrangements, were their traffic to grow to substantial proportions. AT&T also claims that Verizon's proposal is inconsistent with, and more restrictive than, the Commission's provisions addressing tandem congestion.[47]

With respect to the extra charges Verizon would impose when tandem transit traffic exceeds the DS-1 level, AT&T claims they have no cost basis.[48] Verizon admits that the extra charges would signal a carrier that it should establish other trunking arrangements. Verizon believes it should impose hefty fees to strongly encourage a carrier to terminate its use of tandem transit services.

In a related matter, AT&T states that, as a CLEC, it has no duty to provide tandem transit services to Verizon, but it may provide them within its discretion. Verizon, however, believes AT&T should reciprocate, as a matter of fairness, and make its tandem transit services available to others.

Verizon also urges AT&T, when it enters into tandem transit service arrangements with other carriers, to use its best efforts to establish direct billing arrangements. It objects to AT&T's proposed language that would obviate the need for AT&T and a terminating carrier to provide direct billings. Verizon believes it should not serve as a middleman in these situations. To the extent Verizon incidentally incurs

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[47] Case 00-C-0789, supra. Verizon claims its position here is in keeping with the December 22, 2000 order.

[48] AT&T points out that it pays Verizon for transit services and the costs of trunking and billing; and, it maintains that any additional charges are punitive.

reimbursed by AT&T.

Finally, Verizon objects to paying AT&T reciprocal compensation for any traffic originated by a third party. It states that the Act does not impose on it any such requirement, and there is no other basis for AT&T to seek such compensation.

The Commission finds that Verizon is not obligated to provide transit service for the exchange of traffic between AT&T and other carriers. Nonetheless, Verizon does have a tariff offering called Transient Tandem Services (TTS) that AT&T may use. Verizon correctly points out that, in Case 00-C-0789, the Commission determined that the level of service available to other carriers can be limited to the equivalent of one T1 (24 channels). The Commission determined that CLECs and other carriers must enter into interconnection agreements to assure the completion of their calls and, at the T1 level, all carriers (including AT&T) are obliged to provide direct transport.

Competitive Tandem Services

Some interexchange carriers do not have resources to build facilities to each Verizon end office. AT&T has facilities to connect other carriers' points of presence (POPs) to Verizon end offices. It currently provides tandem services for terminating traffic and charges carriers tariff rates. It is not technically feasible at this time for AT&T to provide carriers tandem services for originating traffic.

Verizon accepts AT&T's provision of the tandem function in the access arrangements for other interexchange carriers. However, it disagrees with AT&T about access traffic charges and the inclusion of competitive access tandem arrangements in the new agreement. Verizon insists that AT&T's arrangements with other carriers do not belong in the new agreement if they do not bear on exchange service or exchange access for AT&T end users. According to Verizon, it is better left to federal and state tariffs. In support of its position, Verizon points to regulatory decisions in Indiana and Kansas.

agreement, Verizon would object to AT&T's proposal to modify the rates, terms and conditions contained in its access tariffs. Verizon is opposed to AT&T siphoning any access revenues and purchasing transport for access traffic at UNE rates. It complains that AT&T has provided no evidence for any division of access charge revenues, including its proposal here for ten percent of the switched exchange access revenues. Verizon states that AT&T's handling of interexchange traffic does not relieve it of any responsibilities or costs, and it must still perform the switching and transport functions.

With respect to AT&T's proposal for access transport at UNE rates, Verizon points to FCC and state regulatory decisions having found that the switching elements may not be used to provide interexchange service to end users for whom the requesting carrier does not already provide local exchange service. According to Verizon, unbundled network elements (and TELRIC rates) were not meant for CLECs to use in their capacity as interexchange carriers. Finally, Verizon insists there are substantial technical problems that preclude AT&T from handling originating traffic.

In response, AT&T observes that interexchange carriers will not select its competitive tandem services, unless they can avoid a portion of Verizon's charges. Without its competitive offering, AT&T insists that carriers will pay inflated prices to Verizon, and they will have to charge their customers higher prices. With respect to originating traffic, AT&T seeks only Verizon's cooperation to explore a technically feasible approach for the future. In any event, AT&T maintains that the originating traffic difficulties should not preclude it from providing competitive services for terminating traffic.

The Commission finds that there are no legal or regulatory restrictions precluding AT&T from providing competitive access tandem service to other carriers, even if technical restrictions limit its offering to terminating traffic for the time being. However, this proceeding and the new agreement concerns AT&T's local service interconnections with carriers. Accordingly, AT&T's access service language need not be included in the new agreement.

Information Services Traffic

AT&T does not provide intrastate information services. It is possible for a customer to originate a call on AT&T's network destined for another carrier's information services platform; however, AT&T blocks such calls and plans to continue to do so. Consequently, AT&T sees no need to include any substantive provisions in the new agreement. It has asked Verizon to negotiate suitable rates, terms and conditions if and when it decides to stop blocking customer access, or if it were to obtain Verizon-originated information services.

Verizon is concerned about AT&T removing its blocking, and it believes the new agreement should address this possibility. According to Verizon, the parties negotiated acceptable provisions for information services traffic, but AT&T withdrew its support for them when they did not reach agreement on other matters.

The Commission finds that the dispute here appears only to be incidental to the parties' other disputes. As such, Verizon has offered suitable language to negotiate an arrangement with AT&T when it either develops its own information services, or it connects an information services provider's platform to its network. In the interim, Verizon's provision pertains only to traffic to its own customers without anticipating any future circumstances. Accordingly, AT&T has not provided any compelling reason for not using the provisions Verizon has presented.

Trunk Forecasts

AT&T is willing to provide Verizon good faith forecasts of its outbound traffic; it is unwilling to forecast the amount of traffic on Verizon inbound trunks. It points out that the parties have generally agreed to use one-way trunks for interconnection purposes, and it believes each of them should has sufficient knowledge of its traffic and experience to do so. AT&T also states that it needs no contractual obligation to inform Verizon of its marketing efforts that can produce unusually high amounts of Verizon outbound traffic. It would do so in any event to ensure that AT&T customers receive their inbound calls.

In a related matter, AT&T and Verizon agree that severely under-utilized trunks should be disconnected. However, AT&T objects to Verizon unilaterally disconnecting outbound trunks without providing advance notice. It wants an adequate opportunity to inform Verizon of any traffic volume increases it is aware of that could affect the decision to disconnect the trunk. In general, AT&T believes the implementation and grooming process the parties have agreed to (including trunk fill standards and notices of trunk disconnections) are adequate, and that nothing else is needed. AT&T is opposed to paying Verizon financial penalties for under-utilized outbound trunks. It considers this proposal to be punitive and likely to produce under-forecasts. AT&T insists it has no reason to over-forecast traffic, and there is no need to impose any penalties.

Given AT&T's objection to penalty provisions, Verizon has eliminated them from its proposal and has thereby resolved the matter. Nonetheless, it still wants AT&T to forecast its inbound traffic from Verizon. It claims CLEC forecasts are needed because only they know the likely results of their marketing efforts. Verizon would use this, and other information, to guide its construction of network improvements and to manage its workforce, particularly for the timing and sizing of one-way trunk groups. Verizon points to a Massachusetts regulatory decision that found forecasts of future demand useful for telephone companies to maintain efficient networks and to meet customers' future needs. It also points to the CLECs participating in the New York Carrier-To-Carrier Proceeding that have agreed to provide traffic forecasts.[49]

[49] AT&T observes that Verizon only agreed to forecast its originating traffic in the collaborative proceeding.

trunks, Verizon wants all the information AT&T has, preferably in the forecast it would provide. Verizon urges that trunks not be kept in service on a mere hope that they may be used in the future. According to it, the joint grooming process does not serve this purpose, nor should the matter be relegated to another round of negotiations.

The Commission finds that accurate forecasts of AT&T's and Verizon's traffic are necessary for a well-designed and functioning network. Consequently, the parties must work together and share their respective traffic information as soon as practicable. In particular, disproportionate amounts of traffic can be generated by internet service providers that only the CLECs would know about, and they should share this information with Verizon. Accordingly, in addition to providing forecasts of its own outbound traffic, AT&T should also provide Verizon its best estimates of inbound traffic in all instances when it can reasonably expect volumes in excess of a three to one ratio of inbound traffic to outbound traffic.

AT&T Available Space Licenses

AT&T is willing to provide Verizon central office space to interconnect its equipment, and it would do so on a non-discriminatory basis pursuant to tariff. AT&T complains that Verizon did not respond to its proposal in negotiations. Nonetheless, AT&T wants the matter addressed now to deprive Verizon of any excuse to avoid interconnections and not deliver traffic to it.

Other than acknowledge AT&T's willingness to make space available to others, there is little else for the Commission to do to address this matter. We recognize that Verizon did not answer AT&T's available space offer in its briefs; however, this matter is not essential to the new agreement.

When they began their negotiations, the parties considered rates, terms and conditions for traffic routed to internet service providers (ISPs). However, the FCC recently addressed ISP-bound traffic, and Verizon now claims the matter is moot for purposes of the new agreement.

The FCC ruled that this traffic is not subject to §251(b) reciprocal compensation requirements and that the rates for ISP-bound traffic are subject to its jurisdiction.[50] The FCC requires compensation for ISP-bound traffic in accordance with a declining rate schedule, a cap on the per-minute-of-use rates, and a limit on the total volume of calls eligible for compensation. According to Verizon, this matter can no longer be arbitrated here, and the parties must conform to the FCC's requirements. Verizon states it will abide by the FCC's interim rate structure until it sets permanent rates.

However, AT&T believes that the new agreement need not acknowledge the FCC's decision pending an appeal and a request for a stay. It claims the FCC order is precarious, and the previous reciprocal compensation arrangements should stand. According to it, Verizon could invoke the new agreement's "change of law" provision, if the FCC's order is upheld.[51] Absent a stay or the grant of an appeal, Verizon insists that the FCC order is self-implementing and became effective on June 14, 2001.

The Commission finds that the FCC's order speaks for itself, and there is no need for the agreement to include any terms, conditions or rates for the internet traffic that the FCC order addresses.

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[50] CC Docket Nos. 96-98 and 99-68, Inter-Carrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order (issued April 27, 2001).

[51] AT&T faults Verizon for not providing any language for the new agreement. It insists that the matter cannot be left without a provision, and that a generic reference to the FCC order is inadequate, because the FCC has provided multiple options, and Verizon should make a selection.

AT&T and Verizon differ as to whether the new agreement should include call flow diagrams as did the first agreement.[52] AT&T favors the practice and says it can eliminate disputes. It specifically requests that 24 diagrams be included in the agreement, observing that Verizon accepted this practice in Maryland.[53]

Verizon considers the 24 diagrams unnecessary given the parties' sophistication and the existence of their contractual and legal obligations apart from any diagrams. Verizon admits that the depictions may serve as illustrative aids, but it debunks any notion that they encompass the universe of all applicable routing patterns. It knows of another 63 scenarios, but it prefers that they not be added to the agreement. According to Verizon, this could start a perpetual amendment process that could deprive it of revenues pending the execution of amendments. Ultimately, it fears the inclusion of diagrams in the agreement will produce confusion and disagreements. It believes AT&T may attempt to evade payments for services that do not appear in the diagrams.

The Commission finds that the 24 call flow diagrams AT&T wants to include in the new agreement should be contained in it to serve as descriptive aids for the types of calls they address. The 24 diagrams are not to be considered determinative of all possible calling scenarios between AT&T and Verizon. They represent only some call flows, and as such, they are not intended to control for any pricing purposes.

<u>Shared Transport Charges: Direct and Tandem Routing</u>

AT&T claims Verizon's method of calculating usage charges for local calls routed between end offices is flawed. This traffic can either be routed directly or through a tandem

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52 Call flow diagrams show the applicable charges for local and intraLATA toll calls.

53 Verizon counters, claiming that a diagram-related dispute remains between them in Maryland.

directly routed.

The blended rate Verizon currently uses assumes that 20 percent of the calls are routed through a tandem and 80 percent are routed directly. AT&T insists that all but one percent of its calls are directly routed. For its evidence, AT&T points to monthly carrier access billing service (CABS) records and to automatic message accounting (AMA) records. But, Verizon insists that AT&T has never supplied it any report or study supporting its allegation. To this, AT&T responds that the pertinent data is routinely stripped from the records it receives, and that the information is only available to Verizon. AT&T believes an annual study would be the best method to determine the actual amount of direct routed and tandem routed calls.

According to Verizon, AT&T is seeking unwarranted, special treatment. It claims that the 80/20 composite rate reflects the engineering principles and switch configurations it uses. Moreover, Verizon states that it does not have the recording capability to determine when a particular call is directly or indirectly routed. For this reason, it has used a weighted average for the unbundled common transport charge. It also claims the 80/20 composite rate is endorsed by the CLEC community and AT&T's traffic is routed no differently than is any other carrier's traffic, including its own.

We are not persuaded that the proportion of all carriers' local calls routed directly and through a tandem switch is anything other than the 80 percent direct routed and 20 percent tandem routed for which a study has been provided to the Commission. Nor can we presume that AT&T's traffic, which is handled no differently than any other carrier's traffic, is likely to be routed in any other proportions. Until a carrier is able to present to the Commission a study demonstrating a new and different proportion of local calls being routed through tandem switches, we will continue to rely on established results showing a 80 percent/20 percent ratio. Accordingly, Verizon's used.[54]

Shared Transport Charges:
Access and Conversation Minutes-of-Use

There is no dispute between AT&T and Verizon that access minutes of use (AMOU) apply to the originating switch charges for local calls, and that conversation minutes of use (CMOU) apply to terminating switch charges. The dispute here concerns which charge to apply to the transport portion of a local call. AT&T insists it is the CMOU, because SS7 signaling technology does not allow a transport trunk to be seized pending the set up and completion of a telephone call.

Verizon points out that it bills all CLECs AMOUs for transport purposes and urges that AT&T not be permitted to avoid this financial obligation. The company insists that it incurs costs the entire time an AT&T customer has access to a Verizon trunk, including the time the telephone is ringing. Verizon claims an originating caller, from the time the last dialed digit goes through, seizes its network trunk.

The current rate is set upon costs that were extensively litigated in the First Network Elements Proceeding in 1998. Subsequently, in Case 98-C-1357, we directed a comprehensive reexamination of all unbundled network element rates. The litigation phase of that proceeding has recently concluded, and a recommended decision was issued May 16, 2001. We trust that AT&T has considered and addressed this matter in that proceeding. Thus, on the basis of the limited information provided here, we can only conclude that the current use of CMOUs to determine the applicable rate is appropriate. Assuming that the issue is fully joined in the proceeding coming before us shortly, if changes are warranted we will make them simultaneously with other unbundled network element rate changes.

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[54] AT&T is free to pursue this issue further either informally or through the complaint process, if it requires more access to Verizon data.

Shared Transport Charges:
Non-Conversation Time Additive Factor

The charges that terminating carriers apply to originating carriers for completed local and intraLATA calls include a non-conversation time additive factor (NCTA) to compensate the terminating carrier for the cost of uncompleted calls and for the time its network is in use before a conversation begins. The NCTA is fully addressed by Verizon's tariff; however, AT&T proposes to include a NCTA for its originating traffic in the new agreement. Verizon insists, however, that this is a tariff matter that does not belong in the agreement.

AT&T claims Verizon's NCTA is excessive and points to daily usage feed records (DUF files) for its support. Rather than use a tariffed NCTA that is over five years old, AT&T urges that the figures it presented in this proceeding be adopted. The difficulty with this approach, according to Verizon, is that AT&T did not provide a traffic study to support its figures, nor did it adequately explain how they were derived.

This issue presents the same circumstances considered above with respect to CMOUs and AMOUs. Accordingly, we will wait for the parties to fully present the issue for its resolution in Case 98-C-1357.

AT&T's UNE-Platform Customers:
Third-Party Carriers

Verizon does not collect either transport or termination charges when a third-party carrier terminates local calls to an AT&T UNE-Platform customer. Instead, it keeps the reciprocal compensation it receives from the carrier that AT&T would otherwise be entitled to.

With respect to an AT&T UNE-Platform customer's local calls that terminate to a third-party carrier, Verizon passes the carrier's reciprocal compensation charges, and usage charges, to AT&T for it to pay. AT&T accepts these practices and states that they have worked reasonably well.

the changes should provide for symmetrical opportunities and responsibilities. If Verizon begins to apply transport and terminating charges (and forces AT&T to establish reciprocal compensation arrangements with third-party carriers), AT&T believes it should negotiate reciprocal compensation rates with the third-party carriers for both originating and terminating traffic purposes. According to AT&T, it requires a means to establish equitable reciprocal compensation agreements with third-party carriers, and it can only do so if it negotiates for both types of calls.

AT&T disputes Verizon's assertion that third-party carriers cannot determine whether their incoming calls originate from a Verizon or an AT&T UNE-Platform customer. AT&T points to Texas where it states that such calls are being distinguished. If it is truly impossible to distinguish between them, as Verizon claims, AT&T would prefer that the current arrangements be retained without the change Verizon has proposed.

According to Verizon, third-party carriers' inability to distinguish between an ILEC's customers and a CLEC's UNE-Platform customers is an industry-wide problem that is being addressed by the Ordering and Billing Forum to which AT&T belongs. Direct billings between third-party carriers and AT&T will ultimately solve this problem. However, in the near term, Verizon is only willing to perform a clearinghouse function, if the carrier that creates the costs provides it compensation. It rejects an AT&T proposal for it to either transmit third-party carrier bills to AT&T or send them back to a CLEC. This approach, Verizon states, could subject it to billing and collection disputes that would not include AT&T.

Verizon also opposes any selective use of a "bill and keep" compensation arrangement for AT&T UNE-Platform customers. According to Verizon, this arrangement should only be used when the carriers are entitled to reciprocal compensation from each other. In this case, Verizon states it should receive reciprocal compensation for the calls it terminates from an AT&T end user; however, it claims AT&T should not receive reciprocal

Verizon provides the facilities and incurs the costs.

In their respective positions on this matter, both parties have indicated that the current practice is working satisfactorily. It appears that only more difficulties would arise were we to adopt one or the other's changes to the existing practice. Accordingly, the Commission finds that the prevailing practices shall be maintained in the new agreement.

Packet Switching Rates

Verizon does not currently provide packet switching. The FCC required it to divest its digital subscriber line access multiplexer (DSLAM) equipment to an affiliate when Bell Atlantic and GTE merged. Given the divestiture of these assets, Verizon states that it has no duty to provide any such services to AT&T. It believes that AT&T should contract directly with the Verizon affiliate for its requirements. Only if Verizon were to reacquire the assets, would it recognize an obligation to provide packet switching pursuant to the FCC's rules.

Consequently, Verizon is opposed to AT&T's proposal seeking to bind either it, or the affiliate, to provide packet switching. Verizon states that the affiliate would only be obligated if it were found to be Verizon's successor or assign. Moreover, it points out that the affiliate has not been a party to this proceeding. While Verizon is aware of a court decision adverse to its position, it states that it was not a party to the judicial proceeding, and it remains subject to the FCC merger requirements.

Verizon has neither interim nor permanent rates for packet switching. Were it to provide the service, Verizon states that it would have to develop the rates. If Verizon becomes legally obligated to provide packet switching service, AT&T wants the new agreement to contain an interim rate that would be trued-up to the permanent rate. AT&T is willing to accept a reasonable interim rate to encourage the prompt provision of this service. However, it is also interested in the correct rate being applied both prospectively and retroactively. With respect to the true-up AT&T has proposed, mandating a true-up, but it believes rate changes should only apply prospectively.

We find that AT&T's proposals for interim packet switching rates, and a true-up mechanism, are premature. The FCC and this Commission (in the DSL Collaborative Proceeding) may or may not decide to require Verizon to offer packet switching on an unbundled network basis. Coincident with any such decision, consideration would be given to interim and permanent rates, and whether a true-up is needed. There is nothing to be gained by making any such determination in advance.

Carrier Identification Codes

The first agreement required Verizon to provide carrier identification codes (CICs) and other information useful for AT&T to bill other CLECs and interexchange carriers access and usage charges. AT&T pays Verizon for the codes and the information it supplies, but it has been disappointed by Verizon's performance, claiming that the company did not consistently fulfill its obligations. To provide Verizon a strong incentive to provide adequate CICs (and billing name and address information), AT&T proposes that Verizon be financially responsible for uncollectible charges for as long as it lacks correct codes and billing information from Verizon.

In support of its position, AT&T points to Verizon having provided it "9000 Series" CICs that only Verizon can decipher and use for its internal business purposes.[55] AT&T also complains that Verizon provided it CICs before they were assigned to any carriers, rendering them useless for billing purposes. Further, it points to Verizon having reassigned CICs that once belonged to carriers but were subsequently used by Verizon for its business purposes. This situation led to incorrect billings on four occasions and to carriers laying blame on AT&T rather than Verizon.

[55] According to AT&T, Verizon's website does not identify these codes.

information when carriers do not qualify for codes and for "800" calls. In these instances, AT&T believes that Verizon should turn to its trunk routing information, or it should activate tandem switch and end office capabilities to provide the necessary billing information.[56]

Verizon believes that billing information standards should not be detailed in the new agreement. Instead, it urges that the agreement only commit the parties to implement the guidelines adopted by the Ordering and Billing Forum, an industry-wide forum that addresses the kinds of problems AT&T has laid out here. Verizon considers AT&T's proposal to be too restrictive in comparison to other solutions the industry-wide forum is considering.[57] Rather than focus exclusively on CICs, Verizon reports that OCNs and pseudo-CICs (the codes ILECs devise for entities that do no qualify for CICs) are being considered in the industry-wide forum, and they can serve AT&T's needs.

With respeot to AT&T's proposal that Verizon be financially responsible for CIC errors, the company contends there is no valid basis for shifting AT&T's billing risks and collection costs to it. Verizon states that it will provide AT&T the best information it has in conformance to industry standards, and that no fault should be cast on it for carriers who have not obtained CICs or for industry efforts that have yet to solve carrier identification problems.[58]

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[56] AT&T states it is not enough for Verizon to provide a local exchange routing guide (LERG) or an operating carrier number (OCN) in these instances. The LERG only indicates where a call has entered Verizon's network and does not show the carrier that originated it. AT&T also states that Verizon does not always provide correct or useful OCNs. At a minimum, Verizon believes the OCNs should provide a billing name and address associated with the CIC.

[57] Verizon also points out that FCC regulations address this subject.

[58] Specifically addressing the fact that originating CICs can be lost when calls are switched between tandems, Verizon points

assigning or approval of CICs, as this is the responsibility of the North American Numbering Plan Administrator (NANPA). While it is willing to provide assistance, it believes AT&T should have most of the carrier billing information it needs from previous transactions, or it can obtain the information from the same industry data bases Verizon uses. It sees no need to impose a contractual duty on it, particularly given the upcoming assignment of OCNs in October 2001 that should eliminate some problems with pseudo-CICs.[59]

The Commission finds that the parties should use the Ordering and Billing Forum's guidelines for replacing "pseudo" CICs with OCNs. With respect to the parties' concerns about "9000 Series" CIC codes, invalid CIC codes, and "stolen" CIC codes, Verizon has a duty to provide carriers CIC codes that contain the billing information they need. For this reason, we adopt AT&T's proposal that Verizon should be billed for any uncollectible usage that is the result of Verizon not providing AT&T a valid CIC code.

Unbundled Network Elements Issues

1. AT&T's Preamble

Verizon objects to AT&T's preamble for the UNE section of the new agreement. In it, AT&T makes general assertions for all UNEs and combinations that Verizon considers to be inappropriate. For one, Verizon would not make any sweeping statements about provisioning, ordering and billing requirements that suggest new processes are needed.[60] For another, it would not use broad language to anticipate future UNEs, or allow AT&T

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out that the Order and Billing Forum has produced a solution to which it subscribes.

[59] OCNs are the responsibility of the National Exchange Carrier Association.

[60] According to Verizon, the ordering process is better left to the OSS and DSL Collaborative Proceedings. It also believes AT&T should submit the same types of service orders and bona fide requests that other CLECs use.

would Verizon include in the preamble any language that appears to conflict with FCC requirements and legal restrictions. In this regard, Verizon disputes whether AT&T, and its affiliates, can use UNEs and combinations for themselves.

The Commission finds no essential need for a UNE preamble to be included in the new agreement. The UNE portion of the agreement will contain discrete provisions, and each of them addresses particular types of facilities. We agree with Verizon that its ordering and provisioning process, and business rules, are being considered in the OSS and DSL collaborative proceedings where all carriers' requirements are being addressed. Accordingly, there is no need for these matters to be covered by a UNE preamble. Nor is there any need for a preamble to discuss the bona fide request process that is fully addressed in Verizon's tariff and can be used to handle CLEC requests for non-standard service offerings.

2. Loops

Rather than include unbundled loop provisions in the agreement, Verizon proposes that its tariff provisions be incorporated by reference. Verizon states that the tariff process provides an adequate opportunity for the public to voice concerns and air grievances. It also believes the tariffs are better suited for making changes as circumstances warrant. According to Verizon, a flexible approach is needed to adjust to market growth and competitive developments.

Verizon disagrees with AT&T's proposal to retain the loop definitions and provisions from the first agreement. It states that the old agreement no longer conforms to the tariff provisions that apply to other carriers, and its definitions are today.[61]

Nor does Verizon believe that the new agreement need specify the technical characteristics of the loops it provides. It states that they are better left to the tariffs where loop characteristics conform to national or industry standards, except where Verizon supplements them for its service area. According to the company, its loop characteristics should neither be modified for each CLEC, nor should AT&T be able to define Verizon's technical standards.

With respect to the loop pre-qualification process, Verizon proposes that this matter be left to its tariff and to the DSL Collaborative Proceeding where it is being considered. Verizon denies AT&T's allegation that it does not provide adequate loop information. The company states that it complies with the standards promulgated by the Ordering and Billing Forum where, it believes, AT&T should go to request any more information. In the collaborative proceeding, Verizon has proposed to provide CLECs electronic access to loop information; however, some CLECs are unwilling to incur any costs for this system. Nevertheless, Verizon plans to implement a "change management process" in October 2001, and it currently has an interim process in place to provide CLECs loop information.

Verizon also objects to AT&T's proposal to use its own loop qualification tools, or employ a third party, to conduct the loop pre-qualification process. Given the pre-qualification service it provides, Verizon claims it should not incur any additional expenses or have to change its system for the tools AT&T or a third party might use.

Finally, Verizon urges that bridge tap lengths remain in the loop length measurements it provides to CLECs. When a bridge tap is identified by an automated loop qualification,

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[61] Verizon also objects to AT&T altering the definition of a local loop to include "transmission-related functionality". It sees this as an attempt to avoid the Commission's multiplexing order and to obtain unrestricted access to loops with multiplexers.

information. Verizon may remove bridge taps from loops, if AT&T requests that it do so.

The Commission finds that Verizon's tariff contains adequate provisions for CLECs to access the company's loops, provisions that should apply to all carriers, including AT&T. Additional provisions in the new agreement are not necessary. The tariff defines unbundled and other types of loops, and it specifies their technical characteristics.[62]

Loop pre-qualification matters are being addressed in the DSL Collaborative Proceeding (Case 00-C-0127) that began in August 1999. If we were to approve AT&T's proposal to use its own pre-qualification tools, Verizon would have to modify its system that other CLECs also use, and the company would incur added expenses. We find that the prevailing system that has been designed for all carriers is adequate. However, to the extent that it is technically feasible to modify the requisite systems to accommodate both AT&T's needs and those of the other CLECs, and if AT&T is willing to pay for the modifications, Verizon should make them.

Finally, the length of a bridge tap on a loop can affect its data transmission capability. For this reason, Verizon's loop qualification database notes the presence of a bridge tap on a subscriber loop. However, because not all bridge tap arrangements interfere with data transmissions, it is the CLEC's responsibility to request and pay for the removal of bridge taps.

3. Digital Subscriber Line Loops

AT&T wants digital subscriber line (DSL) loop provisions in the new agreement. As discussed above, it wants the agreement to capture Verizon's legal obligations, rather than having to rely on the company's tariff. It criticizes the

[62] In any instance where the tariff does not contain all the technical characteristics of a loop, the parties should resort to generally accepted national or industry standards for the details they require.

has required. AT&T is unwilling to wait for an expected tariff proposal from Verizon, the contents of which it does not know. Were this matter to be handled by a tariff, AT&T fears that Verizon could unilaterally modify its terms or render unfavorable interpretations. AT&T also makes four other points.

First, it contends that a qualified loop should not be qualified a second time for another carrier providing the same type of DSL service. According to Verizon, this matter is being addressed adequately in the DSL Collaborative Proceeding where it belongs. Verizon agrees that a second qualification can be avoided, if the loop is pre-qualified for the same type of advanced data service. But, it states, comparable service with different loop characteristics would have to be pre-qualified again.

Next, AT&T states that Verizon's operational support systems (OSS) for DSL are not addressed in the tariff. The provisions it has drafted for the new agreement would reflect obligations established by the Commission's January 29, 2001 order and developments in the DSL Collaborative Proceeding.

Third, AT&T criticizes Verizon's mechanized loop qualification system and wants the system enhancements Verizon has promised (in the DSL Collaborative Proceeding) to provide by October 2001. It proposes that the new agreement contain Verizon's commitment. AT&T also wants the new agreement to reflect Verizon's commitment to provide the extract files that it currently provides on a non-contractual basis.[63]

Finally, AT&T observes that costly, manual loop qualifications are required when bridge taps exist on loops and that Verizon adds the information it obtains in this manner to the company's OSS systems. Rather than incur all the costs of a manual loop qualification that may benefit other carriers, AT&T proposes that this charge be spread among all carriers.

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[63] Extract files provide loop data on a wire center basis similar to the information available through the mechanized loop qualification system.

here concerning DSL loops are being adequately considered in the DSL Collaborative Proceeding for the benefit of all CLECs. It would be inefficient to decide these matters in the context of each carrier's interconnection agreement. Moreover, AT&T has not raised here any unique claims applicable only to it. Accordingly, the new agreement need not contain any such provisions pertaining to DSL loops. The applicable requirements will be derived in the collaborative proceeding, and they will be incorporated in the company's tariff, as they are resolved.

4. Cable Plats and Related Network Information

In November 2000, AT&T complained to the Commission about not having sufficient access to Verizon cable plats and other network related information. It uses this information to make interconnection decisions and to determine whether it can access unbundled subloops. By now, AT&T believes Verizon should have provided it direct access to this information on a trial basis, as suggested by the staff assigned to this matter. However, the parties did not agree to any such trial, and AT&T wants a provision in the new agreement ensuring its access.

Verizon objects to AT&T litigating the same matter twice and urges that it remain in the complaint proceeding. Verizon also claims the access AT&T seeks is not required by the Act, nor would it serve a legitimate purpose.[64] Verizon is not opposed to AT&T obtaining such information; it objects to AT&T having unfettered access to its files. Rather than provide AT&T direct access, it prefers that other methods be used to protect its proprietary information.

Verizon also objects to the quick turnaround and delivery AT&T wants. In general, Verizon needs time to ensure that its proprietary information is protected. Finally, in

[64] In response, AT&T states that the FCC's Local Competition Order recognizes legitimate requests for access to network information and requires that this information be available for inspection and copying, subject to reasonable conditions to protect proprietary data.

riser information, Verizon states that such access is not available, because its paper records are scattered widely throughout the company. It is willing, however, to locate and provide its paper records upon request. Verizon also notes that it has an electronic list of house and riser assets it has divested that it is willing to share with AT&T.

Earlier this year, AT&T filed an expedited dispute resolution request to gain access to certain plant related records. Staff has been working with the parties to define the records at issue and to establish a trial that would promote AT&T access to the records under conditions that are mutually agreeable to the parties. Verizon and AT&T are still considering the mechanics of a trial. Accordingly, the Commission finds that this matter should remain in and be resolved by the dispute resolution process.

5. Subloops

Verizon acknowledges that the UNE Remand Order and the FCC regulations require it to provide CLECs access to subloops. It has implemented tariff provisions to comply with these requirements, and it has amended them from time to time. Verizon proposes that the new agreement incorporate by reference its tariff provisions, and that subloops not be addressed in it otherwise.

However, AT&T wants feeder, distribution, and intra-premises subloops (with multiplexing functionality) to be addressed in the new agreement. In general, it seeks technology-neutral access, a commercially reasonable and timely process, and forward-looking TELRIC prices. AT&T claims the tariff does not address these matters adequately According to it, feeder subloops are nowhere discussed in the tariff, and intra-premises subloops are not expressly addressed.[65]

[65] AT&T wonders whether the tariff's house and riser cable provisions (discussed below) are intended to encompass intra-premises subloops.

to deliver a variety of services in apartment buildings, corporate parks, and on academic campuses. It also wants to perform the work needed at the cross-connection blocks, and it seeks to avoid collocation requirements for intra-premises subloops. It maintains that the provisions it seeks would help AT&T to fully realize the competitive potential of multi-tenant environments.

In response, Verizon insists that access to intra-premises facilities must be had at the terminal box that serves as the demarcation point between the carriers' networks. Verizon also insists that it does not allow representatives of other companies unrestricted access to its network to splice cables at will. It states that restrictions are needed to address customer service, fraud, labor union, liability, and network concerns.

AT&T acknowledges that distribution subloops are addressed in the tariff; however, it claims the provisions are not technology-neutral. It states that they only permit access to two and four-wire copper pairs, and not to fiber optics or other technologies Verizon is considering. AT&T also criticizes the distribution subloop provisions for mandating access at the outside plant interconnection cabinet and not permitting interconnections at any other points. It considers the tariff overly restrictive and objects to the connection and conversion charges Verizon would impose. AT&T states that interconnections at outside plant cabinets are unworkable, because they lack electricity. AT&T also complains that Verizon does not have a standard process for taking subloop orders or for provisioning these facilities. It believes performance standards should be applied to distribution subloops.

Verizon denies AT&T's claim that it should provide access to subloops at any technically feasible point. According to it, the UNE Remand Order modified any such requirement by establishing access at accessible terminals. Verizon insists that only its technicians should access the terminal box, and services it provides.

Verizon states that AT&T's provisions for the agreement do not reflect FCC requirements. According to Verizon, it is not possible to include provisions in the new agreement for every variety of subloop. It also contends the AT&T provisions are overly broad and ambiguous, and that problems permeate every sentence AT&T has offered. It urges that AT&T obtain subloops pursuant to the tariff, as other CLECs do. Should AT&T request subloops that differ from the tariff, Verizon states it can handle such requests using the bona fide request process specified in the tariff.

The Commission finds that Verizon has complied with the FCC's UNE Remand Order by providing suitable tariff provisions for unbundled subloop elements. The tariff defines feeder and intra-premises subloops, and its building and riser cable provisions pertain to large apartment buildings. With respect to AT&T's access to buildings on corporate and academic campuses where Verizon owns the cable, AT&T should submit bona fide requests for access at these locations. Overall, the new agreement should incorporate by reference Verizon's tariff that can be modified from time to time to include additional subloop provisions as they are needed.

6. <u>NGDLC Loops</u>

AT&T wants a provision in the agreement requiring Verizon to provide it Next Generation Digital Loop Carrier (NGDLC) loops when this technology is deployed. Verizon acknowledges that it is exploring NGDLC loops but claims it is premature to include them in the agreement, because it has not decided whether they qualify as a UNE. Absent a final decision, Verizon insists it has no obligation to furnish NGDLC loops. According to Verizon, the agreement can be amended if and when NGDLC loops arrive.

AT&T urges that NGDLC loops be addressed now, because they are essential for AT&T to compete in the provision of high bandwidth advanced services. According to AT&T, it does not wholesale service.[66] It states that Verizon should unbundle the loops and provide them as a UNE so it can compete with Verizon's data affiliate.

Verizon disagrees with AT&T's claim that NGDLC loops must be deemed a UNE. It insists that this new technology falls outside the Act's requirements. Verizon states there is no requirement that an ILEC build new network capabilities to unbundle the existing network for competitors. It points out that the FCC is considering the matter, and it is premature to include NGDLC loops in the new agreement before the FCC and the courts have ruled.

Were the Commission to include NGDLC loop provisions in the new agreement, Verizon would object to AT&T's proposal as not complying with the applicable requirements. It points out that the FCC's rules do not require ILECs to provide unbundled loops with DSLAMS in the remote terminals.[67] Verizon also does not consider line cards to be an element of a NGDLC loop. It notes that the FCC is considering this issue in the context of the collocation of line cards at ILEC remote terminals. Absent a FCC finding to the contrary, Verizon does not plan to offer to collocate line cards in the terminals. Nor does Verizon consider line splitters to be an element of a NGDLC loop. It supports an industry-wide approach to line splitting matters.[68]

The Commission finds that it is premature to consider the inclusion of any NGDLC provisions in the new agreement given the current status of this technology and pending its regulatory review. Similarly, we did not require the provision of NGDLC

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66 According to AT&T, it is anticompetitive for Verizon to provide NGDLC loops as a wholesale service.

67 AT&T acknowledges Verizon's position but claims the FCC's classification of DSLAMs is wrong, because DSLAMs cannot perform switching functions at remote terminals. In any event, AT&T claims that the FCC's logic should not apply to NGDLC loop architecture.

68 According to AT&T, there are no technical impediments to line splitting on NGDLC loops.

find that this matter can be better addressed in the DSL Collaborative Proceeding if and when Verizon makes these loops available to competitors.[69]

7. House and Riser Cables

AT&T wants provisions in the agreement allowing it access to Verizon's house and riser cable facilities so it can connect customers in apartment and office buildings. AT&T wants to perform the cross-connections itself to save costs and to effectively serve its customers. In November 2000, AT&T complained to the Commission about this matter. Since then, another carrier sought to perform cross-connections, and it was allowed to do so on a trial basis.

In January 2001, the Commission requested public comments on this matter.[70] AT&T submitted comments supporting the practice, and Verizon opposed it. Verizon prefers that cross-connection work to be done by company employees. It is opposed to AT&T and others having unrestricted access to the network. It is concerned that such access will adversely affect customer service, will disturb union relations, increase telecommunications fraud, create corporate liability, and detract from the company's ability to sustain the network. Verizon also believes CLECs may not provide it accurate reports of their activities.

Nevertheless, Verizon acknowledges that the Commission has directed it to file tariff amendments allowing CLECs to

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[69] See, Case 00-C-0127 Digital Subscriber Line Services, Opinion No. 00-12 (issued October 31, 2000); Order Granting Clarification, Granting Reconsideration In Part and Denying Reconsideration in Part, and Adopting Schedule (issued January 29, 2001).

[70] Case 00-C-1931, In the Matter of Staff's Proposal to Examine the Issues Concerning the Cross-Connection of House and Riser Cables, Notice Inviting Comments (issued January 29, 2001).

concerns will be addressed in the collaborative process established for this purpose. Consequently, Verizon urges that this matter be addressed in the collaborative process and the tariff, and not in the interconnection agreement.

AT&T does not want to rely on the tariff to secure its access to house and riser cable. It believes its rights should be memorialized in the interconnection agreement. According to AT&T, the tariff process subjects it to Verizon's interpretations and to unexpected modifications of the tariff terms.

As explained above, this matter has been fully resolved by our recent order. A collaborative proceeding, in which AT&T is a participant, has been convened to develop cooperative billing and operational practices. Verizon has submitted its proposed tariff revisions that are currently being evaluated by Staff and the parties, including AT&T. Thus, the Commission finds that this matter is best resolved by the interconnection agreement incorporating the Verizon tariff provisions by reference, as amended from time to time.

8. Dark Fiber

Here, as elsewhere, the parties want the Commission to decide whether Verizon's tariff, or AT&T's interconnection agreement, should control access to unused loop capacity, particularly dark fiber. AT&T maintains that its provisions are consistent with the Act, and Verizon's tariffs are flawed. Verizon claims the tariff satisfies the UNE Remand Order requirements, but AT&T's proposal does not.

AT&T and Verizon are clearly at odds about the UNE Remand Order requirements. Verizon claims AT&T seeks a broader offering than it is entitled to; AT&T counters that Verizon would unreasonably restrict access to unused transport capacity. AT&T believes the Order is not limited to fiber technology. It

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[1] Case 00-C-1931, supra, Order Granting Direct Access Cross-Connections to House and Riser Facilities, Subject to Conditions (issued June 8, 2001).

media--dark fiber, copper pairs, and coaxial cable. However, Verizon insists that neither copper pairs nor coaxial cable are subject to the dark fiber requirements.

AT&T seeks access to dark fiber at splice joints claiming it is technically feasible for Verizon to provide access at this location. However, Verizon states that spliced fiber falls outside the UNE Remand Order's unused loop capacity requirements. It points out that the Commission has also ruled to the same effect.[72] In response, AT&T claims that Verizon should not limit access to continuous fiber strands. It believes it should have the same access to the dark fiber as Verizon enjoys.

AT&T defines dark fiber loops to include electronic components (such as lightwave repeaters and optical amplifier equipment) and it claims to have access rights to all such facilities. But Verizon states that AT&T's position conflicts with the UNE Remand Order (and FCC rules) that define dark fiber transport as facilities without any multiplexing, aggregation, or other electronics. It points also to a Commission decision stating that CLECs must provide the necessary electronics for dark fiber.[73]

Verizon insists that the applicable requirements only provide AT&T access to dark fiber subloops at the accessible terminals in its end office, and it objects to AT&T's proposal to access dark fiber elsewhere on the subloop. According to Verizon, AT&T's proposed cross-connections can degrade the transmission quality of the fiber. But, AT&T claims the Act and the UNE Remand Order provide it access to all technically feasible points (including points at regenerator or optical amplifier equipment), and they do not limit cross-connections to hard termination points.

Next, AT&T wants to reserve some of Verizon's dark fiber for its future use. It states that, if Verizon can

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[72] Case 00-C-0127, supra, order issued January 29, 2001.

[73] Case 00-C-0127, supra, Opinion No. 00-12, p. 24, n. 3.

observes that the Act, the UNE Remand Order, and the FCC's regulations all mandate non-discriminatory treatment. But, rather than reserve any fiber capacity, AT&T prefers that Verizon upgrade its electronics and increase the bandwidth of the existing capacity. According to AT&T, Verizon should only reserve its capacity if it can demonstrate a threat to its ability to provide service as a carrier of last resort.

Verizon insists, however, that AT&T cannot reserve dark fiber pursuant to the UNE Remand Order. Verizon's tariff provides all carriers access to available dark fiber facilities on a first-come, first-served basis. Verizon insists that it does not reserve any dark fiber for itself.

AT&T also proposes that when Verizon installs new or additional dark fiber facilities it should include some for AT&T's future requirements. AT&T states it is willing to provide Verizon timely forecasts of its future requirements. However, Verizon claims the applicable law does not require it to consider AT&T's needs when designing its network and expanding its capacity. According to Verizon, it is only obligated to provide AT&T access to spare facilities on the existing network. It believes AT&T should construct its own facilities or obtain additional capacity from a third party.

AT&T also objects to its having to submit fiber inquiry requests to Verizon. It claims this requirement is costly and burdensome, and it provides no assurance that the facilities will be made available. AT&T believes Verizon has records of its available loop plant capacity, and that it does not need any field surveys to determine whether fiber facilities are available for CLEC use.

Verizon is opposed to redesigning its facilities request process for AT&T. It states that, after performing a record review to determine if the requested fiber facilities are available, a CLEC has the option of verifying the accuracy of the information or determining transmission quality by requesting a fiber layout map or field survey respectively.

the availability of dark fiber for its own use.

AT&T also objects to Verizon having up to 30 days to turn up dark fiber for CLECs. At most, AT&T believes Verizon needs no more than 20 days to perform the necessary steps. According to AT&T, the 30-day interval unnecessarily slows its efforts to plan and grow its local network.

Verizon objects to AT&T's proposal calling for it to certify that its dark fiber meets industry standards. Verizon states that the FCC does not require ILECs to improve the transmission quality of their facilities for a competitor's use. It also points out that dark fiber does not have uniform capabilities. Industry standards have changed since fiber was first installed, and the fiber lines may experience degradation. For these reasons, Verizon states it cannot guarantee any constant quality of the fiber optic facilities, or that the fiber will be suitable for any particular purpose. It insists that CLECs must upgrade and retrofit dark fiber to meet their needs.

