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Vice President and General Counsel, Southeast
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June 4, 2002

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 020412-TP
Petition for arbitration of unresolved issues in negotiation of interconnection agreement with Verizon Florida Inc. by US LEC of Florida Inc.

Dear Ms. Bayo:

Please find enclosed an original and 15 copies of the Response of Verizon Florida Inc. to Petition for Arbitration Filed by US LEC of Florida Inc. for filing in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this matter, please contact me at 813-483-2617.

Sincerely,

Kimberly Caswell

KC:tas
Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of unresolved issues in negotiation of interconnection agreement with Verizon Florida Inc. by US LEC of Florida Inc.	Docket No. 020412-TP Filed: June 4, 2002

**RESPONSE OF VERIZON FLORIDA INC.
TO PETITION FOR ARBITRATION FILED BY
US LEC OF FLORIDA INC.**

Verizon Florida Inc. ("Verizon"), by counsel and pursuant to 47 U.S.C. § 252(b)(3), submits this Response to the Petition for Arbitration of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Petition") filed by US LEC of Florida Inc. ("US LEC") on May 10, 2002.

PARTIES

1. *Petitioner US LEC is a certificated alternative local exchange telecommunications company ("ALEC") providing service in competition with Verizon in various locations in Florida.*[1] *US LEC's official business address is Three Morrocroft Centre, 6801 Morrison Boulevard, Charlotte, North Carolina 28211.*

1. Verizon admits the allegations in Paragraph 1 on information and belief.

[1] *Applications for certificates to provide alternative local exchange telecommunications service. US LEC of Florida, Inc.*, Docket No. 971455-TX, Notice of Proposed Agency Action Order Granting Certificates to Provide Alternative Local Exchange Telecommunications Service, Order No. PSC-97-1604-FOF-TX (Dec. 22, 1997).

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2. *The names, addresses, and contact numbers of US LEC's representatives for purposes of this proceeding are as follows:*

Wanda Montano
US LEC Corp.
6801 Morrison Blvd.
Charlotte, NC 28211
(704) 319-1074 (telephone)
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2. The allegations in paragraph 2 do not require a response.

3. Respondent Verizon is an incumbent provider of local exchange services within portions of Florida. Verizon's offices are located at 1320 North Court House Road, Arlington, Virginia, 22201. Verizon is, and at all relevant times has been an "incumbent local exchange carrier" ("ILEC") under the terms of the Act.

3. Verizon admits the allegations in paragraph 3 of the Petition, except that Verizon's offices are located at 201 North Franklin Street, Tampa, FL 33602.

4. The name, address and contact number for Verizon's legal representative during the negotiations with US LEC is as follows:

> *Gregory M. Romano, Esq.*
> *1515 North Courthouse Road*
> *Suite 500*
> *Arlington, Va. 22201*
> *(703) 351-3125 (telephone)*
> *(703) 351-3659 (facsimile)*
> *gregory.m.romano@verizon.com*

4. Verizon admits the allegations in paragraph 4.

JURISDICTION

5. The Commission has jurisdiction over US LEC's Petition pursuant to Section 252 of the Act and Sections 364.161 and 364.162, Florida Statutes. Under the Act, parties to a negotiation for interconnection, access to unbundled network elements, or resale of service within a particular state have a right to petition the state commission for arbitration of any open issues whenever negotiations between them fail to yield an agreement. 47 U.S.C. § 252(b). Under Section 252(b)(1) of the Act, the request for arbitration of the state commission may be made at any time during the period from the 135th day to the 160th day (inclusive) after the date on which the ILEC receives a request for negotiations under Section 251 of the Act. A copy of the letter memorializing the agreed date upon which the parties commenced negotiations for an interconnection agreement for the State of Florida is attached hereto as Exhibit A. This Petition is timely filed within 160 days of that date.

5. Verizon admits the allegations in paragraph 6, agrees that the Commission has jurisdiction over this arbitration pursuant to 47 U.S.C. § 252, and agrees that this Petition was timely filed.

NEGOTIATIONS

6. *Negotiation of the US LEC/Verizon interconnection agreement commenced on December 1, 2001. Working through changes suggested by US LEC to Verizon's template interconnection agreement, the parties have been able to resolve the vast majority of issues raised during the negotiations. Notwithstanding these good faith negotiations, however, US LEC and Verizon have been unable to come to agreement on all terms. The issues that US LEC believes are unresolved are addressed in the Statement of Unresolved Issues found below.*

6. Verizon admits the allegations in paragraph 6.

7. *A draft of the interconnection agreement reflecting the parties' negotiations to date is attached hereto as Exhibit B. The draft consists of Verizon's template agreement with the following revisions: agreed-upon language is shown in normal type, while deletions that US LEC proposes to make are reflected in strike-through text and additions that US LEC proposes to make are shown in underlined text. During the pendency of this arbitration, US LEC will continue to negotiate in good faith with Verizon in an effort to resolve disputed issues and will notify the Commission if and when arbitration of certain issues is no longer necessary.*

7. Verizon admits that the draft interconnection agreement accurately reflects the current state of the parties' negotiations. Verizon will also continue to negotiate in good faith with US LEC to resolve disputed issues during the pendency of these proceedings.

STATEMENT OF RESOLVED ISSUES

8. *The parties have resolved all issues and negotiated contract language to govern their relationship with respect to all items except for those identified below as unresolved issues. These negotiated portions of the Agreement are included in Exhibit B.*

8. Verizon admits the allegations in Paragraph 8.

STATEMENT OF UNRESOLVED ISSUES

Issue 1: (Glossary, Section 2.45; Interconnection Attachment, Sections 7.1.1.1, 7.1.1.1.1, 7.1.1.2, 7.1.1.3)

Issue: Is US LEC permitted to select a single Interconnection Point ("IP") per Local Access and Transport Area

("LATA"), to select the interconnection method, and to require Verizon to bear the financial responsibility to deliver its originating traffic to the IP chosen by US LEC?

US LEC position: Yes. Under federal law, US LEC has the right to choose a single IP per LATA and any technically feasible method of interconnection and Verizon has an obligation to deliver its originating traffic to the IP selected by US LEC.

Verizon's Alleged Position: No. US LEC should be required to establish, or transition its existing architecture to, a US LEC-IP for receipt of Verizon-originated traffic by establishing a collocation arrangement at each Verizon Tandem where US LEC assigns telephone numbers to its customers and at any other wire center designated by Verizon. If US LEC fails to establish such an IP, Verizon should pay US LEC the applicable reciprocal compensation rate less Verizon's transport rate, tandem switching rate, and any other costs assessed by US LEC or third parties for transport purchased by Verizon.

Verizon's Actual Position: Although US LEC is entitled to select a single physical point of interconnection in each LATA, it must bear a fair share of the costs of whatever interconnection architecture it chooses.

US LEC's proposed interconnection agreement language is contrary to federal law. Under US LEC's proposal, it would not only have the right to determine where Verizon and US LEC will *physically interconnect*, but it would also be able to transfer virtually all the costs of its interconnection choices onto Verizon. US LEC would have Verizon subsidize its interconnection choices by requiring Verizon to incur the expense of hauling traffic outside of a local calling area and to pay US LEC reciprocal compensation for the transport and termination of that traffic. Such subsidization impedes, rather than enhances, true competition. Verizon's VGRIP proposal provides a more equitable allocation of those costs by requiring US LEC to bear a portion of the costs caused as a result of its interconnection decisions.

