ORIGINAL

Sprint

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Via Hand Delivery

February 14, 2002

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0870

Re: Docket No. 010795-TP: Sprint's Posthearing Statement and Brief

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint Communications Company Limited Partnership, ("Sprint") are the original and fifteen (15) copies of Sprint's Posthearing Statement and Brief. Also included is a diskette containing a word file of the document. Service has been made this same day via hand delivery or overnight mail to the parties listed on the attached service list.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Sincerely,

Susan S. Masterton

Susan S. Masterton

SSM/tk

Enclosures

AUS
CAF
CMP
COM 3
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ECR
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MMS
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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.	)	Filed: February 14, 2002
	)	Docket No.: 010795-TP

POST-HEARING STATEMENT AND BRIEF OF SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP

SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP ("Sprint" or the "Company"), pursuant to Order No. PSC-02-0047-PHO-TP, submits the following Post-hearing Statement and Brief:

I. Introduction

This arbitration petition was initiated by Sprint to resolve issues in Sprint's interconnection negotiations with Verizon Florida, Inc. ("Verizon") that the Parties were unable to resolve through mutual agreement. While Sprint and Verizon subsequently have been able to resolve the majority of issues originally presented for arbitration, a few critical issues remain to be decided by the Commission. The most significant of the remaining disputed issues addresses the appropriate compensation for Sprint's 00-traffic, which Sprint will use to provide its innovative Voice Activated Dialing (VAD) service offering in Florida and throughout the country. In this brief, Sprint sets forth in detail its arguments supporting its position that 00-calls that are local should be subject to the intercarrier compensation mechanisms applicable to local traffic, regardless of the facilities used provide the service.

The Commission has previously considered this issue, and ruled in Sprint's favor, in Sprint's recent arbitration with BellSouth, Florida's largest ILEC. Sprint urges the Commission to continue its strong commitment to encouraging competition for the provision of telecommunications services in this state and affirm its prior precedent supporting that goal by affirming its decision that local 00- traffic should be subject to local traffic compensation, as proposed by Sprint in this brief and supported by the record in this proceeding.

II. Background

This proceeding began on June 1, 2001, when Sprint filed its Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Act"). Therein, Sprint requested arbitration of 15 issues in dispute between Sprint and Verizon relating to the re-negotiation of their initial interconnection agreement. In its Response to Sprint's Petition, filed July 3, 2001, Verizon identified one additional disputed issue. At the Issue Identification meeting held August 21, 2001, , the Parties identified 16 issues, which were memorialized in the Order Establishing Procedure, No. PSC-01-1753-PCO-TP, issued August 28. 2001.

On October 23, 2001, the Parties filed a Stipulation resolving many of the disputed issues initially submitted to the Commission for resolution. On January 14, 2002, the Parties filed a second Stipulation resolving additional issues and setting forth an agreed upon expedited hearing process. On January 15, 2002, Commission staff deposed Sprint witness Hunsucker and Verizon witness Munsell regarding Arbitration Issues 1 and 2.

The final hearing was held in Tallahassee on January 17, 2002. As agreed, at the hearing the Parties stipulated prefiled testimony and exhibits, including the transcript of the Sprint/Verizon Texas arbitration hearing and the staff depositions of witnesses Hunsucker and Munsell, and waived cross-examination. As reflected in the stipulations listed above, only five issues remain to be decided: 1) definition of local traffic; 2) multi-jurisdictional trunks, including compensation for 00- traffic; 3) resale of vertical features; 12) applicability of Verizon collocation tariff; and 15) Sprint's collocation obligations to Verizon.

Sprint's positions and the reasons the Commission should adopt those positions are set forth below. The portions of Sprint's positions indicated with an asterisk (*) are identified for the Staff Recommendation.

III. Issues, Positions and Argument

Issue A: **[LEGAL ISSUE] What is the Commission's jurisdiction in this matter?**

Position: * Section 252 of the Act authorizes the Commission to arbitrate disputed issues in interconnection negotiations at a Party's request. Sections 364.161- 364.162, Florida Statutes, provide the Commission's state authority to arbitrate disputes relating to interconnection

agreement negotiations. Section 120.80, Florida Statutes, provides the Commission's procedural authority to implement the Act. *

Argument: There does not appear to be a dispute over this issue. In Section 252 (b) Congress created an arbitration procedure for requesting telecommunications carriers and ILECs to obtain an interconnection agreement through "compulsory arbitration" by petitioning a "State commission to arbitrate any open issues" unresolved by negotiation under Section 252(a) of the Act. In accordance with these provisions, the Commission has jurisdiction to resolve all of the issues presented to it for arbitration. Section 252 (c) and (e) of the Act set forth the time frames for Commission action and the criteria upon which the Commission's arbitration decision must be based. In addition to the authority conferred upon states by the federal law and rules, Sections 364.161 and 364.162, Florida Statutes, authorize the Commission to arbitrate disputes relating to the negotiations of telecommunications companies to establish the rates, terms and conditions of interconnection and the unbundling of network elements. Also, Section 120.80 (d), Florida Statutes, provides the necessary procedural authority for the Commission to implement the Act.

Issue No. 1: In the new Sprint Verizon interconnection agreement:

(A) For the purposes of reciprocal compensation how should local traffic be defined? [1]

Position: * The Act, FCC precedent and Commission precedent require that the jurisdiction of telecommunications traffic be determined by the originating and terminating points of the call. If a call originates and terminates within the same local calling area the call is local and not subject to access charges. *

Argument: This Commission already has addressed this issue in the Sprint/BellSouth arbitration.[2] In that decision the Commission found that the jurisdiction of a call is determined by the end points of the call, rather than the type of facilities the call traverses. The issue was framed somewhat differently in Sprint/BellSouth arbitration, because BellSouth agreed that

[1] Issue 1(B) ISP Language is settled (Stipulation filed October 23). It should also be noted that the issue raised by Sprint in its Petition for Arbitration at page 9 regarding the use of the phrase "Internet Protocol" in Verizon's definition of "local traffic" has been resolved. Verizon removed that phrase from the definition of local traffic contained in its proposed agreement submitted as part of its Response to the Petition for Arbitration.

[2] *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.*, Docket No. 000828, Order No. PSC-01-1095-FOF-TP ("Sprint/BellSouth Arbitration Order").

Sprint's request is technically feasible[3] and did not dispute that 00-calls originating and terminating in the same local calling area are local calls.[4] The Commission accepted the position of the Parties regarding jurisdiction and technical feasibility and found that "[F]or 00- traffic routed over access trunks, the appropriate compensation scheme shall be preserved for each jurisdiction of traffic that is combined, i.e., local and intra/interLATA."[5] The Commission should make the same ruling here.

Verizon wrongly contends that Sprint's Voice Activated Calling ("VAD/00-") is access traffic and not local traffic due to the call's path through the network. In addition, Verizon contends that VAD/00- traffic must originate on one carrier's network and terminate on the network of another carrier within the local calling area to be considered local or compensable under the reciprocal compensation rules.[6]

In contrast, Sprint submits that VAD/00- traffic to be exchanged between Sprint and Verizon is local and subject to reciprocal compensation because it originates and terminates within the same local calling area. The end points of the call govern jurisdiction, not the call's path through the network. Moreover, Verizon misinterprets the intent of the FCC's requirements in claiming that VAD/00- traffic should be excluded from reciprocal compensation because it does not originate and terminate on different networks.

As discussed below, precedent from the Act, the FCC, this Commission and Verizon's own admissions require VAD/00- traffic to be classified as local service (not access service) and thus subject to reciprocal compensation. To do otherwise would be to ignore the clear intent of the Act and to allow Verizon to provide to Sprint interconnection in a less efficient manner and at a lesser quality than that which it provides to itself in clear violation of the obligations imposed on Verizon under the non-discrimination provisions of the Act. Verizon, itself offers a variety of services classified as local services, that compete with Sprint's proposed VAD/00- service. Sprint should not be placed at a competitive disadvantage by paying access charges on jurisdictionally local calls.

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[3] Sprint/BellSouth Arbitration Order at 36.

[4] Id. at 37.

[5] Id. at page 38.

[6] See, Response of Verizon Florida Inc. to the Petition for Arbitration of Sprint, page 2.

A.) Sprint's Voice Activated Dialing Service

Sprint has developed a Voice Activated Dialing ("VAD") product that will be offered to its long distance customers nationwide and in Florida. Hunsucker, Tr. at 15-16. The key feature of the product is that it utilizes a 00- dialing code to access the Sprint VAD platform that is subsequently used to complete local calls or long distance calls. Thus, an end user customer who is presubscribed to Sprint's long distance service can simply dial 00- from his/her home phone and verbally instruct the system to call his/her neighbor next door or anyone else he/she would like to call. Hunsucker, Tr. at 15-16. If a Verizon customer dials 00- on his/her telephone, the call is routed through a Verizon end office over trunks that are interconnected to the Sprint network. The customer then receives a prompt to verbally instruct the system who he/she would like to call. For example, the customer could say, "call neighbor." Then based upon a directory list established by the end user customer, the system would look up the name, find the associated telephone number and complete the call as verbally directed. The customer can originate both local calls and long distance calls via this arrangement.

It is Sprint's position that if the person called is within the same local calling area the call should be treated as a local call, not an access call, for compensation purposes with Verizon. This is clearly a local call, however, Verizon is seeking to charge Sprint access charges for this call simply because the call is routed over what has to-date been traditionally labeled as an access facility.

