BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.	DOCKET NO. 000075-TP (Phases II and IIA) ORDER NO. PSC-02-1248-FOF-TP ISSUED: September 10, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER ON RECIPROCAL COMPENSATION

BY THE COMMISSION:

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TABLE OF CONTENTS

I. CASE BACKGROUND

On January 21, 2000, this docket was established to investigate the appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996 (the Act). An administrative hearing regarding issues delineated for Phase I of this docket was conducted on March 7 - 8, 2001. In accordance with Order No. PSC-00-2229-PCO-TP, issued November 22, 2000, as modified by Order No. PSC-01-0863-PCO-TP, issued April 5, 2001, post-hearing briefs were filed on April 18, 2001. Thereafter, on April 19, 2001, the Federal Communications Commission (FCC) released its decision in FCC Dockets Nos. 96-98 and 99-68 on matters regarding intercarrier compensation for telecommunications traffic to Internet Service Providers that had been remanded to the FCC for further determination by the Court of Appeals for the District of Columbia Circuit. On April 27, 2001, Order No. PSC-01-1036-PCO-TP was issued requiring all parties in this proceeding to file supplemental post-hearing briefs addressing the decision of the FCC in Dockets Nos. 96-98 and 99-68 (FCC Order) within 10 days of the issuance of the FCC's Order memorializing the April 19, 2001, decision. On that same day, the FCC Order was memorialized in Docket Nos. 96-98 and 99-68.

On May 2, 2001, AT&T Communications of the Southern States, Inc., TCG of South Florida, Global NAPS, Inc., MediaOne Florida Telecommunications, Inc., Time Warner Telecom of Florida, LP, Florida Cable Telecommunications Association, Inc., Allegiance Telecom of Florida, Inc. and the Florida Competitive Carriers Association (collectively "Joint Movants") filed a Joint Motion for Extension of Time to File Supplemental Post Hearing Brief. Order No. PSC-01-1094-PCO-TP, issued May 8, 2001, granted the Joint Movants' Motion for Extension of Time.

On March 27, 2002, the parties filed a Joint Stipulation, suggesting we defer action on the issues raised in Phase I of this docket. In support of this proposal, the parties stated that on April 27, 2001, the FCC issued its ruling in the case of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Order on Remand and Report and Order (*ISP Remand Order*), FCC 01-131. The

parties asserted that the *ISP Remand Order* established certain nationally applicable rules regarding intercarrier compensation for ISP-bound traffic. Therein, the parties contended that the FCC had asserted jurisdiction over ISP-bound traffic and hence, we should decline to issue a ruling on the issues in Phase I, which addresses reciprocal compensation for ISP-bound traffic. The parties asserted that although the *ISP Remand Order* is under court review, it had not been stayed and was, therefore, binding.

On May 7, 2002, we issued Order No. PSC-02-0634-AS-TP, approving the Joint Stipulation, but leaving open the docket pending the resolution of issues to be addressed in Phase II of this proceeding. A hearing was conducted on July 5, 2001, concerning the Phase II issues dealing with non-ISP reciprocal compensation matters.

On December 5, 2001, a special agenda conference was held to consider issues designated for resolution in Phase II of this docket (Issues 10-19). At the special agenda conference, we reached decisions on Issues 10, 12, 14, 15, 16, 18, and 19 and deferred decisions on Issues 13 and 17, and set the deferred issues for hearing. Our decisions on Issues 10, 12, 14, 15, 16, 18, and 19 were not memorialized in an order pending final decisions on Issues 13 and 17, for which our staff was directed to schedule a one-day hearing to gather more evidence. A prehearing conference was held April 19, 2002, on the two issues that comprise Phase IIA. At the prehearing, it was determined that testimony previously filed in Phase II of this proceeding would be refiled for informational purposes, and the witnesses sponsoring testimony for Phase II would not be susceptible to cross-examination. A hearing was conducted on May 8, 2002.

This Order addresses the issues identified for Phase II and IIA of this docket.