Verizon also states that it must maintain and restore the damaged dark fiber facilities it owns. This means that it may have to splice the fiber cables it provides to AT&T. Accordingly, it states that AT&T's access to unused dark fiber must assume the risk of such future splices. It distinguishes this maintenance activity from other maintenance responsibilities that would properly belong to AT&T.

Finally, Verizon objects to AT&T personnel having unrestricted access to its network to splice and test dark fiber. As stated elsewhere, Verizon is concerned about such access having an adverse effect on the network and its interfering with the company's relationships with others.

The Commission finds that AT&T and other CLECs should obtain access to Verizon's dark fiber facilities pursuant to the tariff provisions that have been implemented consistent with the requirements of the UNE Remand Order. AT&T has not shown any unique circumstances that distinguish it from other CLECs.

reference the applicable tariff provisions.

9. Line Splitting[74]

In the pending DSL Collaborative Proceeding, Verizon is cooperating with the CLECs to develop shared line access. It has filed descriptions of line sharing and line splitting, and it has provided a schedule for implementing tariff provisions. Working groups are developing systems and operational requirements; AT&T and others are participating in this process. AT&T wants to establish line splitting provisions in the interconnection agreement. Rather than establish any line splitting requirements here, Verizon proposes that the collaborative process and the company's tariff set the applicable standards. Verizon believes it is better to conform the new agreement to the business rules and the OSS systems being devised in the DSL collaborative proceeding.[75]

AT&T, Verizon, and other carriers are rolling out line splitting in New York, and they are testing the new provisioning procedures and interfaces that are needed to deploy it. A line splitting working group meets on a regular basis to accomplish this work. On May 29, 2001, Verizon filed a proposed tariff addressing the terms and conditions for line splitting and a recurring charge for OSS line sharing, line splitting and sub-loop unbundling. In response to a Commission invitation to submit comments,[76] several CLECs, including AT&T, filed incisive

[74] Line splitting occurs when a customer that obtains voice service from a CLEC on a UNE-Platform basis also obtains high-speed data service on the same line.

[75] Were the Commission to address line splitting here, Verizon has addressed the specific matters they would contain, including the purchase of UNE-Platform loops, the provisioning of splitters and the provisioning interval, splitter lease terms, splitter locations, operational support systems, advanced services, and the use of authorized vendors. See, Verizon's May 25 Arbitration Brief, pp. 180-193.

[76] Case 00-C-0127, supra, Notice Inviting Comments (issued June 27, 2001).

process. The approved tariff shall be incorporated by reference into the new agreement.

10. Line Sharing and Resold Voice Services

AT&T proposes that line sharing be available in instances where it resells Verizon's voice services. Verizon states that this would contravene the FCC's Line Sharing Order.[77] According to Verizon, the Order requires an ILEC to provide access to the high frequency portion of a copper loop when it is the voice provider.

Verizon's position is correct, and its definition for line sharing is adopted. Moreover, the DSL Collaborative Proceeding is the proper proceeding for developing any process that would allow CLECs to provide data over resold lines.

11. Network Interface Devices

According to Verizon, its tariff adequately addresses the use of network interface devices, and it proposes that the tariff provisions be incorporated by reference into the new agreement. AT&T is generally opposed to any tariff provisions being incorporated into the agreement. For the reasons stated above, the Commission finds that the tariff should set the terms and determine the provision of these UNEs. We note that the existing tariff does not contain definitions for the various network interface devices, and it should be amended to include them.

12. Local Switching: Latent Features and Exemptions

Verizon provides AT&T access to its local switching as required by the UNE Remand Order and its tariff. It proposes that the tariff be incorporated by reference into the new agreement; AT&T proposes its own contract language. Verizon does not believe that tariff provisions should be at issue in

77 CC Docket Nos. 96-98 and 98-147, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98 (issued December 9, 1999).

reflect properly its local switching obligations.

In particular, Verizon objects to AT&T obtaining any latent switch features to which Verizon does not subscribe and for which it is not licensed. Verizon points out that it would incur additional costs were it to obtain and deploy any latent features for AT&T. It believes AT&T should bear the development and provisioning costs for any latent features it should seek through the bona fide request process.

In a related matter, the parties have agreed to include in the new agreement citations to the legal authorities governing unbundled local switching. While they have agreed to cite the FCC's Third Report and Order, Verizon objects to AT&T's paraphrases of it. Verizon believes they are unnecessary, and they could become obsolete or ambiguous were the FCC to change its rules.

In particular, the parties differ on a significant term in the FCC order, "end user with four or more lines."[78] AT&T wants to narrow this exception to unbundled local switching by limiting it to the geographic location in which a business customer takes service. Verizon would apply the term broadly to business customers no matter where they are located.

To support its position, AT&T points to the commitment Verizon made in the Section 271 proceeding to make unbundled local switching available for business customers. According to AT&T, any exception should be applied narrowly in order to make competitive alternatives more available to the mass market and to small business customers.

In response, Verizon states that it fulfilled its Section 271 commitment by including UNE-Platform service in its tariff. It claims that local switching need not be unbundled where it would not improve competition, as is the case with

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[78] This phrase, according to AT&T, permits Verizon to not provide unbundled switching on the fourth and subsequent lines serving the same business end user in the largest metropolitan statistical areas.

populated areas.

In general, the Commission finds that Verizon's tariff properly addresses local switching requirements, and the tariff provisions should be incorporated into the new agreement. With respect to any latent switch features AT&T may want, it should pay for their development, activation, and any associated fees and charges. As to AT&T's proposals to apply the unbundling rule only to the fourth or greater line (to limit the rule to voice grade DS-1 equivalents) and to apply the rule to customer locations, some aspects of these disputes are clear, but others are not properly joined for us to consider them here. Moreover, AT&T is not the only UNE-Platform provider in New York, and the issues it raises could impact other providers. If AT&T believes Verizon's tariff, as it implements the FCC's four business line rule, is ambiguous or that Verizon is misapplying its tariff, we encourage AT&T to file a petition for a declaratory ruling, and we will obtain input from other CLECs with an interest in the matter. Otherwise, we deny AT&T's proposal pertaining to the interconnection agreement.

13. Interoffice Facilities and Dedicated Transport

Verizon provides CLECs access to unbundled interoffice facilities as required by the FCC UNE Remand Order and pursuant to the company's tariff. It proposes that the tariff (as amended from time to time) be incorporated by reference into the new agreement. Verizon claims AT&T's proposal does not reflect its obligations properly, and it objects to AT&T's definition for "dedicated transport."[79]

AT&T's definition comes from the parties' first agreement, as interpreted in an alternative dispute resolution proceeding. According to Verizon, AT&T was improperly provided two UNEs for the price of one by an interpretation that did not

[79] Within AT&T's definition, Verizon also objects to such phrases as "interoffice transmission path" and "network components" as being undefined and broader than the FCC's definition.

Remand Order. It urges that the term from the first agreement not be used in the new agreement.

The FCC has defined "dedicated transport" as a type of interoffice transmission facility, and as such, the term does not include a local loop. The facility between a central office and an end user is considered a different unbundled network element. Verizon insists it has no obligation to provide AT&T transport and loop combinations as a single UNE.[80] It urges the Commission to establish proper rates for each UNE on the basis of their respective costs.[81]

AT&T prefers the definition the alternative dispute resolution process established that includes dedicated transmission facilities between customer premises and the AT&T point of presence (POP). It clearly benefits from being able to purchase, as a single UNE, a DS-1 level transmission facility from a customer's premises to the POP.

AT&T acknowledges that its preferred definition does not comport with the FCC definition; however, it states that the parties are not bound to use the FCC definition.[82] AT&T claims it has relied on the existing definition to implement its business plans in New York, and it believes Verizon's position has changed after it obtained its Section 271 approval. AT&T also states that the prevailing definition reflects the type of special access arrangements that were available in New York before the Act.[83]

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[80] According to Verizon, such a combination of two UNEs constitutes an expanded extended link (EEL).

[81] Act §§252(b), (c)(2), and (d). Verizon points out that, in the UNE Pricing Proceeding, the Commission determined that an interoffice facility runs between two central offices.

[82] AT&T maintains that the FCC definition is descriptive and not preclusive. According to it, the FCC definition should not be used to restrict the use of dedicated transport.

[83] Verizon denies that special access arrangements provide any guidance. It points to differences in UNE configurations, billing arrangements, rates and charges as undermining AT&T's comparison.

free. According to it, Verizon has provided an incorrect price comparison that compares the costs of a DS-1 circuit with a four-wire digital UNE loop. The proper comparison, it states, would compare the costs of a DS-1 dedicated transport circuit between two central offices with the costs of a DS-1 circuit running between a central office and a customer's premises. Under this approach, the costs of both circuits are the same. Thus, AT&T believes TELRIC rates should apply to the dedicated transport it would retain.

AT&T also urges the Commission to affirm the rate application rules from the first agreement that permit it to order multiplexing for a dedicated transport UNE (or an unbundled loop UNE) as a single UNE order and not as a UNE combination. According to Verizon, multiplexing is a transport functionality not an interface UNE. It points out that the tariff addresses multiplexing in the transport section, and the Commission's Multiplexing Order resolved this matter against AT&T.[54] Rather than perpetuate the results of the first agreement, Verizon urges the Commission to reflect the Multiplexing Order results into the new agreement.

Verizon is correct that the standard understanding of dedicated transport facilities is that they run between switching offices. Such facilities typically differ from the plant and technology that is used for the loops to customer premises. Moreover, the facilities used to connect an AT&T POP and a customer's premises generally include both a loop and an interoffice facility. The Commission finds that Verizon should be allowed to recover the cost of all the transport and loop facilities that are used for these connections. Accordingly, Verizon's definition shall be used for purposes of the new agreement.

14. Limits on Unbundled Access

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[54] Cases 98-C-0690 et al., Combinations of Unbundled Network Elements, Order Regarding the Multiplexing Component of the Expanded Extended Link (issued August 10, 1999).

to UNEs at any technically feasible point on its network. However, at this time, Verizon considers collocation to be the only method available for CLECs to access UNEs at its premises. Verizon acknowledges that collocation is not required for access at the customer premises, or when UNE combinations are ordered. It also acknowledges that a CLEC may request access at other points on the network by using the bona fide request process that permits it to evaluate the request, the applicable law, and the appropriate rates.

Next, Verizon claims that stand-alone loops that are provisioned over integrated digital loop carrier (IDLC) facilities cannot be unbundled. It proposes to reflect this in the new agreement, claiming it is consistent with regulatory decisions in other states and the FCC's UNE Remand Order. AT&T acknowledges these circumstances and requests to be informed of any such facilities when Verizon provides its firm order confirmation. However, Verizon states that it does not know when it confirms an order whether any IDLC facilities are present. It proposes to notify AT&T within three business days of a request, if unbundled facilities are unavailable.

Finally, the parties agree that Verizon should be compensated when its personnel make premises visits to AT&T customers but do not gain access. Verizon proposes that the charge equal the sum of its service order and its premises visit charges.

AT&T has not addressed the issues presented in this section, and it must be presumed to have no objection to Verizon's positions. In any event, Verizon proposed §11.7 is acceptable and adopted.

15. UNEs Provided For Telecommunications Service

Verizon insists that CLECs can only obtain UNEs to provide telecommunications service and for no other purpose. It proposes to reflect this in the new agreement; AT&T has proposed to exclude any such limitation. Verizon maintains that the new law, including §251(c)(3) of the Act.

AT&T does not address this issue in its briefs, so it is not clear why it proposes to exclude the limitation; nor can we think of a reason to do so. Access to UNEs is intended for the provision of telecommunications service, and Verizon may reflect this in the new agreement.

16. Credits for Missed Appointments

Verizon charges AT&T a non-recurring fee to recover its costs when it converts an analog, two-wire loop with local number portability. Under certain circumstances, Verizon waives the charge when an appointment is missed, and the work is rescheduled. The parties disagree about the removal of this charge from Verizon's billing system. Verizon states that it cannot remove the charge (once a service order is initiated) without making significant modifications to its ordering and provisioning process. For this reason, Verizon states that AT&T should notify it when a credit is owed. According to Verizon, it is far less costly for AT&T to provide notification, than for Verizon to overhaul its ordering and provisioning system for CLECs.[85]

AT&T is also concerned about double billings in these circumstances. Rather than request a credit, AT&T insists that Verizon should cancel the charges on its own. If necessary, it believes that Verizon should reprogram its system and undertake the measures needed to ensure that only one charge is assessed. AT&T believes it should not be saddled with the expense and burden of seeking credits for incorrect billings.

We accept at face value Verizon's claim that it would be very costly for it to correct the current situation. Consequently, AT&T must notify Verizon when a credit is due.

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85 In this context, Verizon objects to AT&T's use of the term "firm order confirmation" for conversions of analog two-wire loops with local number portability. According to it, "local service request confirmation" is the proper term the industry recognizes, and that comports with applicable law.

faulty Verizon bills, AT&T should be compensated by Verizon for its administrative expenses.

17. <u>Maintenance of UNEs</u>

Verizon believes that AT&T should be responsible for initial testing and trouble isolation on the UNEs it purchases from Verizon. When AT&T accesses UNEs through collocation, Verizon states, AT&T should run the tests and trouble isolation from its collocation cage or space. In instances where AT&T obtains access through UNE-platform arrangements, Verizon also states that AT&T should be responsible for performing remote testing using appropriate equipment. Verizon complains that AT&T's proposed language for UNE maintenance is too broad and is likely to produce disputes in the future. Instead of allowing complaints to emerge, Verizon urges that its language be adopted.

AT&T reports that the parties are close to agreeing on AT&T's responsibility to perform initial tests and trouble isolation work. However, AT&T does not believe that it should have this responsibility in situations where it is not possible for it to do tests that only Verizon can perform.

We find that AT&T should not be held responsible for initial testing where it is not technically feasible for AT&T to perform the test. The parties are directed to resolve this matter by defining "technically infeasible" and by listing the situations where AT&T is absolved of this responsibility.

<u>Combinations</u>

Verizon proposes that its tariff provide the applicable terms and conditions for UNE combinations. It states that the tariff contains all the combinations required by law.

it will update the tariff accordingly.[86]

Verizon objects to AT&T's proposal to use holdover provisions from the first agreement for UNE combinations. According to Verizon, the provisions are obsolete, and they define combinations that do not exist and are no longer contemplated. It also criticizes AT&T's language for addressing individual UNEs. Because individual UNEs are addressed elsewhere, it sees no need for duplicate provisions that could create confusion and conflicts.

If the Commission were to conclude that the new agreement should address combinations, Verizon urges that the AT&T provisions be substantially truncated.[87] With respect to an AT&T request for combinations that do not currently exist, Verizon points out that a recent judicial decision held that ILECs do not have an obligation to offer combinations that do not already exist or that are not already combined in the ILEC's network.[88]

Verizon objects also to AT&T's proposal to use a single local service request to order EELs and other combinations. According to Verizon, single orders do not comport with the industry's step-by-step provisioning practices.[89] It states that the existing process supports only

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[86] In addition to three standard offerings, UNE-Platform, expanded extended links (EELs), and extended dedicated trunk ports, the tariff provides general terms, conditions, and rates for other possible combinations carriers may request.

[87] Verizon states that some of the AT&T provisions are acceptable (§§3.1.7 and 3.1.8), but most are confusing or unnecessary. For example, §3.4.3 is obsolete given the parties' decision to adopt Verizon §17, and §3.4.4 is superceded by their agreement to use Verizon §7.3.

[88] Iowa Utilities Bd. v. FCC, 219 F. 3d 744, 759 (8th Cir. 2000).

[89] Verizon states that the existing ordering system process was developed by the Alliance for Telecommunications Industry Solutions (ATIS), the Ordering and Billing Forum (OBF), and the Access Service Ordering Guidelines (ASOG). It notes that these bodies provide an industry consensus, and CLECs are

not be permitted to change the service order system and force Verizon to incur substantial expense to do so.

Finally, with respect to UNE-Platform and EELs, amendments were made to the first agreement to implement these offerings. Verizon claims there is no need to include the amendments in the new agreement, because the tariff suffices for these purposes. In particular, Verizon points to the Commission order that addressed UNE combinations and mandated tariff revisions.[90] According to Verizon, the approval of the tariff effectively closed this matter, and AT&T should not be allowed to pursue it here for a second time.

AT&T has sought to retain obsolete terms for combinations and to negotiate its own terms for provisioning UNE combinations, some of which we have determined elsewhere in this order to be inappropriate. We find that the tariff provides for standard UNE combinations and for other possible combinations. Accordingly, it should be incorporated into the new agreement by reference.

Conversions

Consistent with its proposal that the tariff provisions for UNEs be incorporated by reference into the new agreement, Verizon proposes that the tariff terms for retail and special access service conversions to UNEs (and combinations) also be incorporated into the new agreement. Verizon points out that a FCC rulemaking proceeding is considering special access conversions and the use of UNEs to provide exchange access. Verizon plans to incorporate the results of the FCC proceeding into its tariff.

If the Commission were to include conversion requirements in the new agreement, Verizon urges that AT&T's provisions be rejected, because they are overly broad and so

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familiar with their work and the common ordering processes they have established.

[90] Case 98-C-0690, supra, Order Suspending Tariff Amendments and Directing Revisions (issued January 11, 1999).

According to Verizon, there is little need for conversion provisions in the agreement, because AT&T will not convert any special access circuits to UNEs or combinations before March 2004. By then, the parties plan to have a better understanding of the applicable standards from which suitable language can be crafted.

With respect to the standards for EELs, Verizon believes that they are likely to change during the term of the new agreement, and AT&T should not preclude the changes from applying to it. Verizon observes that the current standards for EELs are reflected in the tariff, and it is not necessary to set them again in the new agreement.

Verizon also claims AT&T's methods and procedures for conversions are unreasonable. It objects to AT&T's proposal to deem its orders complete upon delivery, providing Verizon no time to process them. Verizon believes its process for EEL conversions properly take into consideration customer concerns about service continuity, CLEC concerns about timely billings, and the time Verizon needs to make conversions.[91]

In general, AT&T doubts that Verizon, and its tariffs, can be relied on to conduct reasonable business practices. It believes Verizon's obligations to convert UNEs should be fully detailed in the new agreement.

Inasmuch as the FCC has yet to act on the terms and conditions needed for the conversion of special access facilities to UNEs, it is premature to include any language in the agreement concerning the FCC's action. Moreover, we have stated applicable terms and conditions for conversions in various orders the results of which are reflected in Verizon's tariff. Accordingly, Verizon's proposal is accepted.

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[91] Verizon expects to use up to 30 business days for conversions, whether they are processed manually or by a mechanized process. Verizon plans to implement a mechanized conversion process in the fourth quarter of 2001.

AT&T proposes a cooperative testing provision to permit it to test UNEs (and ancillary functions) at any time of the day or week, and at any interface. AT&T believes this flexibility is needed for smooth operations and for it to adequately assess the functionality of Verizon-provided equipment.

Verizon objects, claiming it is under no obligation to provide AT&T comprehensive testing rights. Verizon is willing to provide carriers cooperative testing rights in limited circumstances. For example, it has agreed to cooperative testing in the DSL provisioning process. But, Verizon is opposed to giving AT&T any more rights than can be supported by industry forums and collaborative proceedings.

We are inclined to adopt reasonable cooperative testing practices for the benefit of both parties; however, we find that the specific language proposed by AT&T is overly broad, and it consequently cannot be adopted. The parties should continue to seek to achieve a mutually acceptable provision for the new agreement given their agreement in principle to the utility of such testing, and the guidance we provide here.

Verizon should cooperate with AT&T, as needed, to ensure that the network elements provided to AT&T and operational interfaces are in compliance with either the terms of Verizon's tariff or specific requirements of the interconnection agreement, or are otherwise functioning properly. AT&T's language specifying access for testing at any interface between the two parties goes too far; the parties should define the points of access. Finally, AT&T's proposal at §11.17.3 pertaining to multiplexers has nothing to do with cooperative testing and should be removed.

Collocation

AT&T urges that the new agreement contain provisions to reduce its collocation costs and to make the process fair and reliable. It proposes that AT&T employees have access to accompanied by Verizon's employees or escorted by security guards. AT&T claims its proposal is consistent with the FCC's rules, and it should not be charged for escorts.[92]

Verizon believes the new agreement need only incorporate by reference the collocation provisions contained in its tariff. As to the need for Verizon escorts, the company states that this matter was not addressed during the parties' negotiations, and the Commission should therefore dismiss it. In any event, Verizon observes that the tariff permits it to use escorts whenever a CLEC requires access to areas outside the multiplexing node, when a CLEC accesses a cageless collocation arrangement that lacks other security, or on a CLEC's first visit to a central office. Further, the tariff permits Verizon to escort CLECs to their cageless arrangements at any time at no charge or delay to the CLEC.

In buildings where AT&T and Verizon both have facilities, AT&T proposes to collocate by running cables from its floors to Verizon's. Verizon points out that the FCC had precluded this practice and required all CLECs to collocate in the ILEC's central office.[93] Verizon also believes AT&T's proposal contravenes the Act's collocation definition, as it requires a physical collocation of interconnection equipment at the ILEC's premises.[94] It claims AT&T should not obtain competitive advantages that no other CLECs have.

Finally, Verizon wants to be able to collocate at AT&T facilities. Verizon believes it should have the option to have a collocation arrangement or share another carrier's collocation facilities. Verizon has requested, but AT&T has not offered it, contract rates for collocation space.

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92 47 C.F.R. § 51.323(i).

93 CC Docket Nos. 91-141 and 92-222, In the Matter of Expanded Interconnection with Local Telephone Company Facilities Amendment of the Part 69 Allocation of General Support Facility Costs, Report and Order and NPRM (issued October 19, 1992).

94 §251(c)(6).

carriers in its central offices for interconnection purposes, but not for collocation purposes or to access UNEs. With respect to intra-building cable interconnections, AT&T claims it should not be saddled with unnecessary costs when it can use this method. It denies that the arrangement provides it any unfair competitive advantage.

The Commission finds that the new agreement should incorporate by reference Verizon's collocation tariff provisions. The tariff addresses the use of escorts consistent with the FCC rules. With respect to the use of intra-building cables in buildings where AT&T's equipment is proximate to Verizon's wire center, we have concluded that it is efficient to permit AT&T to interconnect its facilities in this manner.

Finally, we find that the new agreement need not impose any collocation or UNE obligations on AT&T, inasmuch as it is a CLEC and not an ILEC.

Operational Support System Matters

AT&T drafted 29 provisions for the new agreement addressing the pre-ordering, ordering, provisioning, maintenance and billing functions. They cover such matters as service address verification at the pre-order stage,[95] electronic notification of jeopardy,[96] order completion,[97] and unscheduled maintenance and testing.[98] It states that Verizon would not

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[95] On occasion, AT&T provides Verizon an incorrect service address for an end user. AT&T wants to be able to verify service address and other information at the pre-ordering stage. If corrections are not made here, AT&T may suffer order rejections.

[96] Not all service orders are executed as originally planned. AT&T seeks electronic notification from Verizon of tardy installations, so it can manage customers' expectations and promote customer satisfaction.

[97] AT&T wants Verizon to notify it electronically when an order has been provisioned, so it can initiate billing and not guess when the work has been done.

agreement to be a voluntary undertaking, AT&T urges the Commission to include in it everything Verizon may be unwilling to do on its own. AT&T states that the 29 provisions apply to essential operations, and Verizon should not have refused to discuss them.

In some instances, AT&T claims, Verizon is its single source of supply. Were the company to change its business practices, AT&T could suffer. To guard against any dire consequences, AT&T wants to include a provision in the new agreement allowing it to grandfather any OSS features Verizon may sunset. AT&T is willing to enter good faith negotiations to obtain them on acceptable terms and prices.

AT&T also wants the new agreement to contain a contingency plan should Verizon's OSS cease to function. It insists that a disaster recovery plan is needed given the essential role that OSS plays. The absence of a plan, AT&T states, puts its customers in jeopardy and threatens its ability to compete. According to Verizon, there is no need for any CLEC-specific contingency and disaster recovery plan. Were it to devise such a plan for AT&T, Verizon believes other CLECs would request such plans at great expense and burden to it.

AT&T also objects to Verizon issuing Firm Order Confirmations (FOCs) that do not inform it when the local service work will be performed. AT&T claims this runs afoul of the C2C guidelines and denies it scheduling information to which it is entitled.

For its part, Verizon urges that OSS matters not be addressed in the new agreement to the degree or detail that AT&T has proposed, and that any OSS requirements be consistent with Merger Conditions, applicable law and accepted industry

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[98] AT&T wants to know as soon as possible of any unscheduled maintenance, testing, or monitoring that may affect its customers.

the CLECs through the change management process.[99]

In a related matter, AT&T refuses to provide Verizon access to its OSS as a condition for obtaining access to Verizon's OSS. AT&T insists that the ILEC's duty to provide non-discriminatory access is unconditional, and Verizon should not overreach the Act.[100] AT&T notes that it participates in and contributes to industry-wide forums. Thus, it believes that Verizon needs no direct recourse to it. Nonetheless, Verizon states that in the competitive market it can win back customers from AT&T, and it should have access to AT&T's OSS to minimize delay and to facilitate customer migration.

While AT&T seeks specific provisions in the new agreement to address OSS requirements and seeks to redefine FOCs, these matters are of industry-wide concern. We find no benefit in allowing individual CLECs to negotiate them when they have already been addressed in industry-wide proceedings, and no new or unique circumstances are present. Furthermore, to the extent AT&T, or any other CLEC, may propose changes to pre-order, ordering, provisioning, maintenance and billing functions that have general application to the industry, such matters should be brought directly to the Commission or to pending collaborative proceedings.

AT&T's proposal for a disaster recovery plan in the new agreement is not accepted. This is not to say that the adoption of a contingency plan in the event of a major service breakdown does not have merit. It does. The problem, once again, is that this is an industry-wide concern, which Verizon and all the CLECs should address in order to jointly establish interface contingency plans for Verizon-provided OSS.[101]

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[99] The change management process provides documented procedures that Verizon and the CLECs use to facilitate their communication about OSS changes, new interfaces and the retirement of old interfaces.

[100] §251(c)(3).

[101] We will require Verizon to draft a disaster recovery plan and submit it to the Commission within 60 days of the date of

functionalities to protect it from Verizon-imposed OSS changes, in effect, this could lock Verizon into practices and procedures that may not comport with the direction and timing of industry changes. We find this unacceptable, and AT&T's proposal is not adopted. We note that OSS systems changes cannot be made precipitously. The change control process provides CLECs ample notice of pending changes. We also note that the uniformity of Verizon systems is guaranteed for a specific time by a settlement reached in a matter that MCI Worldcom, Inc. and AT&T brought to the FCC.[102] Thus, we believe that AT&T's concerns are adequately protected by the procedures that are in place.

Finally, with respect to Verizon's request for reciprocal access to AT&T's OSS, the Act contains no unbundling requirement for CLECs, therefore, Verizon's proposal is not adopted. Verizon is not without recourse, however, as this matter is currently being considered in the CLEC to CLEC Collaborative Proceeding.

Weekend Number Porting

AT&T wants to be able to transfer new customers over weekends, and during other off-hours, to satisfy customer preferences and to avoid interference with business customers' operations. It claims that Verizon is unwilling to provide it adequate support for off-hour porting.

Verizon states that it does not provide technical support for porting over the weekend. Nor does it install any new services for its own customers on these days. It maintains skeletal crews to perform necessary repairs; after-hour installations are only scheduled for large customers with public safety responsibilities, such as hospitals and police stations. It is willing to do the same but no more for AT&T.

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this order. Thereafter, comments will be solicited from CLECs and a plan will be established.

102 MCI Worldcom, Inc. and AT&T, Corp. v. Bell Atlantic Corp., FCC File No. EAD-99-0003.

porting, Verizon has committed itself to install, by the close of business on each Friday, triggers on the lines AT&T wants to port. Verizon states that this enables AT&T to transfer the numbers without any further intervention until Monday, at which time, Verizon will make the necessary changes to the facilities, records and databases. This solution, according to Verizon, requires no additional weekend support, lets AT&T control its porting activities, provides a seamless transition, and permits new service installations to occur over the weekend.

Verizon's offer to provide AT&T and other CLECs an unconditional ten-digit trigger appears to satisfy AT&T's desire for weekend porting activity.[103] This offer should be formally executed in the new agreement.[104]

Audits

AT&T and Verizon agree that audits of each other's books and records may be needed to verify the accuracy of their bills to one another. However, they disagree about the use of company employees to perform the audits. AT&T believes the parties should be free to select either an outside auditor or use their own employees.[105] Verizon prefers that certified public accountants perform audits and that employees be precluded from doing so unless the parties can agree otherwise. Verizon is concerned about employee qualifications and potential bias.

AT&T complains that Verizon's proposal could preclude it from using the most knowledgeable experts. According to it,

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103 For weekend ports, Verizon would remove the trigger at 11:59 p.m. on Monday evening.

104 Verizon should cease billing the customer at the time the port actually takes place; it should not be a function of when the trigger is removed by Verizon.

105 AT&T points out that its proposal is consistent with the parties' first agreement, and an audit was performed by its employees without any adverse consequences. Also, a Sprint/NYNEX interconnection agreement arbitrated by the Commission contains a similar audit provision.

trained) could make the cost of audits prohibitive. By not using in-house auditors, AT&T believes efficiencies would be lost, and the audits would be lengthy and lack continuity. AT&T is willing to impress upon its employees their obligations to Verizon to avoid the misuse of any confidential information. However, Verizon rejected this offer.

AT&T's proposal is adopted. It has provided reasonable grounds supporting its position that independent auditors should not be mandated. AT&T has offered to provide reasonable assurances to preserve confidential information. If necessary, a provision addressing confidentiality may be included in the interconnection agreement.

AT&T Rates Applicable to Verizon

Verizon believes AT&T should not charge it any greater rates than Verizon charges AT&T. AT&T objects, observing that CLECs have no market power. AT&T believes it should be permitted to charge rates consistent with market forces and its underlying costs. It claims that a price cap similar to the one Verizon has proposed here was rejected in a case involving Sprint Communications.

In response, Verizon points out that the standard practice in New York has been to limit CLECs to the prices that the ILEC charges, unless the CLEC provides rate or cost information demonstrating that higher prices are warranted. Absent a rate or cost study, Verizon believes this approach should apply to AT&T's prices for the services and facilities that Verizon may want to obtain from it.

We find Verizon's proposal to be reasonable, as it is premised on the established practice we employ. Absent a cost study and Commission approval of a higher rate, the default rates are those contained in Verizon's tariff.

Bona Fide Request Process

Like many other tariff provisions, Verizon proposes to incorporate in the new agreement the bona fide request process the tariff. The Commission finds that the parties need such a process to effectively process AT&T's request for new UNEs. Accordingly, Verizon's proposal is adopted.

CONCLUSION

Having resolved the issues the parties submitted for arbitration, Verizon New York Inc., AT&T Communications of New York, Inc., TCG New York, Inc., and ACC Telecom Corp. are expected to execute an interconnection agreement consistent with the uncontested results of their negotiations and our determinations by no later than August 31, 2001.

The Commission orders:

1. The issues presented for arbitration by Verizon New York Inc., AT&T Communications of New York, Inc., TCG New York, Inc., and ACC Telecom Corp. are resolved as decided herein.

2. This proceeding is continued.

By the Commission,

(SIGNED) JANET HAND DEIXLER
Secretary

PENNSYLVANIA

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held October 12, 2001

Commissioners Present:

Glen R. Thomas, Chairman
Robert K. Bloom, Vice-Chairman
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

Petition of Sprint Communication Company, L.P. for an Arbitration Award of Interconnection Rates, Terms and Conditions Pursuant to 47 U.S.C. §252(b) and Related Arrangements With Verizon Pennsylvania, Inc.

A-310183F0002

OPINION AND ORDER

BY THE COMMISSION:

232297v1

Table of Contents

I. HISTORY OF THE PROCEEDINGS

This matter is the arbitration of unresolved issues requested pursuant to the negotiation of an interconnection agreement between Sprint Communications Company, L P. (Sprint) and Verizon Pennsylvania Inc. and Verizon North, Inc. (collectively Verizon). On May 15, 2001, Sprint filed a Petition requesting arbitration of interconnection agreements with Verizon. The Petition was filed pursuant to 47 U.S.C. §252(b) (the Telecommunications Act of 1996 or alternately TA-96), and the Commission's *Implementation Orders*[1] and listed approximately twenty-eight issues. Subsequently, Verizon filed an Answer to the Petition. The Answer listed approximately twenty-two unresolved issues.[2]

The matter was, thereafter, assigned to presiding Administrative Law Judge (ALJ) Marlane R. Chestnut acting as arbitrator. Pursuant to the schedule adopted at the pre-arbitration conference conducted June 8, 2001, both parties submitted Initial Offers on July 5, 2001. An arbitration conference was held July 11-12, 2001, in Philadelphia. Each party presented witnesses and introduced exhibits, which were admitted into the record On July 20, 2001, the parties submitted their Final Offers (FO hereafter). Accompanying Sprint's FO were additional exhibits, which were admitted by ALJ Chestnut. Further, Verizon, in response to the request of ALJ Chestnut, supplied responses to Sprint Exhibit 4, and an affidavit, which responded to Sprint Exhibit 12. These supplemental exhibits were admitted in the record.[3]

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1 *In re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (Order entered June 3, 1996; Order on Reconsideration entered September 9, 1996).

2 Certain of the unresolved issues listed by Verizon in its Answer, either overlap the issues presented by Sprint or present sub-issues related thereto

3 Appendix A to the Recommended Decision lists the witnesses and exhibits.

On August 13, 2001, the Recommended Decision (R.D.) of ALJ Chestnut was issued. The Recommended Decision addressed and provided recommendations on the unresolved issues.[4] On August 28, 2001, Verizon filed Exceptions to the Recommended Decision. Accompanying Verizon's Exceptions to the Recommended Decision was a Motion to Supplement the Record (Motion). Verizon's Motion requested permission to supplement the record with certain documents produced in a Maryland arbitration proceeding. Verizon asserted the information in this proceeding purported to support Sprint's oral representations and positions on certain issues litigated in the instant proceedings. The supplemental information was proffered for consideration in this proceeding. Also, Verizon's Exceptions included Appendices A through D and "Supplemental Appendix E" which are extensive reproduced record citations references.[5]

On August 28, 2001, the Exceptions of Sprint were also received. Subsequently, on August 31, 2001, Sprint filed an Answer to the Verizon Motion, as well as a Motion to Strike certain proffered documents.

By Secretarial Letter dated August 31, 2001, the parties were advised of the submission of an August 30, 2001, letter whereby Sprint and Verizon jointly agreed to extend the date for issuance of a decision ("Day 270" pursuant to the Commission's *Implementation Order*) in the above-referenced matter to September 19, 2001. Additionally, the August 31, 2001 letter advised the parties that they were afforded an opportunity to file Reply Exceptions in this matter on or before the close of business on September 6, 2001. Thereafter, the extension until September 19, 2001, was further extended by agreement of the parties until September 28, 2001, and then again until October 15, 2001.

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4 The issues enumerated in the Recommended Decision proceed from Issue No. 1 to Issue No. 28. The actual number of issues presented and addressed is fifteen.

5 Given the expedited time schedule, these references materially aided in this Commission's consideration of the unresolved issues in this proceeding.

On September 6, 2001, Replies to Exceptions were received from Verizon and Sprint. The proceeding is now ripe for disposition by the Commission.

By letters dated September 10, 2001 and September 13, 2001, Sprint lodged objections to Verizon's representations and attachments contained in reply pleadings.

II. DISCUSSION

A. Verizon Motion to Supplement Record and Due Process Concerns

1. VZ Position

In the Introduction preceding its exceptions to specific unresolved issues, Verizon asserts that the presiding ALJ improperly relied upon representations made by Sprint and information referenced by Sprint concerning the status and/or resolution of similar issues in arbitration proceedings in other jurisdictions to reach her determinations. (VZ Exc., pp. 2-5). In addition to arguing that the information provided by Sprint was inaccurate, Verizon further states that certain statements of Sprint's witnesses were improper hearsay, not subject to cross-examination. (VZ Exc., p. 2).

Verizon explains that it was during an arbitration hearing held in Maryland approximately one month after the arbitration proceedings between itself and Sprint in Pennsylvania, that "Sprint's misstatements became abundantly apparent." (VZ Exc., p. 3). Verizon cites specific examples of certain ALJ Chestnut recommendations and argues that the process used in reaching conclusions on the unresolved issues violated its procedural due process rights and did not comport with the "best evidence" rule. As noted, after its independent review of the nature of the documents referenced by Sprint, Verizon argues that Sprint's references were inaccurate. (VZ Exc., pp. 1-5).

For relief, Verizon, through its Motion, requests that the record be supplemented with documents produced by Sprint in the Maryland proceedings, which supposedly support Sprint's oral representations and positions on substantially similar issues. Verizon, in its Exceptions, further requests that the Commission engage in a *de novo* review of the relevant factual and legal issues in this proceeding. (*See* Motion; VZ Exc., p. 5).

2. Sprint Answer and Sprint Motion

In its Motion to Strike,[6] Sprint disputes Verizon's contention that Sprint failed to produce all relevant documents in support of the CLEC's issues. According to Sprint, the obligation was with Verizon to conduct discovery in the subject arbitration proceeding to obtain additional information rather than attempt to submit documents filed in the discovery process of another on-going proceeding. Sprint points out that Verizon was afforded the opportunity to conduct discovery of all assertions and issues presented in this arbitration proceeding. While Verizon was aware at the outset of Sprint's claims and proposals, as well as Sprint's relationship with other RBOCs, Sprint maintains that the ILEC chose not to avail itself of the discovery process. Sprint takes the view that it was not required to provide Verizon with other RBOC interconnection agreements absent a discovery request by Verizon for production of such documents. (Sprint Motion, p. 8). Sprint adds that despite Verizon's prior knowledge of Sprint's claims and its positions on the issues, Verizon now seeks to introduce misleading information under the pretext that the information has only become available due to Sprint's pending Maryland arbitration proceeding. (Sprint Motion, pp. 5-6). Sprint explains that because Verizon is not a party to the interconnections between it and each of the RBOCS (SBC, Bell South and Qwest) and lacks factual experience regarding the specifics of these business relationships, any conclusions regarding the documents proffered by Verizon are based on speculation. As such, Sprint maintains that these portions of Verizon's Exceptions should be stricken as extra record

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6 Sprint categorically objects to documents filed at Tabs 5-16 and Attachments A of Verizon's Exceptions.

Similarly, in its Answer, Sprint urges the Commission to deny Verizon's Motion to Supplement the Record for several reasons. First, Sprint believes that Verizon misrepresents the basis upon which extra record evidence is sought to be admitted. (Sprint Answer, p. 3). With respect to Verizon's contention that the extra record admission is sought to rebut numerous oral representations and positions taken by the CLEC, Sprint points out that Verizon failed to avail itself of the discovery process for production and introduction of these documents. Sprint also disputes Verizon's assertion that Sprint's arguments were oral arguments arguing that Sprint's positions with respect to other RBOCs relative to Verizon were stated in Sprint's Petition, Initial and Final Offers. (Sprint Answer, p. 3). Secondly, Sprint maintains that had Verizon adhered to the established procedural schedule, Sprint would have had an opportunity to rebut and fully respond to Verizon's proposed extra record evidence and Verizon's factually incorrect assertions. (Sprint Answer, p. 4). Having waited until the eleventh hour to present extra record evidence. which Verizon purports to be relevant to this proceeding, Verizon has foreclosed any meaningful opportunity by Sprint to cross-examine or rebut Verizon's assertions with its own witnesses and record evidence. As such, Sprint goes on to explain that it would be severely prejudiced if Verizon's proposed use of extra record evidence is permitted in this proceeding. (Sprint Answer, p. 5).

3. Disposition

On consideration of the Verizon Motion, and Sprint's Answer thereto, we shall grant said Motion and permit the record to be supplemented only for the limited purpose of taking official notice of the policy issues and positions taken in those issues by Sprint. Sprint's Motion is, hereby, denied.

The documents, attached as Attachment A to Verizon's Exceptions, are *inter alia*, certain Sprint responses to discovery requests by Verizon in Maryland Public Service Commission Case No. 8887. As noted, this matter is a pending Section 252 arbitration proceeding between the parties (Sprint and Verizon MD). To the extent the documents are responses to data requests and may not, at this juncture, be a formal part of the evidentiary record in the Maryland proceedings, such documents will not be used to resolve contested issues of fact here. However, to the extent they are documents offered by Sprint in a proceeding outside of Pennsylvania, Sprint is assumed to be under the same obligation of accuracy and truthfulness as in Pennsylvania. Thus, Sprint cannot be said to be inherently prejudiced by referring to statements made under circumstances where it has the same obligation to report. As noted, our review of the supplemental material shall not be used for the purpose of adjudicating any disputed facts at issue in the proceedings in Pennsylvania. Rather, we shall take official notice of the documents for the purpose of reviewing policy determinations relative to substantially similar issues addressed in those jurisdictions and statements or admissions of a party.

We additionally note that due to the extremely abbreviated procedural schedule necessitated by this matter, the parties did not file briefs in this case. This fact has, from our review of the record, been partly responsible for the dissatisfaction expressed by Verizon with regard to the ALJ's reliance on the statements and references of Sprint. We do not find that the ALJ improperly relied upon statements of either party in this matter, but drew appropriate inferences therefrom based on the testimony. One of the most cited and objectionable references appears at the Recommended Decision, page 17, where ALJ Chestnut remarked "I will take Sprint at its word that it is not requiring Verizon (or VADI) to purchase or deploy new facilities " The ALJ cites pertinent portions of Sprint's FO, pp. 24-25, which support the reference.

On balance, we find that the nature of the proceedings have afforded each arbitration participant with adequate procedural due process. In an effort to make clear that no party has been prejudiced by the process, we shall review, *de novo*, the contentions of the parties relative to the outstanding unresolved issues. Additionally, the opportunity to file Replies to Exceptions provides an additional assurance that the process is fair and consistent with due process principles. To the extent we agree with the disposition and/or reasoning of the presiding ALJ, however, we shall not be constrained to so indicate.[7]

B. Unresolved Issues

1. Issue No. 1 -- Terms and Conditions

a. Positions of the Parties

This issue is whether Sprint may apply its tariffs for transport and termination and for access to its facilities for interconnection with Verizon.

Sprint states the issue as follows: "May Verizon arbitrarily cap Sprint's rates and charges and preclude Sprint from adopting tariffed rates for certain wholesale services that are higher than Verizon's charges for the same or similar services under its tariff?" (Sprint Petition, p. 10, Sprint FO, p. 6). Sprint takes the position that its rates for wholesale services provided to Verizon should not be capped at Verizon's rates, but should be governed by its applicable, approved tariffs. (*Id.*) Sprint argues that to require it to provide wholesale services at Verizon's tariffed rates rather than its own rates for the same or similar services, would assume that they each have the same costs. Further, states Sprint, this would require that Sprint price its services at or below its tariffed rates. Sprint primarily relies on Section 1303 of the Public Utility Code ("Code"), 66 Pa. C.S. §1303, to maintain that such a provision would be unlawful. (Sprint FO, p. 7).

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[7] The Commission acts as the ultimate fact-finder and may disregard an ALJ's findings and reverse. *East Goshen Twp. v. Pa. PUC*, 486 A.2d 550 (Pa. Cmwlth. 1985); also *Pa. Elec. Co. v. Pa.PUC*, 473 A.2d 704 (Pa. Cmwlth. 1984).

Sprint states that it is willing, as a matter of compromise, to include a portion of Verizon's proposed language for Section 24 11.3 in a proposed interconnection agreement This language would state that rates and charges could be superseded by a new rate or charge when such rate or charge is required by order of the Commission or the Federal Communications Commission (FCC). (Sprint FO p 6).

Verizon maintains that the issue involves the rates and charges that it must pay Sprint for access to Sprint's facilities. (VZ FO, p 3) Verizon emphasizes that, as an incumbent local exchange carrier (ILEC), it is a captive purchaser of services from the competitive local exchange carrier (CLEC) and cannot obtain the services it requires to interconnect with the CLEC (Sprint) elsewhere Thus, to ensure the rates for these services are reasonable, Verizon proposes that Sprint's rates and charges for the same services, facilities and arrangements that it must obtain from Sprint should not be higher than Verizon's own rates for the same services, facilities, and arrangements. An exception to this principle would occur if Sprint's rates and charges for the same services exceed Verizon's rates and such costs have been justified to and approved by the appropriate regulatory authority. (VZ FO, p. 4).