B.) Similar Services Offered by Verizon Confirm that VAD/00- Service is a local service

The VAD/00- calls that originate and terminate in the same local calling area must be classified as local calls. Verizon offers a variety of local calling services that are similar to the VAD/00- service to be offered by Sprint. Classifying the VAD/00- calls as access traffic and forcing Sprint to pay Verizon access charges on traffic that originates and terminates in the same local calling area, puts Sprint at a severe competitive disadvantage to similar Verizon services. To encourage effective competition, the Commission should find that jurisdiction of the Sprint VAD/00- calls must be determined in the same manner as the similar Verizon local calling services. The end points of the call determine the jurisdiction, not the path through the network

or the network equipment used to route a call.

An examination of several Verizon local services similar in nature to the Sprint VAD/00- product demonstrates the competitive disadvantage to Sprint if it is not permitted to classify its service as local. Verizon currently offers in Florida and elsewhere, and has done so for many years, a service called Speed Calling. Exhibit 14C, p. 2 and Exhibit 14A, p. 29 (Munsell, pp.111-112). As described in Verizon's General Service Local Tariff, this service enables a customer to place calls to other telephone numbers by dialing a one or two digit code rather than the complete telephone number for both local and long distance calls. The service offers an eight-code capacity or a thirty-code capacity. Exhibit 14C, p. 2 and Exhibit 14A, p. 29 (Munsell, pp.111-112). Verizon witness Munsell acknowledged that this may be considered a substitute service for Sprint's VAD/00- service offering and that Speed Dialing is a local service. Exhibit 14C, p. 2 and Exhibit 14A, p. 29 (Munsell, pp.111-112). By the terms of the Verizon tariff there is no additional charge specified for the completion of a local call using this service, although there would be for a toll call.

In addition, although not as yet offered in Florida, Verizon already offers a Voice Dialing Service to its end users for the Bell Atlantic states. Exhibit 9; Exhibit 14A, p. 21 (Hunsucker, pp. 77-78). Voice Dialing service enables residential customers to add up to fifty (50) names or destinations to a customer's personal directory. Calls to these names/locations can be placed simply by picking up the phone and saying "call" followed by the name/destination from the customer's personal directory. Exhibit 9; Exhibit 14A, p. 21 (Hunsucker, pp. 77-78) Again, by the terms of the Verizon tariff there is no additional charge specified for the completion of a local call using this service although there would be for a toll call.

Both of these services are substitute services for Sprint's VAD service. Both of the services are classified as local by Verizon, as they appear in the Verizon's local exchange service tariff. Both of these services enable a consumer to place a local or long distance call and be charged according to the nature of the underlying call. If a Verizon customer utilizes either service to call his/her next door neighbor or anyone else in the local calling area, the call is charged to that customer as a local call.

A third service offer by Verizon is local Operator Assisted Calling. Hunsucker, Tr. at 18-19. If a Verizon customer dials 0- to access Verizon's operator, Verizon will complete a local call for the customer and charge only the flat fee service charge associated with operator call

completion from its tariff. Hunsucker, Tr. at 18-19. There is no additional charge for extra local service minutes. Similarly, if the customer dials 00- to reach Sprint, Sprint should be permitted to serve the customer in the same fashion as Verizon and complete a local call for the end user without the imposition of access charges by Verizon.

Verizon's witness Mr. Munsell acknowledged the Verizon local Operator Assisted Calling service and noted that the operator service center would be located outside the local service area. Exhibit 14A, p.33 (Munsell p. 126) Mr. Munsell also indicated that the local Operator Assisted Calling service would function from a network perspective an almost identical fashion as the Sprint VAD/00- service offering. The Verizon operator services platform would not be located within the local calling area similar to the VAD/00- service platform. In addition, both services utilize the connecting facility all the way through the Sprint or Verizon network to the terminating party for the duration of the call. Exhibit 14A, pp. 39, 42 (Munsell and Hunsucker, pp.151-152, 162) Verizon provides this service to itself today. Sprint is willing to pay for the facilities used for the duration of the call but at TELRIC-based rates – not access. This would put Sprint in a competitively neutral position to the service offered by Verizon.

In his deposition with the Commission Staff, Mr. Munsell acknowledged yet another method by which Verizon can offer a similar service to the VAD/00- service offered by Sprint. Exhibit 13 pp. 15-16. Mr. Munsell acknowledged that a customer of Verizon can accomplish the same functionality by dialing 411 and reaching a DA operator as the customer can by dialing 0- and utilizing Verizon's local Operator Assisted Calling service as described above. Mr. Munsell acknowledged that Verizon would pay reciprocal compensation for the completion of a local call to a facility-based ALEC if the call originated and terminated within the same local calling area. Exhibit 13 pp. 15-16. This is true even if Verizon's operator is outside the local calling area. Mr. Munsell also indicated that if the call were a toll call, access charges would be the appropriate compensation.

Sprint's disagreement with Verizon centers on the fact that Verizon does NOT impose on itself access charges for the completion of a local call. For Verizon the location of the operator services platform is of no consequence to whether Verizon bills the call as a local call or a toll call. However, Verizon is attempting to impose an additional obligation on Sprint by charging Sprint access charges instead of TELRIC pricing for the routing of local Sprint calls. Verizon's offering services similar to Sprint's VAD/00- as local services, while arguing that Sprint's

service is an access service, places Sprint in a severe competitive disadvantage. Similar to Verizon's characterization of its own local services, the Commission should level the playing field and find that the jurisdiction of the Sprint VAD/00- calls be based upon the endpoints of the call.

C.) Sprint's VAD/00- service is a local service when the endpoints of a call are within the same local calling area

Sprint submits that a call is local if it originates and terminates with the same local calling area. There is ample precedent confirming Sprint's position. In addition to the Commission's ruling in the Sprint/BellSouth Arbitration, the definitions from the Telecommunications Act, FCC rules and orders, this Commission's rules, and Verizon's own tariffs confirm that a call's jurisdiction is determined by the end points of the call. In addition to the calls themselves constituting "local service" it is also obvious that the VAD/00- service itself is a local service. As noted above, ILECs, including Verizon, have been offering Speed Dialing, Operator Assisted Calling and 411 DA Call Completion as local services for many years. Services such as Operator Assisted Calling and 411 DA Call Completion are local services that utilize the Verizon network in the same fashion as Sprint is attempting to do with its VAD/00- service. Although VAD/00- is a new and more sophisticated version, Verizon Witness Munsell readily admitted that these are substitute services. Exhibit 14A, p. 29 (Munsell, pp. 111-112).

Section 3(4)(A)(47) of the Telecommunications Act defines Telephone Exchange Service in relevant part as "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 . . ." Prior to the *ISP Remand Order*, for purposes of reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers, the FCC's rules define local telecommunications traffic as "telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission."[7]

[7] Former 47 C.F.R. § 51.701(b) (1) which stated "Telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission". As this Commission is well aware, the FCC recently modified this rule to

In contrast, Section 3(4)(A)(16) of the Act defines Exchange Access in relevant part as "the offering of access to telephone exchange services or facilities for the purpose of the organization or termination of telephone toll services." Section 3(4)(A)(46) defines Telephone Toll Services in relevant part as "telephone service between stations in different exchange areas." Sprint submits that a call is local if it originates or terminates within the local calling area whether it traverses an "access facility" or not.

It is well noted that the FCC has traditionally endorsed an end-to-end analysis in determining the jurisdiction of a call.[8] In the *ISP Declaratory Ruling* the FCC used this analysis to address the jurisdiction of ISP traffic. The *ISP Declaratory Ruling* was reversed by the Court of Appeals for the D.C. Circuit based on the FCC's failure to properly support a position on the proper classification of ISP traffic. Nevertheless, the Court did not disturb past FCC precedent regarding the conventional circuit-switched network. In the decision the Court took particular note as follows:

> Calls to ISPs are not quite local, because there is some communication taking place between the ISP and out-of-state websites. But they are not quite long-distance, because the subsequent communication is not really a continuation, in the conventional sense, of the initial call to the ISP. The Commission's ruling rests squarely on its decision to employ an end-to-end analysis for purposes of determining whether ISP-traffic is local. **There is no dispute that the Commission has historically been justified in relying on this method when determining whether a particular communication is jurisdictionally interstate.** But it has yet to provide an explanation why this inquiry 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. **(Emphasis added)**[9]

The end-to-end analysis is still the appropriate test to apply for the conventional circuit-switched network, which includes VAD/00- local traffic.

The Rules of this Commission also incorporate the end-to-end analysis in discussing the nature of telecommunications traffic. Florida Rule 25-4.003, Definitions, (32) "Local Service Area" or "Local Calling Area" defines local service as "the area **within which** telephone service

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address the issue of ISP traffic. See, FCC 01-131, CC Docket Nos. 96-98 and 99-68, *Order on Remand and Report and Order*, Released April 27, 2001, *(hereinafter "ISP Remand Order.")*

[8] See, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68*, 14 FCC Rcd 3689 (1999), (hereinafter *"ISP Declaratory Ruling"*), at paragraph 11, referencing *Teleconnect Co. v. Bell Telephone Co. of Pen.*, E-88-83, 10 FCC Rcd 1626 (1995) (Teleconnect), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 116 F.3d 593 (D.C.Cir. 1997).

is furnished subscribers under a specific schedule of rates and without toll charges." **(emphasis added)** In addition, Florida Rule 25-4.003, Definitions, include the additional following designations:

> (22) "Inter-office Call." A telephone call originating in one central office but terminating in another central office, both of which are in the same designated exchange area.
>
> (23) "Interstate Toll Message." Those toll messages which do not originate and terminate within the same state.
>
> (25) "Intra-office Call." A telephone call originating and terminating within the same central office.
>
> (26) "Intra-state Toll Message." Those toll messages which originate and terminate within the same state.