When a Verizon customer calls an ALEC customer in a given local calling area, Verizon may nonetheless be required to transport that call *outside* the local calling area before it reaches the ALEC customer. For example, although US LEC's switch in Tampa is its point of interconnection in the Tampa LATA, US LEC has obtained NPA-NXX codes throughout the LATA that serve local calling areas as many as 40 or more miles away from that switch. Thus, if a Verizon customer in Sarasota called her neighbor, who is a US LEC customer, Verizon would bear the costs of transporting that call to Tampa. In addition, under US LEC's proposal, Verizon would also pay US LEC reciprocal compensation for this traffic, thereby more than fully compensating US LEC for any costs it arguably incurs. However, if that same Verizon customer in Sarasota placed a call to an end user located in Tampa, then Verizon would charge its customer originating toll charges in order to cover the costs of transporting the call. If US LEC wishes to serve customers in a local calling area from a switch located far outside that area, that is its business decision. Verizon, however, should not be required to bear the costs of that decision, which transforms a call between neighbors into a toll call for which Verizon receives no compensation.

Matters are made worse if, in the above example, US LEC has assigned a Sarasota NPA-NXX code to an end user with no physical presence in the Sarasota local calling area.[2] In that case, US LEC would not bear the costs of transporting the call from the distant switch back to the local calling area.[3] Instead, when US LEC receives a call that Verizon has transported to its distant switch, US LEC would not transport the call back to the local calling area, but instead would transport that call a very short distance, normally handing it off to a customer that is

[2] The question of the proper treatment of such "virtual" NXX codes is addressed below in Issue 6.

[3] This arrangement would be especially appealing to customers who wanted only to receive calls from the distant local calling area, but had no reason to make calls to that distant local calling area.

collocated at, or located nearby, that switch. In this way, US LEC would have its interconnection decisions further subsidized by Verizon and would enable its customers to receive toll calls at Verizon's expense.

In contrast, under Verizon's VGRIP proposal, US LEC must bear some of the costs imposed by its chosen point or points of interconnection. The VGRIP proposal distinguishes between the point of interconnection ("POI") — the "physical location where the one Party's facilities physically interconnect with the other Party's facilities for the purpose of exchanging traffic," Agreement, Glossary, § 2.66 — and the interconnection point ("IP") — "the point at which a Party who receives Reciprocal Compensation Traffic from the other Party assesses Reciprocal Compensation charges for the further transport and termination of that Reciprocal Compensation Traffic," *id.* § 2.45.[4] Under the VGRIP proposal, the POI and the IP may be at the same physical location, but they need not be.

The VGRIP proposal allows the ALEC to choose the location of its POI(s) and provides three options for the establishment of IPs. First, if US LEC established a POI at a collocation site at a Verizon tandem wire center in a multi-tandem LATA, and accepted Verizon's originated traffic at that point, US LEC could designate that site as an IP. *See* Agreement, Interconnection Attachment, § 7.1.1.1. Although this IP might be outside the local calling area for some of the traffic delivered to that point, pursuant to VGRIP, Verizon will absorb the costs of transporting the call from the local calling area to that tandem, which is a significant compromise for Verizon. Second, if US LEC decided to collocate at a Verizon end office wire center, Verizon may request

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[4] Although US LEC purports (Petition at 6) to "be consistent with Verizon's terms" when it "uses the term IP instead of POI," US LEC has actually proposed to change the definition of IP so that it has the same meaning as POI. *See* US LEC's Proposed Glossary § 2.45 (IP "means the switching, Wire Center, or similar network node in a Party's network at which such Party accepts Local Traffic from the other Party").

that this collocation site function as both a POI and an IP for the local calling area where that end office is located. *See id.* § 7.1.1.2. Under both options, once Verizon delivers originating traffic to the POI/IP, US LEC would become financially responsible for delivering this traffic to its switch, whether by purchasing transport from Verizon or a third party, or by self-provisioning the transport.

Third, if US LEC chooses not to establish a POI at either of the above locations, the end office serving the Verizon customer who places the call acts as a virtual IP, as though US LEC had elected to establish a collocation site at that location (even though US LEC would have incurred none of the costs of doing so). *See id.* § 7.1.1.3. Any reciprocal compensation due to US LEC for this call would be reduced by the transport and switching costs Verizon incurs in transporting this traffic from the virtual IP to US LEC's POI.

In all three scenarios, US LEC may locate its POI(s) at any technically feasible point on Verizon's network in the LATA. US LEC also has choices as to where its IPs are located. However, US LEC must bear a portion, but not all, of the costs that are attributable to its decisions about where to locate its POI(s). For these reasons, the VGRIP proposal provides an appropriate balance between the right of ALECs to choose their physical point(s) of interconnection and the need to prevent ALECs from requiring Verizon to subsidize those choices. Indeed, as the Federal Communications Commission ("FCC") found in related circumstances, permitting an ALEC to recover its costs from an ILEC — rather than from the ALEC's own end users — does not enhance the competitive environment, but instead results in "market distortions" as the costs of an ALEC's decisions are borne by Verizon and the ALEC has no incentive to make optimal investment decisions.[5]

[5] Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 16 FCC Rcd 9151, 9182-83, ¶ 69 (2001) ("*ISP Remand Order*"),

This Commission has addressed the question of the appropriate allocation of costs attributable to an ALEC's selection of POI(s) within a LATA in a number of individual arbitrations between ILECs and ALECs. In arbitrating an interconnection agreement between BellSouth and Sprint, this Commission rejected the very type of cost-shifting that US LEC advocates. In that decision, the Commission specifically found that, "where Sprint designates a POI outside of BellSouth's local calling area, Sprint should be required to bear the cost of facilities from that local calling area to Sprint's POI." *Sprint Arbitration Order*[6] at 60. Although the Commission held further that "BellSouth should not be allowed to designate [Sprint's] virtual point of interconnection [("VPOI")]," the Commission required Sprint to "designate at least one VPOI 'within' a BellSouth local calling area that encompasses that exchange" and permitted BellSouth to "require Sprint to pay TELRIC rates for Interoffice Dedicated Transport . . . between . . . Sprint's VPOI and Sprint's POI." *Id.* at 63. In an extensive analysis, the Commission determined that these requirements — which mirror those of Verizon's VGRIP proposal — comply with the 1996 Act and the FCC's interpretation of that Act. *See id.* at 58-62.

US LEC does not mention the *Sprint Arbitration Order*, but instead relies (Petition at 7) on an order of this Commission arbitrating an interconnection agreement between BellSouth and AT&T.[7] In that case, this Commission found that, "for purposes of this arbitration," it would

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remanded, WorldCom, Inc. v. FCC, No. 01-1218 (D.C. Cir. May 3, 2002). Although the D.C. Circuit remanded the *ISP Remand Order* to permit the FCC to clarify its reasoning, it left the order in place as governing federal law. *See WorldCom, Inc. v. FCC*, No. 01-1218, slip op. at 5.

[6] Final Order on Arbitration, *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-TP, Order No. PSC-01-1095-FOF-TP (Fla. PSC May 8, 2001) ("*Sprint Arbitration Order*").