II. JURISDICTION

The issue to be addressed is whether or not we have jurisdiction to specify rates, terms and conditions governing compensation for transport and delivery or termination of traffic pursuant to the Section 251 of the Act, the FCC's rules and orders, and Florida Statutes. We believe that we have jurisdiction to

establish rates, terms and conditions governing compensation for transport and delivery or termination of traffic pursuant to the FCC's rules and policies, the Act and the Florida Statutes. We also believe that pursuant to Section 120.80(d), Florida Statutes, that in implementing the Act, we have authority to employ procedures consistent with the Act.

There appears to be no significant disagreement among the parties that we have jurisdiction to implement the rates, terms and conditions of intercarrier compensation mechanisms for intrastate traffic subject to Section 251(b)(5) of the Act, so long as such rates, terms and conditions are not inconsistent with the rules and orders of the FCC governing such intercarrier compensation. Verizon states that we have jurisdiction to adopt a reciprocal compensation scheme for local traffic subject to Section 251(b)(5) of the Act, but explains that the FCC has undertaken a rulemaking process to establish a compensation methodology. Verizon contends that the FCC's *Remand Order* confirms that internet-bound traffic is not subject to reciprocal compensation obligations under Section 251 of the Act. Therefore, Verizon requests that we refrain from making a decision regarding intercarrier compensation.

In its posthearing brief, Sprint asserts that we have authority to specify rates, terms and conditions pursuant to Sections 364.161 and 364.162, Florida Statutes. However, Sprint notes that the *ISP Remand Order* has a significant impact on our authority in this proceeding, but it fails to provide an analysis of the extent of this impact. Further, the Joint ALECs assert that, unlike the Act, the Florida Statutes do not distinguish between interconnection and transport and termination of traffic and conclude that both are subsumed in the broad term of "Interconnection." However, the Joint ALECs assert that the *ISP Remand Order* declared that ISP-bound traffic is not "telecommunications" within the meaning of Section 251(b)(5) of the Act and thus not subject to the Act's reciprocal compensation provisions." We note that although the *ISP Remand Order* does indicate that our jurisdiction has been narrowed in the context of determining rates for ISP-bound traffic, we can specify rates, terms and conditions governing compensation for transport and delivery or termination of traffic consistent with Section 251 of the Act. We believe that pursuant to Sections 364.161 and 364.162,

Florida Statutes, we have authority to establish the rates, terms and conditions of interconnection agreements.

Conclusion

Based on the foregoing, we find that the we have jurisdiction to specify rates, terms and conditions governing compensation for transport and delivery or termination of traffic pursuant to Section 251 of the Act, FCC's rules and orders and Sections 364.161 and 364.162, Florida Statutes, so long as not otherwise inconsistent with the FCC rules and orders and the Act. Further, we find that Section 120.80(d), Florida Statutes, authorizes us to employ procedures necessary to implement the Act.

III. TANDEM INTERCONNECTION RATE

A. Compensation

The issue to be addressed is whether an ALEC is entitled to be compensated at the ILEC's tandem interconnection rate. We believe this issue has been largely resolved by the FCC's clarification in its recent NPRM. Specifically, the FCC has rendered the ILEC argument of a two-prong test moot by stating that Rule 51.711 requires only geographic comparability. However, we believe that although Rule 51.711 only requires geographic comparability, the FCC clearly stated in ¶1090 of FCC 96-325 that states shall consider the functionality of an ALEC's network when determining if the tandem rate should apply. Paragraph 1090 states in part:

> states shall...consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminated on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch.

We believe the language in ¶1090 suggests that there are two scenarios by which an ALEC may be entitled to the tandem rate for reciprocal compensation: similar functionality or geographic comparability. We agree with Sprint witness Maples that there is no linkage between these two scenarios which would require an ALEC

to meet a two-prong test, but rather an either/or application of these two scenarios is appropriate.