Thus both the FCC and Florida rules adopt the end-to-end analysis in determining the jurisdiction of a call. This is the exact result and position that Sprint proposes the Commission to adopt in this matter.

Although Verizon disagrees with Sprint's characterization of a local call for the purposes of reciprocal compensation as originating and terminating within the same local calling area, Verizon's tariffs and other statements indicate that Verizon has adopted the same criteria for determining a local call. For example, Verizon's current Florida General Exchange Tariff defines "Local Message" as "A message between stations located within the same local calling area". Exhibit 14C, p. 3. Verizon's Florida Access Tariff follows the same end-to-end analysis in defining the jurisdiction of interstate and intrastate calls:

> Traffic that enters a customer's network at a point within the same state as that in which the station designated by dialing is situated will be considered intrastate.
>
> Traffic that enters a customer's network at a point in a state other than that in which the station designated by dialing is situated will be considered interstate.

Exhibit 14C, p. 4.

Verizon has used the end-to-end analysis to set the jurisdiction of both interstate and intrastate access charges. It would be inappropriate to use a different standard in this proceeding. This is the same position Verizon has taken in proceedings before the FCC. On July 21, 2000,

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[9] *Bell Atlantic v. FCC*, 206 F.3d 1, at 5. (D.C. Cir. 2000)

Verizon filed comments in Docket No. 96-98 at the FCC supporting the FCC's Declaratory Ruling and the use of the end-to-end analysis in determining the jurisdiction of a call. Specifically, Verizon stated:

> In general, the Court questioned whether the end-to-end analysis that the Commission has used for jurisdictional purposes is applicable here. The simple answer is that it is – the analysis that determines whether a call is "interstate" – where the call originates and terminates – is used to determine whether it is local under the Commission's rules. Furthermore, the Commission's end-to-end analysis has not been used only to resolve jurisdictional questions, but has been the basis for substantive decisions as well. Hunsucker, Tr. at 11-12[10]

The end to end jurisdictional analysis advocated by Verizon before the FCC is the appropriate standard to be applied in this proceeding.

Finally, the FCC addressed the jurisdictional classification of call completion services associated with directory assistance recently in the Call Completion Order.[11] Sprint's 00- product is provided in an analogous manner to the end user customer. Hunsucker, Tr. at 26-27. In paragraph 19 of the Call Completion Order the FCC specifically states that: "The call completion service of competitive DA providers for intra-exchange traffic is unquestionably local in nature, and the charge for it, generally imposed on an end user, qualifies as an "exchange service charge".[12]

While the FCC Order was specifically directed at call completion service via a directory assistance call, the Sprint 00- product provides call completion service via the dialing of 00- in a manner analogous to directory assistance in that they are both "operator service" as defined by the FCC.[13] In sum, the jurisdiction of a call is determined by the end points of the call. Ample

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[10] Referencing *Implementation of the Local Competition Provision in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notices of Proposed Rulemaking in CC Docket No. 99-68.* Comments of Verizon Communications, filed July 21, 2000, at pages 5 and 6.

[11] Provision of Directory Listing Information under the Telecommunications Act of 1934,as Amended, CC-Docket No. 99-273, Release Number: FCC 01-27, Adopted January 19, 2001, Released January 23, 2001. ("Call Completion Order").

[12] *Call Completion Order* at paragraph 19.

[13] The FCC defined operator service to mean "any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call." See, *Local Competition Second Report and Order*, FCC Docket No. CC 96-98, at paragraph 110.

federal and state law precedent, along with Verizon's own tariffs and positions, support this analysis.

Issue No. 2: For the purposes of the new Sprint Verizon interconnection agreement:

(A): Should Sprint be permitted to utilize multi-jurisdictional trunks?

(B) Should reciprocal compensation apply to calls from one Verizon customer to another Verizon customer that originate and terminate on Verizon's network within the same local calling area utilizing Sprint's 00- dial around feature?

Position: * Verizon currently offers services that Verizon has acknowledged are substitute services for Sprint's VAD/00- offering that utilize the Verizon's network in the same fashion as VAD/00-. It would be a violation of the Act, FCC precedent and Commission precedent to deny Sprint the same opportunity to provide competitive services. *

Argument: As noted above, this Commission has already adopted Sprint's proposal on this issue in the Sprint/BellSouth Arbitration. Sprint submits that if a call is a local call the FCC's rules prohibit the assessment of access charges on these calls and require that the calls be compensated based upon reciprocal compensation TELRIC based pricing. Although Verizon has attempted to confuse the issue by interposing an overly narrow reading of the FCC's rules regarding reciprocal compensation. The key element to be addressed first is what constitutes local traffic or local service. As noted above, Sprint submits that a call is local if it originates and terminates with the same local calling area. It should also be noted that if the traffic at issue is local traffic it does not constitute access traffic and cannot be treated as access for purposes of compensation.

A.) FCC Requirements – Prior to ISP Remand Order

Unambiguous language from FCC precedent clearly supports Sprint's request for the ability to undertake traffic delivery to Verizon over access facilities. For VAD/00- traffic Sprint submits that this traffic is local in that it meets the following definition issued by the FCC in the *First Report and Order*[14] which was the scope of the FCC's Rules prior to the issuance of the *ISP Remand Order*:

[14] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15509, para. 176 (1996) *("First Report and Order")*, aff'd in part and vacated in part sub nom., *Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997)

§ 51.701 Scope of transport and termination pricing rules.

(b) *Local telecommunications traffic.* For purposes of this subpart, local telecommunications traffic means:

(1) telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission; or

This provision stems from clear FCC precedent that the jurisdiction of a call is determined by the end points of the communication. It is a fairly straightforward argument that the local calls generated by VAD/00- should not be charged access. This position is buttressed by the FCC's rule that a LEC may not access charges, including access charges, for initiating a local call:

§ 51.703 Reciprocal compensation obligation of LECs.

(b) A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network. [15]

It is apparent that the ILEC should not be able to charge access rates for the origination of these calls, even if the call traverses the Sprint interexchange network. The origination and termination points determine the jurisdiction of the call. The fact that the call originates and terminates within local calling area should be controlling.

In the *ISP Remand Order* the FCC dealt with the remand of its prior decision regarding ISP traffic from the Court of Appeals for the D.C. Circuit. The FCC was wrestling with the issue of how to classify ISP traffic, which admittedly did not fit neatly into either classification of telecommunications traffic. ISP traffic is part local or part interexchange depending on the nature of the session a particular user undertakes in using ISP services. Thus the FCC found it necessary to clarify its earlier rulings and determinations with respect to its reciprocal compensation rules in order to address the issue of the appropriate classification of ISP traffic.

The focus of the decision in the *ISP Remand Order* was on ISP traffic and nothing in that order should be construed as changing the above precedent as a clear indication of the FCC's intent with respect to the application of the FCC's current rules to VAD/00- traffic. The FCC clearly intended that "local" traffic, i.e. traffic that originates and terminates with in the local

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(*CompTel v. FCC*) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997) (*Iowa Utils. Bd. v. FCC*), aff'd in part and remanded, *AT&T v. Iowa Utils.*

[15] *First Report and Order,* Appendix B, Final Rules.

calling area such as VAD/00-, should be subject to reciprocal compensation.

B.) FCC Requirements – Under the ISP Remand Order

As noted above, the main area of contention between Verizon and Sprint regarding the definition of "local traffic" and the applicability of reciprocal compensation is that Verizon contends such traffic must originate on one carrier's network and terminate on the network of another carrier within the local calling area to be considered local or compensable under the reciprocal compensation rules. In contrast, Sprint contends that the determination is predicated on the originating and terminating points of the traffic, even if that traffic is originated on the Verizon network and subsequently terminated on the Verizon network, and that the traffic need only be exchanged between carriers in order to qualify.

Although Verizon asserts that there is a requirement that "local" traffic must originate on one carrier's network and terminate on the network of a second carrier, there is no such requirement set forth in the Act. In making this assertion, Verizon relies on Rule 51.701(e),[16] which Verizon interprets in a narrow fashion to require that reciprocal compensation be payable only for traffic that originates on the network of one carrier and terminates on the network of a different carrier. Sprint submits that a careful reading of FCC's decision in the *ISP Remand Order*, where this rule was modified to its current form, in conjunction with the totality of Rule 51.701, clearly reveals that no such limited application was intended.[17]

In the *ISP Remand Order* the FCC modified its rules with respect to the application of Section 251(b)(5) of the Act. In doing so the FCC noted that Section 251(b)(5) imposes a duty on all local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[18] The FCC determined that on its face Section 251(b)(5) clearly requires that *all* local exchange carriers establish reciprocal compensation arrangements for the transport and termination of *all* "telecommunications" traffic (including VAD/00- traffic) they exchange with another telecommunications carrier, without exception. The FCC specifically noted that unless subject to a further limitation, Section 251(b)(5) would require reciprocal compensation for transport and termination of *all* telecommunications traffic

[16] 47 C.F.R. § 51.701(e) ("Rule 51.701(e)").