[7] *See* Final Order on Arbitration, *Petition by AT&T Communications of the Southern States, Inc. d/b/a AT&T for Arbitration of Certain Terms and Conditions of a Proposed Agreement with*

require "both parties [to] assum[e] financial responsibility for bringing their traffic to the AT&T-designated interconnection point." *AT&T Arbitration Order* at 46. However, unlike US LEC, which seeks to have only one IP per LATA (Petition at 8 n.9), AT&T had agreed to accept financial responsibility for Verizon originated traffic at "a minimum of two POIs per LATA," *AT&T Arbitration Order* at 33, 43-44. Moreover, despite its conclusion, the Commission recognized that it "may be possible to construct an argument favoring the payment of compensation by competitive local exchange companies for transporting traffic from a local calling area to a distant POI." *Id.* at 45. Indeed, the Commission accepted such an argument in the *Sprint Arbitration Order*.[8]

Finally, US LEC points (Petition at 7-8) to this Commission's recent approval of its staff's recommendation, in Docket No. 000075-TP, that "an originating carrier is precluded by FCC rules from charging a terminating carrier for the cost of transport . . . from [the traffic's] source to the point(s) of interconnection in a LATA."[9] Verizon respectfully submits that the staff

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BellSouth Telecommunications, Inc. Pursuant to Section 252, Docket No. 000731-TP, Order No. PSC-01-1402-FOF-TP (Fla. PSC June 28, 2001) ("*AT&T Arbitration Order*").

[8] In arbitrating agreements between BellSouth and both MCImetro and Level 3, this Commission discussed, but did not decide the question of the proper allocation of the costs of an ALEC's selection of its POI(s). *See* Final Order on Arbitration, *Petition by Level 3 Communications, LLC for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc.*, Docket No. 000907-TP, Order No. PSC-01-1332-FOF-TP, at 26 (Fla. PSC June 18, 2001) ("While it may be possible ultimately for BellSouth to support its receiving of compensation for moving traffic from a local calling area to an IP in a distant local calling area . . . it has not met its burden in this proceeding."); Final Order on Arbitration, *Petition by MCImetro Access Transmission Services and MCI WorldCom Communications, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Docket No. 000649-TP, Order No. PSC-01-0824-FOF-TP, at 77 (Fla. PSC Mar. 30, 2001) ("we find that the record in this proceeding is inadequate to support resolution of these aspects").

[9] Commission Agenda Conference, Docket No. 000075-TP, Vote Sheet at 4 (Issue 14) (Dec. 5, 2001), *approving* Memorandum, *Investigation Into Appropriate Methods To Compensate Carriers for Exchange Of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Docket No.

recommendation is contrary to the FCC's interpretation of federal law. to recent federal court precedent, and to this Commission's decision in the *Sprint Arbitration Order*. The staff recommendation never addresses the FCC's conclusion, in approving Verizon's Section 271 application in Pennsylvania, that language in an interconnection agreement "permit[ting] carriers to *physically* interconnect at a single point of interconnection (POI)," but "distinguish[ing] between the physical POI and the point at which Verizon and an interconnecting competitive LEC are responsible for the cost of interconnection facilities," "complies with the clear requirement of our rules." *Pennsylvania Order*[10], 16 FCC Rcd at 17474-75, ¶ 100. The FCC also rejected claims that "Verizon's policies in regard to the financial responsibility for interconnection facilities fail to comply with its obligations under the Act." *Id.*

Thus, the staff's statement that the distinction between a POI and an IP "lacks any discernable authority" cannot be accepted in light of the FCC's clear conclusion in the *Pennsylvania Order*. *Staff Recommendation* at 67. Further authority in support of the distinction between a POI and an IP is found in a recent decision by the Third Circuit. That court expressly found that a state commission should "consider shifting costs" to an ALEC that selects a technically feasible POI that "prove[s] more expensive to Verizon." *MCI Telecomms. Corp. v. Bell Atlantic-Pa.*, 271 F.3d 491, 518 (3d Cir. 2001) (citing *Local Competition Order*, [11] 11 FCC

000075-TP (Fla. PSC filed Nov. 21, 2001) ("*Staff Recommendation*"). The Commission has not yet issued a final order in this proceeding.

[10] Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419 (2001) ("*Pennsylvania Order*").

[11] First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 ("*Local Competition Order*"), *modified on recon.*, 11 FCC Rcd 13042 (1996), *vacated in part, Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999), *decision on remand, Iowa Utils Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *aff'd in part, rev'd in part sub nom. Verizon Communications Inc. v. FCC*, No. 00-511, 2002 U.S. LEXIS 3559 (May 13, 2002).

Rcd at 15603, ¶ 209).[12] And, in the *Sprint Arbitration Order*, this Commission required Sprint to establish virtual POIs that were distinct from its physical POIs. The staff's recommendation is also generally inconsistent with this Commission's interpretation of federal law in the *Sprint Arbitration Order*. In that decision, this Commission expressly found that, "in accordance with the FCC Rules and Orders, BellSouth is entitled to recover additional transport costs from Sprint." *Sprint Arbitration Order* at 58. The Commission rejected the claim — which its staff accepted (*Staff Recommendation* at 66) — that the FCC's reciprocal compensation rules prevent an ILEC from assessing an ALEC charges for traffic the ILEC is required to transport outside of a local calling area. *See Sprint Arbitration Order* at 60. The Commission also found that requiring an ALEC to bear the costs of its interconnection decisions "is consistent" with the FCC's conclusion that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit." *Id.* (quoting *Local Competition Order*, 11 FCC Rcd at 15603, ¶ 199) (internal quotation marks omitted). The staff did not address this Commission's reading of that paragraph of the *Local Competition Order*, nor did it analyze any of this Commission's other determinations in the *Sprint Arbitration Order*.

Other state commissions have also found it reasonable and consistent with federal law to distinguish between ALECs' right to select a physical point of interconnection and the allocation of the financial responsibility for those choices. For example, the South Carolina Public Service Commission recently held that "[r]equiring AT&T to pay for the costs of its interconnection choices to offset the costs imposed by those interconnection choices on BellSouth is the fair and

[12] The FCC explained that, "because competing carriers ***must usually compensate incumbent LECs for the additional costs incurred*** by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect." *Id.* at 15608, ¶ 209 (emphasis added).

equitable solution."[13] That Commission further explained that, because "AT&T's interconnection choices require[] the transport of local calls from one local calling area to another local calling area where AT&T's POI is located," "AT&T has contributed to the need and costs of these facilities" and therefore "should pay for use of the facilities."[14] The North Carolina Utilities Commission likewise found that "it is equitable and in the public interest" to require AT&T "to compensate BellSouth for, or otherwise be responsible for, transport beyond the local calling area," when AT&T elects to "interconnect[] at points within the LATA but outside of BellSouth's local calling area from which traffic originates."[15]

US LEC raises a number of objections to Verizon's VGRIP proposal, none of which has merit.

First, US LEC contends (Petition at 6) that, under the FCC's rules, it is entitled to designate a single, "technically feasible" IP per LATA. This claim confuses the applicable standard for an ALEC's choice of physical POI with the standard for the allocation of costs caused by the ALEC's choice. As noted above, in the *Local Competition Order*, the FCC clearly limited the technical feasibility standard to the physical POI in holding that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection" point is "required to bear the cost of that interconnection." *Local Competition Order*, 11 FCC Rcd at 15603, ¶ 199.

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[13] Order on Arbitration, *Petition of AT&T Communications of the Southern States, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252*, Docket No. 2000-527-C, at 24 (S.C. PSC Jan. 30, 2001).

[14] *Id.*

[15] *See* Recommended Arbitration Order, *Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolinas, Inc., and BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996*, Docket Nos. P-140, Sub 73 & P-646, Sub 7, at 15 (N.C. Utils. Comm'n Mar. 9, 2001), *aff'd*, Order Ruling on Objections and Requiring the Filing of the Composite Agreement, Docket Nos. P-140, Sub 73 & P-646, Sub 7, at 5 (N.C. Utils. Comm'n June 19, 2001).