Verizon buttresses its position that reliance on its (the ILEC's) cost data is warranted with two references. First, Verizon cites the FCC *Local Competition Order*, Para. 1085.[8] Second, Verizon argues that our *Global Order*,[9] particularly Section 53 59(a) of Appendix D thereto, supports the notion that a CLEC should be charging the same tariffed rates for certain wholesale services as the ILEC, absent some justification.

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[8] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996).

[9] *Joint Petition of Nextlink, et al.*, Docket No P-00991648, et al. (Opinion and Order entered September 30, 1999). (Appendix D, Section 53.59(a) and (c).

Verizon explains that CLECs are permitted to adopt an ILEC's rates or cost studies because such rates or cost studies, once approved, are presumptively reasonable It is, therefore, presumptively fair, says Verizon, that the CLEC should charge no more to the ILEC than the ILEC can charge to the CLEC, where the ILEC does not have a competitive alternative, but is required by obligations arising under TA-96 to interconnect and, therefore, purchase such services from the CLEC. Thus, states Verizon, a provision in an interconnection agreement that requires the CLEC to charge no more than the ILEC for the same or similar services is reasonable, fair, and comports with applicable law. (VZ FO, p 7)

Last, Verizon asserts that TA-96 provides Sprint the remedy of submitting a forward-looking economic cost study to rebut the presumption of "symmetrical" rates between the ILEC and CLEC In the event Sprint feared that its costs exceeded the amount Verizon is permitted to charge, Verizon argues that Sprint had the opportunity to justify a departure from the ILEC's rate by presenting a cost study. (VZ FO, pp. 7-8 citing a Maryland decision).[10] Sprint did not present such a study.

b. ALJ Recommendation

The ALJ recommended the adoption of Sprint's position. The pertinent reasoning is reprinted, below:

> . . First, there is no question that as a matter of law it [Sprint] is obligated by Section 1303 of the Public Utility Code, 66 Pa. C.S.A. §1303, to charge its tariffed rates for service, not the rates and charges contained in Verizon's tariff Second, each and every authority cited by Verizon as support for its position recognizes that the CLEC can, if it does not

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[10] *In the Matter of the Application of MFS Intelenet of Maryland . . .* , MD P.S.C. Case No. 8584ii, Order No. 72348, Section D-Regulation of New Entrants (December 28, 1995).

> wish to adopt Verizon's rates and charges, charge rates that are either negotiated or supported by a cost study. These authorities include the Federal Communications Commission's (FCC's) *Local Competition Order*, a Massachusetts D.T.E. arbitration order and the Commission's Global Order. . . .
>
> Use of an incumbent's rates for transport and termination have been accepted by the various regulatory bodies as a proxy, not necessarily a cap. A CLEC can choose to adopt an ILEC's rates, which are presumptively reasonable, so as to avoid the necessity of presenting an appropriate cost study. However, this is a rebuttable presumption – an ILEC clearly has the right to charge higher rates if they are cost-justified or negotiated. Of course, any proposed or existing tariff is subject to challenge. If an ILEC in that situation is unable to support its higher rates, then presumably it will not be permitted to include them in its tariff.

(R.D., pp. 3-4).

c. Exceptions and Replies

Verizon excepted to the ALJ's recommendation. It repeats the concerns expressed in its FO but emphasizes the reasoning of the Massachusetts Department of Telecommunications and Energy ("Massachusetts D.T.E.) that absent some compelling justification, Sprint should not be charging more than the incumbent charges for the same services when Verizon (the incumbent) must obtain those services from Sprint.

In Replies, Sprint urges the adoption of the Recommended Decision and points out that Verizon's reliance on Appendix D to the Global Order is misplaced.

d. Disposition

After consideration of the positions of the parties and review of the pertinent citations from the *Local Competition Order*, our *Global Order*, and state commission determinations provided by the parties, we find that Verizon has the better position. Therefore, we shall reverse the ALJ and direct the incorporation of Verizon's proposed language on this issue.

We view the essential question as what is the quantum of proof that a CLEC should produce to overcome the rebuttable presumption that the rates charged by an ILEC for the same or similar services should govern, and that another rate is justified. We do not view the issue as requiring a CLEC to charge a rate other than its tariffed rate in derogation of Section 1303 of the Code. The rates to be charged pursuant to a final, approved interconnection agreement, whether they are Verizon's or Sprint's, will be rates established pursuant to state or federal approved tariffs. Thus, either rate to be used for the services would be according to a regulatory approved process and, thus, Section 1303 would not be violated.[11]

The *Local Competition Order* as well as the Massachusetts decision cited provide for the CLEC to submit a forward-looking cost study as a means of rebutting the presumption that the use of symmetrical rates for the same or similar services is preferred. Sprint has not done so in this case, but has merely relied upon its Commission-approved tariffs as the basis for opposing Verizon's language. Mere reliance on approved tariffs falls short of the burden that the CLEC should meet where the parties cannot agree. Whereas Verizon cites our *Global Order* as support for its position, we note that the discussion of ILEC tariffs in the context of the *Gobal Order* Appendix D is

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[11] We make the same observation in the event Sprint would include a cost study in the record and this Commission were to approve a rate for a service which is different from either parties' filed tariff.

different than the context in which the parties are currently litigating unresolved issues pertaining to tariffs. While different, a review of the *Global Order* Appendix D does militate in favor of Verizon's position.

As the dominant carrier, Verizon's costs for wholesale services will be under the most active scrutiny for compliance with forward-looking cost principles mandated by the current applicable FCC rules and Commission determinations consistent with those rules. (*See, Further Pricing of Verizon Pennsylvania, Inc 's Unbundled Network Elements...*, Docket No. R-00005261, *et al.* (Order entered August 30, 2001)). At the state level, this Commission has authorized CLECs to charge rates for non-competitive services at or below those of the ILECs as a means of providing the CLECs relief from administrative burdens associated with cost justification for said rates. Thus, in Appendix D of the *Global Order*, the CLEC is relieved of the obligation to provide extensive cost support to justify charging rates for services that are substantially similar to those noncompetitive services provided by the LEC where such rates are at or below those of the LEC.

Thus, while the *Global Order* pertains to a "rate parity" analysis, the issue in this arbitration proceeding pertains to rate symmetry. Yet, we conclude that similar, though not identical, policy considerations support Verizon's position. The use of the ILEC's rates for the same or similar services promotes symmetry, avoids the potential for arbitrage of services or arrangements, and is easily established.[12]

Also, we agree that Verizon's proposed language is consistent with the *Local Competition Order* in that the CLEC is able to either negotiate a different rate or submit documentation, *i.e*, a cost study, for a rate other than that provided by the ILEC.

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[12] Sprint would discount Verizon's captive purchaser argument. This position has some validity in that Verizon is obligated to interconnect under TA-96 with a requesting CLEC. 47 U.S.C. §251(c)(2).

Based on the foregoing, we conclude that Sprint failed to meet its burden of proof regarding the rejection of the ILEC's rates for the same or similar services. Consistent with the above discussion, Verizon's proposed language shall be adopted.

We note that in a recent New York arbitration Order involving AT&T and Verizon New York, a similar question arose regarding whether to use the ILEC's tariffs or the terms of the interconnection agreement. (*See Joint Petition of AT&T Communications of New York, Inc., et al. . . for Arbitration to Establish an Interconnection Agreement with Verizon New York*, Case 01-C-0095 (July 30, 2001) (*AT&T/VZNY Arbitration*)). AT&T, as a CLEC, argued that Verizon NY had, on occasion, interpreted or implemented its filed tariffs in ways which were allegedly anti-competitive. AT&T also asserted that the tariff provisions placed an improper burden on it, as a CLEC, to justify any departures. The New York Public Service Commission (NY PSC) concluded that the ILEC tariffs should control unless the tariff did not specifically govern the situation addressed in the interconnection agreement. The NY PSC reasoned that the tariff approach provides a reasonable basis for establishing a commercial relationship, promotes comparable interconnections for CLECs and unbundled access on similar terms and had been approved to assist parties and reduce matters which must be arbitrated on a case-by-case basis. (*AT&T/VZNY Arbitration*, slip op , pp. 3-5).

Ironically, Sprint has cited a NY arbitration proceeding, *Petition of Sprint Communications Company L.P . . . for Arbitration to Establish an Intercarrier Agreement With Bell Atlantic-New York*, Case No. 99-C-1389 (January 28, 2000) (*Sprint/BANY Arbitration*) where the NY PSC rejected Verizon's position on this specific issue as it pertained to Sprint:

> Bell Atlantic-New York has proposed that Sprint not charge any more than Bell Atlantic-New York's tariff rates and charges for the services Sprint provides it, unless Sprint has a cost justification for a higher amount that has been accepted

> by the Commission. Sprint objects to any such cap on its rates and charges.
>
> * * *
>
> The Commission finds that the Bell Atlantic-New York proposal to tie Sprint's prices to its own tariff is unnecessary because Sprint is expected, and will be required, to maintain acceptable tariffs on file with the Commission. In any instance where Bell Atlantic-New York considers Sprint's proposed tariffs to be unwarranted, it may seek to raise the issue when the tariff provisions are presented to the Commission for action. No changes are necessary to the current process by which Sprint submits its tariffs to provide Bell Atlantic-New York a reasonable opportunity to address Sprint's rates.

(*Sprint/BANY Arbitration*, slip op., pp. 15-16). (Notes omitted).

We reject Sprint's request for rates other than Verizon's because Sprint has not sustained its burden of proof necessary to overcome the rebuttable presumption that the ILEC's rates are reasonable and should be charged for the same or similar services absent justification. Acceptable justification has been a cost study, which was not submitted in this case. Further, our determination here is consistent with 47 C.F.R. §51.711(b)-allowing asymmetrical rates for transport and termination of local traffic in certain circumstance.

2. Issue No. 3 – Resale of Vertical Services

a. **Positions of the Parties**

The issue is whether Sprint should be able to obtain from Verizon custom calling features, or vertical features, on a stand-alone basis for purposes of their resale pursuant to the applicable wholesale discount of TA-96. (Sprint Petition, p. 15). Sprint requests this Commission to direct the resale of vertical features consistent with

Section 251(c)(4) of TA-96, 47 U.S C. §251(c)(4). Sprint asserts that Verizon improperly relies upon its historical monopoly control over basic services, *i.e* , the dial tone, as a means of restricting consumer access to competitive options for vertical telecommunications services in the post TA-96 environment. (*Id.*).

Verizon states the issue is whether or not it is obligated under law to provide to Sprint, at wholesale rates, vertical features on a stand-alone basis where it does not offer these features to its end user customers independent of the underlying basic telephone service (dial tone). (VZ FO, p. 9). Essentially, Verizon's position is that Sprint may purchase vertical services from Verizon, but it must pay Verizon's retail price. Thus, Verizon proposes an interpretation of Section 251(c)(4)(A) of TA-96 that it is the obligation of the LEC to offer at wholesale only those services which the LEC offers to retail customers on a stand-alone basis. (*Id.*).[13]

b. ALJ Recommendation

ALJ Chestnut recommended that Sprint's position be adopted. She disagreed with Verizon's contention that it has no legal obligation to sell discounted vertical services to Sprint because it does not offer those services at retail on a stand-alone basis.

ALJ Chestnut observed that local dial tone and vertical features are, effectively, two separate retail offerings, which are separately tariffed, priced, provisioned, and billed. (R.D., p. 5). Thus, she reasoned, vertical services are telecommunications services which are sold to end-users, thereby making them a retail

[13] Verizon references its Tariff Pa. P.U.C. No. 1, §30E-1 and GTE North Inc. Tariff Pa. P.U.C. No. 4, §29. (VZ Final Offer, p. 9, n. 9).

service subject to Section 251(c)(4). ALJ Chestnut concluded that based on the testimony of Verizon witness Muller, Verizon's refusal to agree to the resale of vertical services was not based on any technical impediment, or operational concern, but on its legal position. (R.D., pp. 5-6)

ALJ Chestnut succinctly considered and rejected each successive Verizon objection to Sprint's position. She found that the existence of a Verizon tariff which bundles vertical features with an underlying dial tone could not be used to avert the TA-96 requirements for the resale of retail services at a wholesale discount. Also, ALJ Chestnut was convinced that the statutory presumption that LEC restrictions on resale are unreasonable was not overcome by Verizon. (R.D., pp. 6-7).

Finally, ALJ Chestnut considered the fact that Verizon indicated that it had not conducted a cost study for discounting vertical features. Based on this fact, she recommended:

> . . . Sprint's compromise position, explained in its Final Offer at 14, should be accepted. Verizon should make these vertical services available for resale to Sprint on a stand-alone basis (without dial tone) on an interim basis at the full wholesale discount until such time as Verizon files the appropriate cost studies that establish that a recalculation of the wholesale discount rate is justified and appropriate. Also, the billing options available to ESPs, expressed at page 14 of Sprint's Final Offer, should be made available to Sprint as well.

(R.D., p. 7).

c. **Exceptions and Replies**

Verizon filed Exceptions to the ALJ recommendation. (*See* VZ Exc., pp. 38-40). Verizon reemphasizes its position that Section 251(c)(4)(A) of TA-96 obligates it to offer for resale at wholesale rates, "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." (*See* also 47 C.F.R. §51.605(a)). Therefore, Verizon argues that Sprint may purchase vertical services from Verizon, but it must pay the retail price. (VZ Exc., p. 38).

In its Exceptions, Verizon apparently concedes that vertical services and dial tone are separate services - - "Verizon's position has been and continues to be consistent with applicable law – Sprint may purchase vertical services from Verizon, but it must pay the Verizon retail price." (VZ Exc., p. 38).

Verizon argues that TA-96 requires it to offer to CLECs at wholesale those services which it offers at retail. Thus, because Verizon only provides vertical services in conjunction with Verizon basic dial tone service, it should not, under this reasoning, be required to provide vertical services at the applicable wholesale discount. Verizon points out that the jurisdictions of Kentucky and Massachusetts have rejected Sprint's position. (VZ Exc., p. 38).

Verizon also criticizes the ALJ as having applied the wrong standard to the issue. After citing to the Conference Transcript, page 239, Verizon notes:

> Whether other carriers are doing it [providing a wholesale discount to vertical services] is not the standard. *The standard to be applied is whether Verizon offers the service at retail on a stand-alone basis*. Despite the obvious legal test set forth in §251(c)(4)(A), the ALJ limited her inquiry to asking Sprint's witness whether carriers elsewhere did what Sprint was asking.

(VZ Exc., p. 39). (Emphasis in original).

Verizon next discusses the ALJ direction that it provide vertical services at the full wholesale discount. Verizon explains that the wholesale discount is based on the costs that Verizon would avoid if it provided the service through resale. Verizon notes that it would avoid few, if any costs, applicable to the resale of vertical services.

In Replies to Exceptions, Sprint emphasizes that TA-96 does not mention the phrase "stand-alone basis." Thus, Sprint responds that Verizon attempts to re-write TA-96 include such a requirement. (Sprint R.Exc., p. 22).

Also, Sprint notes that there are no technical impediments to the resale of vertical features without the dial tone, and the record demonstrates that vertical features are offered at retail to end-users. Thus, pursuant to the FCC *Local Competition Order*, Para. 951, if a service is sold to end-users, it is a retail service. (R.Exc., p. 23). Sprint further points out that the FCC has explicitly held that vertical switching features should be made available to competitors through the resale provisions of Section 251(c)(4) of TA-96. (Sprint R.Exc., p. 23).

Finally, Sprint emphasizes that the non-Pennsylvania proceedings which rejected a similar position should not be binding upon our determination here and that with regard to the applicable wholesale discount, Verizon would inappropriately shift the burden of going forward to it as the CLEC, when such burden should be Verizon's. (Sprint R.Exc., pp. 24-25).

d. Disposition

On consideration of this issue, we shall adopt the recommendation of ALJ Chestnut. We conclude that her analysis concisely rebuts every aspect of Verizon opposition and is further compelled by the requirements of TA-96 under the facts presented herein.

(i) The LEC Duty to Provide for the Resale of Retail Services

Verizon's position advocates an interpretation of TA-96 that would modify the language of Section 251(c)(4)(A) to read as follows: "offers the service at retail on a stand-alone basis." (Emphasis added). We reprint the pertinent argument taken from Verizon's Exceptions concerning its interpretation of TA-96.

> Whether other carriers are doing it is not the standard. *The standard to be applied is whether Verizon offers the service at retail on a stand-alone basis*. Despite the obvious legal test set forth in § 251(c)(4)(A), the ALJ limited her inquiry to asking Sprint's witness whether carriers elsewhere did what Sprint was asking

(VZ Exc , p. 39). (Emphasis Verizon).

While Verizon argues that the standard should be whether a retail service is provided on a stand-alone basis, the applicable language of TA-96 reads as follows:

> (c) Additional obligations of incumbent local exchange carriers
>
> In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:
>
> * * *
>
> (4) Resale
>
> The duty –
>
> (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
>
> (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of

> such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

(47 U.S C. §251(c)(4)(A)(6).

Thus, Verizon's position would implicitly modify the language of TA-96 to include the additional requirement that a telecommunications service be provided at retail and on a stand-alone basis in order to qualify for the wholesale discount. This is an inappropriate statutory construction in which Verizon invites this Commission to engage The term, "at retail," has been extensively discussed by the FCC in the context of the resale of DSL services. (*See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 19,237, Para. 17 (Rel. November 9, 1999), *vacated* by *ASCENT*). However, the FCC has interpreted the term "at retail" to mean a sale to an ultimate consumer, thereby applying Section 251(c)(4) to services targeted to end-user subscribers. (*Id.*) Vertical services are, in fact, services targeted toward end-user subscribers and we see no basis on which to support a different statutory interpretation.

Beyond the question of the proper interpretation of TA-96's definition of a service provided "at retail" and the LEC's resale obligation, is the fact that Verizon would also rely upon its approved tariffs to sustain its position. However, the fact that Verizon's retail tariffs do not provide for the sale of vertical services without the purchase of associated dial tone (supplied by Verizon) is not dispositive of the issue. Sprint desires to order and to purchase for resale a discrete retail service, vertical services or features, which may include, *inter alia*, 3-way calling, speed calling, call forwarding, and caller ID. Sprint would purchase these services separately from the local loop (Sprint Petition, p. 16). We agree with Sprint's observation that the bundling of vertical features with dial tone, whether it be the result of Verizon's historical monopoly control over basic services (dial tone) or as a result of regulatory fiat, is not sufficient to overcome the requirements of TA-96 The requirements of TA-96 relative to the resale of a retail service are clear and unambiguous. Therefore, we find an interpretation of the resale duty which interpretation is based on inserting an additional criterion that the service be provided on a stand-alone basis to lack viability. Verizon's vertical features are marketed to end-users separately from dial tone, carry a separate additional charge, and are subject to a service order charge. (Sprint Petition, p. 17). Also, vertical features are not limited to customers based on the type of customer or by a requirement that the customer must first procure a dial tone. (*Id.*, n. 20) Based on the foregoing, we conclude that vertical features and services are services provided at retail.

We further observe that Verizon's interpretation of the resale requirements of TA-96 would, essentially, create an exclusion from the LEC's obligations based on the inopportunity of whether a service is bundled or sold on a stand-alone basis. The extent Verizon relies on the fact that vertical services are offered by the LEC solely in conjunction with dial tone[14] cannot, in our opinion, justify a statutory interpretation which ignores clear and unambiguous direction regarding resale obligations. Verizon itself offers packages of combined basic telephone services and vertical services. Should Sprint desire to purchase a combined package of services at a wholesale rate for resale, it may do so However, if Sprint wants to purchase Verizon's individual vertical services for resale, Verizon would require that Sprint purchase them at tariffed retail rates. This is inconsistent with the intent of TA-96 in light of the fact that it stymies the provision of

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[14] This fact is, in significant respects, disputed by Sprint. (*See* discussion regarding ESPs).

innovative service offerings and gives Verizon, an inherent, competitive advantage relative to combinations of service offerings involving vertical features.[15]

(ii) Resolution of the issue by other jurisdictions

Verizon relies upon decisions in Kentucky and Massachusetts, which rejected Sprint's arguments, as support for rejecting Sprint's position as a matter of policy here. (*See* VZ Exc., p. 38, n. 112). We also take official notice of the recent arbitration order entered by the NY PSC. (*AT&T/VZNY Arbitration*, *supra*.).

In the Kentucky proceeding, *In the Matter of Petition of Sprint Communications Co., L.P. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. 2000-480, (June 13, 2001) (*Kentucky Arbitration Order*), the pertinent discussion concerning the resale of vertical services is reprinted below:

> 2. Should BellSouth make its custom calling features available for resale on a stand-alone basis? (Issue 2)
>
> Sprint asks that it be permitted to purchase BellSouth's custom calling services, or vertical services, on a "stand-alone" resale basis at the applicable wholesale discount, without also purchasing the basic local service for resale. The parties agree that any BellSouth obligation in this regard arises under 47 U.S.C. §251(c)(4), which requires BellSouth to "offer for resale at wholesale only rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." Since BellSouth does not provide custom calling features to end-users that do not take BellSouth service, then BellSouth reasons that this service need not be made available for resale on a stand-alone

[15] Sprint witness Burt explained that it is not purchasing the vertical features at this point in time, but that such vertical features are needed to support a new service offering called Unified Communications. (Tr., pp. 232-235).

basis. To support its contention that the tariff restriction is not an unreasonable restriction upon resale in violation of 47 U.S.C. §251(c)(4), BellSouth asserts that the local competition order does not require wholesale offerings of any service that the incumbent local exchange carrier ("ILEC") does not offer to retail customers and does not impose on an ILEC the obligation to desegregate a retail service into more discreet services.[1] Thus, BellSouth contends that applicable law merely requires that any retail services offered to end-use customers be made available for resale.[2]

[1] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, CC Docket Nos. 96-98, 95-185, FCC No. 96-325 (August 8, 1996) (*Local Competition Order*) at Paragraphs 872 and 877.
[2] *Id.* at Paragraph 977.

Sprint, on the other hand, declares that in the *Local Competition Order* the FCC held that resale restrictions are presumptively unreasonable, even if those restrictive conditions appear in the ILEC's tariff.[3] Sprint asserts that BellSouth's condition for the purchase of the vertical services, *i.e.* the purchase of the local line from BellSouth, is therefore unreasonable.

[3] *Id.* at Paragraph 939.

The Commission finds that BellSouth's tariff restriction on the resale of vertical services as applied to CLECs should stand. Vertical services are a subset of offerings that involve line-side service that should not be available at a wholesale discount to CLECs on a stand-alone basis.

(*Kentucky Arbitration Order*, slip. op. pp. 2-4).

In the Massachusetts proceeding, *Petition of Sprint Communications Company L.P., . . . for arbitration of an interconnection agreement between Sprint and Verizon-Massachusetts*, D.T.E. 00-54 (December 11, 2000) (*Sprint/VZMA Arbitration*), the pertinent discussion which follows articulates the positions of the parties which is substantially the same as the issues argued here:

> Verizon is required under the Act to resell its retail telecommunications services to CLECs at the wholesale discount. 47 U.S.C. §251(c)(4)(A). Verizon does provide Custom Calling Features on a stand-alone basis to its retail customers, but such services are offered only in conjunction with its basic exchange service. *See* D.T.E. MA No. 10. The Department notes that, based on the information provided to us by the Parties on this issue, Verizon's refusal to offer vertical features on a stand-alone basis to Sprint at the wholesale discount does not violate the Act or the FCC's *Local Competition* rules. Therefore, we find that Verizon is not required to offer vertical features at the wholesale discount rate, on a stand-alone basis.

(*Sprint/VZMA Arbitration*, slip op., p. 23).

In the *AT&T/VZNY Arbitration*, the issue addressed by the NY PSC was, again, substantially similar to that presented by the instant case. That is, whether the following vertical services from Verizon NY, custom calling, call forwarding, and call waiting, among others, could be acquired on a stand-alone basis at the applicable wholesale discount and be resold. Verizon NY's position, similar to that here in Pennsylvania, is that vertical services must be purchased in conjunction with dial tone service. (*See AT&T/VZNY Arbitration*, slip op., pp. 20-21). On consideration of the issue, the NY PSC declined to direct the resale of vertical services on a stand-alone basis. The NY PSC was not convinced that it was technically feasible for the ILEC (Verizon NY) to provide such services on a stand-alone basis. Also, the NY PSC noted that a CLEC (in this case AT&T) using Verizon's UNE-platform offering, which uses Verizon's underlying voice port, could obtain most vertical services (with the exception of voice mail) on an unbundled network element basis. The pertinent reasoning of the NY PSC is set forth, below:

> It is not at all clear that it is technically feasible for ILECs to offer all vertical features on a stand-alone basis. Indeed, the more popular features such as call waiting and call forwarding are technically tethered to the underlying ILEC voice port. We will not require that vertical features be made available on a stand-alone basis. However, CLECs using Verizon's UNE-Platform offering (which uses Verizon's underlying voice port) can obtain most vertical features on an unbundled network element basis, but they cannot obtain voice mail on such a basis. This is because the FCC considers voice mail to be an enhanced service and did not require that it be unbundled. We, on the other hand, continue to regulate voice mail, and it is available for resale at the wholesale discount. We see no reason why voice mail, or any other vertical features of a CLEC's choosing, should not be available for resale, at the wholesale discount, along with Verizon's voice UNE-Platform offering.

(*AT&T/VZNY Arbitration*, slip op., p. 21).

In the record before the NY PSC in the *AT&T/VZNY Arbitration*, questions of technical feasibility were referenced and apparently involved in the deliberation of the issue. Further, that decision also appears grounded in the view that an alternative to obtaining vertical features (with the exception of voice mail) on an unbundled network element basis was possible for the CLEC.

Thus, in the jurisdictions of Kentucky and Massachusetts, the state commissions appeared to have rejected the resale of vertical services based on the view that such rejection was a permissible restriction on resale or did not violate Section 252(c)(4) of TA-96. In New York, the concern appeared grounded in considerations of technical feasibility.

In the case before us, Verizon's position cannot be sustained based on an interpretation of the requirements of TA-96 pertaining to the resale of retail services.

Therefore, we must look to the reasonableness of this restriction on the resale of vertical services.

The FCC concluded in the *Local Competition First Report and Order* that resale restrictions are presumed to be unreasonable unless the LEC proves to the state commission that the restriction is reasonable and non-discriminatory. As an example, it was noted that if an ILEC makes a service available only to a specific category of retail subscribers, however, a state commission may prohibit a carrier that obtains the service pursuant to Section 251(c)(4)(A) from offering the service to a different category of subscribers. And, if a state creates such a limitation, it must be done consistent with requirements established by the FCC. (*See In the Matter of Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut* CC Docket No. 01-100 (July 20, 2001 Released; Adopted July 20, 2001) (*Connecticut Section 271 Case*) citing 11 FCC Rcd at 15966, Para. 939; 47 C.F.R. §51.613(b)).

In the *Connecticut Section 271 Case*, the FCC further considered the reasonableness of restrictions on resale in the context of Verizon NY's failure to permit the resale of Digital Subscriber Line (DSL) where the ILEC no longer provided the underlying voice service. The FCC concluded:

> 32. Second, Verizon's argument rests on precisely the conduct ruled unlawful by the court - the use of an affiliate to avoid section 251(c) resale obligations. The *ASCENT* decision made clear that Verizon's resale obligations extend to VADI, whether it continues to exist as a separate entity or whether it is integrated into Verizon, and regardless of the way Verizon structures VADI's access to the high frequency portion of the loop. Accordingly, we conclude that to the extent Verizon's attempt to justify a restriction on resale of DSL turns on the existence of VADI as a separate corporate

> entity (or even a separate division), it is not consistent with the *ASCENT* decision. We also emphasize that Verizon's policy of limiting resale of DSL services to situations where Verizon is the voice provider severely hinders the ability of other carriers to compete. Specifically, Verizon's policy prevents competitive resellers from providing both DSL and voice services to their customers, while Verizon is able to offer both together to its customers. This result is clearly contrary to the pro-competitive Congressional intent underlying section 251(c)(4).

Therefore, the FCC considered the holding of *Association of Communications Enterprises v. FCC*, 235 F 3d 662 (D.C. Cir. 2001) (*ASCENT*), in consideration of the ILEC restrictions on resale relative to DSL. In *ASCENT*, the court held that data affiliates of incumbent LECs are subject to all obligations of Section 251(c) of the Act. Thus, the FCC cited this case as authority to reject the Verizon incumbent's policy of limiting the resale of DSL when it would not provide concomitant voice service. The FCC required that Verizon demonstrate for the first time that its data affiliate, VADI, provides DSL and other advanced services in accordance with the decision in *ASCENT*.

The FCC's discussion in the *Connecticut Section 271 Case* clearly indicates that ILEC restrictions on resale, particularly where they have the effect of tying voice service to the resold product does not meet the "reasonableness" standard of TA-96. Similar to the rejection of Verizon's NY's policy in the *Connecticut Section 271 Case* is the fact that Verizon's restriction on resale is not competitively neutral in that it is intrinsically related to the retention of voice service to the end-user and is not based on distinctions in the categories of end-users. Both Sprint and Verizon desire to compete for the same category of subscribers and the only difference of note is whether Verizon, the incumbent, will retain the provision of voice service to said subscriber.

This Commission would also note, parenthetically, that the FCC, in the *Connecticut Section 271 Case*, discussed vertical features as part of the switching UNE as follows:

> 55. Section 271(c)(2)(B)(vi) of the 1996 Act requires a BOC to provide "local switching unbundled from transport, local loop transmission, or other services." In the Second BellSouth Louisiana Order, the Commission required BellSouth to provide unbundled local switching that included line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC's customers. *Additionally, local switching includes all vertical features that the switch is capable of providing*, as well as any technically feasible customized routing functions.
>
> > [169] 47 U.S.C. §271(c)(2)(B)(vi); see also Second BellSouth Louisiana Order, 13 FCC Rcd at 20722-23, para. 207. A switch connects end user lines to other end user lines, and connects end user lines to trunks used for transporting a call to another central office or to a long-distance carrier. Switches can also provide end users with "vertical features" such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk, such as to a competing carrier's operator services.

(*Connecticut Section 271 Case*) (Emphasis supplied). (Notes 170 and 171 omitted).

Thus, the FCC acknowledged that vertical features should be a part of the unbundled elements that the ILEC should provide in conjunction with switching. (*See* Sprint R.Exc., p. 23). Given that TA-96 does not establish a preference for any mode of competitive entry, whether that method be through the resale of retail services, or facilities based entry through, *inter alia*, the lease of UNEs, we find it incongruous that

TA-96 intended an interpretation of the resale provisions that effectively diminishes resale as a viable mode of competition by creating an artificial economic barrier. This is the result of Verizon's "stand-alone" analysis.

Finally, we are unable to sustain Verizon's position to reject the resale of vertical services at a wholesale discount based on considerations of technical feasibility. Any discussion of technical feasibility is unsupported by the record. (*See* Tr., p. 237). Also, such a discussion of technical feasibility is patently misplaced in the context of resale obligations. Technical feasibility, while a consideration that must be acknowledged in conjunction with the obligations of the LEC to unbundle UNEs, becomes vague in the context of a discussion of a resold service.[16] Sprint, as a CLEC, wants to choose which vertical services it would obtain so as to provide such service to an end-user on a resold local loop. For example, if Sprint orders a resold local loop with Caller ID on behalf of one of its customers, Verizon would discount the local loop for the CLEC but require the CLEC to purchase the Caller ID at the retail tariffed rate. All that

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[16] Section 251(c)(3) states in pertinent part:

(3) Unbundled access

The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

the CLEC is requesting is that it be able to purchase vertical services on behalf of its subscribers at the applicable wholesale discount rate.[17]

Based on the foregoing, we find that the jurisdictions that have rejected a substantially similar position of a CLEC are not persuasive on the record before us.[18]

(iii) Applicable wholesale discount

Verizon makes much of the fact that under the applicable principles of avoided costs, it would avoid little or no costs with regard to an appropriate discount for vertical services. This focus convinces us that the difficulty arising from the issue is neither technical or operational, but pricing related.

TA-96 provides that "wholesale rates" stated in Section 251(c)(4) be determined "on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." (47 U.S.C. §252(d)(3)). Unless one is able to agree that TA-96 provides for an exemption from the wholesale duty of the LEC based on the fact that vertical features, notwithstanding they are a discrete retail service, are not provided on a stand-alone basis from dial tone, then

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17 The *AT&T/VZNY Case* mentions vertical services as being tethered to the voice port. This does not explain the technical infeasibility of providing a wholesale discount to a requesting CLEC.

18 The California Public Service Commission, *Application by Sprint Communications Company, L.P for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Pacific Bell Telephone Company . . .*, Docket No. 00-05-053 (October 5, 2000); and the Texas Public Utility Commission, *Complaint by AT&T Communications of the Southwest, Inc. . . .*, Docket Nos. 21425 and 21475 (December 2000), required jurisdictional LECs to make vertical features available for resale without dial tone. (*See* Sprint Petition, pp. 19-22).

including the cost of dial tone in the rates for vertical services necessarily contravenes TA-96.[19]

We agree with ALJ Chestnut that the established wholesale rate should apply until Verizon puts forth a cost study to substantiate another rate. (*See Pa PUC v Bell Atlantic-Pa, Inc, et al.*, Docket No. R-0096358, *et al* (February 6, 1997)).

Consistent with the foregoing discussion, we shall adopt the recommendation of ALJ Chestnut on this issue. Sprint's proposed language shall be adopted for incorporation into the resulting interconnection agreement.

3. Issue No. 5 – Loop Qualification Database

a. Positions of the Parties

This dispute concerns whether Sprint should be required to use Verizon's database for loop qualification as part of the pre-ordering process for ordering DSL lines. Verizon's position is that Sprint should be required to use its database for pre-ordering loop qualification. Verizon's database was developed in consultation with other CLECs in a New York collaborative. Sprint believes that it should be permitted to decide whether to use its own system or Verizon's systems after the first six months of the term of the Agreement.[20]

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[19] We note that our *Global Order*, *inter alia*, established a local switching port rate which included certain vertical services. (*Global Order*, slip op., pp. 80-81).

[20] Sprint's position was modified from its earlier position that it be permitted to uses either Verizon's loop qualification database or its own system for prequalifying loops. (R.D., p. 7).

b. ALJ Recommendation

The ALJ recommended the adoption of Sprint's modified Initial Offer The ALJ also agreed with the parties' mutual positions that if a CLEC assumes the responsibility for preordering loop qualification, then performance metrics relative to those issues are waived. (R.D., p. 10). Noting that it would be anti-competitive to force Sprint and any CLEC to utilize a pre-qualification process the CLEC neither needs or wants and incur additional costs, the ALJ concluded that Sprint's proposal was reasonable and would give Verizon an opportunity to make necessary changes to its systems. (*Id.*).

c. **Exceptions and Reply Exceptions**

Verizon objects to the ALJ's recommendation arguing that the ALJ's conclusions are based on inaccurate information. Verizon cites several reasons why the ALJ's conclusions are either unsupported by the evidentiary record or based on misstated facts. Verizon states the following: (1) Verizon is required under the *UNE Remand Order*[21] to develop and maintain loop qualification information which identifies the physical attributes of the loop plant, and must provide Sprint and other requesting carriers with that information as contained in Verizon's databases or other internal records; (2) Sprint and other CLECS participating in the New York DSL Collaborative specifically requested that Verizon enhance its electronic loop qualification databases for CLEC use in the entire former Bell-Atlantic territory (including Pennsylvania); (3) Sprint wants to avoid the CLEC-agreed to costs for those enhancements by using an alternate, imperfect loop qualification tool; and (4) separating Sprint loop provisioning orders out of the thousands of CLEC orders submitted to Verizon will require Verizon to recon-

21 *In the Matter of Implementation of the Local Competition Provisions . . .*, CC Docket No. 96-98 (November 5, 1999).

figure its loop qualification system for Sprint's benefit, imposing new costs upon Verizon for which it has no means of recovery. (VZ Exc., pp. 28-29).

Verizon continues that the ALJ relied on inaccurate statements of Sprint that other ILECs who have their own loop qualification systems do not mandate CLEC use of the ILEC's system. This assertion, Verizon comments, was shown to be misleading based on documents produced by Sprint in the Maryland proceeding.[22] Verizon asks that the Commission consider, among other things, the manual process Verizon would have to implement to accommodate Sprint, which process would result in a break in the automatic processing flow and adversely impact provisioning intervals generally.

In Sprint's view, this issue rests on fairness: whether the CLEC should have to pay for a system that it does not use and whether the ILEC should be permitted to mandate use of its system. (Sprint R. Exc., p. 14). Sprint points out that in developing and modifying their respective loop pre-qualification databases, both Verizon and Sprint have expended considerable costs. Sprint adds that while neither system is flawless, both parties endeavored to develop systems that are accurate to ensure that each carrier is able to recover its costs through the use of their respective systems. Rather than be forced to utilize Verizon's system, Sprint believes that it should be allowed to make an independent choice regarding loop pre-qualification systems.

d. Disposition

In our *Global Order*, we addressed the need for CLECs to access the ILEC's loop information in an efficient and uniform database. (*Global Order*, slip op.,

[22] As noted previously, we granted Verizon's request to supplement the record and admitted into the record documents filed by Sprint in the Maryland proceedings.

pp. 107-119). Specifically, we indicated that Verizon's proposed loop qualification database, at that time, was insufficient because it did not include vital loop information needed by carriers to provide various xDSL and other high technology services. We directed Verizon to implement a mechanized system that would provide CLECs with access to any and all existing databases that contain material loop information. In our *Global Order*, we further stated that upon providing appropriate evidence of costs, Verizon would be able to recover the costs of implementing the loop database as well as recover any recurring operating and maintenance expense associated with the operation of the database. (*Global Order*, slip op., p. 118).

We note that in the recent *AT&T/VZNY Arbitration*, the NY PSC also addressed this issue. Consistent with Verizon's assertion in the instant proceeding, the NY PSC noted that loop pre-qualification matters were being addressed in its DSL Collaborative and that in response to CLEC concerns in that collaborative, Verizon implemented certain modifications to its loop pre-qualification process. The NY PSC further observed Verizon's intention to implement a change management process in October 2001. After considering the positions of the parties, the NY PSC concluded that if the CLEC was permitted to use its own pre-qualification tools, Verizon would incur additional expenses to accommodate that CLEC's system. While the NY PSC found that the existing system designed to service all New York CLECs was sufficient, it further concluded that "...to the extent that it is technically feasible to modify the requisite systems to accommodate both AT&T's needs and those of the other CLECs, and if AT&T is willing to pay for the modification, Verizon should make them." (*AT&T/VZNY Arbitration*, slip op., p. 55).

Our concern regarding this issue is two-fold: (1) Verizon should be able to recover costs of developing and implementing loop database systems, as directed by the Commission in the Global Order, which would enable CLECs the opportunity to provide xDSL technologies; (2) in a competitive environment, competitors should have the opportunity to develop and implement their own systems, provided such systems do not compromise the overall integrity of the ILEC's database or forestall the ILEC's ability to provide such services for other requesting carriers.

As noted, ALJ Chestnut recommended the adoption of Sprint's modified Initial Offer. This proposal gives Sprint the option to use its own loop pre-qualification process six months after the entry of an Order and Opinion in this proceeding. At first blush, this may appear to be a reasonable proposition. However, we are concerned about Verizon's position that to accommodate Sprint's request the ILEC would be required to reconfigure its loop qualification system and purportedly incur unrecoverable new costs. We are especially concerned since Sprint failed to produce documentation describing the mechanical characteristics of the system it proposes to utilize after the initial six months of the interconnection agreement at issue in this proceeding. The ALJ points out that Verizon's testimony regarding alleged deficiencies of the Sprint system were based upon the witness' 1999 review of the system. On the other hand, when asked to provide documentation that could ostensibly show that the deficient technical specifications reported in 1999 are no longer present, Sprint failed to do so. In our view, there is insufficient information in the record to determine whether, in fact, the Sprint system is technically comparable to Verizon's and whether Sprint's use of its system in six months would not result in the types of system disruptions predicted by Verizon.

As such, we adopt the ALJ's recommendation that Sprint use Verizon's systems for the first six months of this interconnection agreement. With regard to the ALJ's recommendation that Sprint be allowed to use its own loop pre-qualification systems after six months, we find that additional information is necessary to determine whether it is technically feasible for Verizon to modify its systems to service the needs of Sprint and other CLECs who opt to use Verizon's system. In this regard, we find the NY PSC's ruling on this issue persuasive. First, the loop qualification databases were developed with more than just Sprint's input. Other interested CLECs must be given the opportunity to weigh in on any changes to that database. Second, we conclude that if it is technically feasible for Verizon to accommodate the service needs of both Sprint and other CLECs and Sprint and/or the other CLECs are willing to compensate Verizon for the necessary modifications, we direct that Verizon implement the modifications and that Sprint and other CLECs be allowed to use its own loop pre-qualification systems The Change Management Group should immediately explore the means by which Verizon could or as the case may be, is unable to accommodate Sprint's use of its system and other CLEC suggested modifications. The Commission expects and is confident that Verizon, Sprint and all other interested CLECs should be able, before the expiration of the first six months, to address all technical issues and problems concerning this issue. Before the end of the second six-month period, a decision based on technical factors should be made. Verizon, Sprint and all other interested CLECs, therefore, based on technical feasibility, would determine which system, Verizon's, Sprint's or other alternatives the parties may determine, should be used to prequalify loops for purpose of preordering DSL lines. The parties shall notify the Commission by a letter regarding the results of their negotiations.

4. Issue No. 8 – Packet Switching

a. Positions of the Parties

Sprint's position, as set forth in its Final Offer, is that packet switching at the remote terminal (RT) should be addressed in either a separate proceeding or in the on-going Commission initiated collaborative.[23] Sprint originally requested that packet switching be defined in the interconnection agreement and unbundled at the Central Office and RT. Sprint now requests that Verizon and/or VADI be required to unbundle

[23] *See Collaborative to Address the Design and Deployment of Fiber and Next Generation Digital Loop Carrier and Equal Access to Digital Subscriber Lines Over Fiber*; Docket No. M-00001353.

packet switching at the central office only (as opposed to at the central office and the RT) and that the parties be given a limited period of time to negotiate terms and conditions.

Verizon responds that the threshold requirements for the unbundling of packet switching as set forth by the FCC in Rule 51.319, 47 C.F.R. §51.319, have not been met. (VZ FO, p. 23). Therefore, Verizon states that it is under no legal obligation to unbundle packet switching, at either the central office or the RT, and that any directive to the contrary is inconsistent with the applicable FCC rules.

b. ALJ Recommendation

ALJ Chestnut recommended that Sprint's modified proposal be accepted. A summary of her conclusion is as follows:

> In conclusion, I am recommending that the Commission adopt Sprint's proposal concerning packet switching at the central offices, and declare that Verizon is required to provide central office packet switching functionality. The parties' positions actually are in agreement after this point – that if the Commission determines that packet switching is a UNE, then the parties agree to negotiate in good faith the rates, terms and conditions (Verizon Final Offer, proposed part II, Section 1.4(b)). Therefore, I further recommend that a 45-day period be provided for the parties to meet and discuss the technical and operational details of accomplishing unbundling, as well as the rates, terms and conditions. If they are unable to do so, then they can jointly petition the Commission using the Abbreviated Dispute Resolution Process) for resolution of any outstanding issues. In addition, I recommend that Sprint file a petition with the Commission requesting that the issue of packet switching at remote terminals be addressed either in the pending proceeding at Docket No. M-00001353 or in a separate proceeding (either a collaborative or an investigation).

(R.D., p 18).

figure its loop qualification system for Sprint's benefit, imposing new costs upon Verizon for which it has no means of recovery. (VZ Exc., pp. 28-29)

Verizon continues that the ALJ relied on inaccurate statements of Sprint that other ILECs who have their own loop qualification systems do not mandate CLEC use of the ILEC's system. This assertion, Verizon comments, was shown to be misleading based on documents produced by Sprint in the Maryland proceeding.[22] Verizon asks that the Commission consider, among other things, the manual process Verizon would have to implement to accommodate Sprint, which process would result in a break in the automatic processing flow and adversely impact provisioning intervals generally.