While the FCC did mention in its NPRM that the language in ¶1090 regarding "functional equivalency" has caused some confusion, it did not retract this language.[1] The FCC merely clarified that Rule 51.711 requires only geographic comparability. Therefore, we believe that pursuant to ¶1090 of FCC 96-325, similar functionality is still a consideration when determining if an ALEC is entitled to the tandem rate. We agree with Joint ALEC witness Selwyn that it is appropriate to consider the functionality of an ALEC's network in situations where it does not serve a geographic area comparable to that served by an ILEC tandem switch. In this way, an ALEC may qualify for the tandem rate if it actually performs tandem functions, regardless of the geographic area served.

Conclusion

We find that an ALEC is entitled to be compensated at the ILEC's tandem interconnection rate when its switch either serves a comparable geographic area to that served by an ILEC tandem switch, or performs functions similar to those performed by an ILEC tandem switch. We find that Rule 51.711 establishes that an ALEC need only show geographic comparability to be entitled to the tandem rate. However, we also find that ¶1090 of FCC 96-325 establishes similar functionality as a second scenario by which an ALEC may receive the tandem rate. We note that what actually constitutes "similar functionality" and "comparable geographic area" is also addressed in this Order.

B. Similar Functionality

The issue before us is to determine what constitutes "similar functionality" when determining whether an ALEC is entitled to the tandem interconnection rate. This criterion is identified in ¶1090 of the FCC's *Local Competition Order* (FCC 96-325), which states:

> We find that the "additional costs" incurred by a LEC when transporting and terminating a call that originated

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[1] NPRM at ¶105.

> on a competing carrier's network are likely to vary depending on whether tandem switching is involved. We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch. Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate. (emphasis added)

We believe that similar functionality is one of two possible criteria that would on its own entitle an ALEC to receive the tandem interconnection rate for the purposes of reciprocal compensation. The second criterion, comparable geographic area, is also be addressed in this Order. To be determined in this issue is what constitutes functionality similar to that of an ILEC tandem switch, thereby establishing a test for ascertaining whether an ALEC is entitled to the tandem rate under this criterion.

Approaching the issue of symmetrical reciprocal compensation, we recognize that there is an inherent problem in taking a compensation structure designed for a particular network architecture, and applying it to a different architecture. This becomes glaringly evident when attempting to determine what constitutes "similar functionality" for the purposes of applying the ILEC's tandem interconnection rate to an ALEC's network. Nevertheless, we are left with the task of doing just that. While the FCC has delegated to the states the responsibility of considering whether new technologies deployed in ALEC networks perform functions similar to those performed by an ILEC tandem switch, the FCC has provided no guidance as to what constitutes similar functionality. However, we note that the FCC did not require that the states make a finding in one direction or another,

but merely that states "shall also consider" whether new technologies perform similar functions. (FCC 96-325, ¶1090) It appears to be at our discretion to decide whether new technologies deployed by ALECs perform functions similar to those of an ILEC tandem switch, or whether they do not.

In determining whether an ALEC is entitled to the tandem rate under the similar functionality criterion, we are presented with two compelling arguments. One option presented by ALEC witnesses is an interpretation of similar functionality in terms of aggregating traffic from remote locations. WorldCom witness Argenbright contends that ALEC networks collect traffic from across many exchanges in various rate centers allowing the efficient switching and transporting of traffic originating and terminating among these exchanges and rate centers. ALECs also argue that functions performed by ALEC switches such as measuring and recording traffic detail, and aggregating calls to operator services platforms should entitle them to the tandem rate.

The second option presented by ILECs is a strict interpretation of similar functionality based upon the definition of tandem switching capability found in FCC Rule 51.319(c)(3). Under this interpretation, an ALEC switch would be required to provide trunk-to-trunk connectivity at an intermediate switch between two end offices. Although not citing Rule 51.319 specifically, Sprint witness Maples also contends that an ALEC switch must provide trunk-to-trunk switching to be entitled to the tandem rate.