Furthermore, in approving Verizon's section 271 application in Pennsylvania, the Commission expressly rejected claims that interconnection agreement language distinguishing between the POI (physical connection) and IP (demarcation of financial responsibility) failed to comply with the FCC's rules. *See Pennsylvania Order*, 16 FCC Rcd at 17474-75, ¶ 100. In support of its claimed right, US LEC selectively quotes (Petition at 7) from the Third Circuit's recent decision in *MCI Telecommunications*. Although that Court held that an ALEC may choose only one POI (*not* IP) per LATA, subject to the constraint of technical feasibility, it expressly found that the Pennsylvania commission should "consider shifting costs" to an ALEC that selects a technically feasible POI that "prove[s] more expensive to Verizon." *MCI Telecomms.*, 271 F.3d at 518. Verizon's VGRIP proposal complies with the FCC's rules, as US LEC may select one POI per LATA, at any technically feasible location, as long as it bears the cost of that interconnection through the establishment of virtual IPs.

Second, US LEC asserts that requiring it to bear any of the costs of transporting traffic to its chosen POI is inconsistent with Rule 51.703(b). *See* US LEC Petition at 9-10; 47 C.F.R. § 51.703(b). As noted above, this Commission has rejected that very argument. *See Sprint Arbitration Order* at 60. Section 51.703(b) provides that one LEC may not assess charges on another carrier for traffic that originates on the LEC's network. However, under VGRIP, Verizon is charging the ALEC as a transport vendor, not as an originating carrier, which is consistent with section 51.703(b). Furthermore, US LEC's claim that this section prohibits VGRIP is inconsistent with the FCC's clear statement that an ALEC that chooses a technically feasible, but expensive POI is responsible for the costs imposed on the ILEC by the decision. *See Local Competition Order*, 11 FCC Rcd at 15603, ¶ 199; *see also id.* ¶ 209. Finally, in a recent Notice of Proposed Rulemaking, the FCC noted that US LEC's interpretation of section

51.703(b) "may lead to the deployment of inefficient or duplicative networks" by "forcing the [ILEC] to provision extra transport" and sought comment on national rules to govern the allocation of costs when an ILEC is required to transport calls to an ALEC's POI that is outside the local calling area.[16]

Third, US LEC contends that Verizon's proposed language requires it to alter its network architecture and to transition to collocation arrangements on 30 days' notice. *See* US LEC Petition at 9-10. US LEC misreads the relevant provisions of the agreement. As explained above, Verizon's VGRIP proposal gives US LEC the right to retain its current network architecture — where it accepts Verizon's originating traffic at a single POI per LATA — as long as it assumes financial responsibility for that traffic at Verizon's end offices through the establishment of virtual IPs. Notably, US LEC does not point to any specific language in the proposed agreement that would enable Verizon to force US LEC to establish collocation arrangements.

Fourth, US LEC asserts that the third option under VGRIP — where it takes financial responsibility for traffic at virtual IPs as if it were collocated at Verizon's end offices — penalizes US LEC for refusing to establish additional physical POIs. *See* US LEC Petition at 10. As noted above, this Commission, along with numerous state commissions and federal courts, has found this option is not a penalty, and instead provides a reasonable allocation of the costs resulting from an ALEC's decision not to invest in the facilities necessary to establish multiple physical POIs.

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[16] *See* Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610, 9650-52, ¶¶ 112-114 (Apr. 27, 2001).

Issue 2: **(Interconnection Attachment, Section 7.1.1.2)**

Issue:	Should Verizon be permitted to force US LEC to designate its collocation site at a Verizon end office as the US LEC-IP where Verizon will deliver its traffic?
US LEC position:	No. Under the Act, US LEC has the right to determine where the IP(s) will be established, and as stated in Issue 1, US LEC's switch serves as US LEC's IP in the same manner as Verizon's switches serve as Verizon's IPs.
Verizon's Alleged Position:	Yes.
Verizon's Actual Position:	Under Verizon's proposal, US LEC would not be forced to designate a collocation site at a Verizon end office as a POI/IP. However, if US LEC, which is not currently collocated in any Verizon end office, chooses to establish such a collocation arrangement but not to designate the collocation site as a POI/IP, it should nonetheless become financially responsible for traffic at that point, through the establishment of a virtual IP at that end office.

This issue is based on US LEC's misreading of Verizon's proposed section 7.1.1.2. Although Verizon may request that a US LEC collocation site at a Verizon end office serve as both the POI and the IP for the local calling area where that end office is located, US LEC may refuse to have that collocation site serve as a POI to which Verizon will deliver originating traffic. If US LEC does so, however, that end office will be treated as a virtual IP, as though US LEC had constructed the facilities necessary for the delivery of traffic by Verizon at that point.[17]

Under the correct reading of this section, it is clear there is no merit to US LEC's assertion (Petition at 12) that it could be required to duplicate Verizon's network or otherwise alter its chosen network structure. Furthermore, for the reasons discussed above, requiring US

[17] US LEC (Petition at 11) repeats its mistaken claim that it has the right to select its IPs subject only to the requirement of technical feasibility.

LEC to bear some of the costs of its refusal to accept Verizon's originating traffic at a collocation site is perfectly reasonable.

Finally, US LEC has no standing to dispute this provision. Section 7.1.1.2 applies only when an ALEC elects to collocate in a Verizon end office. US LEC states here that it "does not currently collocate with Verizon." US LEC Petition at 9. US LEC has recently informed the North Carolina Utilities Commission that collocation is not part of its network architecture, that it does not currently collocate with Verizon in any state, and that it merely "is possible" that it will do so in the next few years.[18] There is no reason for the Commission to entertain US LEC's claims with respect to this provision when US LEC has not shown that section 7.1.1.2 will affect it in any way.

Issue 3: (Glossary, Section 2.75; Additional Services Attachment, Section 5.1; Interconnection Attachment, Section 7.3.7)

Issue:	Is US LEC entitled to reciprocal compensation for terminating "Voice Information Services" traffic?
US LEC position:	Yes. The traffic that Verizon now seeks to define as Voice Information Services Traffic fits completely within the definition of Reciprocal Compensation Traffic that is eligible for reciprocal compensation.
Verizon's Alleged Position:	No.
Verizon's Actual Position:	No. "Voice Information Services" traffic is defined to include only traffic that is not subject to reciprocal compensation under current law.

[18] Rebuttal Testimony of Frank R. Hoffmann, Jr., *Petition of US LEC of North Carolina, Inc. for Arbitration with Verizon South, Inc. Pursuant to 47 U.S.C. § 252(b) of the Communications Act of 1996, as Amended by the Telecommunications Act of 1996*, Docket No. P-561, Sub 19, at 3 (N.C. Utils. Comm'n filed May 24, 2002); *see* Direct Testimony of Frank R. Hoffmann, Jr., *Petition of US LEC of North Carolina, Inc. for Arbitration with Verizon South, Inc. Pursuant to 47 U.S.C. § 252(b) of the Communications Act of 1996, as Amended by the Telecommunications Act of 1996*, Docket No. P-561, Sub 19, at 8 (N.C. Utils. Comm'n filed Apr. 12, 2002).

Under current law, reciprocal compensation does not apply to "interstate or intrastate exchange access, information access, or exchange services for such access." 47 C.F.R. § 51 701(b)(1) Both parties have agreed to language that tracks that rule precisely: the proposed agreement excludes "interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access." In addition, to avoid later disputes, Verizon's proposed agreement identifies seven specific types of telecommunications traffic that are subject to that general exclusion. US LEC takes issue with only one – "Voice Information Services" traffic – but, as that term is defined in the proposed agreement, such traffic is not subject to reciprocal compensation.