In Sprint's view, this issue rests on fairness: whether the CLEC should have to pay for a system that it does not use and whether the ILEC should be permitted to mandate use of its system. (Sprint R. Exc., p. 14). Sprint points out that in developing and modifying their respective loop pre-qualification databases, both Verizon and Sprint have expended considerable costs. Sprint adds that while neither system is flawless, both parties endeavored to develop systems that are accurate to ensure that each carrier is able to recover its costs through the use of their respective systems. Rather than be forced to utilize Verizon's system, Sprint believes that it should be allowed to make an independent choice regarding loop pre-qualification systems.

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In our *Global Order*, we addressed the need for CLECs to access the ILEC's loop information in an efficient and uniform database. (*Global Order*, slip op.,

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Our concern regarding this issue is two-fold: (1) Verizon should be able to recover costs of developing and implementing loop database systems, as directed by the Commission in the Global Order, which would enable CLECs the opportunity to provide xDSL technologies; (2) in a competitive environment, competitors should have the opportunity to develop and implement their own systems, provided such systems do not compromise the overall integrity of the ILEC's database or forestall the ILEC's ability to provide such services for other requesting carriers.

As noted, ALJ Chestnut recommended the adoption of Sprint's modified Initial Offer. This proposal gives Sprint the option to use its own loop pre-qualification process six months after the entry of an Order and Opinion in this proceeding. At first blush, this may appear to be a reasonable proposition. However, we are concerned about Verizon's position that to accommodate Sprint's request the ILEC would be required to reconfigure its loop qualification system and purportedly incur unrecoverable new costs We are especially concerned since Sprint failed to produce documentation describing the mechanical characteristics of the system it proposes to utilize after the initial six months of the interconnection agreement at issue in this proceeding. The ALJ points out that Verizon's testimony regarding alleged deficiencies of the Sprint system were based upon the witness' 1999 review of the system. On the other hand, when asked to provide documentation that could ostensibly show that the deficient technical specifications reported in 1999 are no longer present, Sprint failed to do so In our view, there is insufficient information in the record to determine whether, in fact, the Sprint system is technically comparable to Verizon's and whether Sprint's use of its system in six months would not result in the types of system disruptions predicted by Verizon.

As such, we adopt the ALJ's recommendation that Sprint use Verizon's systems for the first six months of this interconnection agreement. With regard to the ALJ's recommendation that Sprint be allowed to use its own loop pre-qualification systems after six months, we find that additional information is necessary to determine whether it is technically feasible for Verizon to modify its systems to service the needs of Sprint and other CLECs who opt to use Verizon's system. In this regard, we find the NY PSC's ruling on this issue persuasive First, the loop qualification databases were developed with more than just Sprint's input. Other interested CLECs must be given the opportunity to weigh in on any changes to that database Second, we conclude that if it is technically feasible for Verizon to accommodate the service needs of both Sprint and other CLECs and Sprint and/or the other CLECs are willing to compensate Verizon for the necessary modifications, we direct that Verizon implement the modifications and that Sprint and other CLECs be allowed to use its own loop pre-qualification systems. The Change Management Group should immediately explore the means by which Verizon could or as the case may be, is unable to accommodate Sprint's use of its system and other CLEC suggested modifications The Commission expects and is confident that Verizon, Sprint and all other interested CLECs should be able, before the expiration of the first six months, to address all technical issues and problems concerning this issue. Before the end of the second six-month period, a decision based on technical factors should be made Verizon, Sprint and all other interested CLECs, therefore, based on technical feasibility, would determine which system, Verizon's, Sprint's or other alternatives the parties may determine, should be used to prequalify loops for purpose of preordering DSL lines. The parties shall notify the Commission by a letter regarding the results of their negotiations.

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[23] *See Collaborative to Address the Design and Deployment of Fiber and Next Generation Digital Loop Carrier and Equal Access to Digital Subscriber Lines Over Fiber*, Docket No. M-00001353

packet switching at the central office only (as opposed to at the central office and the RT) and that the parties be given a limited period of time to negotiate terms and conditions.

Verizon responds that the threshold requirements for the unbundling of packet switching as set forth by the FCC in Rule 51 319, 47 C.F R. §51 319, have not been met. (VZ FO. p. 23). Therefore, Verizon states that it is under no legal obligation to unbundle packet switching, at either the central office or the RT, and that any directive to the contrary is inconsistent with the applicable FCC rules.

b. ALJ Recommendation

ALJ Chestnut recommended that Sprint's modified proposal be accepted. A summary of her conclusion is as follows:

> In conclusion, I am recommending that the Commission adopt Sprint's proposal concerning packet switching at the central offices, and declare that Verizon is required to provide central office packet switching functionality. The parties' positions actually are in agreement after this point – that if the Commission determines that packet switching is a UNE, then the parties agree to negotiate in good faith the rates, terms and conditions (Verizon Final Offer, proposed part II, Section 1.4(b)). Therefore, I further recommend that a 45-day period be provided for the parties to meet and discuss the technical and operational details of accomplishing unbundling, as well as the rates, terms and conditions If they are unable to do so, then they can jointly petition the Commission using the Abbreviated Dispute Resolution Process) for resolution of any outstanding issues. In addition, I recommend that Sprint file a petition with the Commission requesting that the issue of packet switching at remote terminals be addressed either in the pending proceeding at Docket No. M-00001353 or in a separate proceeding (either a collaborative or an investigation)

(R.D., p. 18).

ALJ Chestnut expressed concern over the implementation details of directing the unbundling of packet switching at the central office. However, she was convinced that the packet switching functionality exists at Verizon central offices:

> "There is no question that Verizon – through assets owned by VADI – does have packet switching functionality at its central office, as do other CLECs who have collocated DSLAMs in central offices. My understanding is that at present time, there are no multihosting or shared DLSAMs available, so that Verizon, to provide unbundled packet switching to accommodate Sprint, would have to dedicate a DLSAM to Sprint. If this is the case, then it may well be that unbundling is premature and should not be required at this time."

(R.D., p. 17)

c. Exceptions and Replies

Verizon begins its Exceptions to this aspect of ALJ Chestnut's recommendation by observing that it has no obligation to unbundle packet switching unless the FCC's four-part test is met. (VZ Exc., p. 6 citing 47 C.F.R. §51.319(c)(3)); and Sprint's witness admitted that Verizon's network does not meet the FCC's four-part test pertaining to unbundled packet switching at the remote terminal. (*Id.*) Also, Verizon notes that, to date, only two state commissions have ordered an ILEC to unbundle packet switching and these two commissions have done so only at the remote terminal and only after determining that the FCC four-part test had been met.

Verizon then proceeds to detail the FCC requirement for unbundling packet switching. It emphasizes that the FCC has declined to require the unbundling of packet switching generally, and thus it is under no obligation to unbundle this functionality anywhere on its network except in the remote terminal locations. Verizon cites FCC

Rule 51.319(c)(3)(B) which states, in pertinent part, "An incumbent LEC shall be required to provide nondiscriminatory access to unbundled packet switching capability *only where each of the following conditions are satisfied* . . ." (VZ Exc., pp. 6-7) (Emphasis Verizon)

Verizon explains that Sprint, recognizing that it does not meet the exception to the unbundling packet switching at the remote terminal, claimed that the FCC rule pertaining to the remote terminal exceptions left open the question of packet switching at the central office. (VZ Exc., p. 8). Verizon adamantly rejects this notion.

Sprint also filed Exceptions to the ALJ recommendation. Naturally, Sprint supports the first prong of ALJ Chestnut's recommendation. (Exc., p. 5). Sprint goes further in its support by asserting that the record in this proceeding demonstrates that packet switching functionality at Verizon's central office exists today and is being deployed for the provisioning of advanced services (Sprint Exc., p. 6 citing R.D., p. 17). Further, Sprint repeats its contention that the record indicates that Sprint meets the "impaired" standard as contemplated by the Supreme Court and FCC determinations consistent therewith (*Id.*). Alternatively, Sprint notes in its Exceptions, that the Commission need not rely solely upon the record in this matter, but that the "necessary and impair" analysis has been resolved in its favor in the *Global Order* when the order unbundled DSLAMs. Therefore, Sprint states "[t]hus, before Sprint can address the ALJ's statements questioning "how" the unbundling would be undertaken, packet switching at Verizon central offices must be unbundled as a UNE where the facilities or capabilities have been deployed by Verizon or its affiliates." (Sprint Exc., p. 6) (Note omitted).

Sprint's Exceptions also address the second prong of ALJ Chestnut's recommendation. Sprint explains that the unubundling of packet switching at Verizon's central offices is no different than the unbundling of any other network element. Thus, Sprint, after repeating its position that Verizon and/or its affiliates have already deployed packet switching equipment in certain central offices, states that there is no technical impediment to requiring Verizon to unbundle packet switching at central offices "where it has deployed such equipment." (Sprint Exc., p. 7) (Emphasis Sprint). Sprint emphasizes that it does not request that Verizon deploy packet switching equipment where it is not already deployed in Verizon central offices and does not request that Verizon deploy packet switching in a central office where it does not intend to deploy such facilities. (Sprint Exc., p. 7, n. 18).

Sprint acknowledges that Verizon would likely have to modify administrative processes, such as UNE ordering processes, to accomplish the unbundling Sprint seeks. Also, Sprint notes that Verizon will likely have to provide information as to the full features, functionalities and capabilities of that equipment. However, notwithstanding these implementation measures, Sprint asserts that nothing renders unbundling infeasible. (Sprint Exc., p. 8).

Based on the foregoing, Sprint objects to the ALJ recommendation concerning a recommended forty-five-day period only to the extent that it seeks the following clarification:

> The 45-day stands a better chance of success if Verizon is also required to provide all relevant information to Sprint that will ensure productive discussions during the 45-day period. This should include, but is not limited, the locations and configurations of DSL/packet switching equipment, the name of manufacturer(s), relevant model and part numbers, relevant specification, and a full list and description of the full features, functions and capabilities of all DSL/packet switching equipment (1) deployed at its central offices to date; and (2) expected to be deployed within calendar year 2002. Thus, Sprint excepts and requests that the Commission require that Verizon provide the full features, functions and capabilities of all DSL/Packet switching equipment deployed

and to be deployed by it or its affiliates, within three (3) business days of entry of a Commission order, for use in the discussion occurring during the recommended 45-day period.

(Sprint, Exc., p. 5, Emphasis Sprint, Notes omitted)

In Replies to Exceptions, Verizon accuses Sprint of making a belated and erroneous argument that the *Global Order* directed that packet switching capability be unbundled. (VZ R.Exc., p. 2). Verizon replies that, while access to DLSAMs was discussed in the Global Order, the Global Order contains no language ordering the unbundling of DSLAMs. (VZ R Exc., p. 3).

Verizon explains that the only discussion of the availability of DSLAMs in the Global Order addressed a particular type of DSLAM that the ILEC would have to make available. (VZ R Exc., p. 3). Thus, Verizon complains that Sprint would have this Commission unbundle all packet switching based on the misstatement that the Global Order required the unbundling of DSLAMs, which Verizon states the Global Order did not. Also, such a position is based on the further mistaken view that packet switching capability and DSLAMs are the same. (R.Exc., p. 5). Finally, Verizon notes that even were this Commission to adopt the recommendation of ALJ Chestnut, Verizon would only be required to provide nothing other than what is deployed for itself. (R.Exc., p. 7).

d. Disposition

On consideration of the positions of the parties, we shall adopt the ALJ concerning her recommendation, solely to the extent consistent with this discussion. We observe that the references to packet switching and unbundled packet switching as used in this arbitration were not precise. The dispute, however, is clearly regarding unbundled packet switching, but it is not clear what is meant by unbundling of packet switching at the central office. To the extent that unbundled packet switching at the central office refers to a determination that a packet switching functionality is used by a Verizon affiliate, VADI at a Verizon central office, then we would agree that Sprint should be able to utilize this same functionality at that particular central office as does VADI. This may require VADI and Verizon to participate in negotiation of the implementation terms and engineering detail to accomplish this. This does not assume that VADI has to share its DSLAM, but that Sprint will have its own "dedicated" DSLAM. This then would be consistent with the intent of the *Global Order*.

Consistent with the foregoing, we shall adopt ALJ Chestnut's recommendation for unbundled packet switching at the central office where VADI is so collocated and using such functionality. This is consistent with Sprint Exceptions, page 7, and Verizon's acknowledgement that it is, at present, only required to provide nothing other than what is deployed for itself, either directly, or through its affiliate. (*See* Verizon R.Exc., p. 7). We do not, at this time, direct Verizon to provide information consistent with Sprint's proposed clarification. Rather, we expect the parties to cooperate relative to any implementation details relative to this Order

We shall provide generic guidance concerning the ILEC's obligations as a result of any proceedings which may be instituted after review of the results of the NGDSL collaborative proceeding.

5. Issue No. 12 – Definition of Local Traffic

a. Positions of the Parties

This issue, which is closely related to Issues 16 and 17 in Section No. 8, below, involves the definition of local traffic and telecommunications traffic for purposes of reciprocal compensation as contained in the FCC's *ISP Remand Order* and the regulations adopted at 47 C.F.R. §51.701 Both parties agree that the definition of "telecommunications traffic" (which replaces the term "local traffic") should reflect the definition contained in the regulation. However, both parties include other terms, which are not defined. (R.D., pp. 18-19)

Sprint's proposal contains a definition of the term "local traffic" which the ALJ states is not consistent with TA-96 or with any FCC regulation. Sprint's proposed definition of local traffic, included in its Final Offer, is as follows.

> "Local Traffic" includes all telecommunications traffic that originates and terminates within a given local calling area or mandatory expanded area service ("EAS") area, other than telecommunications traffic delivered to Internet service providers.

(Sprint FO, p. 33) [24]

Verizon's proposal contains and defines the term "reciprocal compensation traffic," which the ALJ also maintains does not appear in TA-96 or any regulation. (R.D., p. 19). In its Final Best Offer, Verizon asserts that its proposal is in accordance with the FCC's recent June 13, 2001, revised regulations that eliminated the payment of reciprocal compensation based solely on "local traffic," and that, therefore, Sprint's definition is not adequate. Accordingly, Verizon proposes that all references to "local traffic" be removed and replaced with "reciprocal compensation" traffic.

Verizon asserts that the principal fault with Sprint's definition of "local traffic" is that it fails to realize that whether or not traffic is local is now irrelevant with regard to the payment of reciprocal compensation. Verizon submits that for traffic to be

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24 It should also be noted that Sprint's Final Offer raises some confusion because at the end of its discussion on Issue 12 in its Final Offer, page 39, Sprint requests that the Commission adopt a different definition that does not exclude traffic delivered to Internet service providers as follows: "Local Traffic means traffic that originates and terminates within a given local calling area or expanded area service ("EAS") area."

eligible for reciprocal compensation under Section 251(b)(5) of TA-96, the traffic: (1) must be "telecommunications traffic" as defined in 47 C.F.R. §51.701(b)(1)[25] and (2) must originate on the network of one carrier and terminate on the network of the other carrier in accordance with 47 C.F.R. §51.701(e).[26] Verizon argues that Sprint's proposed definition incorrectly defines "local traffic" by the geographical location of the parties calling each other, rather than by the way the call is routed, which Verizon alleges is required by law. (VZ FO, pp. 45-46)

Verizon proposes to define "Reciprocal Compensation Traffic" as follows:

> "Reciprocal Compensation Traffic" means Telecommunications traffic originated by a Customer of one Party on that party's network and terminated to a Customer of the other Party on that other Party's network, except for Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access of Information Access. Reciprocal Compensation Traffic does not include: (1) any Internet Traffic, (2) Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis, (3) Optional Extended Local Calling Arrangement Traffic; (4) special access, private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party, or (5) Tandem Transit Traffic.

(VZ Initial Offer, p. 48).

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[25] Section 51.701(b)(1) states that telecommunications traffic means "[t]elecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access."

[26] Section 51.701(e) defines "Reciprocal Compensation" as follows: "[f]or purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier."

b. ALJ Recommendation

The ALJ recommended adoption of Sprint's proposal in order to be consistent with her recommended resolutions of Issues 16 and 17, *infra*. In making that recommendation, the ALJ included a cautionary statement that it is important that the *ISP Remand Order* and the associated regulation not be taken out of context. The ALJ asserted that the FCC was not addressing the issue of defining local traffic generally for reciprocal compensation purposes. Rather, it was reconsidering the proper treatment for purposes of intercarrier compensation of telecommunications traffic delivered specifically to ISPs. (R.D., p. 19).

c. Exceptions and Replies

Consistent with its position with regard to Issues 16 and 17, *infra*, Verizon excepts to the ALJ's adoption of Sprint's definitions for "Local Traffic" and "Telecommunications Traffic" and requests that they be rejected because they misstate the law.

Verizon asserts that in its *ISP Remand Order*, the FCC not only adopted the rules with regard to the treatment of ISP-bound traffic, but also revised its rules that define the traffic that is subject to reciprocal compensation under Section 251(b)(5) of TA-96. Verizon repeats its argument that in order for traffic to be eligible for reciprocal compensation under the FCC's rules, traffic must meet two requirements under the FCC's regulations (*i.e.*, it must meet the FCC's definition of "telecommunications traffic" in 47 C.F.R. §51.701(b)(1), and it must be traffic that originates on the network of one carrier and terminates on the network of the other carrier in accordance with 47 C.F.R. §51.701(e)). (VZ Exc., p. 23)

In light of the above, Verizon asserts that its proposed definition of "Reciprocal Compensation Traffic"[27] would capture these two key requirements for traffic that is eligible for reciprocal compensation. (VZ Exc., p. 24)

Verizon also argues that Sprint's proposed definitions of "Local Traffic" and "Telecommunications Traffic" are an improper attempt to change the access regime that has always held that traffic that originates on Verizon's network, transits over Sprint's network, and then terminates on Verizon's network, is access traffic and is not eligible for reciprocal compensation. (VZ Exc., pp. 24-25).

Sprint, in its Replies to Exceptions, states that Verizon incorrectly relies upon the definition of local traffic for reciprocal compensation purposes to determine the nature of the call. Sprint alleges that Verizon's approach would rob Sprint and other CLECs of the ability to leverage existing investments in telecommunications equipment and trunking. Sprint also argues that Verizon's position -- that originating and terminating networks have to be different -- remains inconsistent with the competitive offering of telecommunications services as envisioned under TA-96. As such, Sprint submits that the ALJ's recommendation should be adopted (Sprint R Exc., p. 9).

d. Disposition

We disagree with the ALJ's recommendation that Sprint's definition should be adopted. We believe that Verizon's definition more closely aligns with the discussion contained in the FCC's April 27, 2001 *ISP Remand Order*. We also disagree with the ALJ's characterization that the FCC, in its order, was only reconsidering the proper

[27] Verizon's proposed definition of "Reciprocal Compensation Traffic" is repeated on page 23 of its Exceptions.

treatment for purposes of intercarrier compensation of telecommunications traffic delivered to ISPs. Although the FCC Remand Order primarily addressed reconsideration of the proper treatment of intercarrier compensation for ISP traffic, Verizon is correct in its observation that the action taken by the FCC in its *Intercarrier Compensation Order* also revised the rules that define the types of traffic that is subject to reciprocal compensation under Section 251(b)(5) of TA-96. As such, the manner in which reciprocal compensation applies for the termination of what was previously defined as "local telecommunications traffic," and is defined today as "telecommunications traffic" is impacted as a direct result of the FCC's definition changes

In reaching our disposition to reject the ALJ's recommendation and adopt Verizon's definition of Local Service, we rely on the FCC's language in the *ISP Remand Order*, which, together with the relevant footnotes, provides some guidance on this matter:

> All of the services specified in section 251(g) have one thing in common: they are all access services or services associated with access [65] Before Congress enacted the 1996 Act, LECs provided access services to IXCs and to information service providers in order to connect calls that travel to points – both interstate and intrastate – beyond the local exchange. In turn, both the Commission and the states had in place access regimes applicable to this traffic, which they have continued to modify over time. It makes sense that Congress did not intend to disrupt these pre-existing relationships.[66] Accordingly, Congress excluded all such access traffic from the purview of section 251(b)(5).
>
> [65] The term "exchange service" as used in section 251(g) is not defined in the Act or in the MFJ. Rather, the term "exchange service" is used in the MFJ as part of the definition of the term "exchange access," which the MFJ defines as "the provision of exchanges services for the purpose of originating or terminating interexchange telecommunications." *United States v. AT&T*, 552 F Supp. at 228. Thus the term "exchange

service" appears to mean, in context, the provision of services in connection with interexchange communications. Consistent with that, in section 251(g), the term is used as part of the longer phrase "exchange services for such [exchange] access to interexchange carriers and information providers." The phrasing in section 251(g) thus parallels the MFJ. All of this indicates that the term "exchange service" is closely related to the provision of exchange access and information access.

66 Although section 251(g) does not compel this outcome with respect to intrastate access regimes (because it expressly preserves only the Commission's traditional policies and authority over interstate access services), it nevertheless highlights an ambiguity in the scope of "telecommunications" subject to 251(b)(5) – demonstrating that the term must be construed in light of other provisions in the statute. In this regard, we again conclude that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access regulations, because "it would be incongruous to conclude that Congress was concerned about the effects of potential disruption to the interstate access charge system, but had no such concerns about the effects on analogous intrastate mechanisms." Local Competition Order, 11 FCC Rcd at 15869

(*ISP Remand Order*, pp. 18-19).

In light of the above language, it appears that it was the intent of Congress and the FCC that the pre-existing interstate and intrastate access charge regimes not be disrupted at this time. As such, Verizon's definition appears to be more in line with the above language.

We also note that the FCC stated in its *ISP Remand Order* that "[b]y its express terms, of course, Section 251(g) permits the Commission to supersede pre-Act requirements for interstate access services [and parallel intrastate access services].

Therefore the Commission may make an affirmative determination to adopt rules that subject such traffic to obligations different than those that existed pre-Act."[28]

In this regard, we believe that Verizon's concern, as stated below, regarding the provisioning of "local service over access" has merit:

> Moreover, designating "00" dialed calls as local calls and subjecting them to reciprocal compensation [in lieu of applicable access charges] would effectively introduce a local service presubscription – purchasing dial tone line from one carrier and local usage from another. The ALJ did not consider this ramification in her RD, its effects on local rate structures, or the fact that neither the Act, the FCC, nor this Commission require the "breaking up" of local dial tone line and usage.

(VZ Exc., page 20, n. 63).

In light of the above, we shall reject the ALJ's recommendation on this issue and adopt Verizon's definition of "Reciprocal Compensation Traffic." We accept Verizon's definition to the extent it is consistent with our Global Order determination that ISP calls are treated as local calls as a matter of public policy, subject to any lawful modification thereof by the FCC which is sustained on appeal.

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[28] The FCC goes on to explain that consistent with that authority, it had previously made the affirmative determination that certain categories of interstate access traffic should be subject to Section 251(c)(4).

6. Issue No. 14 – Geographic Relevant Interconnection Points (GRIP)

a. Positions of the Parties

This issue involves the terms and conditions governing Sprint's points of interconnection to Verizon's network. In Sprint's Petition, it complained that Verizon's GRIP proposal is too burdensome on Sprint.[29] Sprint stated:

> Verizon's proposed GRIP interconnection requirement would force Sprint to bear a disproportionate share of the costs of carrying traffic between them. Sprint would be subsidizing Verizon, because Sprint would be financially responsible for delivering traffic originated on its network to Interconnection Points at Verizon's end office switches, located within Verizon's network, while Verizon would have not reciprocal obligations for the traffic it delivers to Sprint.

(Sprint Petition, p. 57).

In response, Verizon offered its compromise proposal – Virtual Grip (VGRIP) in its Final Best Offer,[30] which is the same proposal contained in its Initial Offer. Under VGRIP, Verizon asks that Sprint establish a collocated Interconnection Point (IP) at a Verizon tandem switch or, in a LATA where Verizon operates only one tandem, at host end offices or other designated locations Verizon believes that this will help mitigate the concern raised by Sprint under the GRIP proposal (currently offered in Pennsylvania) that requires that Sprint IPs be located within the rate center in which the CLEC assigns telephone numbers and which presumably represents rate centers within which Sprint has facilities and/or customers. The VGRIP compromise scenario, as explained by Verizon, would establish fewer IPs at centralized locations that would cover a larger geographic area than any one rate center. This would enable Sprint

29 Sprint Arbitration Petition, p. 57.

30 *See* VZ FOR, pp. 48-61.

to set up far fewer IPs accepting traffic from Verizon at more centralized traffic aggregation points in Verizon's network than under the existing GRIPs scenario that requires establishing IPs in each rate center for which Sprint has assigned an NXX. (VZ FO, pp. 48-49)

Sprint has rejected Verizon's VGRIP proposal because: (1) given that Sprint has existing network points close to, but not at, many of Verizon's tandems, Sprint would still incur transportation costs associated with taking traffic to and from the tandem building or Verizon tandem wire center; and (2) it would permit Verizon to dictate where Sprint can and should deploy facilities and provide service. Sprint also believes that any GRIP proposal is unlawful. (R.D., p. 20) Therefore, Sprint has proposed a final offer that would include a provision in the Interconnection Agreement recently included in a settlement entered into between Sprint and Bell South.[31] The Sprint/Bell South settlement involves nine states in the Bell South territory. Under Sprint's proposal, it agrees to grandfather the existing Verizon/Sprint interconnection locations, but requires that any new Sprint facilities must be established within five miles of Verizon's switching center, either tandem or end office switch. In addition, Sprint is required to establish additional interconnection locations if traffic is greater than 8.9 million minutes per month (the equivalent of Verizon's DS3-type traffic) and greater than twenty miles and not in a local calling area. (R.D., p. 20).

b. **ALJ Recommendation**

The ALJ recommends that Sprint's proposal be adopted because it is "manifestly reasonable." The ALJ submits that Sprint's proposal would address situations where a CLEC may wish to locate its point of interconnection far from Verizon's switch because in that case, the Interconnection Agreement term would not be

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31 *See* Sprint FO, pp. 41-46.

available since Sprint has agreed to grandfather its existing interconnection locations. As such, all new carriers would be required to locate their points of presence (POPs) within five miles of Verizon's switching center.[32] Second, the ALJ opines that Sprint's proposal balances two valid concerns -- (1) Section 252(c)(2) of the TA-96 unambiguously requires that an ILEC must allow a CLEC to interconnect at any technically feasible point;[33] and (2) the FCC has stated in the *Local Competition Order* at Para. 199, that a CLEC that chooses a technically feasible but expensive interconnection location must bear the costs of that interconnection, pursuant to Section 252(d)(1). Since Sprint's proposal reasonably balances these two concerns, the ALJ recommends adoption of Sprint's compromise proposal. (R.D., pp. 20-21).

c. Exceptions and Replies

Verizon excepts to the ALJ's recommendation because it claims that she applied the incorrect standard in denying Verizon's VGRIP proposal. Verizon asserts that rather than the ALJ basing her decision on standards that are set forth in existing federal and state law, the ALJ based her decision on the standard of "which party has tried to compromise more." Verizon claims that the only analysis of competing proposals made by the ALJ is that "Sprint's final offer is a marked compromise from its initial offer."[34] As such, Verizon asserts that the Commission should now consider which party's position is correct from a legal or factual standpoint (VZ Exc., pp. 36-37).

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32 Sprint FO, p. 43

33 47 U.S.C. §252(c)(2), 47 C.F.R. §51.305

34 R.D., p. 20.

Also, Verizon argues that the ALJ failed to address any of the points it made with regard to recent decisions in North and South Carolina.[35] Verizon submits that it did not alter its original position because it believes its position is already eminently reasonable. Verizon emphasizes that it has never argued that it can dictate where CLECs establish their points of interconnections (POIs), as long as the CLECs pay for the added costs that would result if they choose an out-of-the-way or otherwise inefficient location for a POI. Verizon claims that this reasoning is consistent with the recent rulings in North and South Carolina, which this Commission should consider in reaching its final determination on this issue. (VZ Exc., p. 36).

Sprint disagrees that Verizon's arguments in support of its VGRIP proposal are "eminently reasonable." Sprint contends that Verizon raises no new arguments in its Exceptions and that the ALJ's ruling balances the interests of both Verizon and Sprint. It is Sprint's view that the ALJ appropriately based her decision upon the merits of the Sprint/BellSouth Interconnection Agreement that just became public on July 9, 2001. Sprint asserts that the North and South Carolina decisions cited by Verizon, which were issued prior to the Sprint/BellSouth Interconnection Agreement, did not take into consideration the merits of the Sprint/BellSouth Interconnection Agreement. Furthermore, Sprint alleges that the legal arguments and specific facts advanced by AT&T in the North and South Carolina decisions have no relevance to the issues presented in the instant proceeding. (Sprint R.Exc., p. 20).

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[35] *See Petition of AT&T Communications of the Southern States, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252*, South Carolina Public Service Commission, Docket No. 2000-527-C, Order on Arbitration, Order No. 2001-079, at 19, 22-28 (January 30, 2001); *Also See In the Matter of Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolinas, Inc., and Bell South Telecommunications, Inc., pursuant to the Telecommunications Act of 1996*, Docket Nos. P-140, Sub 7 at 7-15 (N.C.P.S. March 9, 2001).

d. Disposition

On consideration of the positions of the parties, we shall adopt the ALJ's recommendation on this matter. We disagree with Verizon's characterization that the ALJ's decision on this issue was based on the application of an improper standard of review. The ALJ made it clear at the beginning of her Recommended Decision that "[b]ecause of the extremely short time period allowed for the preparation of this Recommended Decision, my discussion is necessarily abbreviated," and "[t]his should not be taken as evidence that any position or argument presented by either of the parties was not fully considered." (R.D., p. 2).

It is clear from the ALJ's Recommended Decision on this issue that, based on the record in this proceeding,[36] she took into consideration the various aspects of Verizon's trepidation about the existing interconnection points and the ability of other CLECs to opt into an agreement that is not favorable to Verizon when she appropriately concluded that Sprint's proposal reasonably balanced Verizon's concerns and the legal concerns in complying with federal requirements.[37]

Sprint's proposal will substantially reduce the transport costs that Verizon incurs under the present interconnection point arrangement. In addition, it will ensure that Verizon does not dictate the specific area where Sprint interconnects its facilities with Verizon because Sprint has the option of locating its POP anywhere within five miles from Verizon's tandem. Furthermore, the grandfathering of Sprint's existing locations would ensure that other CLECs that decide, under the "most favored nation"

36 *See* Tr., pp. 149 -- 171.

37 *See* 47 U.S.C. §252(c)(2) and 47 C.F.R. §51.305 that allows a CLEC to interconnect at any technically feasible point and the FCC's conclusion in Paragraph 199 of its *Local Competition Order* that CLECs that choose a technically feasible but expensive interconnection point must bear the costs of that interconnection, pursuant to §252(d)(1).

(MFN) clause of TA-96, to opt into the Sprint/Verizon interconnection agreement arrangement would be bound to the five-mile limitation. (*See* 47 U.S.C. §252(i)). This, in our view, would assist in alleviating the unreasonable transport costs that Verizon must pay today under other interconnection agreements. Furthermore, transport costs to Sprint's existing interconnection points should pose no problem to Verizon in light of the fact that the record shows that most of Sprint's existing interconnection points are located close to Verizon's tandems.[38]

Therefore, we shall deny Verizon's Exceptions and adopt the ALJ's recommendation on this issue.

7. Additional Issues Not Addressed By The ALJ: Issues Nos. 14(A) – Transport Distance Sensitive Charges; 14(C) – Termination Blocking Rights; and 14(D) – Bill Dispute Resolution)

a. Position of the Parties

Three sub-issues – Unresolved Issue Nos. 14(A), 14(C) and 14(D) -- were originally raised by Verizon in its Answer to Sprint's Petition and concern, respectively, Transport Distance Sensitive Charges, Termination Blocking Rights and Bill Dispute Resolution. Verizon incorporates by reference to its Best Final Offer[39] all of its arguments on these three issues. In light of the fact that the ALJ did not address these issues, Verizon urges the Commission to order the parties to adopt Verizon's proposed language for the reasons stated in its Best Final Offer. (VZ Exc., p. 37).

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[38] *See* Tr., pp. 157, 167. On p. 157, Sprint Witness Nelson states: "Before I say that, in many cases I am very close to their [Verizon's] tandems, within a tenth of a mile or third of a mile, within two miles of a building." On p. 167, Verizon Witness D'Amico states: "I would say specifically with Sprint they have location close to our tandems. There are a few that are not close. But yes, we are concerned about MFM [sic] issue where all CLECs would be entitled to --".

[39] *See* Verizon FO pp. 61-67.

Sprint's view, as explained in its Final Offer, is that if the Commission adopts Sprint's compromise offer on Issues 16 and 17, then these three sub-issues would become moot.[40] However, in the event that the Commission decides to address the three sub-issues requested by Verizon, Sprint's position is the same as it argued in its Final Offer on pages 44-46

b. ALJ Recommendation

The ALJ did not address these issues in the Recommended Decision.

c. **Exceptions and Replies**

As previously noted, Verizon excepts to the ALJ's Recommended Decision because it failed to address Issues 14(A), 14(C) and 14(D), which Verizon alleges both parties agreed were issues separate from the dispute over VGRIP. Verizon requests that the Commission adopt Verizon's position on these three issues based on its argument contained in its Best Final Offer on page 61-67 (VZ Exc., p. 37).

Sprint replies that when the ALJ adopted Sprint's compromise proposal, the ALJ correctly rejected the three sub-issues raised by Verizon in its Exceptions. (Sprint R.Exc., p. 20). Sprint repeats its position from its Final Offer that in the event the Commission does decide to addresses the three sub-issues requested by Verizon, its arguments originally made in its Final Offer on pages 44-46 should be adopted.

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[40] Sprint FO, pp. 44-45.

to make the investment in its own entrance facilities, since it currently has no entrance facilities of its own, Sprint should provide no special exemption to Verizon. Rather, Sprint would charge Verizon its standard rates for this service, just as Verizon charges Sprint its standard rates for its entrance facilities. (Sprint FO, p 45).

Verizon is of the opinion that if Sprint prevails in its position concerning IPs in Issue No. 14, Sprint should not charge Verizon distance sensitive charges for entrance facilities it will be forced to purchase from Sprint in order to interconnect with Sprint. As such, Verizon proposes to add the following specific language to that effect in Part V, Sections 1.3.9 and 1.5.3 of the Interconnection Agreement as follows:

> 1.3.9 In recognition of the large number and variety of VERIZON-IPs available for use by SPRINT, SPRINT's ability to select from among those points minimizes the amount of transport it needs to provide or purchase, and the fewer number of SPRINT-IPs available to VERIZON to select from for similar purposes, Sprint shall charge VERIZON no more than a non-distance sensitive Entrance Facility charge as provided in Part IV for the transport of traffic from a VERIZON-IP to a SPRINT-IP in any given LATA.
>
> 1.5.3 Unless otherwise agreed to by the Parties, the Parties shall designate the Wire Center(s) SPRINT has identified as its initial Rating Point(s) in the LATA as the SPRINT IP(s) in that LATA and shall designate a mutually agreed upon Tandem Office or End Offices within the LATA nearest to the SPRINT-IP (as measured in airline miles utilizing the V and H coordinates method) as the VERIZON-IP in that LATA, provided that, for the purpose of charging for the transport of traffic from a VERIZON-IP to the SPRINT-IP, the SPRINT-IP shall be no further than a non-distance sensitive Entrance Facility away from the VERIZON-IP.

(VZ FO, pp. 61-62).

If, however, the Commission adopts Verizon's proposal for Issue No. 14, Verizon asserts that this issue is moot Verizon's detailed rationale for this position is contained on pp. 62-63 of its Final Best Offer

(2) ALJ Recommendation

As previously noted, the ALJ did not address this issue

(3) Disposition

We conclude that this is a moot issue at this time. First, as Sprint points out, it currently has no entrance facilities. Second, Sprint's alternative proposal to Verizon's VGRIP proposal should alleviate Verizon's concerns about incurring high transport costs with Sprint because Sprint locates each of its POPs very close to Verizon's tandems and not more than five miles apart. Finally, we agree with the ALJ's statement during the Conference that it would be more appropriate to address the issue of appropriate transportation charges at such time that Sprint actually files a transport tariff.[42]

Therefore, we shall declare Issue 14(A) moot and deny Verizon's Exceptions on this matter.

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42 Tr, pp. 175-176.

(ii) Issue No. 14(C) – Termination Blocking Rights

(1) Position of the Parties/Exceptions and Replies

Issue 14(C) concerns whether Sprint should exercise commercially reasonable efforts to interconnect directly with other carriers in order to prevent Verizon tandem exhaust when Verizon voluntarily provides Sprint transit service.

Sprint and Verizon both agree with the requirement that Sprint will make commercially reasonable efforts to connect directly with third parties rather than using Verizon as a tandem provider. However, in light of the fact that Sprint has been unsuccessful in entering into interconnection agreements with other CLECs, Sprint does not want Verizon to have unilateral authority to terminate or block its tandem.[43] As such, Sprint position is that before Verizon would terminate traffic in a tandem arrangement, it would first need to obtain Commission approval. Sprint, therefore, requests that the following language be appended to Verizon's proposed language (discussed below): "Further, Verizon will not terminate or block any Sprint interconnection services without the express consent of the Pennsylvania Commission."[44]

Sprint goes on to explain that by placing the burden of securing Commission approval upon the entity seeking to terminate or block its tandem, the entity with the need to terminate or block has the burden of taking affirmative action to secure the right to do so.

Verizon stated in its Final Best Offer that the parties have reached an agreement in principle on this issue, but have not yet had the opportunity to draft contract

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43 This involves sub-issue 14(C). *See* Tr., p. 157, Sprint FO, pp. 45-46.

44 *See* Sprint's Final Offer, p. 46; Sprint R Exc., p. 21. The language is quoted in full in Sprint's Initial Offer, p. 65.

language memorializing their agreement. Verizon further states that the parties anticipated submitting a Joint Stipulation to the Commission indicating their agreement on this issue by no later than July 31, 2001. However, to the extent that this issue does not settle, Verizon submits its argument in support of its position.

Verizon explains in its Final Best Offer that while it is voluntarily agreeing to carry such traffic as an accommodation to Sprint, it asks that Sprint obligate itself to "exercise commercially reasonable efforts" to enter into interconnection agreements with communications carriers with whom it exchanges traffic.[45] Verizon, therefore, proposes that the following language be included in the proposed Interconnection Agreement:

> 4.2.3. Sprint shall exercise commercially reasonable efforts to enter into a reciprocal Telephone Exchange Service Traffic arrangement (either via written agreement or mutual Tariffs) with every CLEC, ITC, CMRS carrier, or other LEC, to which VERIZON delivers Telephone Exchange Service Traffic that is delivered to VERIZON by SPRINT and transits a VERIZON Tandem Office. Such arrangements shall provide for direct interconnection by SPRINT with each such CLEC, ITC, CMRS carrier or other LEC, without the use of VERIZON's Transit Service.

(VZ FO, pp. 64-65).

With regard to Sprint's proposed language, Verizon does not believe that the onus should be on them to request the Commission's express consent to terminate or block Sprint's interconnection services. (Tr., p. 188).

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45 Verizon explains that when Verizon entered into the first generation interconnection agreements a number of years ago, the fact that it did not limit transit services or seek such assurances was less important because competition was just beginning. However, as competition increased, Verizon has experienced a tremendous accompanying growth in volume of traffic at its tandems, which, if not addressed, will result in tandem exhaust and a concomitant negative impact on the public switched telephone network. (Verizon Final Best Offer, p.65).

(2) ALJ Recommendation

The ALJ did not address this issue. However during the Arbitration Conference, she made two suggestions in an attempt to resolve this matter. The first suggestion was to use the Commission's abbreviated resolution process. (Tr., p 189). The second suggestion was to petition the Commission for an expedited collaborative on this issue and have it reflected in the interconnection agreement. (Tr., p. 190).

(3) Disposition

Based on our review of the record, we believe that the best course of action would be for the parties to file a joint petition for an abbreviated dispute resolution before Verizon blocks or terminates any transit services to Sprint. At the same time, we believe that the language proposed by both Verizon and Sprint is appropriate for inclusion in the proposed Interconnection Agreement in conjunction with the abbreviated dispute resolution. Therefore, we shall grant Verizon's Exceptions on this issue, in part, to the extent they are consistent with this disposition, and require the parties to modify the Interconnection Agreement by incorporating the following language therein:

> 4.2.3. SPRINT shall exercise commercially reasonable efforts to enter into a reciprocal Telephone Exchange Service Traffic arrangement (either via written agreement or mutual Tariffs) with every CLEC, ITC, CMRS carrier, or other LEC, to which VERIZON delivers Telephone Exchange Service Traffic that is delivered to VERIZON by SPRINT and transits a VERIZON Tandem Office. Such arrangements shall provide for direct interconnection by SPRINT with each such CLEC, ITC, CMRS carrier or other LEC, without the use of VERIZON's Transit Service. In instances where a VERIZON's tandem(s) approach the level of becoming overburdened as a direct result of providing tandem service to SPRINT, and to the extent that the overburdened tandem(s)

will begin to have a negative impact on the public switched telephone network, VERIZON shall notify SPRINT of such status, approximately six months before such crisis is expected to occur, and both Parties shall immediately file a Petition with the Commission for an abbreviated dispute resolution. Furthermore in no instances will VERIZON terminate or block any SPRINT interconnection services unless it receives the express consent of the Pennsylvania Public Utility Commission.

(iii) Issue No. 14(D) -- Bill Dispute Resolution

(1) Position of the Parties/Exceptions and Replies

Issue 14(D), which is closely related to Issue 14(c), concerns whether Sprint should be obligated to reimburse Verizon for all charges levied by the receiving carrier on Verizon relating to that traffic in instances where Verizon voluntarily provides transit service to Sprint for the exchange of local traffic with other carriers.

Verizon notes in its Final Best Offer that the parties have reached an agreement in principle on Issue 14(D) but have not yet had an opportunity to draft contractual language memorializing their agreement. Verizon further states that the parties anticipate submitting a Joint Stipulation to the Commission indicating their agreement on this issue by no later than July 31, 2001. However, to the extent that this issue does not settle, Verizon submits its position for Commission adoption.

Verizon proposes the following language to memorialize Sprint's obligation to reimburse Verizon for all charges levied by the receiving carrier on Verizon relating to that traffic:

> 4.2.6 Sprint shall pay VERIZON for Transit Service at the rates specified in Part IV, plus any additional charges or costs the terminating CLEC, ITC, CMRS carrier, or other LEC,

imposes or levies on VERIZON for the delivery or termination of traffic, including any Switched Exchange Access Service charges.

(VZ FO, p. 66).

Verizon explains that this provision is to ensure that Verizon is made whole for the additional charges assessed against it in providing voluntary transit service to Sprint. (VZ FO, p. 67).

Sprint is concerned that Verizon's language provides no recourse for unsubstantiated or unreasonable charges. Sprint asserts that it must have a method by which to dispute the Verizon invoice and that by rendering billing disputes subject to a dispute resolution process, the parties will have included measures for resolution of potential disputes. (Sprint R Exc., p. 21-22). Sprint states that it could agree to Verizon's language subject to a reference to the bill dispute resolution process contained in this contract. Therefore, Sprint proposed appending the following language to the last sentence of Verizon's proposed language. " . . , subject to Section 11.3 of the General Terms and Conditions " (Sprint FO, p. 46)

In response to Sprint's concerns that the rates assessed against Verizon by other carriers may not be reasonable, Verizon states that these rates are the same charges the applicable carrier charges Verizon for the delivery of Verizon originated traffic so Verizon has attempted to get as reasonable rates as possible Verizon also notes that Sprint has the option to interconnect directly with these carriers if it wishes better rates. Since Verizon is providing this service as an accommodation. Verizon does not think it should be responsible for footing the bill in the bargain Verizon opines that without this provision, Verizon should not be obligated to provide transit service at all under the Interconnection Agreement (VZ FO, p 67)

(2) ALJ Recommendation

The ALJ did not address this issue.

(3) Disposition

We conclude that the language proposed by both parties is reasonable and should be included in the interconnection agreement. We commend Verizon for voluntarily providing its transits services and we believe that its proposed language is sufficient to enable it to recover any additional costs it may incur in providing this service to Sprint. At the same time, Sprint's language to render billing disputes subject to a dispute resolution process will provide it recourse for any charges it believes may be unsubstantiated or unreasonable. We encourage the parties, however, to strive to resolve all billing concerns between themselves before they formally enter a dispute resolution process with the Commission.