[17] The Rule was originally adopted in the *First Report and Order.*

[18] *ISP Remand Order* at paragraphs 31-33.

(including VAD/00- traffic), -- *i.e.*, whenever a local exchange carrier exchanges telecommunications traffic with another carrier.[19]

The FCC went on to note, however, that Section 251(g) explicitly exempts certain telecommunications services from the reciprocal compensation obligations. The FCC concluded the traffic listed in Section 251(g) is excluded from reciprocal compensation requirements of Section 251(b)(5). Thus the FCC concluded that the statute does not mandate reciprocal compensation for "exchange access, information access, and exchange services for such access".[20] The rules promulgated by the FCC reflected this same analysis. All telecommunications traffic (including VAD/00- traffic) is subject to reciprocal compensation obligations unless it can be rightfully classified as exchange access, information access or exchange services for such access.

As discussed above, VAD/00- traffic is local and not access traffic. Thus, VAD/00- traffic does not fit into the exceptions provided under Section 251(g) for access traffic and the reciprocal compensation obligation under Section 251(b)(5) clearly applies.

The rules promulgated by the FCC in the *ISP Remand Order* provide that traffic is subject to reciprocal compensation if meets the following[21]:

> (b) *Telecommunications traffic.* For purposes of this subpart, telecommunications traffic means:
>
> (1) Telecommunications traffic **[including VAD/00- 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 (*see* FCC 01-131, paras. 34, 36, 39, 42-43); **(Parenthetical and Emphasis added)**

This rule only requires that the traffic be "exchanged between" Verizon and Sprint and that it not be "exchange access, information access, and exchange services for such access exchange access or information access" in order to qualify under the rule for reciprocal compensation. Sprint submits that the VAD/00- local traffic that is the subject of the dispute with Verizon does not fit

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[19] *ISP Remand Order* at paragraphs 32.

[20] *ISP Remand Order* at paragraph 34.

[21] 47 C.F.R. § 51.701 (b), as modified to be effective June 14, 2001.

into one of the excluded categories set forth in Section 251(g) in that this traffic is local traffic and not exchange access traffic or information access traffic.

Verizon relies on Rule 51.701(e), which Verizon interprets in a narrow fashion to require that reciprocal compensation be payable only for traffic that originates on the network of one carrier and terminates on the network of a different carrier. Rule 51.701(e) provides 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 telecommunications traffic that originates on the network facilities of the other carrier.

Sprint's proposal in this proceeding meets the requirement under Rule 51.701(e). Sprint submits that this subpart merely designates as between two carriers that the carrier responsible for the initiation of the use of the other carrier's network is responsible for payment for that use. It must be noted that the plain intent of the rule is to provide for compensation to either carrier for traffic terminated to it from another carrier. The rule does not preclude, however, as suggested by Verizon, the exchange of traffic between carriers in the fashion Sprint proposes for VAD/00- service. The rule requires only that each carrier be appropriately compensated if its network is used in delivering traffic for the other. Sprint's position is supported by the fundamental definition of the word "originate". "Originate" means "to give rise to: initiate".[22]

Rule 51.701(e) must be read in concert with Rule 51.701(b), which provides that any "telecommunications traffic exchanged between" two carriers is subject to reciprocal compensation. As demonstrated above, VAD/00- traffic fits the definition of telecommunications traffic for the purpose of the rule under Rule 51.701(b), In order to give proper import to Rule 51.701(b), Rule 51.701(e) must be read to address the appropriate mechanism for compensation and responsibility for which carrier pays. The rule does not create an additional requirement for an interconnection arrangement to be subject to reciprocal compensation. Sprint submits that Section 51.701, taken as a whole, requires that each carrier is entitled to compensation for the traffic it transports and terminates, **if any**, exchanged between it and the other carrier. If one carrier does not originate traffic the rule still applies.[23]

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[22] Webster's New Collegiate Dictionary, 1981 © G. & C. Merriam Co.

[23] The FCC applied this rule to paging carriers in the First Report and Order where the FCC found specifically that the traffic was virtually 100% one-way traffic. Yet the FCC found that the reciprocal compensation rules still

Sprint asserts that Verizon is viewing the reciprocal compensation methodology in a rigid inflexible manner that was never intended given the nuances and complexities of modern telephony. For example, Sprint would note that Verizon's Proposed Interconnection Agreement as submitted in this proceeding provides that either Party will act as a transit provider for the other at TELRIC pricing.[24] Section 5.5.1, Compensation Arrangements, of the Interconnection Attachment to the Proposed Interconnection Agreement provides as follows:

5.5.1 Compensation Arrangements.

> Sprint as the originating Party will compensate VERIZON as the tandem Party for each minute of originated tandem switched traffic which terminates to third party (e.g., other CLEC, ILEC, or wireless service provider). The applicable rate for this charge is the tandem transiting charge identified in Appendix A...
>
> ...The originating Party also assumes responsibility for compensation to the company which terminates the call. Neither the terminating Party nor the tandem provider will be required to function as a billing intermediary, e.g., clearing house.

5.5.2 Third-Party Providers. The Parties agree to enter into their own agreements with third-party providers. In the event that one Party originates traffic that transits the second Party's network to reach a third-party provider with whom the originating Party does not have a traffic interexchange agreement, then the originating Party will indemnify the second Party against any and all charges rendered by a third-party provider for such traffic, including any termination charges related to such traffic and attorneys fees and expenses.

Appendix A to the Interconnection Attachment Rates and Charges for Transport and Termination of Traffic provides the Tandem Transiting Charge developed at TELRIC. Sprint asserts this is a correct application of the reciprocal compensation rules as contemplated by the Act. Nevertheless it is obvious that this precise application does not fall under the narrow interpretation Verizon has ascribed to Rule 51.701(e). It should also be noted that the Parties agree to enter into their own agreements with third-party providers, an arrangement Verizon contests in the context of VAD/00-. (See discussion below at page 22)

Even if the Commission should find that the reciprocal compensation rules do not clearly apply, the FCC has set forth an absolute prohibition on the imposition of access charges for traffic that fits the definition of "telecommunications traffic" under Rule 51.703(b)(1). In fact, as

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applied. Thus, the fact that Sprint does not originate traffic does not preclude the application of the reciprocal compensation rules.

[24] See, Proposed Interconnection Agreement of Verizon which was filed on July 3, 2001as Exhibit A to Verizon's Response to Sprint's Petition for Arbitration.

pointed out by Mr. Edwards in his examination of Sprint witness Hunsucker, Rule 51.703 (b), even as modified by the FCC as a result of the *ISP Remand Order,* expressly prohibits it. Exhibit 14A, p. 18 (Hunsucker cross-examination, pp. 66-67). Contrary to the implication drawn by Mr. Edwards that Sprint's proposal of charging TELRIC based rates for the origination a call would violate this rule; Verizon's proposal of charging access for the origination of local VAD/00- calls would violate the rule even to a greater degree. Sprint has proposed to compensate Verizon for all costs incurred by Verizon in the initiation and completion of a VAD/00- local call. This includes 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. Hunsucker, Tr. at 21-22. Should the Commission find that this would be the appropriate result given the language of Rule 51.703 (b), Sprint is more than willing to forgo compensating Verizon on the originating side of the call.

Finally, assuming Sprint's proposal does not fit the "reciprocal compensation" provision under Rule 51.701(e) there is nothing in this provision that would preclude Sprint's proposal. Moreover, Sprint submits that its interconnection proposal meets Verizon's existing obligation under Section 251(b)(5) of the Act, which provides that all LECs, including Verizon, have the duty to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[25] Section 251(b)(5) of the Act contains no limitation with respect to "telecommunications traffic that originates on the network facilities of the other carrier". Section 251(b) states an unequivocal obligation for Verizon to establish an interconnection agreement with Sprint without the limitation Verizon is interpreting Rule 51.701(e) to contain. This obligation remains even if the FCC's reciprocal compensation rules do not apply.

To assume, as Verizon does, that the FCC was even aware of the issue so as to preclude Sprint's proposal by adopting the current form of the rule is pure speculation. These particular calls (VAD/00- calls) did not exist pre-1996 or at the time the FCC made it initial determination in the *First Report and Order.*

C.) Nondiscriminatory Interconnection

Section 251(c)(2) imposes upon ILECs, including Verizon, "the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the

[25] 47 U.S.C. § 251(b)(5).

local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access."[26] Such interconnection must be: (1) provided to "any requesting telecommunications carrier"; (2) provided by the incumbent LEC at "any technically feasible point within [its] network;" (3) "at least equal in quality to that provided by the local exchange carrier to itself or . . . [to] any other party to which the carrier provides interconnection;" and (4) provided on rates, terms, and conditions that are "just, reasonable, and nondiscriminatory".

The plain language of the Act supports Sprint's proposed interconnection request. Sprint fits the definition of requesting carrier as set forth in the Act and as interpreted by the FCC. The FCC emphasized that traditional IXCs are a significant potential new local competitor and concluded that denying them the right to obtain section 251(c)(2) interconnection lacks any legal or policy justification.[27] Thus, all carriers (including those traditionally classified as IXCs) may obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating calls originating from their customers residing in the same telephone exchange (*i.e.*, non-interexchange calls).