As the FCC made clear in the *ISP Remand Order*, reciprocal compensation does not apply to "traffic destined for an information service provider" because such traffic falls into the category of "information access." *ISP Remand Order*, 16 FCC Rcd at 9171, ¶ 44.[19] The FCC further held that "Congress's reference to 'information access' in section 251(g) was intended to incorporate the meaning of the phrase 'information access' as used in the AT&T Consent Decree" set forth in *United States v. AT&T*.[20] The Consent Decree defined "information access" as "the provision of specialized exchange telecommunications services . . . in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services."[21] This

[19] As noted above, although the D.C. Circuit Court of Appeals remanded the *ISP Remand Order* to the FCC, the court explicitly declined to vacate the order, which thus remains binding federal law. *See supra note* 4; *see also* Memorandum Opinion and Order, *Joint Application of BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket 02-35, FCC 02-147, ¶ 272 (rel. May 15, 2002) (rules adopted in the *ISP Remand Order* "remain in effect").

[20] *See ISP Remand Order*, 16 FCC Rcd at 9171, ¶ 44 (citing *United States v. AT&T*, 552 F. Supp. 131, 196, 229 (D.D.C. 1982)).

[21] *See ISP Remand Order*, 16 FCC Rcd at 9171, ¶ 44.

definition includes origination, termination, transmission, switching, forwarding and routing of the type of intrastate information services at issue in this arbitration. The fact that the information at issue is voice information, rather than electronic data, is simply beside the point.

Nor should such traffic be subject to a reciprocal compensation scheme. Like ISP-bound traffic, information services traffic is exclusively one-way, and the same opportunity for regulatory arbitrage described by the FCC in its Order exists when carriers recover the cost of terminating traffic from originating carriers rather than from their own voice information service provider customers.[22] Moreover, providers of pay-per-call information services typically recover fees from Verizon's end-user customers in exchange for the services they provide. The fees that the service provider assesses for the call should include the costs of transport and termination. There is no reason why Verizon should have to subsidize information services calls by paying those costs out of its own pocket. Indeed, it is Verizon who should be compensated for providing access to its network for delivery of such pay-per-call information services traffic to US LEC's information service provider customers.

Issue 4: (Additional Services Attachment, Section 5.3)

Issue:	Should US LEC be required to provide dedicated trunking at its own expense for Voice Information Service traffic that originates on its network for delivery to Voice Information Service providers served by Verizon?
US LEC position:	No.
Verizon Alleged Position:	Yes.

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[22] *See ISP Remand Order*, 16 FCC Rcd at 9181-82, ¶ 68 (describing the inaccurate price signals inherent in a calling party's network pays regime, giving carriers "the incentive to seek out customers, including but not limited to ISPs, with high volumes of incoming traffic").

Verizon's Actual Position: Yes.

At issue here is the arrangement that should apply in situations where Verizon serves information services providers that are connected to Verizon's network using 900 or 976 numbers. Those particular "NXX" codes are accessible throughout the LATA without a toll charge to the originating caller. When Verizon end-users call those numbers. Verizon may bill those end-users on behalf of the information service provider. If an ALEC end-user calls such a number, the ALEC must pay Verizon for all amounts due to the information service provider. Thus, if the ALEC chooses to send traffic to Verizon's information services platform (all ALECs have the option not to), then it must either bill and collect from its own end users under contract with Verizon, or bear the charges. For that reason, Verizon must be able to block access to such numbers; moreover, Verizon also wants to ensure that it does not bill reciprocal compensation for such traffic, since it is already compensated for termination of such calls. Separate trunking is essential to ensure that traffic from ALEC end users to information service providers served by Verizon remains subject to adequate controls.

Accordingly, the Commission should adopt Verizon's proposed language.

Issue 5: (Glossary, Section 2.56; Interconnection Attachment, Sections 2.1.2, 8.5.2, and 8.5.3)

Issue:	Should the term "terminating party" or the term "receiving party" be employed for purposes of traffic measurement and billing over interconnection trunks.
US LEC position:	The term "terminating party" should be utilized, consistent with the plain language of Section 251(b)(5) and other sections of the Agreement.
Verizon's Alleged Position:	The term "receiving party" should be utilized.

Verizon's Actual Position: The term "receiving party" is more accurate and should be used.

US LEC's insistence on litigating this issue has nothing to do with vindicating any of its substantive rights under the 1996 Act, nor even anything to do with clarifying the parties' obligations Instead, US LEC's position appears to be an effort to refight old battles over the payment of reciprocal compensation on Internet-bound traffic, perhaps with an eye toward gaining an advantage in some future skirmish. The Commission should not indulge US LEC's gamesmanship.

The FCC's original reciprocal compensation regulations provided that carriers were required to pay reciprocal compensation only on "local traffic," defined as traffic that "originates and terminates within a local service area." 47 C.F.R. § 51.701(b)(1). As this Commission is aware, disputes soon arose over whether Internet-bound traffic "terminates" at the ISP's premises or whether it "terminates" at the distant website that is the end-point of the Internet-bound communication. In its 1999 *ISP Declaratory Ruling*, the FCC concluded that calls to ISPs do not terminate at the ISP's local server, but instead "continue to the ultimate destination or destinations, specifically at a[n] Internet website that is often located in another state." Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 14 FCC Rcd 3689, 3697, ¶ 12 (1999) ("*1999 ISP Declaratory Ruling*"), *vacated, Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (2000). For this reason, among others, the FCC determined that ISP-bound traffic was not subject to reciprocal compensation under its existing rules. That determination was subsequently vacated by the D.C. Circuit Court of Appeals.

After remand, the FCC determined that its use of the term "local traffic" to define parties' reciprocal compensation obligations under section 251(b)(5) had "created unnecessary

ambiguities" and it abandoned its former approach. *ISP Remand Order*, 16 FCC Rcd at 9173, ¶ 46. Accordingly, under present law, the question whether traffic "terminates" at the ISP's premises does not govern parties' obligations under section 251(b)(5) and the FCC's implementing rules. At the same time, because existing contracts continue to reflect the language of prior law, the question where traffic "terminates" remains an issue that both parties may continue to litigate.

Verizon agrees with the FCC's conclusion that Internet-bound traffic does not terminate at the ISP's premises – if it did, then the calling party would never be able to communicate with the Internet at all. But the Commission need not agree with Verizon to find that Verizon's proposed language is reasonable. Whether or not Internet-bound traffic terminates at the ISP, there can be no doubt that such traffic is received by the carrier serving the ISP for delivery to the ISP. Accordingly, there can be no dispute that the term "receiving party" accurately and unambiguously describes the carrier receiving the traffic at issue. That language is used consistently and clearly throughout the proposed agreement, and US LEC does not even claim that it finds the language confusing. Nor can it be claimed that Verizon has attempted to gain any collateral advantage by using this terminology. Verizon uses the same neutral term – receiving party – to describe the carrier receiving both reciprocal compensation traffic and Measured Internet Traffic. US LEC is pursuing an empty dispute over terminology in the hopes of gaining a litigation advantage elsewhere. The Commission should adopt Verizon's proposed language.

Issue 6: **(Glossary, Section 2.56; Interconnection Attachment, Section 7.2)**

Issue: (A) Should the parties be obligated to compensate each other for calls to numbers with NXX codes associated with the same local calling area?

(B) Should Verizon be able to charge originating access to US LEC on calls going to a particular NXX code if the customer assigned the NXX is located outside of the local calling area associated with that NXX code?