Therefore, we shall grant Verizon's Exception on this issue to the extent it is consistent with this disposition. We also note that we do not expect billing dispute resolutions to be filed with the Commission in instances where there is no conflict in the charges contained in Verizon's bill to Sprint and the associated charges assessed to Verizon for any fees billed to Verizon by the carrier to whom Sprint's originated traffic is delivered after transiting Verizon's network. In other words, the dispute resolution process should be used only when Sprint believes that it is being charged by Verizon for something above and beyond what Verizon pays other carriers in providing voluntary transit service to Sprint.

8. Issue Nos. 16 and 17 – Charges for Local Calls, Local Call Over Access Trunks

a. Position of the Parties

This issue involves whether access charges should apply in instances where a Verizon customer originates a local call that is handed off to Sprint over the switched access network and then terminated in the same local calling area as the originator. As previously stated, these issues tie in closely with Issue No. 12 – Definition of Local Traffic, above. Sprint is trying to roll out what it anticipates will be a local service whereby it will use its existing access toll switching and trunking facilities to route multi-jurisdictional traffic, including local traffic within the same local calling area. Specifically, it wants to offer "00-minus" dial around service which would allow a Sprint long-distance subscriber to make voice-activated local telephone calls over access facilities.[46] Sprint believes that the old regime of access charges should not apply when its presubscribed toll customers dial "00-minus" to make voice activated local telephone calls that originate and terminate in the same local calling area

[46] Sprint witness Michael R. Hunsucker described the proposed Sprint voice-activated service during the hearing. When a Verizon dial tone customer that is presubscribed to Sprint dials 00, the call will automatically be routed over the operator services platform and transferred to the presubscribed carrier, which in this instance will be Sprint. The operator services platform will ask whether the caller is a voice-activated dial subscriber. If the response is yes, the caller will get a prompt response stating that the system is ready to receive voice commands to make calls. Sprint will then translate the voice command and regenerate it to complete that call. (Tr. p. 213).

Verizon's position is that access charges must apply for "00-minus" calls for the following reasons.

1. Its "network architecture" analysis, in contrast to Sprint's end-to-end analysis, is required by 47 C.F.R §51.701(e)[47],

2. Two state commissions (Massachusetts and California) have already rejected Sprint s same arguments it makes in this case and determined that Sprint should be required to pay access charges for such calls;

3. Treating "00-minus" calls as reciprocal compensation traffic would inflict deep financial wounds upon Verizon.

b. ALJ Recommendation

The ALJ, on pages 22-24 of the Recommended Decision, reasoned that Sprint's "end-to-end" position -- that "00-minus" calls that originate and terminate in the same local calling area are local calls -- should be adopted for the following reasons:

1. Sprint currently has agreements with every other RBOC (Qwest, SBS [sic] and Bell South) to deploy wireline "00-minus" calling,

2. Verizon's reliance on §51 701(e) is greatly misplaced because it arose from the FCC's *ISP Remand Order* addressed entirely to the issue of the appropriate rate

47 47 C.F.R. §51.701(e) states as follows.

(e) Reciprocal Compensation For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunication traffic that originates on the network facilities of the other carrier.

structure to be used in providing service to Internet Service Providers (ISPs) and made no determination that an end-to-end analysis for the purposes of determining reciprocal compensation traffic is in any way inappropriate; and.

3. Verizon's fear that it would incur "deep financial wounds" is unfounded in light of the fact that Sprint does not seek to charge all "00-minus" calls as local because some of those calls may be interstate and Verizon would be adequately compensated for all "00-minus" toll calls and local calls.

c. Exceptions and Replies

In its Exceptions, Verizon argues that in adopting Sprint's position, the ALJ's action would improperly classify exchange access traffic as traffic that is subject to reciprocal compensation under Section 251(b)(5) of TA-96 Verizon asserts that the only two state commissions (Massachusetts and California) that have actually considered Sprint's "00-minus" proposal have rejected Sprint's proposed language and correctly ruled that access charges - not reciprocal compensation - should apply for local "00-minus" calls . Verizon stresses that the law is clear that access charges have always applied to "00-minus" calls because those calls are dial-around calls that have always been and still are transported via Verizon access facilities. As such, Verizon argues that reciprocal compensation does not apply to Sprint's "00-minus" service. (VZ Exc., p. 18).

Sprint disagrees with Verizon that the traffic at issue is "access traffic." Sprint argues that Verizon has historically and by default automatically assumed that any and all calls directed to Sprint's operator services platform are access chargeable. Sprint submits that the automatic characterization of all operator services calls as access traffic at the time the call is delivered to the operator services platform is not possible because the jurisdictional nature (*i.e.*, local versus non-local) of an outbound operator services call only can be determined at call completion. Sprint also claims that, as noted in its Initial and Final Offer, Verizon's position is inconsistent with Verizon's own comments filed at the FCC in support of an end-to-end analysis to determine if a call is local and subject to reciprocal compensation[43] (Sprint R.Exc., p. 8).

Sprint also argues that the law does not support using Verizon's network architecture or corporate ownership of facilities to determine jurisdiction in light of the FCC's February 26, 1999, Declaratory Ruling in CC Docket 96-98 regarding the nature of calls to Internet Service Providers. In that order, the FCC relied upon the end-to-end nature of the communications as being a more significant factor in determining whether a call is an interstate call rather than an intrastate call. (Sprint R.Exc., pp. 8-9).

Verizon points out that although Sprint led the ALJ to believe that it has agreements with every other RBOC in the country, further analysis shows that this statement is not accurate. This position of Verizon is based on discovery that Sprint produced in Maryland. Verizon notes: (1) the SBC Interconnection Agreement that Sprint produced in Maryland does not, as asserted, contain language entitling Sprint to the cost treatment it seeks in this arbitration; and (2) the Bell South Interconnection Agreement, which does contain a provision regarding the "Local Over Access" issue, has not yet been approved by any state and it has only been filed in Florida. Furthermore, Verizon states that the Bell South Interconnection Agreement presents quite a different deal than the one to which Sprint seeks in Pennsylvania. (VZ Exc., p. 3).

Sprint responds that Verizon erroneously attempts to discredit Sprint and the ALJ by resorting to incomplete representations of the record developed in Maryland regarding the import of a contract that Sprint has with SBC. Sprint goes on to say that Verizon has entirely ignored its experiences with Qwest and SBC on this issue. (Sprint R.Exc., pp. 10-11).

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[43] *See*, Sprint Initial Comments, p. 63; Sprint FO, pp. 37-38.

Verizon also asserts that the statement by Sprint that its proposed service will be available to "every telephone customer in the company" is a misrepresentation. Verizon asserts that Sprint's proposed service will only be available to Sprint's pre-subscribed long distance customers. Therefore, according to Verizon, this makes it clear that the proposed service is an access service and not a local service. Verizon asserts that it is not prohibiting Sprint from offering a voice activated dialing service, but that Sprint is unwilling to do so because it is unwilling to pay access charges for the traffic. (VZ Exc., p. 3).

Verizon goes on to argue that existing law requires that reciprocal compensation is payable only "for the transport and termination on each carrier's network facilities of telecommunications traffic **that originates on the network facilities of the other carrier**." (Emphasis Verizon) Under Sprint's "00-minus" service, traffic would originate on Verizon's network and terminate on that same Verizon network. In light of the fact that reciprocal compensation cannot apply under the FCC rule, Verizon excepts to the ALJ statement on page 22 of the Recommended Decision that "Verizon's reliance on §51.701(e) is greatly misplaced." (VZ Exc., p. 19)

Sprint disagrees with Verizon's position that the ALJ's statement was misplaced. Sprint repeats the ALJ's reasoning that the FCC never made a determination that an end-to-end analysis was inappropriate for purposes of determining reciprocal compensation traffic. Additionally, Sprint agrees with the ALJ's interpretation of §51.701(e) and disagrees with Verizon's view that §51.701(e) requires that only traffic that originates and terminates on different carrier networks is subject to reciprocal compensation. (Sprint R.Exc., p. 10)

Verizon further notes that, contrary to the ALJ's decision, 47 C.F.R. §51.701(e) did not arise from the FCC's *ISP Remand Order* and is not just limited to the

ISP context. Verizon asserts that Section 51.701(e) was adopted on August 29, 1996, or almost five years before the FCC issued its *ISP Remand Order* on April 18, 2001, and approximately three years before the FCC released its first declaratory ruling on the ISP issue. Verizon also stresses that it is clear from sub-section (a) of Section 51.701, that it is more general and is not limited to the ISP context only. (VZ Exc., p. 19).

Finally, Verizon argues that the manner in which Sprint proposes to use "00-minus" is no different than any other presubscribed interexchange service where access charges apply. Verizon stresses that introducing a voice-activated dialing platform in place of Sprint's operator does not change the jurisdiction of the call, and that designating "00-minus" dialed calls and subjecting them to reciprocal compensation would effectively introduce a local service presubscription whereby an end user purchases the dial tone line from one carrier (in this case Verizon) and local usage from another (in this case Sprint). Verizon argues that the ALJ did not consider this ramification in her Recommended Decision, nor the effects on local rate structures. Furthermore, Verizon contends that neither TA-96, the FCC, nor this Commission require the "breaking up" of local dial tone line and usage. (VZ Exc., p. 20).

d. Disposition

On consideration of the positions of the parties, we agree with Verizon that Sprint's dial-around proposal uses access facilities, and not local exchange facilities, to deliver the proposed "00-minus" calls. As such, we shall require that Sprint continue paying Verizon access charges for all types of "00-minus" calls. We shall, therefore, grant Verizon's Exceptions and reverse the ALJ's recommendation on this issue.

Sprint's reliance on the FCC consideration of the end-to-end nature of an ISP call is misplaced here. The FCC used its end-to-end analysis for determining whether a seven-digit local call to an ISP is more like an interstate call in light of the fact that the ISP acts like an enhanced service provider (ESP). The FCC had previously determined that communications provided by ESPs are interstate in nature. In the instant matter before us, however, it is clear that the "00-minus" calls in question are intrastate calls and not subject to Section 201 of the Act Furthermore, the "00-minus" calls in question here do not start out as seven-digit local calls, as do local calls to ISPs. Thus, we do not agree with the ALJ and Sprint's argument that the end-to-end nature of the "00-minus" is pertinent for determining whether reciprocal compensation should or should not apply to such calls. Although the "00-minus" "local call" appears to be local to the end-user, it is irrelevant in the settlement process. The "00-minus" "local" calls are not local for settlement purposes because the underlying network chosen by Sprint to complete those calls employs access facilities under which access charges apply. If Sprint chooses to provide local calling to its customers via "00-minus" dialing which uses the operator services platform, then it must be willing to pay the associated access charges for that platform, regardless of whether or not it seeks to recover this cost from its customers to whom the calls appear as local calls On the other hand, Sprint noted that this service could be handled by employing a seven-digit telephone number. As such, both options are available to Sprint

We further note that when a customer dials "00-minus," the call is automatically switched to an access trunk and routed to the local customer's pre-subscribed interexchange carrier (PIC). Access charges apply today for completion of those calls. Sprint is effectively requesting that Verizon modify its network, although not immediately,[40] so that all "00-minus" voice-activated calls that are originated by Verizon's local end-users that are also presubscribed to Sprint for toll service, would be billed as local calls based on the applicable local reciprocal compensation rates in lieu of access charges when those calls are terminated in the same local calling area as the

[40] Sprint states that it would use percent interstate usage (PIU) or something similar until Verizon's network is configured to the way that Sprint desires.

originator for the completion of these calls.[50] The fact that "00-minus" calls go between two networks (*i.e.*, from the local switched network to the switched access network) is an important factor in our reaching a disposition on this issue that the call is indeed subject to access charges.

Sprint's witness Hunsucker states that he is convinced that the call is local because he alleges that the FCC has always used an end- to-end analysis in making its determination and never considered network architecture of where a call routes. (Tr., p. 220). Verizon's witness D'Amico is of the opinion that the network architecture dictates that the call should be billed as access because it is routed over the operator services platform, which is access billed. Based on our review of the record, we agree with Verizon's witness D'Amico when he states that this issue is more of an access over access rather than a local over access concern, and that access charges should apply. (Tr., p. 219).

Payment of reciprocal compensation is a method of recompensing companies for the origination and termination of local calls whereas switched access charges is a method of recompensing companies for the origination and termination of toll calls and other switched access features. In its Exceptions (Footnote 64, page 20), Verizon has succinctly stated the manner in which "00-minus" traffic is handled by the public switched telephone network as follows:

> The ["00-minus"] traffic is routed from Verizon's local exchange network across the access trunks, switched by Verizon's access tandem switch to Sprint's point of presence

50 These calls can be terminated to either a Verizon customer, another Sprint customer, or the customer of another CLEC that also provide local telephone service in that local calling area. It is not clear how 911, TRS, and toll-free calls would be handled under Sprint's proposal. However, based on Sprint Witness Hunsucker's testimony, it appears that all of these types of telephone calls could be made using Sprint's voice-activated service.

("POP") (with Sprint acting as an IXC), transported by Sprint as an IXC back through a Sprint POP, switched again by a Verizon access tandem, and carried along access trunks to be terminated on Verizon's local exchange network.

We note that the current configuration of the public switched network routes "00-minus" calls across access facilities, and not local exchange facilities, regardless of whether the call terminates within the local calling area or outside the local calling area of the calling party. As such, we agree with Verizon in its Exceptions on page 18, that it is entitled to charge switched exchange access rates pursuant to FCC rules and Verizon's access tariffs.

This rationale is also consistent with the Massachusetts and California arbitration rulings on the same issue In the Massachusetts decision, the Massachusetts D T E. ruled that:

> It is clear that the situation addressed in this dispute does not fall within the limits of reciprocal compensation as defined by the FCC. Because Sprint is not the originating carrier for calls between two Verizon customers who use a Sprint dial-around mechanism, the Department finds that Sprint is not entitled to pay reciprocal compensation rates Therefore, the Department agrees with Verizon that Sprint is required to pay applicable access rates when it handles such calls through dial-around methods.[51]

Likewise, the California PUC ruled that Sprint's proposed "00-minus" service involves access traffic when the California Commission adopted the Final Arbitration Report as follows:

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[51] *In re Petition of Sprint Communications L P., pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration of an Interconnection Agreement between Sprint and Verizon MA*, Docket No. 00-54, Order, pp. 13-14 (Mass. DTE December 11, 2000). (Massachusetts Decision).

> The first issue, known as the "local over access" issue, arises because of Sprint's desire to implement a "new" service, and disputes how it should compensate Verizon for using Verizon's network to facilitate that service. Sprint contends that the service should be compensated as local traffic pursuant to the reciprocal compensation scheme, while Verizon contends that since the service would use access lines Sprint leases from Verizon, the calling should be compensated at higher access charge rates. The Arbitrator agreed that Sprint should pay Verizon access charge rates.
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> * * *
>
> The Arbitrator also found that the "Call Mom" ["00-minus"] calling scheme was not functionally different from other calling patterns in which Sprint compensates Verizon for use of its network through access charges. Finally, the Arbitrator noted that Sprint has agreements in other states in which its position is inconsistent with its proposal for California. We agree with the Arbitrator's reasoning and conclusion on the local over access issue, and adopt the same for purposes of this decision.[52]

It should be noted that our disposition of this issue is also consistent with our observations regarding the same issue that was briefly addressed during Verizon's Pennsylvania Section 271 proceeding. In our *Consultative Report of the Pennsylvania Public Utility Commission* to the FCC dated June 25, 2001, we concluded that Verizon has complied with Checklist item 13 – reciprocal compensation and stated, *inter alia*, that "[w]ith respect to Sprint/United, the "00-calls" do not appear to be local calls subject to

[52] See *In the Matter of the Petition of Sprint Communications Co., L.P., for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with Verizon California, dba GTE California Inc.*, Dec. No. 01-03-044, pp. 6-8 (Cal. P.U.C. March 15, 2001).

reciprocal compensation."[53] (*Consultative Report of the Pennsylvania Public Utility Commission*, p 233).

We note that the ALJ originally indicated at the hearing that it seemed "pretty clear" that access charges rather than reciprocal compensation should apply to calls made under Sprint's proposed service since the traffic begins and ends on Verizon's network. (Tr., p. 212) She again confirmed that the definitions that are involved support Verizon's position (Tr., p 219). However, in reaching a final determination in the Recommended Decision, the ALJ changed her mind and did not adequately consider Section 51.701(e), 47 C.F.R. §51.701(e), as well as the manner in which traffic is routed on the local switched network and the switched access network.

Although we realize that Sprint is attempting to operate in the spirit of TA-96 to create new and innovative offerings such as the one it has proposed here, it must also be realized that the systems, tariffs and rules are not always in place to accommodate such offerings. We hesitate to disrupt the manner in which the local network portion and the switched access portion of the public switched network operate until such time that the FCC makes further rulings on this issue. In the meantime, in the matter before us, the record shows that Sprint has stated that an alternative exists to provide its proposed voice-activated service for dialing a seven-digit local telephone number.[54] Although this method is not as appealing to Sprint as the "00-minus" method,

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[53] *See In the Matter of Application of Verizon Pennsylvania, Inc. et al. For Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the Commonwealth of Pennsylvania – Consultative Report of the Pennsylvania Public Utility Commission*, CC Docket No 01-138, June 25, 2001.

[54] Sprint's witness Hunsucker states that Sprint is able to roll out this same product by having its customers dial a seven-digit number rather than dialing "00". (Tr., pp 219-220). He notes, however, that using "00-minus" dialing would "make it more customer friendly, using the infrastructure that is in place." (Tr. pp. 219-220).

it is a way that Sprint could provide its presubscribed toll customers with access to its proposed voice-activated services without having to pay Verizon access charges. It is important to note, however, that Verizon is not prohibiting Sprint from using the "00-minus" dialing method to make "local calls," it is just requiring the payment of access charges for a service which is considered switched access.

Furthermore, we are not here to develop business plans for the companies. However, in addition to dialing a seven-digit local telephone number to avoid the access charges or doing a traffic study, Sprint could install a trunk to handle these calls without incurring access charges and at the same time assist in building out telecommunication facilities here in Pennsylvania

9. Issue Nos. 18 and 19 – MAN Commingling and Multiplexing

a. Positions of the Parties

Sprint frames this unresolved issue as follows. should Sprint be able to transmit UNE and access traffic over the same facilities? (Sprint Petition, p. 72). Sprint's position is that Verizon's refusal to allow it to place services using access and UNE facilities on the same multiplexing equipment[55] is an unreasonable UNE restriction that unnecessarily impairs Sprint's ability to offer a telecommunications service in the manner that it intends. (Sprint Petition, p. 73; FO, p. 63).

Sprint acknowledges that the FCC currently maintains a temporary prohibition on combining loops or loop-transport combinations with tariffed special

[55] Equipment used to combine several lower-speed channels into a higher speed channel. (*The Irwin Handbook of Telecommunications*); Electronic equipment which allows two or more signals to pass over one communications circuit. . . . That circuit may be analog or digital. (*Newton's Telecom Dictionary*).

access services. This temporary prohibition is the result of the FCC's concern that the use of such combinations could, effectively, disrupt revenues from tariffed special access services and thereby, *inter alia*, impair access charge reform and universal service goals by the potential arbitrage or bypass of LEC facilities. The FCC stated "until we resolve the issues in the Fourth FNPRM, IXCs may not substitute an ILEC's unbundled loop-transport combinations for special access services unless they provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer." (*See Supplemental Order Clarification*)

Sprint maintains that the FCC's restrictions on using shared transport as a UNE to carry access traffic apply to the use of shared transport and special access, loop-transport combinations and should not be interpreted to apply to all other network elements. (Sprint Petition, pp. 73-74)

Verizon maintains that it is not obligated to provide UNE multiplexing services to Sprint and that multiplexing has not been defined by the FCC as a UNE. Further, multiplexing does not meet the "necessary and impair" standard of Section 251(d)(2) of TA-96. Verizon asserts that Sprint seeks to circumvent the FCC restrictions on stand-alone multiplexing as it seeks to "connect loop-transport combinations to a multiplexer, and then connect the multiplexer to its collocation cage. Sprint's request for "connectivity" to its collocation arrangement from a multiplexer is really a request for an enhanced extended link, or "EEL," which is a combination of a loop, transport and multiplexing (if required)." (VZ FO, p. 80). Verizon takes the position that Sprint's attempt to couch its request as merely seeking access to a multiplexing UNE cannot relieve it from the FCC's local use restrictions in the *Supplemental Order Clarification*.

b. ALJ Recommendation

ALJ Chestnut recommended that Sprint's proposal be adopted for Issue No. 18. In light of this recommendation, she found it unnecessary to address Issue No. 19 -- MAN UNE Multiplexing. (R.D., p. 26). In finding that Sprint's position should be adopted for Issue No. 18, ALJ Chestnut concluded that the FCC's *Supplemental Order Clarification* was not relevant in this case as this order prohibited the commingling of special access and UNE traffic. The issue under consideration here involves switched access and UNE traffic. (R.D., p. 26). She also concluded that EELs were not an issue. (*Id.*). As support for her conclusion, ALJ Chestnut observed that Verizon's witness Fox apparently agreed that EELs were not an issue. (*Id.* citing Tr. 103).

Finally, the ALJ rejected Verizon's position that the FCC's ongoing access charge reform (CALLS[56] Plan) indicated that Sprint's proposal should be rejected. The ALJ concluded that CLECs, such as Sprint, would be unable to fully utilize their facilities in an economically efficient fashion absent the ability to utilize the same facilities for UNE services and access services. (R.D., pp. 26-27). Thus, she was convinced that the economic engineering efficiencies to be obtained by Sprint outweighed Verizon's concerns. (R.D., p. 27).

[56] Coalition for Affordable Local and Long Distance Service; *In the Matter of Access Charge Reform* . . .; CC Docket No. 96-262; CC Docket No. 94-1; CC Docket No. 99-249; CC Docket No. 96-45; 15 FCC Rcd 12962; (May 31, 2000 Released; Adopted May 31, 2000), affirmed Case No. 00-60434, _ F.3rd _ (5th Cir. 01).

c. Exceptions and Replies

In Exceptions, Verizon relies upon the *Supplemental Order Clarification* and CALLS Plan adopted by the FCC to argue that the recommendation effectively tampers with the current access charge regime and federal regulatory efforts to reform this regime in light of current objectives of TA-96 by permitting Sprint to evade interstate switched access charges through the use of local service facilities. (VZ Exc., pp. 25-27). Verizon also points to Section 251(g) of TA-96 for the proposition that the access regime remains unchanged by TA-96, pending express revision by the FCC. Thus, Verizon states, this Commission may not, in the context of a TA-96 Section 252 arbitration proceeding, modify the application of access charges. (VZ Exc., p. 26).

In its Replies, Sprint maintains that Verizon either misunderstands the MAN multiplexing issues in this dispute or seeks to unnecessarily confuse the Commission. (R.Exc., p. 12). Sprint states that it does not seek to commingle special access services associated with EELs because it does not seek also to combine a loop connection for transport of traffic. (*Id.*).

d. Disposition

On consideration of the issue, it is clear that Sprint wants to be allowed to take switched access and "next to it have a facility that we're using for local transport between our collocation cages for ION and put them into the same multiplexer, and then bring them back to our collocation cage and put them on dark fiber." (Tr., p. 106). Also, we are clear as to the purpose for which Sprint requests appropriate language.

> Clearly, Sprint is impaired by Verizon's denial. Sprint would be forced to segregate traffic, duplicate facilities and utilize more collocation space. Sprint seeks to realize economic efficiencies. While Verizon cites to supposition concerning

> the applicability of the FCC's access reform proceeding, yet Verizon fails to provide any justifiable reason why Sprint should be denied the ability to realize the same economic efficiencies that Verizon admitted to enjoying.

(Sprint R.Exc., p. 13) (Notes omitted)

We note that although the FCC adopted, on an interim basis, certain local usage options to provide a "safe harbor" that preserves the status quo for access charge revenue recovery pending the completion of its proceedings, it did not prohibit, altogether, the use of combinations. Rather, it allowed carriers to use combinations of unbundled loop and transport network elements to provide local exchange service under certain showings while the issues in the Fourth FNPRM could be examined in more detail.

ALJ Chestnut is correct when she observed that the *Supplemental Order Clarification* did not expressly address switched access, but concerned special access.[57] Consequently, on its face, the Sprint proposal, to the extent it purports to address switched access is not in violation of the *Supplemental Order Clarification*. However, Verizon is not content that no potential harm in the nature of bypass would occur. This contention appears focused on the network configuration proposed by Sprint and relates specifically to the use of the multiplexer device. It is this technical device and configuration which appears objectionable to Verizon in that Sprint, accordingly, can engage in a "detour" around otherwise applicable access regimes, "thereby undermining or superseding ongoing access reform efforts in the context of a local interconnection agreement applicable to a single CLEC." (VZ Exc., p. 27)

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[57] At page 25 of its Exceptions, Verizon maintains that the ALJ decision would, in effect, allow Sprint to bypass switched access charges in violation of FCC rules. However, the distinction between bypass associated with special access and switched access would center upon Verizon's objection to Sprint's use of the multiplexer equipment.

Our review of the issue, based on the technical and complex proposed configurations of Sprint's network, lead us to conclude that Verizon engages in an overbroad interpretation of the *Supplemental Order Clarification*. Also, Verizon's suggestion that Sprint's proposal will upset the complex process of access charge reform engaged in by the FCC is unnecessarily alarmist.

Verizon vigorously contests ALJ Chestnut's conclusion that the commingling prohibited by the FCC in the *Supplemental Order Clarification* only pertained to special access and UNE traffic and not switched access and UNE traffic. (VZ Exc., p. 26). To support this, however, Verizon does not cite to any portion of the order. Rather, it relies on Section 251(g) of TA-96 which holds that the LEC shall provide exchange access in accordance with the same restrictions and obligations, including receipt of compensation, that apply immediately prior to the date of enactment of TA-96. Thus, explains Verizon, the intent of TA-96 is to preserve the status quo of the access regime until modified by FCC regulations. (*Id.*). Verizon subsequently asserts, "whether or not technically feasible, Verizon cannot be compelled to allow Sprint to commingle UNE and access traffic to allow Sprint to avoid access charges." (VZ Exc., p. 27).

Preservation of the status quo relative to access charges is a major undertaking in process by the FCC and the industry. The FCC has specifically spoken to the concerns presented by UNE combinations and transport in the context of special access. However, the order does not go as far as Verizon asserts, as demonstrated by this record. Even were this Commission to assume that the multiplexer functionality as explained by Sprint's proposal could potentially result in the bypass of access charges, we are torn between frustrating the CLEC's desire to use its network in as efficient manner as possible, and restricting CLECs to the network architecture proposed by Verizon. Under these circumstances we shall modify the ALJ's recommendation. However the arrangement proposed by Sprint should be permitted only with adequate safeguards that such arrangement is not used for the purpose of avoiding access facility charges associated with such dedicated transport access facilities. This appears consistent with the determinations of the FCC. Rather than inhibit competitors in light of an industry-wide problem, which is intractable, we believe it is best to modify Sprint's language with certain safeguards.

In determining these safeguards, as we previously noted, Sprint's proposal to allow for UNE transport and switched access facilities over the same facilities could potentially result in the misuse of providing access over local trunks. It is important to note that today, when a Sprint presubscribed toll customer makes a toll call, that call is originated at the ILEC's (in this case Verizon's) local central office and handed off to Sprint's POP. In this instance, Verizon charges Sprint originating switched access charges for that toll call. It is our understanding that what Sprint proposes to do under its MAN plan is to move the point of interface between Verizon's local central office and Sprint's POP out of the central office and put it on dark fiber.[58] In other words, under Sprint's plan, in lieu of Sprint having to route its local, toll, and packet-switched traffic over separate networks, it will move the point of access to Verizon's switched access network from out of the central office and connect it to Sprint's multiplexer (DSLAM). This, in our view, although efficient for Sprint, will have the effect of potentially disrupting the existing access charge regime, which Congress and the FCC believe should not be disrupted at this time.[59]

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58 This dark fiber could either be owned by Sprint or obtained from a third party

59 As was previously noted in our disposition to Issues 12, the FCC's *ISP Remand Order* on pages 18-19 indicated that it is the intent of Congress and the FCC that the pre-existing interstate and intrastate access charge regimes not be disrupted at this time.

Sprint Witness Nelson stated that Sprint would entertain paying 100 percent of access charges on all of the multiplexed traffic.[60] We believe that payment of access charges for all of the multiplexed traffic would alleviate Verizon's access charge concerns on this matter. As such, we shall modify the ALJ's recommendation and require Sprint to continue to pay access charges for all of the traffic routed through the multiplexer and placed on fiber. This Commission is vigilant that unintended consequences of otherwise well-meaning decisions have resulted in arbitrage as parties accidentally or intentionally exploit differences in prices. That is absolutely not the intent of the disposition of these issues. If the parties believe that arbitrage is occurring, then the aggrieved party should petition this Commission for ADR resolution.

Also, we note that Sprint is requesting Verizon to deploy OCN multiplexers, which Verizon indicated it does not currently deploy today for itself. In order to accommodate this concern, we shall also modify the ALJ's recommendation and require that Sprint make requests only for the types of multiplexers in use by Verizon today.

We believe that this disposition will help to resolve the concerns of both parties on this matter. Therefore, we shall modify the ALJ's recommendation consistent with this disposition, and grant Verizon's Exceptions to the extent they are consistent with this disposition.

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60 *See* Tr., p. 109, when Witness Nelson states "I would like to say also on this issue that multiplexing if [sic] the concern of Verizon, you have this multiplexing, and I don't want to have to allocate some of it to access and some of it to UNE, we would very strongly entertain paying 100 percent access on that multiplexing, hooking up to that and everything that's in the big pipe we would pay."

10. Issue No. 20 – Collocation Space Reservation

a. Positions of the Parties

On this issue, Sprint maintained that the Commission's policy on collocation space reservation as stated in the Commission's June 8, 2001 Collocation Order should be articulated in the subject Interconnection Agreement. While the Commission directed Verizon to adopt a two year reservation period in the June 8, 2001 Collocation Order, Sprint argued that the policy should be stated in the subject Interconnection Agreement because Verizon failed to include the issue in its Collocation compliance filing.

b. ALJ's Recommendation

The ALJ concluded that the Verizon's purported compliance filing did not include the Commission's directive regarding space reservation. For this reason, the ALJ recommended adoption of Sprint's proposal to include the Commission's determination on this issue in the subject Interconnection Agreement. (R.D., pp. 27-28).

c. Exceptions

Verizon disagrees with the ALJ's recommendation to include the Commission's determination with respect to space reservation in this Interconnection Agreement. As a party in the Collocation proceeding, Verizon comments, Sprint may file a complaint to the Collocation compliance filing if it feels that Verizon's Collocation filing does not comply with the Commission's directive on this issue Verizon adds that to allow Sprint to address the same issue in this docket as well in the Collocation docket would be asking the Commission to address the issue twice, thus resulting in an ineffective use of Commission resources.

In its Reply Exceptions Sprint points out again that the Verizon's Collocation Compliance filing is silent on the issue of two year space reservation requirement adopted by the Commission in the June 8 Collocation Order. Sprint repeats its earlier contention that inclusion of the space reservation policy adopted in the June 8 Collocation Order is reasonable and necessary. (Sprint R. Exc., pp. 15-16).

d. **Disposition**

Sprint's proposal to include the Commission's space reservation policy in the interconnection agreement appears to be based on its concern that Verizon's Collocation Compliance Filing did not include such a provision. Regardless of the basis for its request, we will grant it on the grounds that including the space reservation policy set forth in our June 8, 2001 Order, in the agreement could make it compliant with that order.

11. Issue No. 21 Reallocation of Facilities

a. Positions of the Parties

This issue deals with the changeover of Sprint DSO (voice grade) connections to line sharing. Sprint believes that a minor augment charge of $200 is appropriate because restenciling or reuse of the cable is adequate and no additional cabling is necessary. Verizon differs with Sprint's position citing that based on the experience developed in the New York collaborative, it is not possible to reuse the cable. Verizon asserts that in addition to a fee of $2,050 to permit Sprint vendors to do the work. Sprint should also make a payment of $550 to Verizon

b. ALJ Recommendation

The ALJ recommended the adoption of Verizon's position noting that Verizon convincingly established that the issue regarding reuse of the cable was explored in the New York collaborative and found to be unworkable. The ALJ further observed that while there was no support in the record for the fee of $550, that amount appeared to be a reasonable until such time that an appropriate cost study is provided. (R.D., p. 28) [61]

c. Exceptions and Replies

Sprint filed Exceptions to the ALJ recommendation (Sprint Exc., pp. 9-13). Specifically, Sprint believes that the ALJ erred in rejecting its proposed $200 fee. According to Sprint, Verizon currently allows CLECs to redesignate facilities for a minimal charge of up to $200 per occurrence. (Sprint Exc., p. 9). Repeating its earlier contention that no additional cabling work is required of Verizon and no engineering work is required to restencil a cable block, Sprint argues that the ALJ's reliance on Verizon's assertion that the ILEC's experience in the New York collaborative is misplaced. It further challenges the ALJ's finding that the results of the New York collaborative is controlling on this issue. Sprint maintains that it is not bound by the New York collaborative and that it did not join in the New York line-sharing pilot. Simply stated, Sprint objects to the ALJ's conclusion that the technical findings regarding the issue of reallocation of facilities uncovered in the New York line sharing pilot should apply in the instant arbitration proceeding.

Alternatively, Sprint seeks clarification of the ALJ's recommendation that the $550 fee would represent an interim fee pending submission and Commission

61 Verizon explained that the $550 fee amount was chosen because it represented the current lowest engineering and implementation fee for any collocation arrangement.

approval of a Verizon cost study containing this rate Sprint adds that because the cable has already been delivered, engineered and implemented, it does not support a facilities reallocation fee based upon engineering and implementation costs As such, Sprint concludes that it would agree to an interim total charge of $550 per occurrence for the redesignation of DSO pairs under these conditions: "(1) the $550 charge represents the total cost to be assessed by Verizon to Sprint for completion of reallocation work, and no additional hidden charges or fee are associated with this task; (2) the $550 charge remains in effect until Verizon completes a cost study and the Commission determines otherwise in the UNE proceeding in which that cost study is presented; and (3) the opportunity to seek refunds is specifically reserved for disposition in that UNE proceeding." (Sprint Exc., p. 13).

Verizon replies that the ALJ's recommendation is fair and reasonable under the circumstances and should be adopted. Verizon comments that the experience gained from the New York, as anticipated by the participants of that collaborative, is analyzed to aid in development and implementation of industry-wide standards for line-sharing cutovers, operational procedures, central office equipment designs, ensure end user service quality. (Verizon R. Exc., p. 10). Verizon further references unrebutted testimony in the present arbitration that the prospect of cable reuse, as proposed by Sprint, was attempted in the New York trials and proved to be unsuccessful. (Verizon R.Exc., pp. 10-11).

With respect to the $550 fee for reallocation of facilities, Verizon disagrees that clarification is warranted. Verizon emphasizes that it reduced the proposed application and engineering rate for these conversions from $2,050 to $550 because under the new proposal, Sprint's own vendor would perform much of the conversion work. Contrary to Sprint's assertion, Verizon maintains that the $550 fee would cover the time and materials it incurs in processing the application, working with Sprint's vendor to engineer the job as well as inputting the appropriate information into proper inventory databases. In Verizon's view, the ALJ properly characterized the $550 fee as an interim rate until such time an appropriate cost study is submitted and approved by the Commission. Verizon notes that it reserved the right to propose a new rate in any subsequent UNE proceeding and any objections of Sprint to the $550 fee should not be addressed in this proceeding, but in a separate UNE proceeding or by proper motion of Sprint. (Verizon R.Exc., p. 14).

d. Disposition

Upon consideration, we find that there is sufficient evidence in the record to demonstrate that restencilling or reuse of cable, as suggested by Sprint, resulted in the technical problems observed in the New York line-sharing pilot. Indeed, from a technical as well as economic perspective, it serves no useful purpose to direct the use of processes which have been proven unsuccessful under similar circumstances. The experience gained from technical trials and pilots would be useless if CLECs, ILECs and regulatory communities failed to take notice and decline to implement policies and processes that have proven to be impractical. In our view, this is such a situation. Accordingly, we adopt the ALJ's finding that Sprint's proposal is not technically advisable.

We turn now to consider whether the ALJ's recommended $550 charge is appropriate. Sprint asserts that Verizon charges a lesser fee for the same service in another jurisdiction. In addition, Sprint implies that in the Verizon service footprint, of which Pennsylvania is a part, the maximum fee Verizon charges for this service is $200. We further observe that Verizon did not specifically dispute Sprint's allegations in its reply Exceptions. Rather, Verizon highlights the various services and tasks it would have to perform to accommodate a request for reallocation of facilities. Assuming that Verizon would have to perform the same tasks for a CLEC's request in another jurisdiction, we fail to see the justification for a pricing differential, *i.e.*, no fee versus a $550 fee. Given the lack of a sufficient basis to support Verizon's proposed $550 fee for reallocation of facilities, we will adopt Sprint's alternative proposal, as set forth on pages 88-89.

12. Issue No. 22 -- Timing of Transport Availability

a. Positions of Parties

On this issue, Sprint sought a commitment from Verizon to implement a parallel provisioning of DSLAM transport and collocation cage construction. Sprint explains that at present a CLEC must wait months after the collocation arrangement is completed before it is able to order DSLAM transportation. Sprint has proposed that Verizon be required to provide this type of parallel provisioning on or before December 31, 2001.

Verizon conceded that parallel provisioning was not permitted. Initially, Verizon proposed to wait until the conclusion of the Cavalier trial.[62] Later, in its Final Offer, Verizon offered to conduct a test of parallel provisioning within ninety days. Verizon subsequently modified its proposal and now offers to conduct a trial with suggested contract language that the parties make commercially reasonable efforts to establish such processes by June 30, 2002.

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[62] On June 6, 2001, Verizon and Cavalier Mid-Atlantic, LLC (Cavalier) entered into a Trial Agreement for the parallel provisioning of unbundled interoffice dark fiber and central office collocation arrangements. *Re: Verizon Pennsylvania Inc.-Cavalier Mid-Atlantic, LLC Interoffice Dark Fiber and Collocation Parallel Provisioning Trial*, Docket No. M-00001435.

b. ALJ Recommendation

The ALJ observed that Verizon's modified final offer was filed after the submission of the parties' final offers and that Sprint did not have an opportunity to respond to Verizon's modified proposal. Despite the lateness of Verizon's modified proposal, the ALJ reasoned that because the Parties had discussed the concept of a trial during the conference, she would take into consideration Verizon's latest proposal on this issue. Yet, in reviewing the proposals, the ALJ concluded that Verizon's proposed language was too indefinite and, therefore recommended adoption of Sprint's proposal to implement parallel provisioning by December 31, 2001.

c. Exceptions and Replies

In its Exceptions, Verizon argues that ALJ's recommendation is flawed and based on misrepresentations of fact made by Sprint. Specifically, Verizon argues that Sprint's representation with respect to an agreed parallel provisioning of DSLAM transport and collocation between Qwest and SBC is inaccurate. Verizon contends that but for Sprint's misstatement and the ALJ's misplaced reliance on that misrepresentation, the ALJ would have concluded that Verizon's proposal to conduct a trial was reasonable, thereby recommending its adoption.

Sprint notes that the Parties agree that the lack of parallel provisioning is a problem as Sprint cannot order DSLAM transportation from Verizon at the same time that Sprint orders a collocation arrangement. Yet, Sprint argues that the ALJ's recommendation is reasonable and should be adopted. Sprint supports both the ALJ's recommended implementation date of December 31, 2001 and Verizon's completion date of June 30, 2002. (Sprint R.Exc., pp. 17-18).

d. Disposition

Contrary to Verizon's assertion, we are not convinced that the ALJ's recommendation is based solely on Sprint's representation that other ILECs were permitting parallel provisioning of DSLAM transport and collocation cage construction. In our view, the ALJ expressed concern that Verizon's modified proposal to conduct trials and make reasonable efforts to establish such processes by June 30, 2002 was too indefinite and that a date certain for implementation was appropriate The issue of whether other ILECs have agreed to provide parallel provisioning is not nearly as important as the issue of whether there are legitimate technical impediments which would preclude parallel provisioning of DSLAM transport and collocation in Pennsylvania. The record in this proceeding does not reveal any known technical impediments to implementation of parallel provisioning in Pennsylvania.

We order that a trial for parallel provisioning with Sprint should commence no later than December 31, 2001. We further find that this service offering will be available for all carriers, upon successful completion of the trial, but no later than July 1, 2002. However, should both Sprint and Verizon agree any time after initiating the parallel provisioning trials that, based on technical concerns, a reasonable extension f time beyond June 30, 2002 is warranted, we will entertain such request at that time. We also direct the Parties to submit individual status reports monthly[53] and at the completion of the trial. The reports shall be filed with the Commission's Bureau of Fixed Utility Services. That Bureau in conjunction with the Office of Special Assistants shall review the reports and inform the Commission of their findings. Like the ALJ, we also encourage the parties to continue to explore efficient methods to assist in a smooth

[53] The reports shall be filed on the 15th of each month commencing with February 2002 and continuing until the conclusion of the trial.

implementation of this process.[64] The parties are obligated to advise the Commission of the progress and results of the Maryland trial upon completion. At that time, we will entertain any proposed modification the parties may have regarding the disposition of this issue consistent with the outcome of the Maryland trial.

[64] PA is aware of a trial in MD based on documents filed as part of this record.

III. CONCLUSION

The parties are hereby directed to submit an interconnection agreement consistent with the dispositions contained in the body of this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition of Sprint Communications Company, L.L.P., for Arbitration of an Interconnection Rates, Terms and Conditions pursuant to 47 U.S. C. §252(b) And Related Arrangements with Verizon Pennsylvania, Inc. is granted, in part, and denied, in part, consistent with the discussion and directives contained in this Opinion and Order.

2. That the Recommended Decision of Administrative Law Judge Marlane R. Chestnut, Acting as Arbitrator, issued on August 13, 2001, is adopted as modified, consistent with this Opinion and Order.

3. That the Exceptions of Sprint and Verizon are granted, in part, and denied, in part, consistent with this Opinion and Order.

4. That the Motion to Supplement the Record is granted consistent with the discussion outlined in this Opinion and Order.

5. That the Sprint Motion to Strike is denied consistent with the discussion contained in this Opinion and Order.

6. That consistent with the discussion contained in this Opinion and Order, a trial for parallel provisioning should be implemented by December 31, 2001.

7. That the monthly reports regarding the parallel provisioning trial ordered for in this Opinion and Order shall be filed with the Bureau of Fixed Utility Services. Both the Bureau of Fixed Utility Services and the Office of Special Assistants shall review the reports and inform the Commission of their findings.

8. That within thirty (30) days of the entry date of this Opinion and Order, the parties shall file an executed agreement which sets forth all terms and conditions agreed to by the parties or decided by the Arbitrator and this Commission.

BY THE COMMISSION,

James J. McNulty

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: October 12, 2001

ORDER ENTERED: OCT 12 2001

TEXAS

PUC DOCKET NO. 24306

PETITION OF SPRINT COMMUNICATIONS COMPANY L.P., D/B/A SPRINT FOR ARBITRATION WITH VERIZON SOUTHWEST INCORPORATED (F/K/A GTE SOUTHWEST INCORPORATED) D/B/A VERIZON SOUTHWEST AND VERIZON ADVANCED DATA INC. UNDER THE TELECOMMUNICATIONS ACT OF 1996 FOR RATES, TERMS AND CONDITIONS AND RELATED ARRANGEMENTS FOR INTERCONNECTION	§ § § § § § § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS

ARBITRATION AWARD

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PUC DOCKET NO. 24306

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ARBITRATION AWARD

This Arbitration Award (Award) addresses five primary issues raised by Sprint Communications Company, L.P. (Sprint) and Verizon Southwest, Inc. (Verizon) under section 252(b) of the Federal Telecommunications Act of 1996 (FTA) in regard to unresolved rates, terms, conditions, and related arrangements for a proposed renewal of the parties' interconnection agreement. The Award addresses issues concerning use of multijurisdictional trunks, definition of local traffic, resale of vertical features, incorporation of a collocation tariff, and Sprint's collocation obligation.