Verizon's failure to provide the requested interconnection arrangement constitutes a violation of the provisions of the Act. The FCC articulated a very strict standard regarding the ability of an ILEC to discriminate against its competitors by providing them less favorable terms and conditions for interconnection than it provides itself.[28] The FCC found that permitting such circumstances were inconsistent with the pro-competitive purpose of the Act. The FCC rejected for purposes of section 251, its historical interpretation of "nondiscriminatory," which the FCC interpreted to mean a comparison between what the incumbent LEC provided other parties in a regulated monopoly environment. The FCC found that the term "nondiscriminatory," as used throughout section 251, applies to the terms and conditions an ILEC imposes on third parties as well as itself.[29] By providing interconnection to a competitor in a manner less efficient than an

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[26] 47 U.S.C. § 251(c)(2).

[27] First Report and Order paragraph 190.

[28] *First Report and Order* paragraphs 217-218.

[29] *Id.*

incumbent LEC provides itself, the incumbent LEC violates the duty to be "just" and "reasonable" under section 251(c)(2)(D).

In addition, the FCC found that the equal in quality standard of section 251(c)(2)(C) requires an ILEC to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party.[30] The statutory language prohibits action which may allow an ILECs to discriminate against competitors in a manner imperceptible to end users, but which still provides incumbent LECs with advantages in the marketplace (*e.g.*, the imposition of disparate conditions between carriers on the pricing and ordering of services).

As clearly demonstrated in the record in this proceeding Verizon provisions competitive service to itself in the same manner Sprint is requesting for VAD/00- services. Verizon provides operator assisted local calling and 411 call completion by utilizing its network in the same fashion Sprint seeks to employ in the provision of VAD/00- services. Yet Verizon denies Sprint this same opportunity to gain the efficient use of the network to deploy VAD/00- in an economically efficient manner. Such denial is a clear violation of the nondiscrimination provisions contained in the Act regarding interconnection.

D.) Operational and Technical Issues

Verizon claims a multitude of operational and technical issues would make Sprint's proposal unworkable. Sprint submits that Verizon's claims are greatly exaggerated and ignore common practices within the industry to resolve billing disputes. Verizon's arguments (as represented in Mr. Munsell's testimony, Tr. at 49-55) can be broken down as follows:

- Technical and operational issues which are actually billing concerns;
- Contract issues between Verizon and other carriers;
- Pricing Issues Regarding Access;

Each will be discussed below.

1.) Billing Issues

[30] *First Report and Order* paragraph 224.

Verizon contends that, if Sprint's proposal is adopted, correct billing between Sprint and Verizon will be impossible. Verizon claims that in order for Sprint to bill Verizon for reciprocal compensation, Sprint will need to set up terminating recording capability on the trunk group that carries local traffic subject to reciprocal compensation. If this same trunk group is used to carry exchange access traffic coming from IXCs connected at the Verizon tandem and terminating to Sprint local end users, Sprint will create terminating records for the exchange access traffic as well.

In response Sprint submits that it is not intending to bill Verizon for terminating the traffic generated by VAD/00-. Hunsucker, Tr. at 21-22. Sprint's proposal provides that Sprint will be compensating Verizon. In addition, Sprint submits that Mr. Munsell readily conceded that access trunks are already multi-jurisdictional trunks. Exhibit 14A, p. 24 (Munsell, pp. 95-96). The telecommunications industry has applied a Percent Interstate Usage ("PIU") factor to access trunks since their inception to correctly bill based upon the jurisdiction of the call where call detail records are not available to serve as a basis for billing. This process is detailed in Verizon's intrastate and interstate access tariffs.[31] Verizon's intrastate access tariff on file with the Florida Commission provides that customer's purchasing out of the access tariff must provide to Verizon a PIU factor to be applied to the call volumes to correctly identify jurisdictional usage.[32] The tariff contains expansive audit procedures to allow the parties to reach resolution should a dispute arise. Verizon retains audit rights to assure the accuracy of the reporting information carriers supply to Verizon.

This is the methodology Sprint is proposing in this proceeding to allow for a percent local usage factor ("PLU") to be developed and utilized in the billing of local usage generated by Sprint's proposed VAD service. Witness Munsell acknowledged that the Verizon method was to determine the jurisdiction of a call for access purposes based on the originating and terminating numbers of the call. Exhibit 14A, p. 32 (Munsell, pp. 123-124). As explained by Sprint witness Hunsucker, this is the exact method Sprint is proposing to utilize to develop and provide to Verizon a local usage indicator or PLU. Exhibit 14A, p. 14 (Hunsucker, pp. 49-50). This methodology of using the originating number and terminating number to determine appropriate

[31] See, GTE Florida Incorporated, Facilities for Intrastate Access, Section 6.3, Third Revised page 27.1.

[32] *Id.*

billing information is already a common practice with access usage and Sprint submits can easily and accurately be applied to local usage to accomplish the same end.

It should be also noted that Verizon acknowledged that it currently combines local traffic and access traffic over the same facilities in the same manner as Sprint is requesting in this proceeding. Exhibit 14A, p. 26 (Munsell, p. 97). Sprint should be given the opportunity to utilize its existing investment in network switching and trunking to achieve engineering economic efficiencies similar to those achieved by Verizon.

2.) Contract Issues

Verizon witness Mr. Munsell suggested that each and every interconnection agreement Verizon has with facilities-based CLECs in Florida 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. Munsell, Tr. at 49. Mr. Munsell went on to suggest that if Sprint's position on this issue were adopted, Verizon 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 and this will put Verizon in a position of contractual non-compliance with each and every facilities-based CLEC in Florida. Nevertheless, Mr. Munsell agreed that this issue was one primarily between Sprint and the CLEC in question rather than between Sprint and Verizon. Exhibit 14A, p. 29 (Munsell, pp. 109) [33] Furthermore, as pointed out by Mr. Hunsucker, if VAD local traffic is local, Verizon is already in non-compliance with the contract provisions as they would pass the traffic over the same trunks. Exhibit 14A, p. 37 (Hunsucker p. 144).

3.) Pricing Issues Regarding Access

Verizon will actually have an increase in revenues associated with Sprint's introduction of the VAD product offering. Exhibit 14A, pp. 24-25 (Munsell, pp. 92-95).[34] With respect to the billing issue identified by Mr. Munsell, Sprint has proposed a methodology whereby Sprint will deliver to Verizon the necessary information to accurately bill access and local usage. This should be sufficient to address the issue of the creation of obscure records that appears to concern Mr. Munsell. In addition, Mr. Munsell acknowledged that if Verizon has records that are not beneficial in accurate billing that they "just delete it." Exhibit 14A, p. 27 (Munsell, p.103,

[33] See also, Discussion Sprint witness Hunsucker and Verizon witness Munsell, Exhibit 14A, page 37, Transcript pages 141-143. Also, Ex. 14A, pages 183-184, Sprint Exhibit J, pages 3-4.

[34] See also, Exhibit 14A, page 172, Sprint Exhibit F.

lines 4-9). It is patently unfair to allow Verizon to utilize a network efficient configuration to provide for local and access traffic over the same facilities and to deny Sprint the same opportunity.

Verizon's basic premise is that it has the right to impose on Sprint access charges for these calls because they are access. As stated by Mr. Munsell, Verizon's circular logic is that, this is access because it is access. Munsell, Tr. at 52. Nevertheless, Mr. Munsell agreed that the facilities in question were basically the same physical facilities and that the cost of constructing these facilities would be the same whether they were used for intrastate access, interstate access or local services. Exhibit 14A, pp. 33-34 (Munsell, pp. 126-132). Mr. Munsell also acknowledged that the function of access trunks as compared to local interconnection trunks was also functionally the same. Mr. Munsell's assertion that they are access because they are access does not address the relevant issue. Sprint submits that the price differences associated with the different classes of service were the product of specific regulatory objectives. It is clearly the intent of the Act that compensation for local service interconnection be priced at TELRIC. The Act, FCC precedent and the prior decisions of this Commission require that local traffic be compensated by TERLIC priced rates as a public policy matter.

E.) Decisions in Other Jurisdictions

In an Arbitration Award issued January 22, 2002, the Arbitrators in the Texas Arbitration adopted Sprint's proposal with respect to multi-jurisdictional trunks.[35] In addition, the Texas Arbitrators found that VAD/00- calls were local traffic.[36] Nevertheless the Texas Arbitrators determined that access rates should be applied to these calls as the "traditional compensation mechanism" a finding that is inconsistent with the determination that VAD/00- traffic is local traffic and not subject to §251(a).[37]

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[35] *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 dated January 22, 2002. ("Texas Award") at 18.

[36] Texas Award at 28.

[37] Texas Award at 36. The Texas Award is not final in that it must be presented to and approved by the Texas Commission after a comment period.

Sprint supports the Texas Arbitrators' findings that a call is local if it originates and terminates within the same local calling area. Having made this determination and the determination that Section 251(g) does not apply to VAD/00- traffic as local traffic, Sprint takes exception the finding that VAD/00- traffic should be made subject to access charges as "the traditional compensation mechanism". The Texas Award also finds that the fact that Sprint would be "creating" an additional compensation arrangement "suggests" access charge compensation is the best alternative. Sprint is not attempting to create an additional compensation arrangement, rather Sprint is simply seeking to apply the current reciprocal compensation mechanism to its new service offering.