The ALECs counter this argument by stating that the definition in Rule 51.319(c)(3) is intended to define the functionality that ILECs must provide as an unbundled network element (UNE). They contend that since ILEC tandems perform trunk-to-trunk switching, the tandem switching UNE must offer the same capability. However, they argue that the definition of tandem switching for unbundling purposes, in terms of the functions performed by the ILEC's network configuration, does not control what constitutes "similar functionality" in an ALEC's network that has a different technical configuration. We disagree. We believe that when determining similar functionality, the benchmark by which an ALEC's network functionality is to be measured is the ILEC tandem switching function. If FCC Rule 51.319(c)(3) defines the functionality of an

ILEC tandem switch, we believe it would stand to reason that this definition of tandem functionality would be controlling, regardless of the fact that it is pertaining to the tandem switching network element.

We do not believe that traffic aggregation by an ALEC network end office switch is similar to the tandem function of an ILEC tandem switch. In looking at an ILEC network, there are several points of traffic aggregation. Traffic is aggregated at remote terminals for transport to an end office. Traffic is aggregated at end offices for transport to a tandem switch. Traffic is aggregated at tandem switches for transport to other end offices. However, we believe an important distinction can be made between the traffic aggregation performed by an end office switch and that performed by a tandem switch. End offices aggregate traffic from end users, and deliver that traffic to either other end users or to a tandem switch. On the other hand, a tandem switch aggregates traffic from end offices for delivery to other end offices. Joint ALEC witness Selwyn explains that in the ALEC network configuration, the transport function is carried out on the "line side" of the switch. In other words, the traffic is aggregated and transported to end users. We believe the switches deployed in an ALEC network perform functions similar to an ILEC end office switch, not a tandem switch. Therefore, we believe that the "new technologies" addressed in this proceeding do not perform functions similar to an ILEC tandem switch unless found to provide trunk-to-trunk connectivity.

We believe the definition of similar functionality to be applied when determining if an ALEC is entitled to the tandem rate should be trunk-to-trunk switching pursuant to FCC Rule 51.319(c)(3). We recognize the argument presented by WorldCom witness Argenbright when he states:

> a focus on technical definitions at the expense of the results places ALECs in the position of having to replicate the ILEC's tandem/end office network in order to "qualify" for tandem level compensation. Such an incentive toward the construction of inefficient networks is clearly not in the public interest.

However, we believe that an ALEC's incentive to construct a particular network should not be the receipt of reciprocal compensation at a particular rate; rather, ALECs should construct networks that will enable them to efficiently serve end users. In addition, we believe that the FCC established the "geographic comparability" criterion to enable an ALEC to receive the tandem rate when it doesn't actually perform tandem switching. We would also note that the FCC provided for asymmetrical compensation based upon the ALEC's own costs, if an ALEC can show that the costs it incurs in terminating traffic are greater than that provided for in the ILEC's tandem rate. (FCC 96-325, ¶1089 and ¶1091)

Conclusion

We find that "similar functionality" shall be defined as trunk-to-trunk switching when determining if an ALEC is entitled to the tandem interconnection rate pursuant to FCC 96-325, ¶1090. We find that the FCC has clearly defined the tandem switching function in Rule 51.319(c)(3) as the basic switch function of connecting trunks to trunks. Although the FCC also described the functions of call recording, routing calls to operator services, and signaling conversion features in Rule 51.319(c)(3), these functions alone will not qualify a switch as performing functions similar to an ILEC tandem switch.

C. Comparable Geographic Area

The issue before the us is to determine what constitutes a "comparable geographic area" when determining whether an ALEC is entitled to the tandem interconnection rate pursuant to 47 C.F.R. 51.711 (Rule 51.711). This rule states in part:

> Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate. (Rule 51.711 (a)(3))

Serving a comparable geographic area is one of two possible criteria that will on its own entitle an ALEC to receive the tandem interconnection rate for the purposes of reciprocal compensation.

The second criterion, similar functionality, has already been addressed in this Order. However, in this issue we are to determine what qualifies an ALEC's network as serving a comparable geographic area to that served by an ILEC tandem switch. We are presented with several options in the record.