I. SUMMARY OF PROCEEDING

A. Jurisdiction

If an incumbent local exchange carrier (ILEC) and a CLEC cannot successfully negotiate rates, terms, and conditions in an interconnection agreement, section 252(b)(1) of the FTA provides that either of the negotiating parties "may petition a State commission to arbitrate any open issues" through compulsory arbitration.[1] The Commission is a state regulatory body responsible for arbitrating interconnection agreements approved pursuant to the FTA.[2]

B. Procedural History

On June 22, 2001, Sprint Communications Company, L.P. (Sprint) filed with the Public Utility Commission (Commission) a petition to arbitrate unresolved rates, terms, conditions, and related arrangements of a proposed renewal of its interconnection agreement with Verizon Southwest, Inc. (Verizon) and Verizon Advanced Data Inc. (VADI)[3] under section 252(b)(1) of the FTA.[4] Sprint, in its petition, advanced 22 issues for the arbitration. Verizon and VADI subsequently moved for dismissal several issues as not appropriate for arbitration.[5] In an order on motions to dismiss issues 1, 4, and 8 of Sprint's petition, the Arbitrators found that VADI is a proper party to this arbitration, VADI would be bound by the agreement reached in this proceeding, and that issues 4 and 8 would be addressed.[6]

On September 28, 2001, all of the parties filed a stipulation indicating that VADI need not continue as a party to this proceeding because the parties agreed that the issues involving VADI were more appropriately addressed in the *Line Sharing Docket*.[7] The parties stated that the determinations made in the *Line Sharing Docket* shall apply to Verizon and VADI. The

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[1] 47 U.S.C. § 251(b); P.U.C. PROC. R. 22.305.

[2] 47 U.S.C. §§ 251(b)(4); 252(e)(1).

[3] VADI is a facilities-based local exchange carrier providing DSL, frame relay, and ATM cell relay services. VADI is the advanced services affiliate of Verizon. VADI Initial Brief in Support of Motion to Dismiss at 1 (July 16, 2001).

[4] 47 U.S.C. 252(b)(1); P.U.C. PROC. R. 22.305.

[5] *See* P.U.C. PROC. R. 22.305(f). *Compare* 47 U.S.C. 252(a) (voluntary negotiations) *with* 47 U.S.C. 252(b) (compulsory arbitration).

[6] Order No. 2 at 7, 9-10 (August 7, 2001); *See In re Application of GTE Corporation, Transferor and Bell Atlantic Corporation, Transferee for Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Order at 2, 4 (rel. September 26, 2001) (allowing Verizon to reintegrate VADI by accelerating the time in which Verizon is permitted to provide advanced services without using its separate advanced services affiliate).

[7] Stipulation I at 1-2, 3, 5 (September 28, 2001); *See Petition of Rhythms Links, Inc. Against Southwestern Bell Telephone Company for Post-Interconnection Dispute Resolution and Arbitration under the Telecommunications Act of 1996 Regarding Rates, Terms, Conditions and Related Arrangements for Line Sharing*, Docket No. 22469 (April 26, 2000) (Line Sharing Docket).

parties, therefore, agreed that VADI shall be dismissed from this proceeding.[8] Also in that stipulation, the parties agreed, for various reasons, that issues 1, 6-8, 11, 13-14, 16-18, 20-21 no longer needed to be addressed in this proceeding.[9]

On November 14, 2001, Sprint and Verizon filed a second stipulation, in which they reached an agreement on issues 4 and 12 and stated that these would no longer be at issue in the proceeding.[10] Finally, Sprint and Verizon filed a third stipulation stating that issues 9-10 and 19 were no longer issues that would be submitted for resolution to the arbitrators.[11] The parties additionally agreed to waive cross-examination of direct testimony for issues 5, 15, and 22, to admit the direct testimony of each witness on these issues in evidence, and to submit the issues in written briefs to the arbitrators.[12]

In response to the parties' stipulation, on November 27, 2001, the Arbitrators issued Order No. 6 dismissing VADI as a party to this proceeding. The Arbitrators also set the hearing schedule and resolved that issues 2 and 3 would be presented on the merits and that issues 5, 15, and 22 would be submitted through admitted pre-filed testimony and briefing by the parties. The hearing on the merits for issues 2 and 3 was held on November 29, 2001.

C. Executive Summary

The parties have brought five issues to the Commission for compulsory arbitration. The first, Issue 2, concerns whether the Commission should require Verizon to allow multijurisdictional trunks that combine local traffic with access traffic, and to permit reciprocal compensation to be paid for the local portion of the traffic. Issue 3 concerns Sprint's 00-/ voice-activated dialing (VAD) product, asking whether a certain subset of 00-/VAD calls are "local calls," and, if so, whether they are subject to reciprocal compensation or some other kind of charges. The next issue, Issue 5, asks whether Verizon should be required to provide Sprint with custom calling services on a stand-alone basis at wholesale discount rates. The fourth issue,

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[8] Stipulation I at 1-2 (September 28, 2001).

[9] Stipulation I at 2-7 (September 28, 2001).

[10] Stipulation II at 1-2 (November 14, 2001).

[11] Stipulation III at 2, 3-4 (November 19, 2001).

Issue 15, concerns the collocation tariff that Verizon anticipates filing with the Commission, and raises Sprint's concern that this tariff may supersede provisions in the Sprint/Verizon interconnection agreement without providing Sprint an opportunity to comment. Finally, Issue 22 asks whether Sprint has an obligation to provide Verizon with collocation pursuant to Section 251 of the FTA.

Issue 2 concerns whether the Commission should require Verizon to allow multijurisdictional trunks that combine local traffic with access traffic, and whether to permit reciprocal compensation to be paid for the local portion of the traffic. The Arbitrators find that Sprint should be allowed to combine multijurisdictional traffic over the same trunks or trunk group. The Arbitrators concluded that Verizon's administrative concerns regarding billing should not be determinative regarding this issue. Should the Sprint software that manages the identification of the traffic be determined to be inadequate, a percent local usage (PLU) factor could be utilized for billing. Verizon was also concerned it would be in violation of agreements with other CLECs that require jurisdictional separation of traffic. The Arbitrators find that Sprint's argument is compelling in that it is in fact Sprint, not Verizon, routing such traffic to the third party LEC. As such, it would be Sprint's responsibility to establish interconnection agreements with all relevant CLECs for compensation arrangements. Finally, the Arbitrators find significant precedent for the use of multijurisdictional trunks for local and access traffic. The Arbitrators find that Sprint's proposed language should be adopted except for sections 1.1.4.2 and 1.1.4.3, which pertain to Issue 3.

Issue 3 concerns Sprint's 00-/ voice-activated dialing (VAD) product. It asks whether a certain subset of 00-/VAD calls are "local calls," and, if so, whether they are subject to reciprocal compensation or some other kind of intercarrier compensation or charge. The Arbitrators first find that the 00-/VAD call at issue does not fall within the federal statutory definition of exchange access, the Commission's definition of long distance, or the Commission's definition of access services. Conversely, these 00-/VAD calls do fit the federal statutory definition of a telephone exchange service and the Commission definition of local exchange service. In relation to compensation, the Arbitrators do not believe that the 00-/VAD

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[12] Stipulation III at 1, 2 (November 19, 2001).

call fits neatly within any of the static categories of traffic compensation the FCC presents in the *ISP Remand Order*. This type of call presents a novel question for the Commission. The Arbitrators conclude that the 00-/VAD calls at issue are "local" calls, but they are not subject to reciprocal compensation. Current FCC policy results in access charges applying to these calls because the call does not originate or terminate on Sprint's network facilities. The Arbitrators additionally find that the parties' definition of local traffic should reflect the *ISP Remand Order's* instructions regarding what traffic is subject to reciprocal compensation. The Arbitrators decide that a combination of language from both parties' proposals is appropriate for the definition of local traffic.

Issue 5 asks whether Verizon should be required to offer for resale custom calling services on a stand-alone basis at wholesale discount rates. The Arbitrators conclude that Verizon does offer custom calling services at retail. Thus, Verizon is obligated under section 251(c)(4) of the FTA to offer its custom calling services to Sprint, without requiring the purchase of the underlying local service, at the appropriate discount.

Issue 15 concerns the collocation tariff that Verizon anticipates filing with the Commission, and raises Sprint's concern that this tariff may supersede provisions of the Sprint/Verizon interconnection agreement without providing Sprint an opportunity to comment. The Arbitrators recognize that Verizon has the right to file a collocation tariff, and the terms of that tariff may be different from the collocation terms in the parties' interconnection agreement. The Arbitrators agree with Sprint that any future collocation tariff should become binding upon the parties on the actual effective date of the tariff, and the parties' agreement should govern until that time. Generally, a tariff's effective date occurs on or after the Commission issues an order approving Verizon's tariff. This process allows Sprint to have the opportunity to participate in the collocation tariff proceeding pursuant to PURA Chapters 53 and 58.[13] The arbitrators conclude that Sprint's proposed language best reflects the Arbitrators' decision and should be adopted with modifications.

[13] Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-64.158 (Vernon 1998 & supp. 2002) (PURA).

Issue 22 asks whether Sprint has an obligation to provide Verizon with collocation pursuant to Section 251 of the FTA. The Arbitrators conclude that Verizon is essentially seeking an extension of collocation obligations upon CLECs that are not contained in the FTA. The duty to provide collocation is only applicable to incumbent local exchange carriers. The Arbitrators decline to require Sprint to provide collocation to Verizon.

II. RELEVANT STATE AND FEDERAL PROCEEDINGS

A. Relevant Commission Decisions

Essential Office Order

In 2001, the Commission decided that Southwestern Bell Telephone's (SWBT) practice of requiring telecommunications carriers to purchase underlying basic local services in conjunction with its vertical features was an unreasonable restriction on resale in violation of section 251(c)(4) of the FTA and section 60.042 of PURA.[14] The Commission further established a general presumption "that tying the purchase of separately tariffed vertical features to the purchase of local service is unreasonable."[15] In the order, the Commission required SWBT to discontinue its practice and offer its vertical features for resale without the concomitant purchase of the underlying basic local service line.[16]

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[14] *Complaint By AT&T Communications of the Southwest, Inc. Regarding Tariff Control Number 21311, Pricing Flexibility – Essential Office Packages*, Docket Nos. 21425 and 21475, Order at 2, 10 (conclusions of law 10, 13, and 14) (December 18, 2000) (on appeal at *Southwestern Bell Tel. Co. v. P.U.C.*, No. GN1-00541 (Travis County, Tex.) (*Essential Office Order*), *adopting*, *Complaint By AT&T Communications of the Southwest, Inc. Regarding Tariff Control Number 21311, Pricing Flexibility – Essential Office Packages*, Docket Nos. 21425 and 21475, Proposal for Decision (October 19, 200) (*Essential Office PFD*).

[15] *Id.* at 4.

[16] *Id.* at 11.

B. Relevant Federal Communications Commission Decisions

ISP Remand Order

On April 27, 2001, the FCC released an Order reconsidering the proper treatment for purposes of inter-carrier compensation of telecommunications traffic delivered to ISPs.[17] The FCC modified its previous analysis in the *Declaratory Ruling* to conclude that Congress excluded traffic identified in section 251(g) of the FTA, including traffic destined for ISPs, from the "telecommunications" traffic subject to reciprocal compensation.[18] Accordingly, although for different reasons than set out in the *Declaratory Ruling*, the FCC found that the provisions of section 251(g) of the FTA do not extend to ISP-bound traffic, reaffirmed its previous conclusion that traffic delivered to an ISP is predominantly interstate access traffic subject to FTA § 201, and established a cost recovery mechanism for the exchange of ISP-bound traffic.[19] In particular, the FCC initiated a 36-month transition towards a complete bill-and-keep recovery system.[20]

The *ISP Remand Order* clarified that the classification and compensation standard for all telecommunications traffic, including ISP-bound traffic, is to be based upon the interplay between sections 251(b)(5) and 251(g) of the FTA. The FCC concluded that all telecommunications traffic is eligible for reciprocal compensation under section 251(b)(5) of the FTA, unless expressly exempted by section 251(g). Section 251(g) exempts exchange access, information access, and exchange services for such access from reciprocal compensation.[21]

[17] *In the Matter of Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, FCC 01-131 (rel. April 27, 2001) (*ISP Remand Order*).

[18] *Id.* at ¶ 1.

[19] *Id.*

[20] *Id.* at ¶ 7.

[21] *Id.* at ¶ 32, 34.

C. Relevant Court Decisions

Bell Atlantic Telephone Companies v. FCC

On March 24, 2000, the District of Columbia Circuit Court vacated the FCC's *Declaratory Ruling* regarding inter-carrier compensation for ISP-bound traffic.[22] The court remanded the FCC decision to the federal commission because the FCC did not properly explain why ISP-bound traffic should not be subject to reciprocal compensation. The court found that the FCC's ruling was premised on its decision to employ an end-to-end analysis traditionally used for jurisdictional purposes in determining whether particular traffic is interstate.[23] The FCC utilized the end-to-end analysis to demonstrate why ISP-bound traffic is interstate traffic, not terminating local telecommunications traffic and why the traffic is "exchange access" rather than "telephone exchange service."[24] The court went on to examine the FCC's statutory and policy justifications regarding its ISP-bound traffic finding. Ultimately, the court found that the FCC had not explained why the end-to-end analysis "is relevant to discerning whether a call to an ISP should fit within the local call model of two collaborating LECs or the long-distance model of a long-distance carrier collaborating with two LECs."[25] Consequently, the court vacated the *Declaratory Ruling* and remanded the case to the FCC. After the federal court's ruling, the FCC issued the *ISP Remand Order* discussed above.

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[22] *Bell Atl. Tel. Companies v. FCC*, 206 F.3d 1 (D.C.Cir. 2000). *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Declaratory Ruling; *Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Notice of Proposed Rulemaking, 14 FCC Rcd 3689 (Feb. 26, 1999) (*Declaratory Ruling*); *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunication Act of 1996*, Docket No. 21982, Revised Arbitration Award at 7-8 (August 31, 2000) (discussing the *Declaratory Ruling*).

[23] *Bell Atl. Tel.*, 206 F.3d at 5.

[24] *Bell Atl. Tel.*, 206 F.3d at 4, 5.

[25] *Bell Atl. Tel.*, 206 F.3d at 5; *ISP Remand Order* at ¶¶ 16, 25, and 53.

III. DISCUSSION OF DPL ISSUES

A. DPL Issues 2(a) and 2(b) Multijurisdictional Trunks

2(a). Should Sprint be able to combine interstate, intrastate, both interLATA and intraLATA, and local traffic on the same network trunk groups ("multijurisdictional trunks") and to compensate Verizon based on the particular jurisdiction of each segment of the call volumes that utilize the facilities; i.e., pay access on interstate calls, intrastate access on intrastate toll calls and pay reciprocal compensation for local traffic?

2(b). Should reciprocal compensation apply to calls that originate and terminate within the same local calling area but are routed over Verizon-provided access facilities before termination?

Sprint's Position

Sprint believes it should be able to combine traffic from different jurisdictions on the same facilities and pay separate types of compensation (local compensation or access) based on the jurisdiction of the traffic.[26] Sprint believes it is not necessary for a call to originate and terminate on different carrier's networks to be subject to reciprocal compensation rates.[27] In brief, Sprint noted that the FCC has traditionally endorsed an end-to-end analysis for call jurisdiction determination.[28] Sprint further offered that Verizon's General Exchange Tariff utilizes this same end-to-end rationale.[29] Sprint submits that when determining traffic type, the Commission should examine the use of the facility as opposed to a characterization of the facility.[30] Sprint posits that if it is required to pay access charges for calls that are local in nature (in Sprint's opinion), made utilizing its Voice Activated Dialing (VAD) service, it would not be financially viable to offer this service (VAD).[31]

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[26] Sprint Exhibit C, Direct Testimony of Michael Hunsucker at 9 (Hunsucker Direct)

[27] Hunsucker Direct at 9.

[28] Sprint's Initial Brief at 11 (December 14, 2001).

[29] Sprint Exhibit H, General Telephone Company of the Southwest, Texas General Exchange Tariff, Section 4, 3rd revised sheet No. 11A.

[30] Tr. at 149-150.

[31] Hunsucker Direct at 11.

Sprint offers that a call placed by a Verizon end-user, using 00-/VAD via Sprint's network, and terminating to another Verizon end-user in the same local calling area is in fact a local call, and not subject to access charges. It compares such a call to one made from a Verizon end-user to a CLEC number, which is in turn call-forwarded to another Verizon local customer in the same local calling area. Sprint believes that both call scenarios (VAD local end to end and call forwarded local end to end) should be treated as local calls and subject to reciprocal compensation as opposed to access charges.[32] Similarly, Sprint maintains that it is not necessary for a call to originate on one carrier's network and terminate on a different carrier's network to be subject to reciprocal compensation.[33] Further, Sprint offered, and Verizon concurred that its 00-/VAD service itself is a local service, similar to and substitutable for, Verizon's local service of Speed Dialing.[34]

Sprint maintains that a call by a Verizon customer, placed via Verizon Operator service to another Verizon customer in the same local calling area, is also similar in routing to the Sprint 00-/VAD local call at issue. Each routes to another platform that is not necessarily in the same local area and then terminates to another local customer of the same carrier as the originating caller. Sprint makes the point that the Verizon call placed via Operator service is construed by Verizon as a local call, not a toll call, therefore, neither should the similar 00-/VAD "local" call.[35]

Sprint states that it has interconnection agreements with BellSouth, SBC and Qwest that allow Sprint to provide local calls via its 00- dialing arrangement and treat the calls as local for compensation purposes.[36] Sprint offers to "compensate Verizon for transport on the originating side of the call and for all appropriate network elements (tandem switching, transport and end office switching) on the terminating side of the call at TELRIC-based rates."[37] Sprint cites

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[32] *Id.* at 12.

[33] *Id.* at 13.

[34] Sprint Exhibit G; Tr. at 111 - 112

[35] Hunsucker Direct at 14 - 15.

[36] *Id.* at 16 – 17.

[37] *Id.* at 17.

P.U.C. SUBST. R. 26.272(d)(4)(A)(i) as support for its position that local interconnection rates are appropriate for the types of calls/traffic being arbitrated.[38]

Sprint disagrees with the assertion that it is trying to avoid access charges by its proposal.[39] Rather, they assert that Sprint will distinguish between what it considers local and toll calls made via 00-/VAD, pay access for the toll calls and TELRIC-based charges for the local calls.[40] Sprint believes that the FCC has provided guidance on defining calls for compensation purposes.[41] Sprint believes its 00-/VAD service is analogous to directory assistance calls, and thus, the FCC's position that such calls are local is applicable in this scenario.[42]

AGREEMENT LANGUAGE

Sprint proposes the following language:

Multi-jurisdictional Trunks

1.1.1 VERIZON shall not impose any restrictions on SPRINT's ability to combine Local Traffic, as defined in this Agreement, with intrastate intraLATA and interLATA access traffic, and interstate access traffic on the same (combined) trunk group. To the extent VERIZON does not currently combine its own intrastate intraLATA and interLATA access traffic and interstate access traffic with Local Traffic does not in any way inhibit or limit SPRINT's ability to combine such traffic. Verizon will allow Local Traffic to be transmitted over access facilities and reciprocal compensation chargers shall apply. VERIZON shall also allow access traffic to be transmitted over local interconnection facilities and access charges shall be applicable only to that portion of the traffic that is access traffic.

1.1.2 Sprint will identify to Verizon the traffic delivered on the combined trunk group as intrastate intraLATA or interLATA access, interstate access or Local Traffic. Sprint shall only be required to compensate Verizon for the delivery of such Local Traffic terminated on the Verizon network pursuant to the reciprocal

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[38] *Id.* at 18 – 19.

[39] Sprint Exhibit D, Rebuttal Testimony of Michael Hunsucker at 2 (Hunsucker Rebuttal).

[40] Hunsucker Rebuttal at 2.

[41] *Id.* at 4.

[42] Hunsucker Rebuttal at 4; *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket 99-273, First Report and Order at ¶¶ 15, 17, and 19 – 21 (rel. January 23, 2001) (*DA Order*).

compensation provisions of this Agreement. Access charges do not apply to Local Traffic. Neither Party will charge the other Party access charges for Local Traffic.

1.1.2.1 SPRINT will measure and accurately identify Local Traffic, intrastate intraLATA and interLATA access traffic and interstate access traffic on the combined trunk group. SPRINT will pay VERIZON reciprocal compensation for the Local Traffic portion of traffic identified that is terminated on the VERIZON local network. The appropriate access charges shall apply to non-Local Traffic.

1.1.2.2 When SPRINT is not able to measure traffic, SPRINT shall provide appropriate jurisdictional use factors that will be used to apportion traffic.

1.1.3 VERIZON may audit the development of SPRINT's actual usage or the development of the jurisdictional usage factors, as set forth in the Audit provisions of the General Terms and Conditions of this Agreement.

1.1.4 As an example of the parties' intent 00- traffic from Verizon Customers who are presubscribed to Sprint will continue to be routed by Verizon to Sprint over originating switched access service.

1.1.4.1 00- traffic from Sprint IXC presubscribed end user customers will continue to be routed to Sprint IXC over originating FGD switched access service.

1.1.4.2 The jurisdiction of the traffic will be determined by Sprint based upon the origination and termination points of the call. Sprint will determine the amount of total 00- traffic that is Local Traffic and will report that factor and the associated minutes of use (MOU) used to determine the factor to VERIZON.

1.1.4.3 Using that data and the Sprint IXC total switched access MOUs for that month, Verizon will calculate a credit on Sprint IXC's switched access bill, which will be applied in the following month. The credit will represent the amount of 00- traffic that is local and will take into consideration TELRIC based billing for the 00- MOUs that are local. The credit will be accomplished via a netting process whereby Sprint IXC will be given full credit for all applicable billed access charge components offset by the billing of 00- transport on the originating side of the call and for all appropriate network elements (tandem switching, transport and end office switching) on the terminating side of the call at TELRIC-based rates based upon the applicable state TELRIC rates contained in this Agreement. VERIZON will have audit rights on the data reported by Sprint CLEC."[43]

[43] Sprint's Initial Brief at 28-29 (December 14, 2001) (Sprint's Initial Brief).

Verizon's Position

Verizon asks that this Commission reject Sprint's request to create new "multijurisdictional" trunks by renaming certain access calls – its 00-/VAD calls – as "local."[44] Verizon contends that Sprint wants the ability to route "local" traffic over access facilities in order to bolster its argument that its 00-/VAD calls are "local" and thus subject to reciprocal compensation rates rather than access charges.[45] Verizon states its proposed language does not permit multijurisdictional trunks. Verizon explains that its position is based on technical and operational reasons, as well as contractual reasons between Verizon and other CLECs.

With respect to the multijurisdictional trunk issue as it relates to Sprint's 00-/VAD calls, Verizon states that Sprint indicates it is interested in "creating" multijurisdictional trunks only in so far as it is permitted to re-classify a certain subset of access calls – its 00-/VAD calls – as non-access.[46] Verizon notes Sprint's proposed language in the context of Issue 2 would permit Sprint to route those re-classified "local" calls on the same access trunks over which they have always been routed (with other access traffic). Verizon concludes that this language would effectively make the access trunks over which those calls have always been routed "multijurisdictional."[47] Accordingly, Verizon points out that Sprint must have contract language allowing multijurisdictional traffic over the same trunks if it prevails on its argument relating to its 00-/VAD product. Conversely, Verizon submits that if it prevails on its position with respect to Sprint's 00-/VAD product the multijurisdictional trunk issue is moot.[48]

If Sprint's proposal is adopted, Verizon asserts, correct billing between Sprint and Verizon will be impossible.[49] Verizon explains that, per the industry standard guidelines for the meet-point billing of switched access to IXCs, as defined in the Multiple Exchange Carrier Access Billing (MECAB) guidelines, and under which Sprint and Verizon have agreed to operate, terminating access records on tandem-routed traffic are created by the tandem company

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[44] Verizon's Initial Brief at 20 (December 14, 2001 (Verizon's Initial Brief)

[45] *Id.* at 20.

[46] Verizon Exhibit 4, Direct Testimony of William Munsell at 5 (Munsell Direct).

[47] Verizon's Reply Brief at 7 (December 21, 2001) (Verizon's Reply Brief).

[48] *Id.* at 7.

(Verizon) and forwarded to the end office company (Sprint). If the parties utilize a single trunk group for exchange access, intraLATA toll, and local traffic, Verizon notes that Sprint will create terminating records at its switch for all such traffic, including terminating exchange access, for which Sprint will receive from Verizon terminating access records per the MECAB guidelines.[50] Verizon asserts that Sprint admits duplicate records would indeed be created.[51]

More importantly, Verizon contends, Sprint admits it does not have a method to identify and delete the duplicate records.[52] Without a method to delete the duplicate records, Verizon concludes the billing process is corrupted and inaccurate. Verizon is also concerned that Sprint will bill reciprocal compensation charges to Verizon for traffic for which Verizon is not responsible.[53]

At the hearing, when asked whether the proposed contract specified how Sprint was going to deal with this billing issue, Verizon asserts that Sprint witness Hunsucker said he did not know.[54] Mr. Hunsucker then testified that he believed Sprint was working on a system that would look at the "from" and "to" numbers of the traffic to address the billing issues.[55] Verizon adds that Mr. Hunsucker did not know, however, how long it had been worked on and stated "there are some changes on the horizon next year that will change that process, but I'm not – you know, I can't speak to the details of how all of that is going to work."[56] Verizon points out that Sprint states that the billing issue will be addressed through the use of percent interstate usage and percent local usage factors.[57] Verizon notes there is no record evidence to support this assertion, and this does not appear to be what Sprint witness Hunsucker is referring to in his testimony at the hearing. Verizon adds that using these factors will not address at all the

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[49] Munsell Direct at 6.

[50] *Id.* at 8.

[51] Tr. at 49.

[52] Munsell Direct at 8-9.

[53] Munsell Direct at 9.

[54] Tr. at 48.

[55] *Id.* at 49.

[56] *Id.* at 49-51.

[57] Verizon's Reply Brief at 9.

duplicate bill problem that Verizon has identified, because these factors do not identify which duplicate records should be deleted.[58]

Without knowledge of the amount of traffic (local, intraLATA toll and exchange access) that Sprint would terminate over its proposed multijurisdictional trunks, Verizon maintains it is impossible to quantify exactly the financial magnitude of this problem. Verizon notes, however, that reciprocal compensation rates are lower than access charges by a factor of 4.5, and thus, there is a natural motivation to misreport this traffic.[59] Verizon asserts that the duplication of records for terminating exchange access would increase the potential for future disputes between Verizon and Sprint, which would likely come before this Commission, and which could be avoided altogether by the use of separate trunk groups, which has been the practice in the past.[60]

Verizon adds that every interconnection agreement Verizon has with facilities-based CLECs in Texas requires that exchange access traffic be routed between Verizon and the CLEC on trunks that are distinct from trunks that carry local traffic between the two entities.[61] Verizon states that, if Sprint's position on this issue is accepted, then Sprint will have the ability to route both exchange access and local traffic to a Verizon tandem switch on the same trunk group. Verizon notes that some of this traffic will be destined for other CLECs that are also interconnected at the Verizon tandem switch. In such a case, Verizon argues it will not be able to "separate" the exchange access traffic destined for a third-party CLEC from the local traffic also destined for that third-party CLEC. Verizon concludes it will be put in a position of contractual non-compliance with each and every facilities-based CLEC in Texas with whom Verizon has an interconnection agreement, which will create billing problems – and ultimately billing disputes – between Verizon and the third-party CLECs.[62]

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[58] *Id.*

[59] Verizon's Initial Brief at 22.

[60] Munsell Direct at 9.

[61] *Id.* at 10.

[62] *Id.*

Further, Verizon maintains its position is consistent with how Sprint, in its capacity as an ILEC, treats CLECs in Texas.[63] For example, Verizon notes the interconnection agreement between United Telephone Company of Texas, Inc. d/b/a Sprint and Central Telephone Company d/b/a Sprint ("Sprint the ILEC") and the CLEC Ernest Communications, Inc., requires the separation of access traffic onto its own trunk group.

AGREEMENT LANGUAGE

Verizon proposes the following contract language:

> Interconnection Attachment, Section 2.4 Trunking Requirements. In accordance with Article I, Section 3.4, it will be necessary for the Parties to have met and agreed on trunking availability and requirements in order for the Parties to begin exchange of traffic.
>
> 2.4.1. Switching Center Trunking. The Parties agree to establish trunk groups of sufficient capacity from the interconnecting facilities such that trunking is available to any switching center designated by either Party, including end offices, tandems, 911 routing switches, and directory assistance/operator service switches. However, if the traffic is entirely one-way to Sprint from Verizon, then the requirement for 911 and directory assistance/operator services trunks is waived. The Parties will mutually agree where one-way or two-way trunking will be available. The Parties may use two-way trunks for delivery of Local Traffic or either Party may elect to provision its own one-way trunks for delivery of Local Traffic to the other Party. If a Party elects to provision its own one-way trunks, that Party will be responsible for its own expenses associated with the trunks.
>
> Each Party is obligated under this Agreement to order trunks or build facilities in the establishment of interconnection arrangements for the delivery of Internet traffic.
>
> SPRINT and VERIZON shall, where applicable, make reciprocally available, by mutual agreement, the required trunk groups to handle different traffic types. SPRINT and VERIZON will support the provisioning of trunk groups that carry combined or separate Local Traffic, intraLATA toll and optional EAS traffic. Sprint will establish separate trunk groups, to the extent Sprint subtends a VERIZON access tandem, for the routing of exchange access traffic used to provide Switched Access Service to IXCs. To the extent SPRINT desires to have any IXCs originate or terminate switched access traffic to or from SPRINT, using jointly provided switched access facilities routed through a VERIZON access

[63] Munsell Direct at 10-11.

tandem, it is the responsibility of SPRINT to arrange for such IXC to issue an Access Service Request ("ASR") to VERIZON to direct VERIZON to route the traffic. If VERIZON does not receive an ASR from the IXC, VERIZON will initially route the switched access traffic between the IXC and SPRINT. If the IXC subsequently indicates that it does not want the traffic routed to or from SPRINT, VERIZON will not route the traffic.

2.4.1.1. Each Party agrees to initially route traffic only over the proper jurisdictional trunk group, as follows:

(a) VERIZON originated traffic destined for the Sprint Operator Services platform (e.g., 00-. 1010333 or other Sprint routed CIC) will be routed to Sprint over new or existing Sprint access trunks, as leased from VERIZON by Sprint pursuant to the terms of VERIZON access tariff(s).

(b) VERIZON originated traffic destined to a Sprint Customer (e.g., 7 or 10 digit dialed) will be routed to Sprint over local interconnection trunks.

(c) Sprint originated traffic destined to a VERIZON Customer (e.g., 7 or 10 digit dialed) will be routed to VERIZON over local interconnection trunks. This traffic may include local traffic terminated to VERIZON from a Sprint Operator Services platform.

(d) Sprint originated traffic routed to an interexchange carrier (e.g., 1+ Toll) connected at a VERIZON access tandem will be routed to VERIZON over access interconnection trunks.

(e) Toll traffic routed to Sprint from an interexchange carrier connected at a VERIZON tandem (e.g., terminating toll) will be routed to Sprint over access interconnection trunks.

While the initial trunking will be as specified above, the Parties may agree to additional trunk groups, or a combination of trunk groups.

2.4.1.2. Each Party shall only deliver traffic over the local interconnection trunk groups to the other Party's tandem for those publicly-dialable NXX Codes served by end offices that directly subtend the tandem or to those wireless service providers that directly subtend the tandem.

2.4.1.3. Neither Party shall route Switched Access Service traffic over local interconnection trunks, or Local Traffic over Switched Access Service trunks.

2.4.2. Tandem Trunking—Interconnection at the Tandem for Local, InterLATA Toll, and/or IntraLATA Toll Traffic.

2.4.2.1. Single Tandem LATAs. Where VERIZON has a single Tandem in a LATA, IntraLATA Toll and/or Local Traffic may be segregated on separate interconnection trunk groups, or combined on a single interconnection trunk group, as specified in Section 2.4.1, for calls destined to or from all end offices and NXX's which subtend VERIZON's tandem. This trunk group shall be two-way, unless the Parties mutually agree to one-way, and will utilize Signaling System 7 (SS7) signaling, where available.

2.4.2.2. Multiple Tandem LATAs. Where VERIZON has more than one Tandem in a LATA, IntraLATA Toll and/or Local Traffic may be segregated on separate interconnection trunk groups, or may be combined on a single interconnection trunk group, as specified in Section 2.4.1, at every VERIZON tandem to terminate calls destined to or from all end offices and NXX's which subtend each tandem.

Pursuant to Section 2.3.2 of this Attachment, such Interconnection Trunk groups may interconnect utilizing SPRINT-provided facilities at only one of the Verizon Tandems in the LATA. However, if SPRINT assigns NXX codes in rate centers that are served by other Verizon Tandems in the LATA, SPRINT will establish additional routing points at such other Verizon Tandems by establishing Interconnection Trunk groups provisioned over dedicated facilities between the IP and such additional Verizon Tandem(s). SPRINT agrees to pay the appropriate facilities, switching, transport, and end-office termination charges to compensate VERIZON for terminating calls to all VERIZON subscribers in that LATA.[64]

Arbitrator's Decision

The Arbitrators determine that the issue of multijurisdictional trunks should be analyzed separately from Issue 2(b), whether reciprocal compensation applies to calls that originate and terminate within the same local calling area (00-/VAD traffic over these trunks). Here, the Arbitrators will address whether Sprint should be allowed to combine traffic from different jurisdictions on the same trunks or trunk group. Entirely separate are the debates as to whether the Sprint 00-/VAD traffic under discussion in this case is properly categorized as either local service or exchange access, and whether reciprocal compensation or some other form of compensation should apply to these calls. The local versus access question and the 00-/VAD compensation question shall be dealt with in the Arbitrator's Decision for Issue 3.

Although Verizon argues that the multijurisdictional trunk issue is moot if we find against Sprint regarding the classification and compensation of the 00-/VAD call, Sprint has stated that it would, nonetheless, request a Commission decision on this matter.[65] The

64 Joint Decision Point List at 3-5 (November 14, 2001) (DPL).

65 Tr. at 47.

Arbitrators believe that it is appropriate to render a decision here on Sprint's request for multijurisdictional trunks as part of the parties' agreement.

The Arbitrators conclude that Sprint should be allowed to combine multijurisdictional traffic over the same trunks or trunk group. Verizon presented two primary areas of objection to multijurisdictional traffic: technical/operational issues and contractual issues.[66] The Arbitrators have reviewed Verizon's objections and can find no justifiable reason for denying multijurisdictional trunks.

Verizon's technical and operational concern is that correct billing of the calls would be impossible due to the lack of systems to separate, identify and appropriately bill the calls.[67] Sprint counters that it has a software system developed to manage the identification of the jurisdictional nature of the traffic, and that this system, as of December 2001, was in the testing stage.[68] Based on implementation of this software, Sprint asserts that billing of multijurisdictional traffic will not be a problem.[69]

The Arbitrators find that an administrative concern regarding billing should not be determinative regarding this issue. To the extent that multijurisdictional traffic exists between Sprint and Verizon, and billing problems arise, such matters can be resolved through a dispute resolution process. Multijurisdictional billing concerns are not new. For example, procedures exist for reporting the appropriate jurisdiction of traffic, *e.g.*, percent interstate usage (PIU) factor.[70] The Arbitrators believe that, should the Sprint software be determined to be inadequate, a similar PIU concept could be utilized for billing of local versus access traffic, using a percent local usage (PLU) factor. Therefore, the Arbitrators find that the billing issue is not grounds for barring interstate, intrastate (both interLATA and intraLATA), and local or exchange services traffic over the same trunks or trunk groups.

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[66] Munsell Direct at 5.

[67] *Id.* at 6-7.

[68] Tr. at 49-50.

[69] *Id.* at 53.

[70] Sprint Exhibit I, GTE Southwest Incorporated, Texas Facilities for State Access Tariff, Section 4, 5th Revised at 46.

Verizon's contractual concerns regarding multijurisdictional traffic revolve around Verizon's interconnection agreements with facilities-based CLECs in Texas.[71] Verizon explained that, in circumstances where Sprint 00-/VAD traffic is ultimately routed to other CLECs interconnected to a Verizon tandem switch, Verizon would be unable to separate the traffic onto separate trunks, and therefore, would be in violation of agreements that require such separation.[72] Sprint disagreed with the assertion that a contract violation would occur in this scenario because the traffic would actually be terminating from the Sprint platform to the CLEC. Thus, any contractual obligations would be between Sprint and the relevant CLEC.[73] The Arbitrators find that Sprint's argument is compelling in that it is in fact Sprint, not Verizon, routing such traffic to the third party LEC. As such, it would be Sprint's responsibility to establish interconnection agreements with all relevant CLECs for compensation arrangements. The Arbitrators conclude that Verizon would not be in violation of the terms of its interconnection agreements that require separation of traffic.

Finally, the Arbitrators find significant precedent for the use of multijurisdictional trunks for local and access traffic. In the hearing, Verizon agreed that it already has multijurisdictional trunks for interstate and intrastate access as well as for local and access traffic on some segments of its network.[74] Furthermore, in the arbitration award for the Texas Mega-Arbitration, parties cite interconnection agreements between MCI and SWBT and AT&T and SWBT that offer language to allow for the combination of local and access traffic on the same trunks.[75] The provisions read as follows:

> IntraLATA toll may be combined with local traffic on the same trunk group when MCI/AT&T routes traffic to either a SWBT access tandem which serves a combined local and toll tandem or directly to a SWBT end office.[76]

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[71] Munsell Direct at 8.

[72] *Id.*

[73] Tr. at 141-143.

[74] *Id.* at 97.

[75] *See Petition of MFS Communications Company, Inc. for Arbitration of Pricing for Unbundled Loops*, Docket Nos. 16189 (Consolidated with Docket Nos. 16196, 16226, 16285, and 16290), Arbitration Award (November 7, 1996).

[76] *Petition of MFS Communications Company, Inc. for Arbitration of Pricing for Unbundled Loops*, Docket Nos. 16189 (Consolidated with Docket Nos. 16196, 16226, 16285, and 16290), Arbitration Award at 102 and 130 (November 7, 1996).

These companies, more than five years ago, agreed to the creation of multijurisdictional trunks containing local and access traffic. The Arbitrators find no reason to prohibit a similar arrangement of multijurisdictional traffic between Sprint and Verizon.[77] Likewise, we see no reason why the calls on these multijurisdictional trucks should not be compensated according to their classification or jurisdiction. Sprint should compensate Verizon based on the jurisdiction of the call volumes that utilize the multijurisdictional trunks.

AGREEMENT LANGUAGE

Because we have found that Sprint should be able to combine interstate, intrastate, both interLATA and intraLATA, and local traffic on the same network trunk groups (multijurisdictional trunks) and to compensate Verizon based on the particular jurisdiction of each segment of the call volumes that utilize the facilities; *i.e.*, pay access on interstate calls, intrastate access on intrastate toll calls and pay reciprocal compensation for local traffic, the Arbitrators find that Sprint's proposed language should be adopted for the parties' agreement except for two sections. For the reasons stated under decision point list (DPL) Issue 3 for the 00-/VAD call, the Arbitrator's reject sections 1.1.4.2 and 1.1.4.3 of Sprint's proposed language.[78]

B. DPL Issues 3(a) and 3(b) Definition of Local Traffic

3(a). For the purposes of reciprocal compensation how should local traffic be defined?

3(b). Should the definition of traffic for which reciprocal compensation is paid require that the traffic originate and terminate on separate local exchange carrier ("LEC") networks?

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[77] *See In the Matter of the Petition of Sprint Communications Company for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, North Carolina Utilities Commission Docket No. P-294, Sub 23, Public Utility Reports.4th 2001. N.C. PUC Lexis 525, Recommended Arbitration Order at 25 (July 5, 2001) *(North Carolina Decision)* (finding transporting of traffic from multiple jurisdictions over the same trunk groups both technically feasible and proper).

[78] Sprint's Initial Brief at 28-29.

Sprint's Position

Regarding the definition of local exchange traffic, "Sprint maintains that the Act and FCC decisions require that the jurisdiction of the traffic be determined by the origination and termination points of the call. In other words, if the call originates and terminates with the Verizon defined local calling area (including mandatory EAS), the call is local and not subject to access charges."[79] Sprint maintains that the FCC supports this end-to-end type of analysis for use in determining the jurisdiction of a call.[80]

Sprint alleges that Verizon's position in this proceeding is contradictory with positions Verizon has taken in other venues, in which Verizon has supported the end-to-end method of determining call jurisdiction.[81] Further, Sprint believes that the definition of a local call in P.U.C. SUBST. R. 26.5 is applicable to the issue in this case.[82]

Sprint denies that its proposal imposes costs on Verizon by refusing to compensate Verizon for calls routed over access trunks.[83] Sprint cites its proposed compensation plan which, in addition to paying reciprocal compensation for the traffic, provides for Sprint to compensate Verizon TELRIC-based charges for transport only on the originating side of the call and for tandem switching, transport and end office switching on the terminating side of the call, based on which network elements are actually provided by Verizon in the completion of the call.[84] Sprint asserts that its proposed compensation plan fairly compensates Verizon.[85] Sprint adds that Verizon is compensated by each of the end-users through monthly local service rates for the right to originate and terminate local calls.[86]

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[79] Hunsucker Direct at 3 – 4.

[80] *Declaratory Ruling*; Hunsucker Direct at 4 – 6.

[81] Hunsucker Direct at 6-7.

[82] *Id.* at 8.

[83] Hunsucker Rebuttal at 2.

[84] *Id.*

[85] *Id.* at 3

[86] *Id.* at 3

AGREEMENT LANGUAGE

Sprint argues that the following language should be used for defining Local Traffic in the parties' agreement:

> For purposes of the payment of reciprocal compensation between the Parties, "Local Traffic" shall mean all telecommunications traffic, exchanged between Verizon and any telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate Exchange Access, Information Access (traffic delivered to an Internet service provider), or exchange services for such access as determined by the FCC in the Order on Remand and Report and Order, CC Docket Nos. 96-98, 99-68 adopted April 18, 2001, FCC 01-131 ("Order"), as that Order is subsequently modified by action of the FCC or a court of competent jurisdiction. The parties agree that for purposes of the above, the term Exchange Access does not include telecommunications traffic that originates and terminates within a given local calling area or mandatory expanded area service ("EAS") area. Neither Party waives its rights to participate and fully present its respective positions in any proceeding dealing with the compensation for Internet traffic.[87]

Verizon's Position

Verizon argues that the Arbitrators should adopt its proposed agreement language because it reflects how Sprint's proposed 00-/VAD and local calls should be compensated. Verizon explains that the parties' dispute does not relate to all 00-/voice-activated dialing calls ("00-/VAD calls"), but to a specific subset of calls. The calls would originate by a Verizon customer dialing 00-, routed through Sprint's operator platform and then terminated to another Verizon customer in the same local calling area.[88] Verizon argues that, as an initial matter, the decisive inquiry is not whether these calls are "local," but whether they are subject to reciprocal compensation.[89]

Verizon states that "00-" traffic is not new. It explains that Sprint has historically offered this service to end-users who are presubscribed to Sprint long distance. If the calling party chooses to make a call with the assistance of Sprint's operator, that customer dials "00." That

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[87] Sprint's Initial Brief at 6.

[88] Munsell Direct at 13

[89] Verizon Exhibit 5, Rebuttal Testimony of William Munsell at 2 (Munsell Rebuttal).

end-user's call is then routed to the Sprint IXC operator service platform by way of Sprint's point-of-presence (POP) over Sprint access trunks, and then terminated at the location of the called party, who could be within the same local calling area as the calling party.[90] Verizon offers that parties do not dispute whether such a call is an access call.[91] However, Verizon disagrees that Sprint's introduction of a voice activated dialing platform into this scenario (00-/VAD) justifies reclassifying an access call as a "local" call for compensation purposes. Verizon notes that Sprint agrees that any interexchange call made via its 00-/VAD service would continue to be access for which Sprint would pay access charges.[92] Verizon argues that Sprint seeks to offer a voice activated dialing service only to those customers who are presubscribed to Sprint long distance service.[93] Sprint's proposed 00-/VAD service is, in Verizon's words, really only a long distance "feature."