US LEC position: (A) The determination of whether a call is rated as local or toll for billing purposes is based upon the NXX of the originating and terminating numbers. This practice must be maintained such that calls between an originating and terminating NXX, associated with the same local calling area, should continue to be rated as local. Under any scenario, Verizon is responsible to bring traffic originated on its network to the US LEC-IP. The associated cost to Verizon does not change based upon the location of US LEC's customers;

(B) Verizon should not be allowed to charge US LEC originating access for calls to an NXX code if the customer assigned that NXX is located outside of the local calling area to which that NXX is assigned.

Verizon's Alleged Position: (A) Verizon should be allowed to revise the industry practice of comparing the NXX codes of the calling and the called party in order to rate a call as local or toll;

(B) Furthermore, Verizon should be allowed to impose originating access charges on a call going to an NXX code if the customer assigned that code is located outside of the local calling area associated with that NXX code.

Verizon's Actual Position: (A) Reciprocal compensation does not apply to interexchange traffic, defined by reference to the actual originating and terminating points of the complete end-to-end communication;

(B) Intrastate and interstate access charges are governed by the parties' tariffs.

The issue presented is whether interexchange traffic is subject to reciprocal compensation when the calling party and the called party are assigned NPA-NXX codes associated with the same local calling area. This Commission has already resolved this issue in Verizon's favor: it recently confirmed that virtual NXX or "VFX" traffic is not subject to reciprocal compensation because it does not physically terminate in the same local calling area in which it originates.[23] That Commission squarely held that compensation for traffic depends on the end points of the call – that is, where it physically originates and terminates – not on "the NPA/NXXs assigned to the calling and called parties."[24] The Staff recommended, and the Florida Commission agreed, that "calls to virtual NXX customers located outside of the local calling area to which the NPA/NXX is assigned are not local calls for purposes of reciprocal compensation."[25] That resolution was correct: the FCC's rules directly provide that interexchange traffic is not subject to reciprocal compensation.

The FCC's rules have always made clear that reciprocal compensation under 47 U.S.C. § 251(b)(5) "do[es] not apply to the transport and termination of interstate or intrastate interexchange traffic." Local Competition Order, 11 FCC Rcd at 16013, ¶ 1034. The FCC confirmed that result in its April 2001 ISP Remand Order, in which it held that reciprocal compensation does not apply to "interstate or intrastate exchange access, information access or exchange services for such access." 47 C.F.R. § 51.701(b)(1). The FCC has made clear that this exclusion covers all interexchange communications: whenever a LEC provides service "in order to connect calls that travel to points – both interstate and intrastate – beyond the local exchange,"

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[23]*See* Staff Memorandum, *Investigation into Appropriate Methods to Compensate Carriers for Exchange Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Docket No. 000075-TP, Issue 15 at 68, 71, 96 (Fla. PUC Nov. 21, 2001) ("Reciprocal Compensation Recommendation"), approved at Florida PUC Agenda Conference (Dec. 5, 2001).

[24]*Id.* at 88-92; Florida PUC Agenda Conference Approval, Issue 15 (Dec. 5, 2001).

it is providing an access service. ISP Remand Order, 16 FCC Rcd at 9168, ¶ 37. "Congress excluded all such access traffic from the purview of section 251(b)(5)." *Id.*

"Virtual FX" traffic – that is traffic sent to a "Virtual NXX" – is, by definition, interexchange traffic. A "Virtual NXX" is an exchange code assigned to end users physically located in exchanges other than the one to which the code was assigned. Such a service would be valuable to customers that expect to receive a high volume of incoming calls from ILEC customers within the exchange of that NXX, because the CLEC's "Virtual NXX" arrangement allows such calls to made without the imposition of a toll charge on the calling party. In one common arrangement, a CLEC assigns an ISP that is collocated with its switch telephone numbers in every local calling area within a broad geographic area – a LATA, or an entire state, for example. The ISP would then be able to offer all of its subscribers a locally rated access number without having to establish more than a single physical presence in that geographic area. If the ISP had been assigned an NXX associated with the calling area in which it is actually located, many of those calls would be rated as toll calls.

Verizon has two fundamental objections to US LEC's manipulation of such arrangements. First, as described above (*see* Issue 1), US LEC is seeking to require Verizon to accept financial responsibility for transporting traffic to a single point in the LATA, designated for US LEC's convenience. In the case of interexchange traffic, if US LEC assigns NXX codes on a geographically relevant basis, Verizon can at least collect the toll charges due on such traffic from its end-users, because the call will be rated as a toll call. But if US LEC assigns a virtual NXX corresponding to the caller's local calling area even though the called party is collocated with US LEC's switch in another exchange – as in the ISP example above – Verizon

[25]Reciprocal Compensation Recommendation at 94.

is required to transport the traffic across the LATA and is deprived of the compensation ordinarily associated with the call.[26] US LEC charges its customers for virtual FX service while Verizon does almost all the work and bears the bulk of the costs. That is entirely unfair.

US LEC not only attempts to force Verizon to bear an unfair share of the costs of these calls. US LEC even attempts to require Verizon to pay US LEC intercarrier compensation on such calls, even though Verizon generally receives no incremental revenue and is instead deprived of toll charges which would ordinarily apply. By contrast, US LEC *does* receive compensation for such calling arrangements from its customer, and is thus seeking double recovery for the same call.

As noted above, that result is simply inconsistent with the FCC's binding regulations and prior determinations of this Commission. US LEC's claim that NPA-NXX assignments should govern inter-carrier compensation is also contrary to decades of industry practice and sound regulatory policy. Before the widespread introduction of local competition following the adoption of the 1996 Act, the most important type of inter-carrier compensation were the access charges that interLATA long distance carriers paid to local telephone companies. Such inter-carrier compensation has always been governed by the actual originating and terminating points of the end-to-end call, not the NPA-NXX of the calling and called party.

For example, AT&T has offered customers interLATA FX service, described by the FCC as one "which connects a subscriber ordinarily served by a local (or "home") end office to a distant (or "foreign") end office through a dedicated line from the subscriber's premises to the home end office, and then to the distant end office." Memorandum Opinion and Order, *AT&T*

[26] That concern can be alleviated, but only if the Commission adopts Verizon's VGRIPs proposal, which ensures that each party bears an appropriate share of such transport costs.

Corp. v. Bell Atlantic-Pennsylvania, 14 FCC Rcd 556, 587, ¶ 71 (1998) ("*AT&T v. BA-PA*"), *recon. denied*, 15 FCC Rcd 7467 (2000). Using such an arrangement, an airline with a reservation office in Atlanta could provide customers in Tallahassee a locally rated number, but all calls would still be routed to Atlanta. The FCC ruled, in that situation, that AT&T was required to pay access charges for the Tallahassee end of that call – even though the call was locally rated for the caller, AT&T was still using access service to complete an interLATA call to the called party. *Id.* at 590, ¶ 80. The fact that the calling party and the called party were assigned NPA-NXX's in the same local calling area was totally irrelevant to the proper treatment of the call for inter-carrier compensation purposes.[27] To cite another example, when an interexchange carrier ("IXC") uses "Feature Group A" access to gain access to the local exchange, the caller first dials a seven-digit access number to reach the IXC, and then dials a password and the called party's area code and number to complete the call. Notwithstanding this dialing sequence, the service the LEC provides is considered *interstate* access service, not a separate local call, and the IXC must pay access charges.