When addressing the issue of defining "comparable geographic area" for the purposes of applying the ILEC's tandem interconnection rate to an ALEC's network, we believe there are several sticking points that must be addressed before any definition can be established. The first is the interpretation of the word "serves" contained in FCC Rule 51.711(a)(3). This rule states:

> Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate. (emphasis added)

The debate revolves around whether this word means that an ALEC is actually providing service to a particular number of geographically dispersed customers in that area, or simply capable of providing service to customers throughout the area.

BellSouth witness Ruscilli states that to demonstrate that its switch serves a comparable geographic area to an ILEC tandem, an ALEC must show that it has customers in each of the wire centers served by that ILEC tandem. In addition, he asserts that these customers must be evenly dispersed throughout that area as well. Witness Ruscilli argues that Rule 51.711 states that an ALEC must "demonstrate that it serves, which means to me not capable of serving, but is serving." BellSouth contends that the "[a]doption of a 'capable of serving' standard would render the FCC Rule meaningless, in that every switch is capable of serving virtually any point within the continental United States."

In support of its "actually serves" standard, BellSouth cites to our decision in the Intermedia/BellSouth arbitration.[2] In that order, we found that the maps submitted by Intermedia were insufficient to reasonably determine if Intermedia was actually serving the areas they had designated as local calling areas. (Order at p.14) We note that this decision was based upon the record in that proceeding. While we used the term "actually serving" in our order, we were not attempting to establish a standard by which companies must demonstrate a particular level of customer service within a geographic area. Rather, we were expressing the fact that a lack of evidence precluded us from determining if Intermedia was providing *any* service to those areas.

Witness Ruscilli acknowledges that a test that looks at the number of customers served, and their general dispersion throughout a particular area, is very subjective. He also concedes that BellSouth has proposed no test to determine a certain numerical threshold of customers that must be served to be entitled to the tandem rate. Verizon witness Beauvais agrees that an ALEC must be serving customers in a particular area, and that they should show some degree of geographic dispersion. However, he too concedes that he does not know how many customers an ALEC must serve to be entitled to the tandem rate.

WorldCom witness Argenbright argues that "a look at number of customers really is a test of marketing success and market penetration." In addition, he contends that the number of customers is not particularly directive as to whether or not an ALEC has investment and a network in place. Sprint witness Maples agrees. He too argues that looking at customer dispersion is basically evaluating success at marketing. He contends that "when you say actually serve, we believe that they are actually seeking customers through advertising or whatever for those geographic areas." Witness Maples explains:

> I think by advertising - the fact that they are advertising in that area also assumes that they have perhaps incurred costs, they could have collocated, they

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[2] Petition of BellSouth Telecommunications, Inc. for Section 252(b) Arbitration of Interconnection Agreement with Intermedia Communications, Inc., Docket No. 991854-TP, Order No. PSC-00-1519-FOF-TP, dated August 22, 2000.

> could have done - made whatever arrangements necessary to serve that area. So if they have incurred the costs, why not be able to recover it.

Witness Maples also emphasizes the subjective nature of basing geographic comparability upon customer information. He explains that we would be looking at marketing efforts and making a judgement based upon how successful an ALEC has been. He states that "today they have got 100 customers, tomorrow they have got 110. Today they are dispersed this way, tomorrow they disperse, you know, some other way." He argues that the problem with establishing very detailed specifics regarding customer information, is that they are going to change from day-to-day and week-to-week.

We believe this argument is very compelling. While basing a decision upon the quantity and dispersion of an ALEC's customers may seem at first glance to be a logical approach, we believe this customer information would be subject to flux in a competitive market. One week an ALEC may qualify, the next week it may not. We agree with ALEC witnesses that this approach would be more akin to basing the decision of whether an ALEC is entitled to the tandem rate on the ALEC's marketing success. We do not believe that this approach finds support in FCC Rule 51.711, which bases the determination upon whether an ALEC serves a comparable geographic area, not a comparable customer base within this area.

We also believe that establishing a geographic comparability threshold based upon the number and location of customers served would be administratively burdensome. With the churn that would presumably occur in a competitive market, an ALEC would be forced to track the location and quantity of customers served on a monthly basis to establish that it is entitled to bill the tandem rate. We agree with Sprint witness Maples that this would create an "administrative nightmare." We also emphasize the difficulty inherent in trying to establish a numeric benchmark. As ILEC witnesses concede, this is a very subjective approach in which they themselves could give no guidance. Therefore, we do not believe a determination of geographic comparability should be based upon ALEC customer information.