Verizon explains that the 00-/VAD calls at issue travel over access facilities as opposed to local interconnection facilities, and they are switched numerous times at both ends – exactly like a standard-dialed long distance call.[94] Verizon contends this is not an efficient manner in which to provide local calling service, yet Sprint seeks to provide it in such a manner and to impose the costs of this inefficiency on Verizon.[95] Verizon asserts it incurs costs when switching calls through its access tandems.[96]

Verizon argues that the determination of whether 00-/VAD traffic is local should be based on three aspects of the call: the originating and terminating geographic points, the originating and terminating carriers, and the routing of the call.[97] Verizon contends that Sprint seeks to define certain 00-/VAD calls as "local" based solely on its application of an "end to end" analysis, *i.e.*, because the calls at issue originate and terminate in the same local calling

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[90] Verizon's Initial Brief at 8-9.

[91] *Id.* at 9

[92] Tr. at 27-28.

[93] Verizon's Initial Brief at 9.

[94] Munsell Direct at 14.

[95] *Id.* at 14.

[96] *Id.* at 14-15.

[97] Munsell Rebuttal at 2.

area.[98] However, Verizon observes that the 00-/VAD traffic at issue does not originate and terminate on the networks of different LECs.[99] Also, Verizon notes that the traffic at issue is routed like a long-distance call, originating from a Verizon customer, routed over access facilities through Sprint's operator services, and routed back into the same local calling area of the originating Verizon customer to another Verizon customer.[100]

Verizon explains that a typical call for which reciprocal compensation is due is one that originates on the network of one local service provider and terminated on the network of another local service provider within the same local calling area.[101] An example is when a Verizon local customer in Irving, Texas, makes a call to a Time Warner Telecom local customer in the Dallas Metro area. In contrast, when a Verizon customer in Irving, who is presubscribed to Sprint the IXC for long distance service, places a call to someone in the Austin area, the customer is connected through an originating switched access service known as Feature Group D (FGD) from the calling customer's premises, through a Verizon end office switch, to Sprint's Point of Presence over switched access trunks provided to Sprint by Verizon.[102]

Verizon explains that under 47 U.S.C. § 51.701(e),[103] in order to be eligible for reciprocal compensation under § 251(b)(5) of the Act, traffic must originate on the network of one carrier and terminate on the network of another carrier.[104] Verizon notes that Sprint recognizes its 00-/VAD traffic does not meet this definition, and actually asks this Commission to rewrite FCC Rule 51.701(e).[105] Verizon notes that Sprint admitted at the hearing that its 00-/VAD traffic does not satisfy a "literal" reading of the reciprocal compensation regulation.[106]

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[98] *Id.* at 2.

[99] *Id.*

[100] *Id.*

[101] *Id.* at 4

[102] *Id.*

[103] FTA.

[104] Verizon's Initial Brief at 6.

[105] Verizon's Reply Brief at 4.

[106] Tr. at 36-37.

Verizon argues that 00-/VAD calls are governed by the Texas Facilities for State Access Tariff. Under that tariff, if a caller presubscribed to Sprint long distance dials "00" to use the assistance of Sprint's operator to complete a call, this call results in access charges. Verizon points out that nothing in the tariff precludes the use of Switched Access FGD service for intrastate calls originating and terminating in the same local calling area. In addition, if the call traverses a state boundary, then Verizon notes the associated access service would be governed by Verizon's interstate access tariff rather than by the State Access Tariff.[107]

Verizon reports that Sprint admits the 00-/VAD traffic at issue does not fit within the reciprocal compensation scheme, even though that is what its proposed contract language contemplates.[108] In its pre-filed testimony and at the hearing, Sprint proposed a new compensation regime for its 00-/VAD calls that Verizon argues is not found in any of its proposed contract language. Verizon concludes that Sprint's new proposal carves out a third category of traffic that is neither subject to reciprocal compensation nor access but would violate applicable law regarding both.[109] Verizon notes the TELRIC-based compensation scheme Sprint proposes would make reciprocal compensation applicable to calls that do not originate on the network of one LEC and terminate on the network of the other, which conflicts with FCC rule 51.701(e). Additionally, Verizon states that under the reciprocal compensation regime, the originating carrier bears the cost of originating the call and pays the terminating carrier for transport and termination of the call. Indeed, compensation for origination of a call subject to reciprocal compensation is expressly prohibited; Verizon quotes 47 U.S.C. § 51.703(b) "A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network."[110] Verizon observes that Sprint's proposal would compensate Verizon both for originating the call and for terminating the call. When asked about this at the hearing, Verizon states that Sprint's witness admitted their proposal would violate the

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[107] Munsell Rebuttal at 6-7.

[108] Tr. at 36-37.

[109] Verizon's Initial Brief at 14

[110] *Id.* at 16

prohibition on an originating carrier charging originating costs, but stated that he believed Sprint and Verizon could contractually agree to violate the FCC rule.[111]

Verizon also points out that Sprint has argued for its definition of local traffic in other Verizon arbitrations across the country, and all of the commissions that have considered this issue have rejected Sprint's argument that 00-/VAD access calls should re-classified as "local" for compensation purposes. These states are California, Maryland, Massachusetts, and Pennsylvania and.[112] For example, the Massachusetts Department of Telecommunications and Energy concluded that because Sprint is not the originating carrier for calls between two Verizon customers who use a Sprint dial-around mechanism, Sprint is not entitled to pay reciprocal compensation rates. The Public Utilities Commission of California found that the 00-/VAD calling scheme was not functionally different from other calling patterns in which Sprint compensates Verizon for use of its network through access charges.

AGREEMENT LANGUAGE

Verizon offers the following proposed language:

> Glossary: Local Traffic. For purposes of compensation between the Parties, Local Traffic is VERIZON Traffic that terminates to SPRINT and SPRINT traffic that terminates to VERIZON, that is geographically within VERIZON's then current local calling area, including mandatory local calling scope arrangements. A mandatory local calling scope arrangement is an arrangement that provides End-Users a local calling scope, i.e. Extended Area Service (EAS), beyond their basic exchange serving area. The Parties agree that traffic which originates on Verizon's network and terminates on Sprints network, or which originates on Sprints network and terminates on Verizon's network shall be used to determine Local Traffic. Local Traffic does not include optional local calling scopes, i.e.

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[111] Tr. at 66-67.

[112] Munsell Direct at 15. *In the Matter of the Petition of Sprint Communications, L.P. For Arbitration Of Interconnection Rates, Terms, Conditions And Related Arrangements With Verizon California, Inc. F/K/A GTE California, Incorporated,* California Public Utilities Commission Application No. 00-09-031, Opinion (March 15, 2001) *(California Decision); In the Matter of the Arbitration of Sprint Communications Company, L.P. v. Verizon Maryland, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996,* Maryland Public Service Commission No. 8887, Order No. 77320 at 10-11 (October 24, 2001) (*Maryland Decision*); *Petition of Sprint Communications Company, L.P, Pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of an interconnection agreement between Sprint and Massachusetts,* Massachusetts Department D.T.E. 00-54 (December 11, 2000) (*Massachusetts Decision); Petition of Sprint Communications Company, L.P. for an Arbitration Award of Interconnection Rates, Terms and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements With Verizon Pennsylvania, Inc.*, Pennsylvania Utility Commission No. A-3101183F0002, Opinion and Order at 32 (October 12, 2001) (*Pennsylvania Decision*).

optional rate packages that permit the End-User to choose a local calling scope beyond their basic exchange serving area for an additional fee, referred to hereafter as "optional EAS". Local Traffic does not include Internet Traffic.[113]

Arbitrator's Decision

The parties ask that we examine how local traffic should be defined in their agreement. Sprint presents a particular type of call, 00-/VAD service, to support its definition. The Arbitrators conclude that the 00-/VAD calls at issue are properly classified as telephone exchange service or "local" calls, but they are not subject to reciprocal compensation. As explained below, current FCC policy dictates that access charges apply to these 00-/VAD calls.

At the outset, the Arbitrators note that the specific traffic the parties dispute is not all Sprint 00-/VAD calls, but a specific subset of these calls, made from a Verizon local service customer to another Verizon local service customer, both of which are in the same local calling area.[114] The caller subscribes to Sprint long distance, which provides the 00-/VAD service. The caller picks up the receiver, dials "00," and speaks a name. The call is then routed through an originating switched access service known as Feature Group D (FGD) from the customer's premises, through a Verizon central office switch and a Verizon access tandem, over a trunk to Sprint's point of presence (POP). The parties appear to agree that LATA boundaries are typically crossed to reach this POP. At the POP, a computer interprets the voice command and dials a number to reach the call recipient. In this case, the recipient is in the same local calling area as the caller. The call is then routed back over a trunk, through Verizon's access tandem and a Verizon central office to reach the end user.[115] The Arbitrator's conclusions concentrate on this specific traffic, unless otherwise noted.

Sprint and Verizon ask whether the call is a local call subject to reciprocal compensation or an exchange access call subject to access charges. The parties are concerned about whether the call is local because the definition of "local traffic" in their interconnection agreement, negotiated before the issuance of the FCC's *ISP Remand Order*, describes the traffic to which

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[113] DPL at 11-12.

[114] Sprint Exhibit J at scenario 2.

reciprocal compensation will apply.[116] The Arbitrators stress the importance of determining the call's proper classification before an appropriate compensation scheme can be considered. The Arbitrators, therefore, will address Issue 3 in this manner.

The Arbitrators will refrain from referring to traffic as "local" because the term "local," not being a statutorily defined category, is susceptible to varying meanings and is not a term used in sections 251(b)(5) or 251(g) of the FTA.[117] The FCC, in its *ISP Remand Order*, instead uses the terms "telephone exchange service" for calls commonly thought of as local, and "exchange access" to refer to calls commonly thought of as long distance.[118]

a. <u>00-/VAD Classification</u>

As we outlined above, we will first examine the 00-/VAD call's proper classification. The Arbitrators do not believe that Sprint's 00-/VAD call falls with the federal statutory definition of exchange access.

> The term "exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.[119]

The Arbitrators do not believe that the 00-/VAD calls in question are for the purpose of origination or termination of telephone toll services. Although the call is routed over access trunks and utilizes the facilities of an inter-exchange carrier, the call appears local to the end-

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[115] Verizon's Initial Brief at 11.

[116] The FCC's *ISP Remand Order* was issued late in the parties' negotiations. Consequently, the parties retained references to "Local Traffic" in the proposed agreement, notwithstanding the FCC's removal of all references to "local" in its definitions of traffic subject to reciprocal compensation. *ISP Remand Order* at 60. Verizon additionally indicates that the parties are continuing negotiations that would replace the definition of local traffic that is consistent with the *ISP Remand Order*, but for this proceeding Verizon makes its arguments based on the reference to Local Traffic and its implications for compensation. Verizon's Initial Brief at 5 n. 3. For the purposes of this proceeding, the Arbitrators, as well, presume that the reference to Local Traffic defines the traffic subject to reciprocal compensation. *See* Sprint's Petition for Arbitration at 128 (Exhibit 1 at 56, section 5.4.1 of the parties proposed agreement).

[117] *ISP Remand Order* at ¶ 34.

[118] *Id.* at ¶ 32-36.

[119] 47 U.S.C. § 153(16).

user, and, in fact, connects two customers within the same local calling area.[120] If the 00-/VAD service were not available, the customer would have dialed a local number to complete this call. There is no call that otherwise would have incurred toll charges. Consequently, we do not believe that the 00-/VAD call is for toll services. The service does not facilitate the provisioning of a toll call beyond the affected local exchange area.[121]

Second, we find that the Commission's definitions are illustrative. The Commission's definition of long distance also does not match the 00-/VAD calls in question. "Long distance" means

> That part of the total communication service rendered by a telecommunications utility which is furnished between customers in different local calling areas in accordance with the rates and regulations specified in the utility's tariff.[122]

As the parties explain, the 00-/VAD calls at issue are not furnished between customers in different local calling areas. Next, the Commission's definition of access services also does not fit this type of call. "Access services" are

> [Telecommunications utility] services which provide connections for or are related to the origination or termination of intrastate telecommunications services that are generally, but not limited to, interexchange services.[123]

We do not believe that the call described by the parties is a connection providing interexchange service.

Although the call utilizes the facilities of an inter-exchange carrier, we believe that the call is less related to an interexchange call than it is related to a local feature. Consequently, we agree that the 00-/VAD service is most easily compared to a calling feature such as Verizon's

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[120] Not all telecommunications traffic that crosses an exchange boundary is necessarily deemed interexchange traffic and therefore automatically subjected to exchange access compensation. *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Inter-Carrier Compensation for "FX-Type" Traffic Against Southwestern Bell Telephone Company*, Docket No. 24015, Arbitration Award at 37 (November 28, 2001) (*FX Award*).

[121] *See FX Award* at 36.

[122] P.U.C. SUBST. R. 26.5(125).

[123] P.U.C. SUBST. R. 26.5(2).

own Speed Dialing feature.[124] The originating caller is in some respects utilizing a chosen interexchange carrier to provide a calling feature.

While federal and state definitions of exchange access services do not reflect the 00-/VAD calls in question, the call does fall within the definition of telephone exchange service. The federal statutory definition of "telephone exchange service" provides that

> [t]he term "telephone exchange service" means (a) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (b) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.[125]

The Arbitrators observe that the 00-/VAD calls at issue most clearly fit subsection (b), but both subparts could be applicable.[126]

Furthermore, the Commission definition of local exchange service also encompasses the calls in question. It provides in part that a local exchange service is

> A telecommunications service provided within an exchange to establish connections between customer premises within the exchange, including connections between a customer premises and a long distance provider serving the exchange.[127]

Based on these federal and state definitions, a Sprint 00-/VAD call from a Verizon local customer to another Verizon local customer in the same local calling area is appropriately classified as a telephone exchange service.

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[124] Sprint Exhibit G; Tr. at 111 – 112; *see* Hunsucker Direct at 12.

[125] 47 U.S.C. § 153(47).

[126] *Cf. Directory Assistance Order* at ¶¶ 17-19, 23.

[127] P.U.C. SUBST. R. 26.5(120).

b. <u>00-/VAD Inter-carrier Compensation</u>

As the call in question is now defined, the appropriate intercarrier compensation scheme can be considered. The Arbitrators do not believe that the 00-/VAD call that Sprint proposes, in relation to compensation, fits neatly within any of the static categories outlined by the *ISP Remand Order*. This type of call presents a novel question for the Commission in regard to compensation.

The FCC, in its *ISP Remand Order*, revisited inter-carrier compensation schemes for telecommunications traffic. The FCC found that section 251(b)(5) of the FTA imposes a duty on all local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[128] The FCC concluded in its order that all telecommunications traffic is subject to reciprocal compensation, unless it is otherwise excluded by section 251(g) of the FTA. The FCC stated that section 251(g) implies that the statute does not mandate reciprocal compensation for exchange access, information access, and exchange services for such access provided to interexchange carriers (IXCs) and information service providers (ISPs).[129] Thus, if a type of telecommunications traffic is defined as exchange access, information access, or exchange services for such access to IXCs and information service providers, it is excluded from reciprocal compensation.[130] Some other compensation scheme would apply to the traffic. In making its decision, the FCC explicitly removed all references to the term "local" as a means to determine what traffic is subject to reciprocal compensation.[131]

As we have already classified the 00-VAD traffic as a telephone exchange service, and not one of the three categories in section 251(g) of the FTA, the Arbitrators could conclude that, under the *ISP Remand Order*, the traffic at issue here is subject to reciprocal compensation.[132] In

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[128] 47 U.S.C. § 251(b)(5).

[129] *ISP Remand Order* ¶ 34.

[130] *FX Award* at 32.

[131] *ISP Remand Order* at 60.

[132] The parties do not contend that the 00-/VAD is "information access" or "exchange services for access to IXCs or ISPs." While at first blush it may appear that the 00-/VAD call is an exchange service for access to an IXC, we do not believe that to be the case. The call in question is not made "for the purpose of originating or terminating interexchange telecommunications." *ISP Remand Order* at ¶ 37 n. 65. It is not made in order to access an IXC for the purpose of a toll call or an exchange access call.

fact, the Commission's finding in Docket 21982 could support that conclusion. There the Commission examined reciprocal compensation pursuant to section 252 of FTA. The award stated that:

> The Commission also reaffirms its previous determination that reciprocal compensation arrangements apply to calls that originate from and terminate to an end-user within a mandatory single or multi-exchange local calling area, including the mandatory EAS/ELCS areas comprised of SWBT exchanges and the mandatory EAS/ELCS areas comprised of SWBT exchanges and exchanges of independent ILECs.[133]

The Commission determined that reciprocal compensation is appropriate for a call that originates from and terminates to end-users within a single local calling area. This describes the type of 00-/VAD call at issue here.

The Arbitrators recognize, however, that the FCC's definition of reciprocal compensation does not subsume the 00-/VAD call presented.

> A reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier.[134]

The Commission definition mirrors the federal definition except for the exclusion of the word local.[135] We believe that a fair reading of the reciprocal compensation definition contemplates that an eligible call must originate and terminate on different carriers' networks. The definition specifies that carriers receive compensation for the transport and termination of traffic that originates on the facilities of the other carrier. In this case, the call is both originating and terminating on Verizon facilities, conflicting with the definition. In addition, the definition

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[133] *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunication Act of 1996*, Docket No. 21982, Revised Arbitration Award at 19 (August 31, 2000).

[134] 47 C.F.R. § 51.701(e), as amended by, *ISP Remand Order* at 60.

[135] P.U.C. SUBST. R. 22.5(173).

requires that a call either originate or terminate on a carrier's network facilities. The call here does not originate or terminate on Sprint's network facilities, but rather on Verizon's.[136]

Consequently, we agree with Verizon that Sprint's proposed "local" 00-/VAD call does not fit the definition or framework of reciprocal compensation. If the Commission were to determine that reciprocal compensation was an appropriate compensation scheme for this type of traffic, under the definition, Sprint would be exempt from paying any compensation to Verizon for use of its facilities. In accordance with the definition, the originating carrier would pay the terminating carrier; thus, Verizon would be paying Verizon.

The Arbitrators are presented with two "walls" in this situation.[137] One is where reciprocal compensation, as a compensation scheme and definition, does not fit the actual traffic, and another where the definition of exchange access does not fit the traffic's proper classification. The Arbitrators are presented with a call that falls within a particular statutory definition for which the appointed compensation scheme does not apply. We must, therefore, consider alternatives for the inter-carrier compensation of the call.

Four other state commissions – Massachusetts, Pennsylvania, California, and Maryland – have been presented with a similar question, and all four have determined that access charges are appropriate. Although we do not agree with their reasoning, we are persuaded that the other state commissions reached the correct result. The Massachusetts commission determined that Sprint is required to pay Verizon access rates for 00-/VAD calls that originate and terminate to Verizon customers within the same local calling area, without any clear justification other than that reciprocal compensation is invalid.[138] The Pennsylvania Public Utility Commission based its decision on the fact that the calls are routed using access facilities. The fact that 00-/VAD calls go between two networks, from the local switched network to the switched access network, was

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[136] It could be argued that Sprint is originating the call on its network facilities because it is acting as a reseller (of Verizon's facilities) on the originating side of the call. *Cf. DA Order* at ¶ 18. Although this position is credible for classifying the call, we are not convinced, for the purposes of inter-carrier compensation, that this argument is valid. Sprint, as an IXC, is not purchasing Verizon's local loop for the 00-/VAD call through any arrangement other than the inter-carrier compensation at issue.

[137] Tr. at 36 - 37 ("So, you know, you can take a very literal reading of the FCC rule and say, 'It's not recip. comp,' because in the case of Sprint's VAD product, it doesn't originate on one network and terminate on another, but it's definitely not access, either, because it's not a toll call.")

[138] *Massachusetts Decision* at 18

an important factor in reaching their decision. The California PUC ruled likewise and determined that the 00-/VAD scheme was not functionally different from other calling patterns in which Sprint compensates Verizon for use of its network through access charges.

Although Verizon and Sprint have concurred that the call is routed in an identical fashion to a long-distance call,[139] the Arbitrators stress that we are not basing the decision about the applicable compensation based entirely on the routing of the call. The FCC in its *Declaratory Ruling* and *ISP Remand Order* approved of an end-to-end analysis to determine whether a call is within interstate jurisdiction.[140] The FCC added that the court, in its review of the *Declaratory Ruling*, stressed that a service should additionally be reviewed based on statutory definitions of "telephone exchange service" and "exchange access."[141] The Arbitrators believe that the 00-/VAD call in question has been appropriately categorized using these two methods.

The Arbitrators note that the staff of the Public Service Commission of Maryland suggested an alternative approach, whereby a new cost-based compensation should be developed rather than access charges for the traffic at issue. There, the staff advocated that a percentage of local usage calls (PLU) be developed to determine the proper percentage of local usage. This factor would be the basis for determining the new compensation regime.[142] However, the Maryland Commission conceded that this proposal is in conflict with the *ISP Remand Order*. Maryland concluded that access charges were most in conformance with the *ISP Remand Order* and thereby adopted them.[143]

In this docket, Sprint counters that it is willing to compensate Verizon for transport and all appropriate network elements associated with the call at a TELRIC-based rate, including for originating the call.[144] We do not believe, however, that this compensation mechanism is

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[139] Munsell Direct at 14; Hunsucker Direct at 10-11

[140] *ISP Remand Order* at ¶ 24-25

[141] *Id.* at ¶ 26.

[142] *Maryland Decision* at 23.

[143] *Id.* at 23-24.

[144] Hunsucker Direct at 17; *see also* Sprint Exhibit F.

appropriate given the current schemes for intercarrier compensation.[145] As stated in the *ISP Remand Order*, Congress when enacting section 251(g) of the FTA did not intend to disturb the pre-existing treatment of access services.[146] Sprint's 00-/VAD call, in 1996, would likely have been compensated under the access regime.[147] Thus, until the FCC by regulation should determine otherwise and alter its definition of reciprocal compensation, we are persuaded that the call should retain what would have been its traditional compensation mechanism at this time.[148]

Further, the fact that Sprint would have to create an additional compensation arrangement suggests that access charge compensation is the best alternative at this time.

Lastly, if reciprocal compensation were to apply to the "local" 00-/VAD call, the Arbitrators have not resolved how the traffic would be compensated or billed if the terminating carrier on the call was a CLEC other than Sprint and the originating carrier was Verizon. This hypothetical circumstance presents billing difficulties for which no clear or reasonable resolution was presented.[149]

We recognize that Sprint is attempting to create new and innovative offerings, and we believe that such efforts are in the spirit of the FTA. However, we recognize that the systems and rules are not always in place to accommodate such offerings.[150] The Arbitrators conclude that Verizon's proposal of access charges for the 00-/VAD call that originates and terminates in the same local calling area is in general conformance with the present FCC policy at this time.[151] In the event the policies and regulations set forth in the *ISP Remand Order* that affect this decision are reversed or modified, we believe this area may then be suitable for further

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145 The Arbitrators note that if Sprint were to compensate Verizon for originating the call, Verizon may violate the FCC's prohibition on originating compensation. 47 C.F.R. § 51.703(b) ("A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.")

146 *See ISP Remand Order* at ¶¶ 37, 39.

147 Munsell Direct at 14; Hunsucker Direct at 10-11; *See Pennsylvania Decision* at 73.

148 *Cf. ISP Remand Order* at ¶ 39; *Pennsylvania Decision* at 49-50 and 77.

149 Tr. at 144 – 146; Sprint Exhibit J at scenarios 3a and 3b.

150 Sprint, nonetheless, acknowledges that it could offer the voice activated dialing service with a seven-digit number by installing its own access trunks. Tr. at 61 - 63.

151 Sprint's 00-/VAD call will, therefore, be subject to Verizon's Texas Facilities For State Access Tariff. Munsell at 5.

consideration. Accordingly, we do not believe that our acceptance of Verizon's position will foreclose revision in the event of future developments.

c. Agreement Language

The Arbitrators find that for the purposes of reciprocal compensation, local traffic should be defined based on the *ISP Remand Order* and attendant regulations. Consequently, reciprocal compensation should apply to calls that originate and terminate within the same local calling area but are routed over Verizon provided access facilities before termination only to the extent that the calls are not exchange access, information access, or exchange services for access to IXCs or ISPs and when they originate and terminate on separate LEC networks. The Arbitrators also find that the definition of traffic for which reciprocal compensation is paid should require that the traffic originate and terminate on separate local carrier networks.

Sprint's proposed language most accurately reflects the *ISP Remand Order's* instructions for reciprocal compensation. Because the Arbitrators have determined that access charges shall apply to 00-/VAD calls at issue, however, Sprint's language is incomplete. Verizon's proposed language actually reflects the proper manner in which to determine the jurisdiction of a local call and whether reciprocal compensation applies to the 00-/VAD call at issue. The Arbitrators find that a combination of language from both parties' proposals is appropriate for adoption. The definition of Local Traffic would then read:

> Glossary: Local Traffic. Local Traffic is Traffic that originates and terminates within a local calling area, including mandatory local calling scope arrangements. A mandatory local calling scope arrangement is an arrangement that provides End-Users a local calling scope, i.e. Extended Area Service (EAS), beyond their basic exchange serving area. Local Traffic does not include optional local calling scopes, i.e. optional rate packages that permit the End-User to choose a local calling scope beyond their basic exchange serving area for an additional fee, referred to hereafter as "optional EAS".
>
> Notwithstanding the above, for purposes of compensation between the parties, "Local Traffic" shall mean all telecommunications traffic which originates on Verizon's network and terminates on Sprint's network, or which originates on Sprint's network and terminates on Verizon's network, except for telecommunications traffic that is interstate or intrastate Exchange Access, Information Access (traffic delivered to an Internet service provider), or exchange services for such access as determined by the FCC in the Order on Remand and

Report and Order, CC Docket Nos. 96-98, 99-68 adopted April 18, 2001, FCC 01-131 ("Order"), as that Order is subsequently modified by action of the FCC or a court of competent jurisdiction. Local Traffic does not include Internet Traffic. Neither Party waives its rights to participate and fully present its respective positions in any proceeding dealing with the compensation for Internet traffic.

C. DPL Issue 5 Resale of Vertical Features

For Purposes of the new Sprint/Verizon interconnection agreement, should Verizon be required to provide custom calling services, on a stand-alone basis, to Sprint at wholesale discount rates?

Sprint's Position

Sprint proposes language for the parties' interconnection agreement regarding the purchase of custom calling services and other vertical features.[152] Specifically, Sprint seeks language that will allow it to purchase custom calling cervices and other vertical features on a "stand-alone" basis for resale without the restriction of having to also purchase basic local service for resale.[153] Sprint requests that the Commission direct Verizon to make custom calling services and other vertical features available to Sprint on a stand-alone basis at wholesale rates for this agreement.[154]

Custom calling services, according to Sprint, are optional features that an end-user may purchase to enhance the functionality of local service. Custom calling services are retail services that are priced and purchased separately from the basic local service and are not necessary for the basic local service to function properly.[155]

Sprint seeks the stand-alone wholesale purchase of custom calling services because some of its other services currently used or being developed can only be offered in conjunction with custom calling services. An example is "Unified Communications" which allows messages to be retrieved from various electronic devices, including computers and telephones; this system,

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[152] Sprint Exhibit A, Direct Testimony of Thomas G. McNamara at 3 (McNamara Direct).

[153] McNamara Direct at 3.

[154] McNamara Direct at 14; Sprint Exhibit B, Rebuttal Testimony of Mark G. Felton at 5 (Felton Rebuttal); Sprint's Initial Brief at 29.

however, requires customers to have Call Forwarding Busy Line and Call Forwarding Don't Answer.[156]

Sprint could allow a customer to purchase custom calling services directly from Verizon, but Sprint contends that this would diminish their stature as a local competitor. Also, Sprint argues that allowing the resale restriction would create an obstacle in marketing and selling Sprint's services to the end user - an obstacle Verizon does not face.[157]

Sprint advances three reasons why it should not be required to purchase custom calling services from Verizon at retail rates. First, Sprint is entitled under the FTA to purchase for resale at wholesale rates those services that Verizon sells to retail end-users.[158] Verizon is attempting to place an unreasonable resale restriction on the purchase of vertical services. Contrary to Verizon's assertions, Verizon does offer vertical features on stand-alone basis to retail end-users who are not telecommunications providers.[159] Likewise, vertical services are purchased in addition to, but separate from, local dial tone, priced separately on the bill, marked distinctly, and contained in a separate tariff section.[160] The restriction Verizon imposes in a retail context is acceptable and necessary, but not in a wholesale environment unless the ILEC can demonstrate that the restriction is reasonable and necessary.[161] Verizon has not made this showing.[162]

Verizon, according to Sprint, seeks to restrict Sprint from purchasing custom calling services at wholesale rates except where Sprint also purchases the underlying basic local service. Ostensibly, Verizon will offer at wholesale to CLECs only those services which it offers to retail customers on a stand-alone basis.[163] Sprint argues that FCC and Commission precedent requires just the opposite. Sprints states that the FCC has found that "the ability of incumbent LEC's to

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155 McNamara Direct at 3.

156 *Id.* at 7.

157 McNamara Direct at 8.

158 *Id.* at 9.

159 Felton Rebuttal at 2.

160 *Id.*

161 *Id.* at 2-3.

162 *Id.* at 3.

163 McNamara Direct at 4.

impose resale restrictions and conditions is likely to be evidence of market power and may reflect an attempt by an incumbent LEC to preserve their market positions."[164] Sprint claims that the concern raised by the FCC could explain Verizon's stance on the issue here.[165]

Second, purchasing at retail would mean that Sprint would be treated as an end use customer rather than as an interconnection carrier as the Act envisions. This could entail submitting orders differently. Therefore, Sprint would not be treated as a peer.[166]

Finally, as an end-user, Sprint would likely receive paper bills, rather than a bill through a mechanized wholesale billing arrangement.[167] A paper billing arrangement is discriminatory and would prevent Sprint from acting as a competitor.[168]

a. Requirement to Provide Stand-Alone Resale at Wholesale Rates

Sprint contends that Verizon is statutorily required to offer custom calling services individually for resale.[169] Under the FTA, an ILEC must "offer for resale at wholesale rates *any* telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."[170] Sprint contends that custom calling services are "telecommunications services" under section 251(c) of the FTA that provide additional functionality to basic telecommunications services.[171] Under federal law, there is no distinction between "basic" and "optional" services in the context of the resale requirements.[172] In fact, the FCC has found that that there is "no statutory basis for limiting the resale duty to basic telephone

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[164] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order at ¶ 939, 11 FCC Record 15499 (rel. Aug. 8, 1996) (*Local Competition Order*).

[165] Felton Rebuttal at 3.

[166] McNamara Direct at 9.

[167] *Id.*

[168] *Id.*

[169] *Id.* at 4.

[170] U.S.C. § 251(c)(4)(A); McNamara Direct at 4.

[171] McNamara Direct at 3, 5.

[172] *Id.* at 5.

services."[173] Consequently, Verizon is obligated to offer for resale "optional" as well as "basic" local telephone service.[174] Requiring a *retail* customer to have in place local service before that *retail* customer may order custom calling services is a reasonable practice that Sprint follows; however, this restriction does not and should not apply for *wholesale* service.[175] The federal act does not single out certain kinds of telecommunications services for resale at wholesale rates; rather, the FTA requires that the discount apply to any telecommunications service.[176]

Moreover, Sprint claims that Verizon's position would insert a nonexistent qualification into the federal statute. That is, an eligible service must be offered at retail on a stand-alone basis. Sprint states that this interpretation should not be adopted. Although Verizon's General Exchange Tariff provides that custom calling services are furnished only in connection with individual line service, Sprint contends that this provision does not overcome federal mandates to the contrary.[177] The FCC's Local Competition Order stated that "resale restrictions are presumptively unreasonable," which includes "conditions and limitations contained in the incumbent LEC's underlying tariff; Incumbent LECs can rebut this presumption if the restrictions are narrowly tailored."[178]

b. Unreasonable Restriction on Resale

Sprint adds that Verizon's refusal to allow the stand-alone purchase of vertical services is indeed a resale restriction and not merely a "retail restriction" as Verizon contends. In fact, Sprint explains that vertical services and the local dial tone are separately tariffed services; vertical services are optional features that are marked differently and priced separately on customer bills; and vertical features are not contained in the same tariff section as dial tone.[179]

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173 *Id.* (*citing Local Competition Order* at ¶ 871).

174 McNamara Direct at 5.

175 *Id.*; Felton Rebuttal at 2.

176 McNamara Direct at 5.

177 *Id.* at 6; GTE Southwest Texas General Tariff at Sheet 1, Section 16.

178 *Local Competition Order* at ¶ 939. *Complaint By AT&T Communications of the Southwest, Inc. Regarding Tariff Control Number 21311, Pricing Flexibility – Essential Office Packages*, Docket Nos. 21425 and 21475, Proposal for Decision at 11-12 (October 19, 200) (*Essential Office PFD*), *adopted in full by*, *Essential Office Order*.

179 Felton Rebuttal at 2.

Additionally, call forwarding features are marketed to end-users separately from local dial tone.[180]

Sprint further states that there is no question but that providing vertical features for resale on a stand-alone basis is technically feasible.[181] Sprint agrees with Verizon that a customer must first have local dial tone for a vertical feature to work and Sprint will only sell the stand-alone features to customers who first have dial tone from Verizon on retail or resold basis.[182] However, there is no technical reason why Verizon cannot provision Custom Calling Services on a stand-alone basis.[183] In fact, Verizon currently offers custom calling services to Enhanced Service Providers (ESPs) without requiring the purchase of local service.[184] Lastly, Sprint counters Verizon's argument that the vertical service resale proposal is not technically feasible for Verizon when another CLEC provides local service to the customer through UNEs.[185] Sprint acknowledges that it may not be possible for Verizon to offer the vertical services in this situation because the CLEC would be entitled to exclusive use of all the features associated with the UNE.[186] Sprint rebuts that this that this circumstance occurs through customer choice. The circumstance described by Verizon, Sprint avers, is no different than other circumstances when a customer has decided to obtain services in a different manner. If another CLEC is providing the local service to the end-use customer, Sprint should still be allowed to purchase the custom calling services on a stand-alone basis. Local service and vertical features are two distinct retail services offered by Verizon.[187] Both functions operate properly no matter which carrier is offering the local service or vertical features.[188] The hallmark of competition is for the customer to have the ultimate choice of provider. Thus, even if this situation presented a problem, a

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[180] McNamara Direct at 7.

[181] *Id.* at 7; Verizon Exhibit 3, Rebuttal Testimony of Terry R. Dye at 2 (Dye Rebuttal).

[182] Felton Rebuttal at 3.

[183] McNamara Direct at 7.

[184] *Id.* at 4, 7.

[185] Dye Rebuttal at 5.

[186] Sprint's Initial Brief at 33.

[187] McNamara Direct at 10.

[188] *Id.* at 10.

complete, broad proscription of resale in this case is not "narrowly tailored" to overcome the presumption of unreasonableness.[189]

Sprint next disagrees with Verizon's contention that it seeks improperly to "disaggregate" a service.[190] Sprint avers that Verizon is improperly applying the FCC's Local Competition Order because vertical services are already separate from basic local service.[191] Also, Verizon improperly compares resale and UNE requirements. Sprint does not dispute the Commission's determination regarding the costs of unbundled switching, including vertical services. Rather, resale and UNE obligations are different and must be examined in their context.[192] For example, a reseller is not entitled to collect access charges for service, but a UNE provider does.[193] Similarly, when a CLEC provides service with the UNE switch port, that CLEC becomes the "owner" of the switch port; however, if the CLEC provisions service through resale, the CLEC is not automatically entitled to any vertical features associated with the service and must purchase them separately from Verizon.[194]

Sprint next counters Verizon's claim that Enhanced Service Providers (ESP's) would be treated unfairly under Sprint's proposal. Sprint recognizes that Internet Service Providers (ISPs) and ESPs would not be entitled to the same resale discount that Sprint is entitled to under the FTA. This is because Sprint, unlike ISPs and ESPs, is a telecommunications carrier providing services to end-users under the Act.[195] FCC rules explicitly exclude certain services provided to ESPs from the category of telecommunications services eligible for discounts.[196] Whether an Enhanced Service Provider is disadvantaged by allowing Sprint to purchase stand-alone vertical services at the wholesale discount is beside the point. The FTA mandates that result, and if it is

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[189] *See Essential Office PFD* at 21; *Essential Office Order* at 3.

[190] Felton Rebuttal at 4.

[191] *Id.* at 3. *See also Essential Office PFD* at 15.

[192] Felton Rebuttal at 3.

[193] *Id.* at 4.

[194] *Id.*

[195] McNamara Direct at 8-9.

[196] 47 C.F.R. 51.605(c).

unfair or inequitable, Congress or the FCC would have to address it and not the Commission.[197] In addition, Sprint takes issues with Verizon's claim that Sprint will become an ESP under its vertical services' resale proposal. Sprint states that it is a CLEC; it is entitled to resale as a CLEC; and it will operate as a CLEC with the stand-alone vertical services.[198]

Sprint concludes its statutory argument by claiming that under the FCC standard, the burden of proof is on Verizon to demonstrate that its tariff resale restriction is reasonable and non-discriminatory. Sprint offers that for Verizon to rebut the presumption that the resale restriction here is unreasonable, Verizon may only do so only if the restriction is narrowly tailored.[199] Verizon, according to Sprint, has not established that its resale restriction is reasonable nor overcome the presumption that the restriction is unreasonable.

c. Wholesale Discount

Next Sprint disagrees with Verizon that the current wholesale discount rate should not apply to vertical features. Sprint argues that Verizon was entitled to file a cost study to set its wholesale discount at the appropriate level in this proceeding.[200] Verizon, however, presented neither a cost study nor any evidence to justify a different discount rate for vertical features. Consequently, Sprint argues that the current discount should apply.[201]

d. Precedent for Stand-alone Resale at Wholesale Rates

Other ILECs have agreed to provide vertical features on a stand-alone basis to Sprint at wholesale rates, including Qwest. That agreement states that "Except as otherwise explicitly provided by applicable law, and where technically feasible, there shall be no restrictions on the

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[197] Felton Rebuttal at 4.

[198] *North Carolina Decision* at 16 (citing with approval a California PUC Opinion) ("The vertical services Sprint wants to purchase from Pacific are clearly telecommunications services, not enhanced services. Sprint, operating as a CLEC, is entitled to purchase retail telecommunications services at a wholesale discount.").

[199] *Local Competition Order* at ¶ 939.

[200] Felton Rebuttal at 5.

[201] Felton Rebuttal at 5; *Pennsylvania Decision* at 32.

resale, under section 251(c)(4), of stand alone regulated vertical features that are associated with telecommunications services."[202]

Several states have also required the ILEC to provide stand-alone vertical features at wholesale rates. These are California, Texas, Florida, North Carolina, and Pennsylvania.[203] In the Texas decision, SWBT was offering its retail business customers a package of vertical features after first purchasing local service. SWBT allowed CLEC's to purchase the vertical services package for resale at 21.6% discount below its tariffed rate, but refused to offer the discount package to CLECs unless they also purchased for resale the local exchange service for that particular customer.[204] The Commission found that SWBT's practice of making the vertical services package available for resale only in conjunction with resale of the underlying basic local service was an unreasonable or discriminatory resale restriction in violation of section 251 (c)(4) of the FTA and section 60.042 of PURA.[205]

Sprint points out that the *Essential Office Order* specifically found that the practice of making vertical services available for resale only in conjunction with resale of the underlying basic local service was a "resale restriction" and that this restriction improperly prohibited, or imposed an unreasonable or discriminatory condition or limitation on, the resale of services in violation of section 251(c)(4) of the FTA.[206] Sprint states that the Commission also established a general presumption that local loop restrictions on separately tariffed services are

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[202] McNamara Direct at 11.

[203] *See In the Matter of the Petition of Sprint Communications, L.P. For Arbitration Of Interconnection Rates, Terms, Conditions And Related Arrangements With Verizon California, Inc. F/K/A GTE California, Incorporated*, California Public Utilities Commission Application No. 00-09-031, Final Arbitrator's Report at 23-26 (February 23, 2001) *(California FAR), affirmed by, In the Matter of the Petition of Sprint Communications, L.P. For Arbitration Of Interconnection Rates, Terms, Conditions And Related Arrangements With Verizon California, Inc. F/K/A GTE California, Incorporated*, California Public Utilities Commission Application No. 00-09-031, Opinion at 9 (March 15, 2001) *(California Decision)*; *Essential Office Order*; *In re: Petition of Sprint Communications Company Limited Partnership for Arbitration of Certain Unresolved Terms and Conditions of a Proposed Renewal of Current Interconnection Agreement with BellSouth Telecommunications, Inc.* Florida Public Service Commission, No. 000828-TP, Order No. Order No. PSC-01-1095-FOF-TP, Final Order on Arbitration at 10-13 (May 8, 2001) (*Florida Decision*) (Sprint's Petition for Arbitration (June 22, 2001) at Exhibit 6; *North Carolina Decision at 3-19*; *Pennsylvania Decision* at 21-22.

[204] McNamara Direct at 12-13; Felton Rebuttal at 5.

[205] McNamara Direct at 13 (*citing Essential Office Order* at 3, 10.).

[206] *Essential Office Order* at 10 (conclusion of law 10).

unreasonable."[207] Given this general presumption, Sprint argues that its position and language on vertical services' resale must be adopted.

Sprint contends that the other state commissions that adopted Verizon's position did not adequately explain their decisions and should not be relied upon.[208] Further, the New York decision improperly relied upon the misconception that resale of vertical features is not technically feasible.[209] Consequently, Sprint argues that these orders may be disregarded.

e. Cost Recovery

Finally, Sprint should not be required to absorb Verizon's costs for implementation of stand-alone vertical services: it is Verizon's responsibility to comply with section 251(c)(4) of the FTA.[210] Verizon is not entitled under the FTA or rules and regulations to such recovery. Even if it were, Sprint claims, Verizon cannot attempt to recover all its costs from Sprint because it is the first CLEC to pursue the request.

f. Agreement Language

Sprint proposes the following for inclusion in the parties' agreement:

> Sprint may purchase at a discount and on a stand-alone basis (meaning Sprint is not required to be the service provider for the underlying associated dial tone) all Vertical Features and services offered at retail by Verizon to its end users pursuant to Section 251(c)(4) of the Act and CFR 51.605(a). Without limiting the generality of the foregoing, the Parties will work together to develop standardized ordering guidelines for Call Forwarding Custom Calling Services. Call Forwarding Custom Calling Services shall be ordered by Sprint via a wholesale process agreed to by the Parties until a final process is developed within the framework of OBF issue 2037, or as otherwise agreed to by the Parties. The Parties further agree that stand-alone vertical features will be exempt from any

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[207] *Essential Office Order* at 4.

[208] *North Carolina Decision* at 16-17 ("The Massachusetts decision offered much less discussion of the rationale underlying its decision than did the California and Texas PUCs in their respective decisions.").

[209] *Joint Petition of AT&T Communications of New York, Inc., TCG New York, Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc.*, New York Public Service Commission Case No. 01-C-0095, Order Resolving Arbitration Issues at 21 (July 30, 2001) (*New York Decision*).

[210] Felton Rebuttal at 5.

performance measures until such time as OBF issue 2037 is final and implemented by the Parties.[211]

Verizon's Position

Verizon argues that custom calling services (often referred to as vertical features) should be provided to Sprint on the same terms and conditions as Verizon currently offers to other resellers pursuant to its General Exchange Tariff, Section 48.[212] The issue in this case, according to Verizon, is what price Sprint must pay when it wishes to purchase stand-alone custom calling services.[213] Under Verizon's retail tariff, a retail customer must purchase Verizon basic dial tone service before the customer may order or use vertical features.[214] Verizon has no obligation to provide Sprint with vertical features for resale on a stand-alone basis at the wholesale discount.[215]

As a practical matter, Verizon explains, a customer must have dial tone service in order to use a vertical feature.[216] To allow one entity to order service placed on another entity's line without an agency agreement would create problems.[217] Sprint's proposal is contrary to how these vertical services are always sold at retail.[218] Sprint should not be allowed to purchase custom calling services outside of the terms and conditions of Verizon's retail tariff at wholesale rates pursuant to section 252(d)(3) of the FTA.[219] Verizon urges the Commission to reject Sprint's proposed language for Section 1 of the Resale Attachment that would require Verizon to provide vertical features on a stand-alone basis *at wholesale rates.*

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[211] Sprint's Initial Brief at 36.