Not only is US LEC's proposal contrary to law and industry practice, it is likewise inconsistent with sound regulatory policy, because US LEC and its customer do not bear the costs of an arrangement designed for their benefit. Traditionally, the basic local exchange charge has covered the cost of service *within the exchange*. If a user wishes to make a call outside the end-user's local calling area, the end-user must generally pay a toll charge, which the LEC either

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[27] US LEC's proposed language places absolutely no restriction on the location of the end-user to which the NPA-NXX is assigned. Accordingly, the end-user could be across the state, across the country, or even overseas. US LEC would demand reciprocal compensation for all such calls.

keeps (if it is providing the interexchange service) or receives a part of in the form of access charges. Some dialing arrangements – such as toll free 800 numbers and FX arrangements – allow the calling party to make an interexchange call without incurring the toll charges that would normally apply. But the LEC continues to be compensated for providing access to the local exchange – through access charges or payments by the FX subscriber for the dedicated connection to the foreign exchange.

In the case of Virtual FX traffic. US LEC wants to offer its customers the benefit of access to a foreign exchange without the necessity of deploying any facilities serving customers in that exchange. Whether or not that use of numbering resources is appropriate, it cannot be the case that US LEC should take money *away* from the subscribers in the local exchange rather than *contribute* to the support of the local exchange in this circumstance. Otherwise, Verizon and its subscribers will, in effect, be required to sponsor US LEC's provision of Virtual FX services to US LEC's subscribers. That results turns basic principles of telecommunications regulation on their head.

Notably, the issue whether US LEC should pay access charges when Verizon originates Virtual NXX interexchange traffic is not before the Commission in this proceeding. That issue is governed by Verizon's access tariff; indeed, US LEC has agreed to contract language embodying that result. *See* Agreement, Interconnection Attachment, § 8.2. The *only* issue is whether such traffic is subject to reciprocal compensation. For the reasons set forth above, it is not and should not be.

The vast majority of other state commissions to consider this issue have agreed with this Commission and held that reciprocal compensation does not apply to virtual NXX traffic because it does not physically originate and terminate in the same local calling area. These state

commissions include those in Connecticut,[28] Illinois,[29] Texas,[30] South Carolina,[31] Tennessee,[32] Georgia,[33] and Missouri.[34]

Other state commissions have restricted carriers' ability to establish virtual NXX codes in the first place. The Pennsylvania commission has required CLECs to assign its customers "telephone numbers with NXX codes that correspond to the rate centers in which the customers'

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[28] Decision, *DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities*, Docket No. 01-01-29, at unnumbered page 43 (Conn. Dept. of Pub. Util. Control Jan. 30, 2002) ("The purpose of mutual compensation is to compensate the carrier for the cost of terminating a local call" *and "since these calls are not local*, they will not be eligible for mutual compensation.") (emphasis added).

[29] Arbitration Decision, *TDS Metrocom, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Illinois Bell Telephone Co. d/b/a Ameritech-Illinois Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 01-0338, at 48 (Ill. Comm. Comm'n Aug. 8, 2001); Arbitration Decision, *Level 3 Communications, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Docket No. 00-0332 (Ill. Comm. Comm'n Aug. 30, 2001) ("FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation.").

[30] Revised Arbitration Award, *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Docket No. 21982, at 18 (Tex. PUC Aug. 31, 2000) (finding FX-type traffic "not eligible for reciprocal compensation" to the extent it does not terminate within a mandatory local calling scope).

[31] Order on Arbitration, *Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Docket No. 2000-516-C, at 7 (S.C. PSC Jan. 16, 2001) ("Applying the FCC's rules to the factual situation in the record before this Commission regarding this issue of 'virtual NXX,' this Commission concludes that reciprocal compensation is not due to calls placed to 'virtual NXX' numbers as the calls do not terminate within the same local calling area in which the call originated.").

[32] Interim Order of Arbitration Award, *Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00948, at 42-44 (Tenn. Regulatory Util. Comm'n June 25, 2001).

[33] Final Order, *Generic Proceeding of Point of Interconnection and Virtual FX Issues*, Docket No. 13542-U, at 10-12 (Ga. PSC July 23, 2001) ("The Commission finds that reciprocal compensation is not due for Virtual FX traffic.").

[34] Arbitration Order, *Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc., for Compulsory Arbitration of Unresolved Issues With Southwestern Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. TO-2001-455, at 31 (Mo. PSC June 7, 2001) (finding VFX traffic "not be classified as a local call").

premises are physically located."[35] And the Maine Public Utility Commission ordered a CLEC, Brooks Fiber, to return 54 NXX codes (*i.e.*, 540,000 telephone numbers) which it was using in a "Virtual NXX" capacity and rejected Brooks' proposed "Virtual NXX" service. The Commission found that Brooks had no facilities deployed in any of the locations to which the 54 NXX codes were nominally assigned. As such, it rejected Brooks' arguments that it was using the codes to provide local service, and concluded that Brooks' activities had "nothing to do with local competition."[36] It found that Brooks' "extravagant" use of the 54 codes "solely for the rating of interexchange traffic" was patently unreasonable from the standpoint of number conservation.[37] The Commission further observed that Brooks' likely reason for attempting to implement an "FX-like" service, instead of a permissible 800 or equivalent service, was Brooks' "hope that it might avoid paying Bell Atlantic for the interexchange transport service provided by Bell Atlantic."[38]

US LEC's claim that the FCC's decision in *TSR Wireless* provides any support for its position here is plainly incorrect. That decision merely ruled that incumbent LECs could not charge paging carriers for existing facilities used to deliver local traffic generated on the LEC's network to the paging carrier's switch. The FCC did not rule that any non-local traffic would be subject to reciprocal compensation, nor did it address any issues related to network architecture. Moreover, the question of whether the traffic at issue in *TSR Wireless* was interexchange traffic

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[35]Opinion and Order, *Petition of Focal Communications Corp. of Pennsylvania for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc.*, Docket No. A-310630F0002, at 10-11 (Pa. PUC Jan. 29, 2001).

[36]Order Requiring Reclamation of NXX Codes and Disapproving Proposed Service, *Investigation into Use of Central Office Codes (NXXs) by New England Fiber Comm., LLC d/b/a/ Brooks Fiber, etc.*, Docket Nos. 98-758 and 99-593, at 13, Tab 1 (Maine PUC June 30, 2000).

[37]*Id.* at 16.

[38]*Id.* at 12.

did not arise because, under the FCC's rules, traffic between CMRS providers and LECs is subject to reciprocal compensation so long as it originates and terminates *within the same Major Trading Area*, an area encompassing many exchanges. *See* 47 C.F.R. § 51.701(b)(2).

Issue 7: (Interconnection Attachment, Sections 8.1 and 8.1.1; General Terms and Conditions, Section 50.2)

Issue: What compensation framework should govern the parties' exchange and termination of ISP-bound traffic in the event the interim compensation framework set forth in the FCC's Internet Order is vacated or reversed on appeal?

US LEC position: In the event the interim compensation framework of the Internet Order ultimately is vacated or reversed on appeal, the parties should continue to compensate each other at the rates set forth in the FCC's Internet Order, but waive any other terms and conditions of that Order (e.g., the growth caps and new market restrictions).

Verizon's Alleged Position: In the event the interim compensation framework of the Internet Order is vacated or reversed on appeal, the parties should have to negotiate and, if necessary, arbitrate a new compensation framework.

Verizon's Actual Position: The parties' obligations are governed by federal law.