There are two basic flaws in the underlying rationale supporting the Texas Arbitrator's decision in this regard. First, VAD/00- traffic did not exist pre-1996 and thus it is pure supposition on the Texas Arbitrators' part to assume any conscious intent on any regulator's part to treat such calls as subject to the access regime. Second, having found Section 251(g) of the Act inapplicable to VAD/00- traffic, the Texas Arbitrators then use Section 251(g) to bootstrap their finding that access should apply. In addition, this finding allows Verizon to provide to Sprint interconnection in a less efficient manner and at a lesser quality than that which it provides to itself in clear violation of the obligations imposed on Verizon under the non-discrimination provisions of the Act.

In California, the California Commission based its decision on the recommendations of the *Final Arbitrator's Report.*[38] The California Commission incorporated the *Final Arbitrator's Report* into the *California Arbitration Order* by reference.[39] It should be empahsized that the *Final Arbitrator's Report* noted as follows in discussing the merits of Sprint's proposal:

> It simply makes no sense for Verizon to receive no compensation for use of its access lines for the calls at issue to take the detour to Sprint's OS platform. Nowhere does Sprint claim it gains no benefit from such use. Indeed, an offer Sprint made during the

[38] *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 (Cal. P.U.C. Mar. 15, 2001) ("*California Arbitration Order*"). *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., Final Arbitrator's Report*, February 23, 2001. ("*Final Arbitrator's Report*") The *California Arbitration Order* is attached to Verizon's Initial Brief. The *Final Arbitrator's Report* is attached to this Reply Brief as Attachment A.

[39] *California Arbitration Order at page 7.*

> hearing to compensate Verizon for part of the access line use constituted acknowledgement that Sprint should not be allowed such use for free.[40]

Sprint is not proposing to utilize Verizon's network for free in this proceeding. As demonstrated by Sprint witness Hunsucker, Sprint has carefully developed a compensation mechanism to fully compensate Verizon for the use of its network. Hunsucker, Tr. at 21-22.

Verizon witness Munsell acknowledged that Sprint's proposal will actually provide a revenue stream to Verizon above the incremental cost that was not present before the introduction of the Sprint VAD calling. Exhibit 14A, p. 172 (Sprint Exhibit F); Exhibit 14 A, p. 24-25 (Munsell, pp. 90-95). In California there was a misperception that Sprint is taking away compensation from one type of traffic thus depriving Verizon of access compensation or undercompensating Verizon for local traffic that is simply carried on access trunks.[41] The record in this proceeding clearly shows that Verizon gains in both traffic and compensation.

In addition to the California decision, Mr. Munsell notes that the Massachusetts Department of Telecommunications and Energy ("Department") held against Sprint on this issue.[42] The Department found as follows:

> 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 another Verizon customer in the same local calling area. [Footnote 6]

It should be noted, however, that in Footnote 6, which is referenced immediately following the above statement, the Department added:

> 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 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).

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[40] *Final Arbitrator's Report* at page 14-15.

[41] See, *Final Arbitrator's Report* at p. 14 where Verizon is quoted as follows: "Verizon has no way of identifying the ultimate destination of traffic that originates with the Sprint CIC," Sprint's offer to keep track "is tantamount to Sprint saying 'trust us' with respect to approximately $45 million of access revenue owed to Verizon . . . on an annual basis."

[42] *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*, D.T.E. 00-54, Decision (rel. Dec. 11, 2000) ("*Massachusetts Arbitration Order*"). A copy of the order is attached to Verizon's Initial Brief as part of Exhibit A.

> 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 or intercarrier compensation).[43]

First, Sprint notes that the Department makes an apparent finding in Footnote 6 that the definition of local requires that traffic that originates and terminates within the same calling area is subject to reciprocal compensation "regardless of the facilities over which the call is carried".[44] This finding is inconsistent with the ultimate conclusion reached by the Department. In addition, the FCC paragraph cited by the Department actually supports Sprint's position, and does not support the Department's ruling.[45] In paragraph 1034 of the *Local Competition First Report and Order* the FCC is addressing a request by a party to pay reciprocal compensation for long-distance calls. The paragraph reads as follows:

> We conclude that section 254(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local calling area, as defined in the following paragraph.[46]

The FCC declined to apply reciprocal compensation to long-distance calls, and further stated, "[b]y contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call."[47] The current situation does not involve long-distance calls, but a situation in which two carriers collaborate to complete a local call.

Mr. Munsell also refers to the *Maryland Arbitration Order.* [48] With respect to the *Maryland Arbitration Order* the Maryland Commission apparently was under the impression that

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[43] *Massachusetts Arbitration Order* at page 11.

[44] *Id.*

[45] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, *First Report and Order*, 11 FCC Rcd 15499, 16045 (1996) (*"Local Competition First Report and Order"*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) (*CompTel*), *aff'd in part and vacated in part sub nom. Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997) (*Iowa Utils. Bd.*), *aff'd in part and rev'd in part sub nom., AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) at paragraph 1034. .

[46] *Id.*

[47] *Id.*

[48] *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*, Order No. 77320, Case No. 8887 (rel. October 24, 2001) (*"Maryland Arbitration Order"*).

the determination on this issue had to deal with ISP compensation and did not adopt a Maryland Staff recommendation that a Percent Local Usage Factor ("PLU") be utilized:

> 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.*[49]

The Commission went on to adopt Verizon's proposal indicating that it believed "that at this time" the Verizon proposals are most in conformance with the FCC *ISP Remand Order.*[50] Nevertheless the Maryland Commission noted:

> 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.

Sprint submits that this decision does not represent a thorough analysis of the information addressed upon the record in this proceeding nor a comprehensive analysis and interpretation of the issues presented in the *ISP Remand Order.*[51]

While Verizon may cite the rulings of other commissions, Sprint reminds this Commission that it already has approved language in the Sprint/Bell South arbitration that finds that a call's jurisdiction is based on its end points. Contrary to the analysis made by the other state commissions, Sprint has demonstrated that a careful reading of the Act and FCC decisions mandates that traffic does not need to originate on one carrier's network and terminate on another's to be eligible for reciprocal compensation treatment. The Commission should ignore Verizon's view that the traffic must be access because it does not conform to the precise definition found in Rule 51.701(e). The more persuasive analysis is the inverse. The VAD/00- traffic terminating in the same local calling area as it originates cannot be access traffic under the relevant federal rules. Thus, it must be classified as local traffic. Given Verizon's menu of local

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[49] *Maryland Arbitration Order* at page 23.

[50] *Id.*

[51] *Maryland Arbitration Order* at page 24.

services that are functionally similar to Sprint's 00-/VAD service, classification of the service as access would be discriminatory interconnection in violation of the Act. Finally, Sprint thoroughly has rebutted Verizon's claims of billing concerns, contract issues and concerns of lost access revenues. Verizon actually will obtain more revenue than it currently receives if Sprint is allowed to implement this service. In sum, the Commission should find that reciprocal compensation charges apply to VAD/00- calls terminating in the same local calling area as they originated.

Issue 3: For the purposes of the new Sprint/Verizon interconnection agreement, should Verizon be required to provide custom calling/vertical features, on a stand alone basis, to Sprint at wholesale discount rates?

Position: * Yes. Sprint should be able to obtain from Verizon a stand-alone vertical feature as a resold service, subject to a whole sale discount, pursuant to section 251 (c)(4) of the Telecommunications Act. *

Argument: The dispute on this issue is straightforward. Sprint believes it should be able to obtain custom calling and other vertical features from Verizon at a wholesale discount without having to concurrently acquire basic local service ("dial tone" or "local exchange line") for resale. Verizon's position is that it is not obligated under the federal Act to provide vertical features on a stand-alone basis at wholesale because it does not do so at retail.

The resolution of this dispute also should be straightforward since the Florida Commission has already decided the issue. The Commission found in the Sprint /BellSouth arbitration that BellSouth is required by the Federal Telecommunications Act ("FTA") to allow the resale of the package of vertical and other services on a wholesale basis separate from the sale of local exchange line.[52] The Commission stated:

> We find that BellSouth did not present an adequate argument to overcome the conclusion in ¶939 of the Local Competition Order, FCC 96-325, that resale restrictions are "presumptively unreasonable." We note that BellSouth's argument was predicated on whether or not the products were offered on a "stand-alone" basis, and we think that this argument is misguided. BellSouth did not demonstrate that its proposed resale restriction is "narrowly tailored," nor did it establish why it would not have "anticompetitive results" or otherwise be reasonable. We also believe that BellSouth did not make the necessary

[52] Sprint/BellSouth Arbitration Order at 12.

showing under §51.605. Accordingly, we conclude that BellSouth did not rebut the presumption set forth in ¶939 of the Local Competition Order.[53]

In light of the Commission's determinations in the Sprint/BellSouth arbitration, there can be no doubt that Verizon's positions in this arbitration are untenable.