[212] Verizon Exhibit 2, Direct Testimony of Terry R. Dye at 3, 10 (Dye Direct); Dye Rebuttal at 7.

[213] Dye Rebuttal Testimony at 8.

[214] Dye Direct at 4, 5; GTE Southwest Inc., Texas General Tariff, Section 16, Sheet No. 1; Contel of Texas Inc., Schedule No. A-1, Sheet No. 34.

[215] Dye Direct at 5.

[216] Dye Direct at 4.

[217] Dye Direct at 4.

[218] Dye Direct at 3.

[219] Dye Rebuttal at 1, 7, and 8.

A vertical feature, as Verizon explains, is a functional network capability that is provided in conjunction with the basic dial tone service, such as Call Forward Busy Line/Don't Answer; custom calling services are also vertical or ancillary services.[220]

a. <u>No Requirement to Provide Stand-Alone Resale at Wholesale Rates</u>

Verizon contends that it is not obligated under the FTA to make its vertical features available for resale on a stand-alone basis.[221] The FTA imposes a duty upon ILECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."[222] The FCC, Verizon claims, has affirmed this principle by stating that the "Act does not require an incumbent LEC to make a wholesale offering of any service that the incumbent does not offer to retail customers."[223] Because Verizon does not offer vertical features on a stand-alone basis at retail to retail customers, the obligation to provide vertical features for resale is not triggered.[224] Consequently, Verizon states that it has no obligation under section 251(c)(4) of the FTA to provide Sprint with custom calling services on a stand alone basis at the section 252(d)(3) wholesale-discount basis.[225] Rather, Sprint may purchase and resell custom calling services on a stand-alone basis on the same terms and conditions as Verizon currently offers to ESPs.

A "telecommunications service," Verizon explains, is "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public regardless of the facilities used."[226] Although Verizon provides vertical features to retail end-users, it does not do so on a stand-alone basis.[227] And although Verizon's retail tariff has separate rates and charges for vertical services at retail, it still requires

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[220] Dye Direct at 3.

[221] Dye Direct at 10.

[222] Dye Direct at 4; Dye Rebuttal Testimony at 6; 47 U.S.C. § 251(c)(4); 47 C.F.R. § 51.605(a).

[223] *Local Competition Order at ¶* 872.

[224] Dye Direct at 4-5.

[225] Dye Rebuttal at 2-3.

[226] 47 U.S.C. 153(46).

[227] Dye Direct at 5.

a retail customer to have basic dial tone service to order and use vertical features.[228] This is appropriate because a customer may have basic dial tone service without additional vertical features.[229] Custom calling services are never purchased separately from basic local service.[230]

Verizon concedes that it does provide vertical features to ESPs without the purchase of dial tone, but not at the terms Sprint is seeking.[231] Verizon agrees that Sprint may purchase vertical services on a stand-alone basis, but not at the wholesale rate. Verizon provides functional network capabilities to any entity under Section 48 of Verizon's Texas General Exchange Tariff. The provision of vertical services under Section 48, however, is a wholesale/resale offering that predates the Act and is not a retail offering.[232] ESPs purchase the services for resale and operate as wholesalers. Thus, this tariff provision allows for a wholesale offering not a retail one. Likewise, because Sprint is not prohibited from purchasing the stand-alone vertical features, Verizon satisfies its duty to under section 251(b)(1) of the FTA "not to prohibit, and not to impose unreasonable or discriminatory conditions on, the resale of its telecommunications services."[233]

Verizon next points to the FCC's holding regarding ILEC-provided DSL to ISPs. Verizon explains that the FCC held that "while an incumbent LEC DSL offering to residential and business end-users is clearly a retail offering designed for and sold to the ultimate end-user, an incumbent LEC offering of DSL services to [ISPs] as an input component to the [ISP's] high-speed Internet service offering is not a retail service."[234] As such, these input components to the

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[228] Dye Direct at 6; Dye Rebuttal at 2.

[229] Dye Direct at 6.

[230] Dye Rebuttal at 2.

[231] Verizon Southwest Texas General Exchange Tariff, Section 48, Sheet 6; Contel of Texas Schedule No. F-1, Network Services, Sheet 2; Dye Direct at 7.

Verizon also contends that Sprint's Qwest agreement is not relevant in this proceeding because an ILEC may choose to offer services for resale when not otherwise required to do so. The terms and conditions that Sprint has with other ILECs offering additional services is not binding on Verizon. Dye Rebuttal at 9.

[232] Dye Direct at 7.

[233] 47 U.S.C. 251(b)(1).

[234] *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Second Report and Order, 14 FCC Record 19237 (rel. 1999) (*Second Report and Order)*, aff'd at *Ass'n of Communications Enters. v. FCC*, 253 F.3rd 29 (D.C. Cir. 2001).

ISP's retail offering were not subject to the discounted resale obligations of section 251(c)(4).[235] By analogy, Verizon argues, ESPs are merely purchasing an input component from Verizon; Verizon is not offering a retail service. Furthermore, Verizon's ESP offering is not subject to the discounted 251(c) resale obligations or the section 252(d)(3) wholesale rates. Because Sprint will be operating like an ESP operates, it may, therefore, purchase the stand-alone vertical features at the rates provided by Verizon's current tariff.

Correspondingly, Verizon explains that just as ISPs are not entitled to the resale discount, nor should Sprint be entitled to such.[236] Like ISPs, Verizon contends, Sprint should not be allowed to have the wholesale discount because when Sprint seeks to obtain the vertical services, they are to be used for "information services." Sprint's potential service will allow a user to retrieve voice mail message from various devices, including computers. Sprint is, therefore, acting as an ISP and not providing telecommunications services.[237] The FTA definitions support this conclusion when looking to the definitions of "information service," "telecommunications," "telecommunications carrier," and "telecommunications service."[238] Verizon claims that ISPs offer end-users "information services" just as the "Unified Communications" product does.[239] If a telecommunications carrier is only offering an end-user "information services," then it should not be treated as a common carrier eligible to receive the section 252(d)(3) discount and should be required to purchase vertical services out of Section 48 as an ISP does.[240]

b. No Unreasonable Restriction on Resale

Verizon makes an additional argument that requiring the purchase of basic service in order to purchase vertical services, is a *retail* restriction, but it is not a *resale* restriction.[241] Verizon's position in no way limits Sprint's ability to resell vertical services. Sprint may purchase the features under the terms of the tariff and provide services to their customers while

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235 *Second Report and Order* at ¶ 22.

236 Dye Rebuttal at 3.

237 *Id.* at 3, 8.

238 *Id.* at 3-4.

239 *Id.* at 4.

240 *Id.*

Verizon continues to provide the directly associated dial tone line.[242] Verizon's obligation to provide resale at the wholesale discount is only triggered when the service is offered at retail; Verizon does not offer at retail stand-alone vertical services.[243] And, as Sprint concedes, it is undisputed that Verizon's retail offering is reasonable.[244] Further, providing Sprint to purchase the underlying basic service when acting as a telecommunications carrier is narrowly tailored and reasonable.[245]

In addition, Verizon explains, the FCC has stated that ILECs are not required to "disaggregate a retail service into more discrete retail services."[246] Vertical features are "more discrete retail services."[247] Verizon meets its obligation to Sprint by allowing Sprint to resell vertical features under the same terms and conditions that Verizon provides to its retail customers. Since Verizon's customers must first purchase Verizon's local exchange service, it is also reasonable to require Sprint's customers to purchase the local line.[248]

The Commission has also stated that "the costs of local switching capability should include all of the switch costs required to provide vertical services."[249] Not to disaggregate vertical features from the local loop as "more discrete retail services" is consistent with commission precedent.[250] It is also consistent with the FCC's interconnection rules that state, "[a] telecommunications carrier that has interconnected or gained access under section 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well."[251]

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241 *Id.* at 6.

242 Dye Direct at 8.

243 Dye Rebuttal at 6.

244 *Id.*

245 *Id.* at 7.

246 *Local Competition Order* at ¶ 877.

247 Dye Direct at 5.

248 *Id.*

249 *Petition of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement between AT&T and GTE Southwest, Inc, and Contel of Texas, Inc.*, Docket Nos. 16300 and 16355, Arbitration Award at 135 (December 13, 1996).

250 Dye Direct at 6.

251 47 C.F.R. § 51.100(b).

Verizon goes on to argue that it is not always technically possible to offer stand-alone vertical services.[252] For example, in contrast to Sprint witness McNamara, when a different CLEC is providing basic service through UNEs to a customer to whom Sprint was reselling vertical services, Verizon would be in no position to offer vertical services for resale to Sprint.[253] The CLEC in this case would be the "owner" of the network services, including vertical services, and would have the sole right to provide the services to the customer.[254] A CLEC is not required to offer vertical services for resale at wholesale rates.[255] Verizon points out that Sprint concedes this limitation; yet, Sprint's contract language does not address this point.

Lastly, Verizon contends that if Sprint were allowed to purchase vertical features on a stand-alone basis, the service provided by Sprint to the end-user would be similar to that offered by an ESP. Sprint plans to use the vertical features for a "Unified" telecommunications platform, which allows an end-user to retrieve voice mail messages from various devices.[256] This is identical to the way ESPs utilize the vertical services features provided under Verizon's tariff Section 48 for voice messaging services.[257] When Sprint uses these vertical features for the "Unified Communications" platform, it is performing the services of an ESP instead of a CLEC.[258] To allow Sprint to have a discounted purchase offering would be unfair to ESPs who have purchased the features under the FCC's Open Network Architecture rules with no discount.[259] Under Sprint's proposal, Sprint would have an unfair wholesale advantage over another wholesale competitor.[260]

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[252] Dye Rebuttal at 5.

[253] *Id.* at 5, 8.

[254] *Id.* at 5.

[255] *Id.*

[256] Dye Direct at 7-8.

[257] *Id.* at 8.

[258] *Id.*

[259] *Id.* at 7.

[260] *Id.* at 7.

c. *Precedent for Rejecting Stand-alone Resale at Wholesale Rates*

Verizon acknowledges that the Commission in the *Essential Office Order* has addressed a similar issue to the one presented in this arbitration. Verizon argues that the previous decision, however, should not control the outcome of the decision here because unlike the previous Commission order, Sprint does not seek a package of vertical services. Further, the Commission previously assumed the threshold issue that SWBT's vertical-services package was subject to the resale requirement of section 251(c)(4). Here, Verizon contends that the vertical services are not subject to the resale requirements. Consequently, Verizon's failure to provide vertical services on a stand-alone basis at the wholesale rate cannot, as a matter of law, constitute an unreasonable restriction on resale.

Several other state commissions have found that CLECs do not have the right to purchase stand-alone vertical features at a wholesale discount.[261]

d. *Wholesale Discount*

Even if Verizon were required to offer stand-alone vertical features at the wholesale discount, the FTA section 252(d)(3) avoided-cost discount should not apply. The section 252(d)(3) wholesale discount is developed through an avoided-cost analysis that considers what costs Verizon will avoid should it cease to provide retail dial tone service.[262] The wholesale avoided cost discount is applied to Verizon's retail offerings to non-telecommunications carriers. The wholesale avoided cost discount is not intended or appropriate for application outside the context of Verizon's retail offerings to non-telecommunications carriers.[263] To allow Sprint to "disaggregate" Verizon's retail offerings and yet to get a discount based on Verizon's retail service is unfair and inconsistent with the FTA.[264]

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[261] *Petition of Sprint Communications Company, L.P. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Kentucky Public Service Commission, No. 2000-480, Order at 2-4 (June 13, 2001) (*Kentucky Decision*); *Maryland Decision* at 10-11; *Massachusetts Decision* at 23; *New York Decision* at 20-21.

[262] Dye Rebuttal at 7.

[263] Dye Rebuttal at 1, 8.

[264] *Id.* at 8.

If the Commission decides that vertical features are entitled to the 251(c) discount, a separate determination of the proper level of discount for stand-alone vertical features should be performed.[265] This is necessary because the current discount is derived by examining the total (combined dial tone and vertical feature) retail expense avoided when sales and ordering processes change from retail to wholesale.[266] Currently, there is no viable measurement of sales and ordering expenses for stand-alone features incorporated into the current discount level; there is no measurable product expense data on which to base the discount.[267] If Sprint is allowed to purchase vertical services apart from the local loop, Verizon will avoid few, if any, costs because the majority of sales, ordering and billing costs would remain associated with basic dial tone.[268] Verizon argues that it would continue to incur the retail customer orders costs, the billing and collection costs, and most marketing costs. The bulk of ordering costs are associated with the establishment of a customer account and the assignment of a line number so augmenting this established information with vertical features is minor.[269] Additionally, the sales cost to acquire a customer would exceed the sales cost to augment their service. This would result in a "discount" price that is not significant.[270]

e. *Cost Recovery*

Furthermore, reselling vertical features on a stand-alone basis will require modifications to Verizon's provisioning and billing systems.[271] Verizon's ordering and billing systems are not designed to process and bill orders for stand-alone vertical features.[272] Sprint should be required to reimburse Verizon for the costs incurred to implement this type of resale arrangement.[273]

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265 *Id.*

266 Dye Direct at 9.

267 *Id.*

268 *Id.*

269 *Id.*

270 *Id.*

271 *Id.*

272 Dye Rebuttal at 6.

273 Dye Direct at 9.

f. Agreement Language

Verizon urges the Commission to reject Sprint's proposed agreement language regarding stand-alone vertical features.

Arbitrator's Decision

As the parties explain, vertical features (also referred to as custom calling services) are ancillary or optional services that enhance the functionality of local service.[274] Sprint indicates that it may employ vertical features to offer a service that will permit customers to retrieve messages from various electronic devices, such as computers and telephones. This service would, however, require customers to have certain vertical features.[275] Verizon objects to allowing Sprint to purchase these vertical features on a stand-alone basis at the wholesale discount outlined in the FTA. As such, the primary questions presented for the parties' agreement are (1) whether Sprint may purchase Verizon's vertical services on a stand-alone basis without the concurrent obligation to purchase the underlying basic local service and (2) whether the wholesale discount requirements of section 251(c) of the FTA apply to Sprint's purchase of these stand-alone vertical features. The Arbitrators are persuaded by Sprint's arguments on these issues. The Arbitrators find that Verizon should be required to offer its vertical features on a stand-alone basis and that they should be available to Sprint at the wholesale discount rates as provided under sections 251(c)(4)(A) and 252(d)(3) of the FTA.

Section 251(c)(4) of the FTA provides that incumbent local exchange carriers, such as Verizon, have the duty "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."[276] The essence of the parties' dispute is a disagreement on the application of this provision. To answer the first question posed above, we must examine whether Verizon offers vertical features at retail as contemplated by section 251(c)(4). When making this inquiry, we must also examine whether Verizon's retail offering places an unreasonable restriction on its resale.

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[274] McNamara Direct at 3; Dye Direct at 3. *E.g.*, Sprint Exhibit G.

[275] McNamara Direct at 7.

a. Retail Service

Verizon argues that because it does not offer stand-alone vertical features "at retail," section 251(c)(4) does not apply.[277] Verizon contends that it will allow Sprint to purchase the stand-alone vertical features under its current tariff for Enhanced Service Providers (ESPs) which does not allow for the wholesale discount.[278] Verizon maintains that the stand-alone features it offers to ESPs is a wholesale arrangement not a retail one. Verizon additionally states that Sprint may purchase the vertical features under its retail tariff. That provision, however, requires the purchase of the underlying basic local service.[279] While both parties agree that an end-user must have the underlying dial tone to actually use a vertical feature, the parties disagree as to whether the underlying dial tone must be purchased along with the vertical features because of this retail offering.[280] Verizon argues that under either of its vertical services' offerings it does not offer the stand-alone features at retail. Thus, section 251(c)(4) cannot apply. And, because Sprint is allowed to purchase vertical features under the same arrangements as an ESP, Verizon is in not imposing unreasonable or discriminatory conditions on the resale of its telecommunications services.[281]

Sprint counters that section 251(c)(4) applies to *any* telecommunications services offered at retail not just ones that are offered at stand-alone conditions. The Arbitrators agree with Sprint's analysis. As Sprint points out, the federal statute does not limit the resale requirements to basic telephone services.[282] Further, we see no statutory requirement, and Verizon points to none, that would limit the eligible services for resale to only those that are offered on a stand-alone basis at retail. Verizon instead relies on its tariff conditions to confirm that the services

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[276] 47 U.S.C. 251(c)(4).

[277] *Local Competition Order* at ¶ 872 (stating the FTA does not require a incumbent LEC to make a wholesale offering of any service that the incumbent does not offer to retail customers).

[278] Verizon Southwest Texas General Exchange Tariff, Section 48, Sheet 6; Contel of Texas Schedule No. F-1, Network Services, Sheet 2; Dye Direct at 7. *See also* McNamara Direct at 4, 7.

[279] GTE Southwest Inc., Texas General Tariff, Section 16, Sheet No. 1; Contel of Texas Inc., Schedule No. A-1, Sheet No. 34

[280] McNamara Direct at 5; Felton Rebuttal at 2-3; Dye Direct at 5.

[281] *See* 47 U.S.C. 251(b)(1).

[282] *Local Competition Order* at ¶ 871.

must either be purchased in a bundled fashion or separately without a wholesale discount. We do not believe, however, that Verizon's current tariff provisions control the outcome in this case.[283] Additionally, Sprint presented evidence that vertical features and local dial tone are separately tariffed services, marketed and priced differently on customer bills.[284]

Verizon also insists that when Sprint purchases its vertical features, it will be acting as an ESP or an ISP when providing services to customers. According to Verizon, Sprint's resale of vertical features is comparable to how ESP's and ISP's operate.[285] Verizon states that it must treat these entities equally and should not be obligated to offer the vertical features to Sprint at the wholesale discount because ESPs and ISPs do not receive the discount. Verizon explains that, in the context of ILEC-provided DSL services, the FCC has found that "while an incumbent LEC DSL offering to residential and business end-users is clearly a retail offering designed for and sold to the ultimate end-user, an incumbent LEC offering of DSL services to [ISPs] as an input component to the [ISP's] high-speed Internet service offering is not a retail service."[286] The FCC found that these "input components" to the ISP's retail offering were not subject to the discounted resale obligations of section 251(c)(4).[287] By analogy, Verizon argues that Sprint, acting as an ESP or an ISP, is merely purchasing an input component from Verizon; Verizon is not offering a retail service.

Even if we were to agree that Sprint is acting as an ESP or an ISP, we do not believe that section 251(c)(4) does not apply.[288] First, we do not find the DSL illustration analogous. Second, the FTA places an affirmative duty upon ILECs to provide the retail services for resale to telecommunications carriers. The FCC has found that the term "at retail" means a sale to an

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[283] *See Local Competition Order* at ¶ 939 (ILEC tariff cannot place an unreasonable restriction on resale); *see also Essential Office Order* at 3, 4; *Essential Office PFD* at 11-12.

[284] McNamara Direct at 7; Felton Rebuttal at 2.

[285] Dye Rebuttal at 3-4, 8.

[286] *Second Report and Order* at ¶ 22.

[287] *Second Report and Order* at ¶ 22.

[288] The Arbitrator's are convinced, nonetheless, that Sprint will be operating as CLEC to provide vertical services directly to consumers. *Compare* 47 C.F.R. 51.605(c) *with* 47 U.S.C. 251(c)(4); *see North Carolina Decision* at 16 (citing with approval a California Opinion) ("The vertical services Sprint wants to purchase from Pacific are clearly telecommunications services, not enhanced services. Sprint, operating as a CLEC, is entitled to purchase retail telecommunications services at a wholesale discount.").

ultimate consumer.[289] Here, Verizon is most assuredly targeting and offering vertical services to end-user subscribers or consumers, albeit only in connection with individual line service.[290] And, unlike the DSL example, Verizon's retail tariff does not offer the stand-alone vertical features to an intermediary, either an ESP or an ISP, which then provides the service to the consumer. Verizon itself provides vertical features to the consumer.[291]

RESTRICTION ON RESALE

We will next examine whether Verizon's requirement that Sprint purchase the underlying dial tone in conjunction with the vertical features is an unreasonable or discriminatory resale restriction.[292] Sprint argues that Verizon is attempting to place an unreasonable restriction on the resale of its vertical features by tying their purchase to the underlying local service. Verizon seeks to "bundle" the resale of its vertical services with basic local service. Verizon claims that its "restriction" is merely a "retail" restriction not a "resale" restriction.

Notwithstanding Verizon's arguments, we conclude that its current retail tariff does present a resale restriction. Sprint explains that vertical features and basic local service are not contained in the same tariff section and they are marked and priced separately on consumer bills. Some vertical services are even marketed to end-users separately from local dial tone services.[293] And, although the parties agree that the underlying basic local service is needed for vertical services to be functional, it is technically feasible for vertical features to be provided on a stand-alone basis for resale.[294] As outlined above, the federal statute does not provide for resale obligations only to those services provided at retail on a stand-alone basis. Thus, if a bundling or exogenous requirement is added to the condition of the purchase of the service, we believe that a restriction occurs as contemplated by the federal provision. Consequently, by requiring the purchase of the underlying local service before Sprint may purchase vertical features, Verizon is, in our opinion, placing a restriction on the resale of a telecommunications service.

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[289] *Second Report and Order* at ¶ 17.

[290] GTE Southwest Texas General Tariff at Sheet 1, Section 16.

[291] *See Pennsylvania Decision* at 21.

[292] 47 U.S.C. 251 (c)(4)(B).

[293] McNamara Direct at 7.

"Resale restrictions are presumptively unreasonable" which includes "conditions and limitations contained in the incumbent LEC's underlying tariff."[295] "Incumbent LECs can rebut this presumption, but only if the restrictions are narrowly tailored."[296] "Tying the purchase of separately tariffed vertical services to the purchase of local service is unreasonable. Ultimately, the burden to prove whether a restriction is reasonable or not will be placed upon the telecommunications provider."[297] "With respect to any restrictions on resale not permitted under [section 251(c)(4)(A)], an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory."[298] Verizon argues that its resale restriction is not unreasonable or discriminatory because it is not required to "disaggregate a retail service," nor is it always technically feasible to provide the stand-alone vertical services.[299] Verizon further complains that if Sprint is allowed to purchase the stand-alone features at the wholesale discount, ESP's will be placed at a considerable disadvantage. We will address each of Verizon's arguments in turn.

We do not believe that requiring Verizon to offer stand-alone vertical features for resale will improperly "disaggregate" a retail service. Vertical features and the local loop are already tariffed separately and can be provided separately.[300] Moreover, Verizon's "bundling" of local service and vertical features at retail can be "unbundled" for resale purposes under section 251(c)(4) if the bundling is found to be an unreasonable condition or limitation on resale.[301] Lastly, as Sprint points out, Verizon is improperly comparing resale and UNE obligations.[302]

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[294] McNamara Direct at 7; Dye Rebuttal at 2.

[295] *Local Competition Order* at ¶ 939; *Essential Office Order* at 3, 4, 10 (conclusion of law 10).

[296] *Local Competition Order* at ¶ 939.

[297] 47 C.F.R. 51.613(b); *Essential Office Order* at 4; *see Pennsylvania Decision* at 28 (FCC's discussion "clearly indicates that ILEC restrictions on resale, particularly where they have the effect of tying voice service to the resold product does not meet the 'reasonable' standard of TA-96") (*citing In the Matter of Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Connecticut*, Docket No. 01-1000, Order at ¶ 32 (rel. July 20, 2001)).

[298] 47 C.F.R. 51.613(b).

[299] *Local Competition Order* at ¶ 877.

[300] *North Carolina Decision* at 18.

[301] *See Essential Office PFD* at 11-12 (*citing Local Competition Order* at ¶¶ 872 and 939).

[302] Felton Rebuttal at 3-4.

Likewise, we are not persuaded by Verizon's technical feasibility arguments. Verizon does not claim that it cannot provide vertical features on a stand-alone basis. Rather, Verizon claims that if another telecommunications carrier has purchased the underlying local line through UNEs, Verizon cannot resell the vertical features to the associated line because the other carrier becomes the "owner" of the network services. Sprint, however, presented evidence that because the vertical features and the local service are distinct offerings, Sprint could still purchase the vertical features on a stand-alone basis; both functions could properly operate no matter which carrier is offering the local service.[303] In fact, the Pennsylvania Public Utility Commission recently stated that

> technical feasibility, while a consideration that must be acknowledged in conjunction with the obligations of the LEC to unbundle UNEs, becomes vague in the context of a discussion of a resold service. Sprint, as a CLEC, wants to choose which vertical services it would obtain so as to provide such service to an end-user on a resold local loop. For example, if Sprint orders a resold local loop with Caller ID on behalf of one of its customers, Verizon would discount the local loop for the CLEC but require the CLEC to purchase the Caller ID at the retail tariffed rate. All that the CLEC is requesting is that it be able to purchase vertical services on behalf of its subscribers at the applicable wholesale rate.[304]

We agree that when Sprint is the underlying local carrier, it should be permitted to purchase the vertical features at the wholesale discount.

On the other hand, if Sprint were not the underlying local carrier providing service on a resold local loop, as Verizon also suggests, we still find that Sprint should be able to purchase vertical services on behalf of its subscribers at the applicable wholesale rate. If another CLEC "owned" the switch port or the network services of the underlying local loop because it had purchased it through UNEs, Sprint would then be obligated to transfer complete control of the vertical features to the UNE purchasing CLEC and Sprint would be in the position of having to negotiate an agreement with the CLEC in order for Sprint to resell any vertical service. Sprint acknowledges this circumstance.[305] Nonetheless, we conclude that customer choices will drive Verizon's obligations and the determination of which carrier resells the vertical services and

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[303] McNamara Direct at 10.

[304] *Pennsylvania Decision* at 30-31 (footnotes and citations omitted).

[305] Sprint's Initial Brief at 33.

which carrier provides service to the consumer. "If a CLEC purchases the UNE to provide local switching in relation to a particular customer, then the CLEC assumes the responsibility for reselling any particular vertical services to [Sprint]."[306] We envision no problems with Sprint's proposed language in this regard. If Verizon does not "own" the "network services" of the underlying line, it will not be obligated to resell them to Sprint. Not only does Verizon's request to reject Sprint's proposed language based on this eventuality lack merit, it is not "narrowly tailored" to remedy the perceived problem.

Finally, we do not believe that Sprint is acting as an ESP when providing the resold vertical features to the consumer. Sprint, unlike an ESP or an ISP, is a "telecommunications carrier" providing telecommunications services to end-users.[307] As such, it is entitled to the resale provisions of section 251(c)(4). We are not persuaded that any disadvantage that an ESP will experience *vis-à-vis* Sprint's wholesale discount is justification to show that Verizon should not follow the requirements of the federal statute.

b. Wholesale Discount

Verizon argues that even if it were required to offer stand-alone vertical features at the wholesale discount, the section 252(d)(3) avoided-cost discount should not apply. Verizon contends that the avoided-cost discount is inappropriate in this case because Sprint is acting as an ESP not a telecommunications carrier. Verizon complains that under the avoided-costs discount, it would avoid few, if any, costs because a majority of sales, ordering, and billing costs remain associated with the basic dial tone. Thus, Verizon contends that the avoided-cost discount should not apply. Sprint disagrees and states that if Verizon wishes to establish a different discount rate, it should be required to file a cost study and justify a different discount rate for vertical features.

Section 252(d)(3) of the FTA states that

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[306] *Essential Office PFD* at 21-22; *see also* 47 U.S.C. (b)(1) (all local exchange carriers had a duty to resell their telecommunications services).

[307] 47 U.S.C. 153(43), (44), (47); *North Carolina Decision* at 12; McNamara Direct at 8-9. *Cf.* 47 C.F.R. 51.605(c).

> "For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local carrier exchange.

Because we have found that Verizon has a duty under section 251(c)(4) to offer the stand-alone vertical features at wholesale, section 252(d)(3) also applies. Consequently, we conclude that Commission's current discount rate should apply until Verizon presents a cost study to justify its claims that another rate should be established.

c. Other Jurisdictions

Verizon also stresses that four other state commissions have rejected Sprint's vertical services language. The Pennsylvania Decision examined three of the state arbitration awards cited by Verizon, but was not persuaded by their findings. That commission concluded, as do we, that Kentucky, Massachusetts, and New York rejected the resale of vertical features based on a view that such rejection was a permissible restriction on resale, did not violate section 252 (c)(4), or was based on technical unfeasibility.[308] The Maryland decision was based on a determination that Verizon did not provide stand-alone vertical features at retail under section 251(c)(4) and was, therefore, not required to offer the features to Sprint at wholesale discount rates.[309] As we outlined above, we do believe that federal resale provision is applicable here, that Verizon's restriction is unreasonable, and that the stand-alone provision of the features is technically feasible. We have examined all of the decisions cited by Verizon and find no new arguments or considerations that we have not already taken into account.

The Arbitrator's conclusion here is also entirely consistent with the previous Commission determination on this issue.[310] Additionally, at least four other state commissions have adopted our conclusions on this matter.[311]

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[308] *Pennsylvania Decision* at 24-26.

[309] *Maryland Decision* at 10-11.

[310] *Essential Office Order* at 3-4.

[311] *California Decision* at 8-9; *California FAR* at 23-26; *Florida Decision* at 4-7; *North Carolina Decision* at 12-19; *Pennsylvania Decision* at 19-32.

d. Cost Recovery

Verizon finally contends that because reselling vertical features on a stand-alone basis will require modifications to Verizon's provisioning and billing system, Sprint should be required to reimburse Verizon for the costs incurred to implement this type of resale arrangement. We disagree. Verizon has a duty under the FTA to comply with its obligations under section 251(c)(4). There is no provision that allows Verizon such recovery.

e. Agreement Language

The Arbitrators do not believe that Verizon has provided any justification to overcome the presumption that its resale restriction, requiring the purchase of the underlying local service, is unreasonable. Verizon's restriction is not "narrowly tailored." As an unreasonable restriction on resale, we find that Verizon should not be allowed to require the purchase of the underlying local service before Sprint is allowed to purchase vertical features for resale. Consequently, we conclude that Verizon does provide custom calling services or vertical features at retail. Because we have found that Verizon has a duty under section 251(c)(4) to offer the stand-alone vertical features at the wholesale discount under section 252(d)(3), we adopt Sprint's proposed language for this issue.[312]

D. DPL Issue 15 Incorporation of Collocation Tariff

Should the new Sprint/Verizon interconnection agreement incorporate tariff provisions regarding collocation that are filed subsequent to the effective date of the Agreement?

Sprint's Position

Sprint argues that Verizon's proposed language implies that Verizon's tariff language will apply to Sprint once Verizon files the collocation tariff, regardless of whether the rates have been approved by the Commission.[313] Sprint points out that Verizon's proposal states "Verizon

[312] Sprint's Initial Brief at 36.

[313] Sprint's Initial Brief at 37.

shall provide Collocation to Sprint in accordance with the rates, terms and conditions set forth in Verizon's Collocation tariff, and Verizon shall do so regardless of whether or not such rates, terms and conditions are effective."[314] Sprint contends that it should not be required to give Verizon the right to unilaterally modify the collocation conditions simply by filing a tariff.[315]

Sprint argues that its proposed language acknowledges the precedence of the parties' interconnection agreement over any tariff. Sprint further offers that its language would preserve Verizon's right to file tariffs to supplement or modify the rates, terms, and conditions of its tariffs, as long as Sprint has a meaningful opportunity to participate before the changes become effective.[316]

Sprint maintains that its proposed language allows Sprint to receive the benefit of the contract provisions until such time as Verizon's tariff is filed and becomes effective.[317] Sprint acknowledges that the approved terms in the tariff may vary from those contained in the Sprint/Verizon interconnection agreement.[318] Sprint argues that the only condition it seeks is that Sprint to have the opportunity to participate in the tariff approval proceeding, not that it actually participates. Sprint acknowledges that if there is an open docket in Texas concerning approval of Verizon's tariff in which Sprint is allowed to participate, then the condition is satisfied. Sprint asserts that when the tariff is approved by the Commission, the tariff would be binding upon Sprint.[319]

AGREEMENT LANGUAGE

Sprint proposes the following language for the parties' agreement:

> Collocation services will be provided by VERIZON pursuant to the contract provisions set forth in this Agreement, unless otherwise expressly agreed to by the Parties. The Parties agree that provision does not in any way restrict the ability of Verizon to file a Collocation Tariff at any time pursuant to the rules of the Texas

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[314] *Id.*

[315] *Id.*

[316] *Id.* at 38.

[317] Sprint's Reply Brief at 23 (December 21, 2001 (Sprint's Reply Brief).

[318] *Id.*

[319] *Id.* at 24

PUC, pursuant to a proceeding in which Sprint has had the opportunity to fully participate. However, Sprint is not bound by such modifications unless and until an order is issued by the Texas PUC with such specificity as to invoke the provisions of Article II, Section 1.2 of this Agreement..[320]

Verizon's Position

Verizon argues that its proposed language establishes the collocation tariff as the first source for applicable collocation rates.[321] Verizon contends that this ensures that its collocation rates are set and updated in an efficient, consistent, fair and non-discriminatory manner for all CLECs. Verizon acknowledges that it currently does not have a collocation tariff in effect in Texas,[322] but that by referencing a collocation tariff in the interconnection agreement, the parties will be able to avoid future litigation. Verizon argues that its proposal ensures that the agreement remains up-to-date without the need to amend the agreement.[323] Verizon further argues that by referencing a future collocation tariff, these tariffs are immediately applicable to the various interconnection agreements and ensures non-discriminatory treatment of CLECs.[324]

Verizon states that Sprint opposes Verizon's proposed language because Sprint wants to choose the more favorable collocation rates of either the Sprint/Verizon interconnection agreement or Verizon's collocation tariff.[325] Verizon contends that this would give Sprint an unfair competitive advantage over the carriers that must purchase based on Verizon's tariff.[326] Verizon also states that Sprint has the right to contest any tariff Verizon files, contrary to Sprint's contention that Sprint would be denied the opportunity to review or challenge the tariff or any changes.[327] Verizon further argues that under Sprint's proposal, Sprint and any other carrier who opts into the Sprint/Verizon interconnection agreement would have the right to veto any future collocation tariff, thereby rendering the tariff process moot.[328]

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[320] Sprint's Initial Brief at 38; DPL at 55.

[321] Verizon's Initial Brief at 32.

[322] *Id.*

[323] *Id.*

[324] *Id.* at 32-33.

[325] Verizon's Initial Brief at 33; Verizon Exhibit 1, Direct Testimony of John Ries at 3 (Ries Direct).

[326] Verizon's Initial Brief at 33; Ries Direct at 3.

[327] Verizon's Initial Brief at 33; Ries Direct at 4.

[328] Verizon's Initial Brief at 34; Ries Direct at 3.

AGREEMENT LANGUAGE

Verizon proposes the following language for the parties' agreement on this issue:

> Collocation Attachment, Section 1. Verizon shall provide to Sprint, in accordance with this Agreement (including, but not limited to, Verizon's applicable Tariffs) and the requirements of Applicable Law, Collocation for the purpose of facilitating Sprint's interconnection with facilities or services of Verizon or access to Unbundled Network Elements of Verizon; provided, that notwithstanding any other provision of this Agreement, Verizon shall be obligated to provide Collocation to Sprint only to the extent required by Applicable Law and may decline to provide Collocation to Sprint to the extent that provision of Collocation is not required by Applicable Law. Subject to the foregoing, Verizon shall provide Collocation to Sprint in accordance with the rates, terms and conditions set forth in Verizon's Collocation tariff, and Verizon shall do so regardless of whether or not such rates, terms and conditions are effective.
>
> Because of the Notices Abating the Proceedings regarding Tariff Control Nos. 22709 and 22710 issued by the Commission on July 11, 2000, Verizon shall provide Collocation according to the following terms and conditions in the State of Texas on an interim basis only until Verizon files another Collocation Tariff in Texas. At such time as there is a Verizon Collocation tariff on file with the Commission, and subject to the foregoing, the following terms and conditions will be rendered ineffectual, and Verizon shall provide Collocation to Sprint in accordance with the terms and conditions set forth in Verizon's Collocation tariff, and Verizon shall do so regardless of whether or not such terms and conditions are effective.[329]

Arbitrator's Decision

The Arbitrators recognize that Verizon does not currently have a collocation tariff in effect in Texas.[330] The parties agree that Verizon has the right to file such a tariff, and they acknowledge that the terms of any collocation tariff may be different from the collocation terms in the parties' interconnection agreement. The parties' arguments also reflect that they agree that the terms of any future collocation tariff will supersede the terms in the parties' agreement.[331]

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[329] DPL at 55-56.

[330] *See Application of Contel of Texas, Inc. to Introduce a New Optional Service – Collocation Service, Pursuant to P.U.C Subst. R. 26.212*, Docket No. 22709, Notice Abating the Proceedings (July 12, 2000); *Application of GTE Southwest Incorporated to Introduce a New Optional Service – Collocation Service, Pursuant to P.U.C Subst. R. 26.212*, Docket No. 22710, Notice Abating the Proceedings (July 12, 2000).

[331] Sprint's Reply Brief at 24; Verizon's Initial Brief at 37. Because the parties agree that any future Collocation Tariff will be binding, we do address whether Sprint could merely opt-into specific provisions of the

The disagreement is therefore surrounding when the new terms in any tariff become effective and binding.

Sprint argues that the collocation tariff's terms should become binding only on the effective date pronounced by the Commission order approving the tariff. Verizon's proposed language suggests to us that the collocation tariff's terms supersede the parties' agreement on the date Verizon files a collocation tariff with the Commission. The Arbitrators agree with Sprint that any future collocation tariff should become binding upon the parties on the actual effective date of the tariff. The parties' agreement should govern until that time. Generally, a tariff's effective date occurs on or after the Commission issues an order approving Verizon's tariff. This process allows Sprint to have the opportunity to participate in the collocation tariff proceeding pursuant to PURA Chapters 53 and 58.[332]

AGREEMENT LANGUAGE

The arbitrators conclude that Sprint's proposed language best reflects the Arbitrators' decision and should be adopted with the following modifications: [333]

> Collocation services will be provided by VERIZON pursuant to the contract provisions set forth in this Agreement, unless otherwise expressly agreed to by the Parties. The Parties agree that <u>this</u> provision does not in any way restrict the ability of Verizon to file a Collocation Tariff at any time pursuant to the rules of the Texas PUC <u>which allows Sprint the opportunity to participate</u> ~~pursuant to a proceeding in which Sprint has had the opportunity to fully participate~~. However, Sprint is not bound by such modifications <u>until the Texas PUC-approved Collocation Tariff is effective and in force</u> ~~unless and until an order is issued by the Texas PUC with such specificity~~ as to invoke the provisions of Article II, Section 1.2 of this Agreement.

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collocation tariff while also keeping in place other collocation terms in the parties' section 252 agreement. *Cf. U.S. West Communications, Inc. v. Sprint Communications, L.P.*, -- F.3d --, 2002 WL 12253, (10th Cir. January 04, 2002) (finding that competitive LECs may "opt-into" incumbent LEC's state tariffs despite interconnection agreements).

[332] *E.g.*, TEX. UTILITIES CODE § 53.105(a).

[333] The Arbitrator's additions are underlined. The strikethrough provisions are the Arbitrator's deletions.

E. DPL Issue 22 Sprint's Collocation Obligation

Does Sprint have an obligation to provide Verizon with collocation pursuant to Section 251 of the Telecommunications Act of 1996?

Sprint's Position

Sprint argues that the FTA's obligation requiring collocation applies only to incumbent local exchange carriers. The FTA, Sprint continues, does not impose equivalent obligations on CLECs such as Sprint.[334] Sprint contends that it may license to Verizon, at its own discretion, the entitlement to locate equipment at a Sprint switching office and to use Sprint's support services (*e.g.*, power, heating, ventilation, air conditioning and security for the equipment) for the purpose of delivering traffic. Sprint argues that this type of licensing arrangement, however, is voluntary on Sprint's part, and could not be compelled or required under law.[335]

AGREEMENT LANGUAGE

Sprint urges the Arbitrators to conclude that Verizon is seeking to impose obligations upon CLECs beyond those required by the FTA and to reject Verizon's proposed language.[336]

Verizon's Position

Verizon argues that section 251(a) of the FTA imposes a duty on all telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[337] Verizon states that it is seeking collocation as a reasonable means to achieve the interconnection obligations imposed by the FTA.[338] Verizon argues that it is simply trying to use its own infrastructure to interconnect with Sprint. Verizon complains that without this option, it may be forced to purchase transport in order to deliver traffic to Sprint's interconnection points. Purchasing this transport may not be an efficient interconnection option

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[334] Sprint's Initial Brief at 39 (citing 47 U.S.C. § 251(c)(6)).

[335] *Id.* at 39.

[336] Sprint's Reply Brief at 24.

[337] Verizon's Initial Brief at 34 (citing 47 U.S.C. § 251(a)).

for Verizon. Additionally, Verizon contends that there may not be an alternative if Verizon does not have the option to collocate at Sprint's facilities.[339]

Verizon acknowledges that Sprint is not required by the FTA to allow other carriers to collocate.[340] Given Verizon's duty to interconnect with Sprint at Sprint's choice of location, Verizon contends, nonetheless, that permitting Verizon to self-provision its infrastructure to Sprint's premises is a reasonable and equitable method for complying with the FTA. By requiring Sprint to collocate, the Commission will allow Verizon to make an economic and efficient choice between collocating or purchasing transport.[341] Verizon clarifies that it is seeking collocation with Sprint for interconnection and is not seeking to use access facilities to deliver local traffic to Sprint.[342]

AGREEMENT LANGUAGE

Verizon proposes the following agreement language:

> 2. SPRINT shall offer to VERIZON collocation of facilities and equipment for purposes of Interconnection pursuant to the Interconnection Attachment. The collocation arrangements and rates offered by SPRINT to VERIZON shall be no less favorable than the collocation arrangements and rates offered by VERIZON to SPRINT.[343]

Arbitrator's Decision

The Arbitrators agree with Sprint on this issue. Verizon is essentially seeking an extension of collocation obligations upon CLECs, Sprint in this case, which is not contained in the FTA. The general duties of telecommunications carriers and the obligations of all local exchange carriers are provided for separately in the FTA from the additional obligations of

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338 *Id.* at 34.

339 *Id.* at 35.

340 *Id.*

341 *Id.*

342 Verizon's Reply Brief at 14.

343 DPL at 69.

incumbent local exchange carriers.[344] The duty to provide collocation is only applicable to incumbent local exchange carriers.[345] We therefore reject the Verizon proposal. Although witness Ries states that Verizon is merely seeking to have available to it the same types of interconnection choices that are available to CLECs, we decline to require Sprint to provide collocation so that Verizon can achieve this objective. We believe that Verizon is seeking to impose obligations upon CLECs beyond those required by the FTA.

AGREEMENT LANGUAGE

Because Sprint does not have an obligation to provide Verizon with collocation under the FTA, we reject Verizon's proposal and its proposed agreement language on this issue.

II. CONCLUSION

The Arbitrators conclude that the decisions outlined in this Award, as well as any conditions imposed on the parties by these decisions, meet the requirements of section 251 of the FTA and any applicable regulations prescribed by the FCC pursuant to section 251 of the FTA.[346]

III. PROCEDURAL ORDER AND SCHEDULE

The parties are hereby instructed to incorporate the determinations outlined in this award into the parties' final agreement. Pursuant to section 252(e)(1), the parties shall file an entire Interconnection Agreement, setting forth both negotiated and arbitrated terms and conditions, for final Commission approval no later than January 25, 2002. To the extent that the parties have negotiated different references for Local Traffic or Reciprocal Compensation, these alterations may be incorporated to the extent that they conform to the determinations in this award. If the parties have alterations, the parties should identify them and provide an explanation as to how they conform to the determinations in this award.

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344 *Compare* 47 U.S.C. §§ 251(a) and (b) *with* 47 U.S.C. § 251(c).

345 46 U.S.C. § 251(c)(6).

346 47 U.S.C. § 252(c).

The Notice of the parties' Interconnection Agreement will be published in the *Texas Register* on February 8, 2001. Comments on this Interconnection Agreement must be filed no later than February 22, 2002.

SIGNED AT AUSTIN, TEXAS the 22 day of January, 2002.

FTA § 251 PANEL

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DON BALLARD
ARBITRATOR

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KARA SHELDON
ARBITRATOR

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