The *ISP Remand Order* has been remanded by the D.C. Circuit Court of Appeals but continues in effect pending further FCC proceedings. If past history is any indication, those proceedings are likely to be prolonged, so the rules adopted in the *ISP Remand Order* are likely to remain the law of the land for some time. To be sure, no one can anticipate with certainty what additional steps the FCC may take on remand. Such uncertainty is regrettable, but it is also inevitable. And Verizon simply will not agree to pay any compensation for ISP-bound traffic not

strictly required by federal law, which governs the issue. Accordingly, if there is a subsequent change of law on this point, the parties' obligations will conform to that change.

US LEC's proposed provision – which deals with the possible outcome of the court challenge to the *ISP Remand Order* – has thus been overtaken by events; moreover, the proposed terms, if applied, would lead to the wrong result. As noted, although the D.C. Circuit remanded the *ISP Remand Order* for additional explanation, it explicitly decided that the order should continue to govern parties' obligations. Accordingly, US LEC continues to be subject to growth caps and all other provisions of the *ISP Remand Order* rules under governing federal law. Yet, under US LEC's proposed provision the FCC's "growth cap and new market provisions" in the *ISP Remand Order* would be eliminated, contrary to governing federal law. That result is simply inconsistent with the explicit determination of the D.C. Circuit that the *ISP Remand Ord*er would remain in effect pending further proceedings on remand.

Indeed, in a prior arbitration, the Commission recognized that it currently has no authority to make any provision for inter-carrier compensation for Internet-bound traffic; the *ISP Remand Order* governs this issue.[39] Accordingly, the Commission should not entertain US LEC's proposal which has no basis in law. This Commission should reject US LEC's proposal; the parties' obligations should simply conform to those imposed by federal law.

Issue 8: (Pricing Attachment, Section 1.5)

Issue: Should Verizon be permitted to change its non-tariffed charges during the term of the agreement, or must such charges remain fixed for the entire term?

[39] *See* Final Order on Arbitration, *Petition by BellSouth Telecommunications, Inc. for Arbitration of Certain Issues in Interconnection Agreement with Supra Telecommunications and Information Systems, Inc.*, Docket No. 001305-TP, Order No. PSC-02-0413-FOF-TP, 78-79 (Fla. PSC March 26, 2002).

US LEC position:	Although tariffed charges may change during the term of the agreement due to changes in applicable tariffs, non-tariffed charges must remain fixed for the term of the agreement.
Verizon's Alleged Position:	Both tariffed rates and non-tariffed rates may be changed whenever Verizon alters its existing rates or adds new tariffed rate elements or services.
Verizon's Actual Position:	Applicable tariff charges take precedence over charges set out in the agreement; regulatory decisions modifying applicable charges should be incorporated into the agreement.

In negotiating the present agreement. Verizon has attempted to conform all of the agreement's terms to the requirements of applicable law. This principle applies with respect to pricing in particular: the rates set forth in the agreement are either based on generally applicable tariffs or reflect this Commission's rate-setting under section 252(d) of the Communications Act. In general, the pricing provisions of Verizon's agreements within a particular state are uniform, reflecting the generally applicable rates set by regulators in appropriate adversary proceedings.

For this reason, it is both fair and appropriate that, if the generally applicable charges for a particular service change, the charges under the agreement should change along with them. The principle that the charges for services provided to ALECs should be nondiscriminatory is deeply embedded both in the history of telecommunications regulation and in the 1996 Act in particular: federal law specifically requires that charges for interconnection unbundled network elements, services offered for resale, and collocation must be "just, reasonable, and *nondiscriminatory*." 47 U.S.C. § 251(c)(2), (3), (4), (6) (emphasis added); *see also id.* § 252(d)(1). By providing that applicable tariffs and other charges that are mandated or approved by the FCC or this Commission should supersede any charges set forth in the

agreement, Verizon's proposed language gives effect to the letter and the spirit of these nondiscrimination provisions. Otherwise, a carrier may be at a permanent advantage by the mere fortuity of when the carrier executed the governing interconnection agreement.

US LEC claims that Verizon's proposed language would give Verizon "unbridled discretion to modify its rates at will." Petition at 25. This is nonsense. Verizon is not free to modify its generally applicable charges unilaterally. Those charges will change in one of two ways. Either Verizon will publicly file a tariff with the appropriate state or federal commission – tariffs that do not go into effect until interested parties have had an opportunity to raise a challenge to them – in which case US LEC will have every opportunity to participate in the process of agency review. Or the industry or some segment of it will participate in a generic ratemaking proceeding of some other type; again, in that circumstance, US LEC would presumably be able to participate in the proceedings and ensure that such new rates are just, reasonable, and in conformance with applicable law.

Accordingly, US LEC has no legitimate reason to resist Verizon's proposed language, and Verizon has every reason to be concerned about arbitrage. So long as the rates contained in the interconnection agreement place an ALEC at an advantage, it will exploit those rates, but if a new generally applicable rate is lower, the ALEC will likely claim that it is entitled to purchase service out of the tariff, notwithstanding the existence of an agreement. In this way, an ALEC hopes to gain the benefit of rate reductions without facing any risk that other charges will increase under applicable law.

Faced with a comparable problem, the New York Public Service Commission ruled that "it is better to allow the new agreement between AT&T and Verizon to absorb tariff amendment and changes that are intended to implement substantial telecommunications policy initiatives

than to freeze it at its inception."[40] The PSC noted that "the tariff process promote[s] comparable interconnections for competitive carries and unbundled access on similar terms" and that "[t]he tariff process permits ample opportunity for interested persons to participate and seek changes (or even rejection) of proposed tariffs before they become effective."[41] The same reasoning argues in favor of adopting Verizon's proposed language here.

Issue 9: (General Terms and Conditions, Section 21)

Issue:	Should Verizon's proposed insurance requirements be adjusted to coverage levels that are consistent with the insurance that US LEC currently maintains?
US LEC position:	Yes.
Verizon's Alleged Position:	No.
Verizon's Actual Position:	US LEC should be required to maintain a commercially reasonable level of insurance.

US LEC does not challenge the principle that the agreement should impose a commercially reasonable level of insurance; it simply disputes what that level should be. The parties' differences are relatively narrow, and the insurance premiums at stake hardly merit US LEC's insistence on litigating the issue. For Verizon, which deals with dozens if not hundreds of ALECs, the principle that ALECs must carry adequate insurance is an important one. And the levels that US LEC has proposed are not adequate.

In particular, US LEC has proposed slashing the level of general commercial liability and commercial motor vehicle liability coverage in half, from $2,000,000 to $1,000,000. But even

[40] Order Resolving Arbitration Issues, *Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.*, Case 01-C-0095, at 5 (N.Y. PSC July 26, 2001).

[41] *Id.* at 4.

individuals frequently carry insurance above this level. And US LEC's proposal for employer's liability insurance – $100.000 per incident, $500,000 for the policy – is wholly insufficient. This is an area of increasing exposure. and the $2,000,000 level proposed by Verizon is reasonable. The Commission should accordingly adopt Verizon's position on this issue.

Respectfully submitted.

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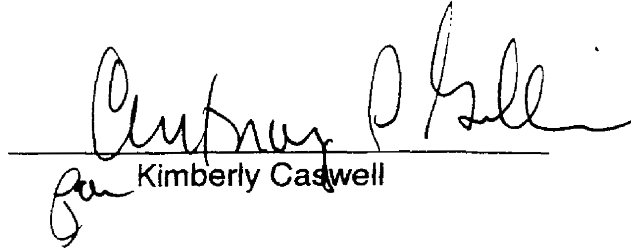
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Response of Verizon Florida Inc. to Petition for Arbitration Filed by US LEC of Florida Inc. in Docket No. 020412-TP were sent via U.S. mail on June 4, 2002 to the parties on the attached list.



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