A.) Verizon's Policy Constitutes A Resale Restriction

Verizon primarily relies on the same argument here that was rejected by the Commission in the Sprint/BellSouth arbitration. As asserted by Verizon's witness Terry Dye, Verizon is not obligated to offer vertical features for resale under 47 U.S.C.§251(c)(4) because it does not offer vertical features at retail on a stand-alone basis. Dye, Tr. at 64. Mr. Dye argues that ILEC's are not required to "disaggregate a retail service into more discrete retail services" under FCC decisions and vertical features are such more discrete retail services. Dye, Tr. at 64. He therefore claims that Verizon's policy with regard to resale of vertical feature is not a "resale restriction" but is only a "retail restriction," which presumably requires no justification. Dye, Tr. at 79.

Verizon's position cannot withstand the slightest scrutiny. Like BellSouth's vertical service offerings, Verizon's vertical services and local dial tone service are separately tariffed services. Verizon's vertical services are optional features that are marketed distinctly, priced separately on customer bills, and contained in a section of the tariff separate from local dial tone. They are purchased in addition to, but separate from, local dial tone. Felton, Tr. at 98. Furthermore, there is no question about the technical feasibility of providing Verizon's vertical features for resale on a stand-alone basis. Felton, Tr. at 91; Dye, Tr. at 73. Faced with these same facts - separate retail tariff offerings and technical feasibility of providing the services separate from local service - the Commission found in the Sprint/BellSouth arbitration that the attempt to force tying of an optional service package with dial tone service is a restriction on resale.[54] Consequently, there can be no doubt that Verizon's attempt to make vertical features only available for resale with the purchase of local service is not a mirroring of its retail services but is an impermissible restriction on resale.

B.) Verizon's Resale Restriction is Unreasonable and Discriminatory.

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[53] Id. at 11

[54] Sprint/BellSouth Arbitration Order at 11.

As a resale restriction, Verizon must prove that its policy is reasonable and nondiscriminatory. 47 C.F.R. §51.613(b). The FCC found that resale restrictions, including "conditions and limitations contained in the incumbent LEC's underlying tariff," are presumptively unreasonable. This presumption arises because the ability of ILECs to impose resale restrictions and limitations is likely to be evidence of market power and may reflect an attempt by ILECs to preserve their market position.

> Given the probability that restrictions and conditions may have anticompetitive results, we conclude that it is consistent with the procompetitive goals of the 1996 Act to presume resale restrictions and conditions to be unreasonable and therefore in violation of section 251(c)(4).[55]

Although ILECs may rebut the presumption of unreasonableness, they can do so only if the restrictions are narrowly tailored.[56] Thus to justify its restriction on resale of vertical features, Verizon must show that such a resale restriction is narrowly tailored and is otherwise reasonable and nondiscriminatory. Verizon has utterly failed to overcome the FCC's general presumption.

Aside from Verizon's spurious claim that the vertical features resale restriction is merely a mirroring of retail restrictions, its only attempt to justify the restriction is to point to certain limited circumstances in which it may not be "technically" feasible for Verizon to provide vertical features on a stand alone basis. Specifically, if another CLEC provides service to a customer through the use of UNEs acquired from Verizon, that CLEC would be entitled to exclusive use of all the features associated with the UNE. Verizon could not therefore provide the vertical features to Sprint for resale to the same customer. Dye, Tr. at 78. BellSouth also raised this issue in its arbitration with Sprint . While the Commission recognized that Sprint might be required to relinquish the vertical services if another CLEC gained control of the underlying basic service, the Commission held that this did not preclude BellSouth from providing the vertical services to Sprint on a stand alone basis at the wholesale discount. Rather, the Commission found that "if the end-use customer wants custom calling features through a subsequent reseller, Sprint would have to relinquish its provision of those services."[57]

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[55] *Local Competition First Report and Order,* CC Dkt. No. 96-98, paragraph 939.

[56] *Id.*

[57] Sprint/BellSouth Arbitration Order at 12.

Sprint recognizes that in specific limited circumstances, it would have to relinquish the ability to provide vertical features on a stand-alone basis, since it is ultimately the customer's choice of where to obtain service. Felton, Tr. at 93-94. But such situations are no different from others in which the customer has decided to obtain services in a different manner. It is unclear why Verizon believes this is a problem. In any event, Verizon's inability to control the customer's choice of service providers is clearly not a justification for restricting the availability of services for resale. Even if the limited situations posed by Verizon did present difficulties, the broad resale restriction it is advocating is not "narrowly tailored" to address the specific and limited circumstances giving rise to its concerns. The restriction cannot therefore pass muster under the FCC criteria.

Other state commissions have also found no justification for restricting the availability of vertical features for resale by tying them to basic local service. These state commissions have required that vertical features be made available for resale on a stand-alone basis. For example, the Texas Public Utility Commission recently held in a complaint proceeding involving Southwestern Bell Telephone Company (SWBT):

> SWBT's practice of making Essential Office available for resale only in conjunction with the resale of the underlying basic local exchange service constitutes a resale restriction and improperly prohibits, or imposes an unreasonable or discriminatory condition or limitation on, the resale of its services in violation of FTA §251(c)(4) and PURA §60.042.[58]

The Texas Commission's decision regarding vertical features has been affirmed in the recent arbitration award issued in the Texas Sprint/Verizon arbitration proceeding, and awaiting final action by the Texas Commission. In its arbitration decision, the arbitrator found:

> 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

[58]Complaint by AT&T Communications of the Southwest, Inc. regarding Tariff Control Number 21311, Pricing Flexibility – Essential Office Package, Dkt. Nos. 21425 & 21475, Texas Public Service Commission Order, Issued December 18, 2000.

> offer the stand-alone vertical features at the wholesale discount under section 252(d)(3), we adopt Sprint's proposed language for this issue.[59]

In addition to Texas, the California[60], Pennsylvania[61] and North Carolina[62] Commissions have also required vertical features to be made available for resale at the wholesale discount in arbitration proceedings.

There are decisions, which Verizon will presumably rely on, that did not require the resale of vertical services under the Act. It appears that the Maryland, Kentucky and Massachusetts decisions accepted Verizon's argument inserting a "stand-alone" qualification to the Act's requirement of offering retail service for resale. However, unlike the Texas Commission's decision, the recent Pennsylvania PUC decision, and this Commission's decision, the Maryland, Kentucky and Massachusetts decisions failed to provide an adequate explanation for their decision or a reasoned analysis of the provisions of the Act. They therefore have no persuasive value.[63] As the North Carolina Commission observed in comparing this Commission's *Essential Office* decision and the Massachusetts decision:

> In reviewing the Texas decision, the Commission found it to be on point and persuasive, particularly in consideration of the discussion of the rationale underlying the decision set forth by the Texas PUC in its Order. The Commission, in its review of the Massachusetts decision, found it to be on point but much less persuasive than both the California and Texas decisions. The Massachusetts decision offered much less discussion of the rationale underlying its decision than did the California and Texas PUCs in their respective decisions. Therefore, due to that lack of discussion, very little additional insight could be gleaned from the Massachusetts decision, that is, other than the positions taken by the parties and the reasoning presented in support of those positions by the parties were quite similar to that presented in this proceeding.[64]

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[59] Texas Arbitration Award at 63.

[60] In the Matter of the Petition of Sprint Communications Company LP for Arbitration of Interconnection Rates, Terms , Conditions, and Related Arrangments with Verizon California d/b/a GTE California Incorporated, Decision 01-03-044, issued March 15, 2001 (California Decision).

[61] Petition of Sprint Communications Company, L.P. for an Aribtration Award of Interconnection Rates, Terms and Conditions Pursuant to 47 U.S.C. §252 (b) And Related Arrangements with Verizon Pennsylvania, Inc., Docket No. A-310183F002, Opinion and Order, Issued October 12, 2001 (Pennsylvania Decision).

[62] 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, North Carolina Docket No. P-294, Sub 23, Arbitration Order (North Carolina Decision).

[63] *Also,* see Pennsylvania PUC discussion of Kentucky, Massachusetts and New York decisions. *Pennsylvania Decision*, at pp.23-6.

[64] *North Carolina* Decision at pp. 16-17.

The North Carolina Utilities Commission proceeded to find that BellSouth's attempt to tie local service and vertical services was an unreasonable restriction on resale.[65]

C.) Verizon's Other Arguments Are Without Merit

Verizon also makes three other arguments in connection with the resale of vertical features. First, Verizon argues that it would be unfair to Enhanced Service Providers (ESPs) to provide vertical features to Sprint at a wholesale discount when ESPs do not receive a discount. Dye, Tr. at 67. Second, Verizon posits that the discount should not be the current discount since it does not reflect the separate retail avoided costs for vertical features. Dye, Tr. at 68-69. And, lastly, Verizon asserts that Sprint should compensate Verizon for its implementation costs in making vertical features available for stand-alone resale. Dye, Tr. at 69. These arguments are all without merit and provide no basis for delaying availability of vertical features for resale.

With regard to the unfairness to ESPs, Verizon's crocodile tears of sympathy are misplaced. The Telecommunications Act of 1996 and the FCC have determined that wholesale discounts for resale of telecommunications services are to be made available only to telecommunications carriers. The FCC rules, 47 C.F.R. 51.605(c), explicitly exclude certain services provided to ESPs from the category of telecommunication services eligible for discounts but ESPs that otherwise qualify as telecommunications carriers may well be entitled to discounts for some services. In any event this issue is clearly a red herring that is undeserving of attention. The only real issue is whether Verizon's attempted resale restriction is justified and it clearly is not.

With regard to the amount of the discount, Verizon has simply not presented any evidence to the Commission in this arbitration to justify a different discount rate for vertical features. Although the Verizon witness asserts that the avoided costs associated with stand-alone provision of vertical services are different than the total avoided costs for dial tone and vertical

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[65] *Id,* at 18-19. The NCUC listed the following as principle reasons for its conclusion: Vertical features are telecommunications services under the Act; BellSouth provides vertical features at retail to end-users, notwithstanding the fact that they are offered only in addition to local service; it is not technologically necessary for the dial tone to be provided by the same carrier that provides vertical services; vertical services are priced and billed separately from dial tone; BellSouth is not being asked to disaggregate a bundled retail service; Sprint, as a certified local service provider, is entitled to purchase retail telecommunications services at a wholesale discount; it is irrelevant what use Sprint plans to make of the vertical services; allowing resale of vertical services without restrictions is a step toward a market unhindered by any dominant carrier; and the conclusion is mandated by the Act and FCC rules.

features, this is clearly *ipse dixit* without any support, analysis or cost study that would warrant a different discount rate. Indeed, Verizon does not even propose a specific discount rate. Verizon may, of course, request appropriate proceedings in the future that the Commission consider such a rate, but obviously has not adequately done so in this proceeding. There is, therefore, no basis for any Commission action on this Verizon argument.

Lastly, Verizon's request to recover the costs of implementation from Sprint is completely at odds with the requirements of the Telecommunications Act. Verizon's obligation to provide vertical features for resale is just part of its duty under §251(c)(4) of to provide telecommunications services at wholesale. Verizon is not entitled under the Act and FCC rules to recover its costs of implementing those resale requirements from CLEC's who request services for resale. Those costs are simply costs of complying with the law and Verizon has not cited any other authority to support its request for cost recovery. Furthermore, even if Verizon were entitled to recover implementation costs from requesting telecommunications carriers, it certainly cannot attempt to recover all the costs from Sprint, just because Sprint is the first CLEC to pursue the request.

For the reasons set forth herein, Sprint urges the Commission to reaffirm its decision in the Sprint/BellSouth Arbitration Order, find that Verizon must provide its vertical services to Sprint for resale at the wholesale discount rate, and order the Parties to include Sprint's proposed language on this issue in their interconnection agreement.

Issue 12: Should changes made to Verizon's Commission-approved collocation tariffs, made subsequent to the filing of the new Sprint/Verizon interconnection agreement, supercede the terms set forth at the filing of this agreement?

Position: * No. If tariff changes supersede the terms of a negotiated or arbitrated interconnection agreement, the interconnection agreements would be reduced to little more than placeholders until tariffs go into effect. This is inconsistent with the process for negotiation and arbitration of interconnection agreements set forth in the Telecommunications Act. *

Argument: This issue is a legal issue concerning the status of a generic state collocation tariff *vis a vis* the terms, conditions and prices for collocation contained in an interconnection agreement negotiated or arbitrated pursuant to §§ 251 and 252 of the Act. Under price regulation as set forth in section 364.051, Florida Statutes, tariff changes made by Verizon (or any price-regulated

ILEC) are presumptively valid. The only mechanism for challenging the changes is through a complaint filed with the Commission, after the tariff has been filed. There is no statutory provision that allows the Commission to suspend the tariff pending the resolution of the complaint for price-regulated ILECs. Therefore, any changes made to Verizon's collocation tariff would essentially be unilateral changes to the terms of the agreement.

Verizon witness Mr. Ries filed testimony in support of Verizon's proposed language allowing tariff changes to control. Ries, Tr. at 105-106. However, Mr. Ries fails to address the central issue to which Sprint objects. Mr. Ries assumes in his testimony that Sprint will have the opportunity to contest the tariff filing. Ries, Tr. at 106. As discussed above, under Florida law, tariffs for nonbasic services filed by price-regulated incumbent local exchange companies are "presumptively valid" and take effect with 15 days of filing. While a presumptively valid tariff may be challenged via the complaint process, Florida law governing price-regulated ILECs makes no provision for suspending the effect of the tariff pending resolution of the complaint. The Commission has recognized the presumptively valid status of a price-regulated ILECs nonbasic tariff filings and that the available mechanism for challenging such a tariff is through the complaint process.[66]

Moreover, Section 251(c)(1) of the Act requires Verizon to "negotiate in good faith ... the particular terms and conditions" of an interconnection agreement. Any attempt to avoid obligations arising under a contract by referring to non-negotiable tariffs is a violation of the good faith requirement of the Act. Any attempt to place tariff provisions in a superior position to the interconnection agreement defeats Sprint's right pursuant to Section 252(c)(1) to a negotiated and arbitrated agreement.

Verizon argues that CLECs will have an opportunity for arbitrage if the Commission does not hold that the tariff supersedes the terms of an agreement. However, there is no requirement in Florida that a tariff must be filed setting forth collocation rates, terms and conditions. In fact, the Commission declined to adopt such a requirement in its generic collocation docket (although it left the need for and status of such tariffs as an open issue for a

[66] See, *In re: Investigation to determine whether BellSouth Telecommunications, Inc.'s tariff filing to restructure its late payment charge is in violation of Section 364.051, F.S.,* Docket No. 000733-TI, Order No. PSC-01-1769-FOF-TL, Issued: August 30, 2001.

later phase of the docket).[67] While an ILEC is under no obligation to file a collocation tariff, the Act is clear in its requirement that the terms of interconnection, including collocation, be negotiated by the Parties and embodied in an agreement governing the relationship of the ILEC and the CLEC under §§251 and 252 of the Act.

In an previous arbitration involving Verizon Florida's predecessor, GTE Florida, Inc., the Commission addressed the issue of whether tariffs can unilaterally supersede and amend the terms of an interconnection agreement arrived at through negotiation or arbitration of the Parties in accordance with the Act.[68] In its final arbitration order in that docket the Commission stated:

> We believe that GTEFL should not be permitted to unilaterally modify an agreement reached pursuant to the Act by subsequent tariff filings. One party to a contract cannot alter the contract's terms without the assent of the other parties. [69]

The Commission recognizes that tariffs may be incorporated into an agreement through mutual concurrence of the Parties.[70] Consistent with the Commission ruling, Sprint agrees that to the extent that the rates, terms or conditions in Verizon's tariffs appropriately supplement the interconnection agreement, those tariffs should be specifically referenced in the agreement and a provision should be included addressing how both parties could participate in the modification of the negotiated conditions.

Sprint has agreed to incorporate into the Parties' interconnection agreement the terms, conditions and rates contained in Verizon's Florida collocation tariff as of a date certain (June 1, 2001).In addition, Sprint's proposed language would preserve Verizon's right to file tariffs to supplement or modify the rates, terms and conditions of its tariffs, so long as such action is

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[67] *In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory*, DOCKET NO. 981834-TP and *In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation*, DOCKET NO. 990321-TP, ORDER NO. PSC-00-0941-FOF-TP, ISSUED: May 11, 2000 at page 69.

[68] See, *In Re: Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc., for arbitration of certain terms and conditions of a proposed agreement with GTE Florida Incorporated concerning interconnection and resale under the Telecommunications Act of 1996,* Docket No. 960847-TP; Docket No. 960980-TP; Order No. PSC-97-0064-FOF-TP, Issued January 17, 1997.

[69] Id. at page 145.

[70] Id. The Commission states: We find, however, that interconnection agreements between GTEFL and AT&T and MCI may be modified by subsequent tariff filings if the agreements contain express language permitting modification by subsequent tariff filing, such as a clause establishing a contractual requirement with specific reference to a tariff provision.

undertaken in a fair and equitable manner in which Sprint has the opportunity to participate in a meaningful fashion, before the changes become effective. Sprint's proposed approach would acknowledge the precedence of the interconnection agreement over any tariff.

Sprint asks the Commission to clearly affirm that Verizon cannot unilaterally modify the terms of interconnection agreement with Sprint through the filing of a presumptively valid tariff and adopt the agreement language proposed by Sprint to resolve this issue.

Issue 15: For the purposes of the new interconnection agreement, should Sprint be required to permit Verizon to collocate equipment in Sprint's central offices?

Position: * No. The collocation obligations and duties described in Section 251 (c)(3) of the Act pertain exclusively to ILECs. *

Argument: This is a legal issue concerning the interpretation of the varying obligations ILECs and CLECs under §251 of the Act. Verizon witness Mr. Ries filed testimony in support of the proposed language. Ries, Tr. at 106-107. Nevertheless Mr. Ries fails to address the central issue to which Sprint objects. Mr. Ries assumes that the obligation of all carriers to interconnect under Section 251(a) of the Act imposes on all carriers an obligation to allow for collocation. Mr. Ries does not, however, address the fact that Section 251(c)(6) of the Telecommunications Act of 1996 imposes on *incumbents only* "the duty to provide, on rates, terms and conditions that are just, reasonable and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements . . .." 47 U.S.C.§ 251(c)(6). The Act does not impose equivalent obligations on CLECs such as Sprint.

At its own discretion, Sprint may license Verizon 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 to Sprint for completion. This type of licensing arrangement, however, is voluntary on Sprint's part, and as such, could not be compelled or required under law.

The Commission should reject Verizon's proposed language requiring Sprint to provide collocation to Verizon.

DATED this 14th day of February, 2002.

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