Without basing a decision upon customer information, what then does it mean for an ALEC to serve a comparable geographic area? We believe that the appropriate application of the term "serves" found in Rule 51.711 is that an ALEC should be found to serve a geographic area if it has prepared and offered a product throughout that area. Absent any direction from the FCC regarding what they meant by the word "serves" as contained in FCC Rule 51.711, we believe this more liberal interpretation is appropriate.

To loosely illustrate this application of the term "serves," we use the example of a landscaping business. A particular landscaping company could advertise that it serves Tallahassee and the surrounding area. Of course, this company may not have customers within every neighborhood of this area, but it is capable and prepared to serve anyone within each of these neighborhoods. In other words, this company has invested in the equipment necessary to serve any prospective customer within each of these neighborhoods. The number and location of customers that actually subscribe to this company's service will vary depending upon marketing success, but that does not change the fact that Tallahassee is the area it serves.

The next point for consideration is how an ALEC is to demonstrate that it serves a particular area without showing customer information. What information would be needed to verify that an ALEC is in fact capable and prepared to serve a comparable geographic area to that of an ILEC tandem switch? Sprint witness Maples suggests that ALECs be permitted to self-certify that they serve a comparable geographic area. However, we believe that this approach opens the door for further proceedings before us to determine the validity of each ALEC self-certification. As witness Maples acknowledged during cross examination, ILECs could object to every self-certification and bring those objections before us for a decision. Since this proceeding is intended to eliminate the need for us to repeatedly arbitrate this issue, we believe Sprint's self-certification approach would not be appropriate.

In their joint brief, certain ALECs have supported the method proposed by WorldCom witness Argenbright. Witness Argenbright suggests:

> An ALEC can make this demonstration by comparing the rate centers associated with the NPA/NXXs that the ALEC has opened in its switch for the origination and termination of local traffic to the tandem and end office combinations that the ILEC utilizes in serving those same rate centers.

Witness Argenbright explains that prior to obtaining NPA/NXXs for the purposes of opening a particular rate center, an ALEC must prepare its network to serve customers located in that particular rate center. He contends that since the network investment is carried out in advance of acquiring customers, a comparison based upon the NPA/NXXs obtained for the purpose of assigning numbers to customers should be sufficient to show that an ALEC has developed its network to serve the area in question.

While we acknowledge the logic in this argument, we believe a more liberal application of the term "serves" should be accompanied with a more detailed demonstration of network ability. While we believe it is appropriate for an ALEC to provide a list of the NPA/NXXs that an ALEC has opened to show that it is prepared to serve customers in specific rate centers, we also believe an ALEC should be required to make a showing of its actual capability to serve those customers.

We believe the first step is the provision of switching. Rule 51.711 provides that an ALEC is entitled to the tandem rate when its "switch" serves a comparable area to that of an ILEC tandem. Therefore, the first requirement is that an ALEC must deploy a switch and be performing a switching function. While Sprint witness Maples acknowledges that to seek reciprocal compensation an ALEC must deploy a switch, he also requests that UNE-P be included in the criteria established for demonstrating geographic comparability. We disagree. The UNE-P is a combination of UNEs (loop/port combination), in which the ALEC would utilize the ILEC's local switching as an unbundled network element. Since an ALEC would not be performing a switching function when providing service via UNE-P, we do not believe that the use of UNE-P should serve as a qualification for serving a comparable area pursuant to Rule 51.711.

We believe that the context of FCC Rule 51.711, and its supporting discussion in ¶1090 of FCC 96-325, is the function of an ALEC's network. Therefore, we believe an ALEC must show that it is serving the area through its own facilities, or a combination of its own facilities and UNEs leased from the ILEC. WorldCom witness Argenbright explained that one method of expanding geographic service areas is through the establishment of collocation arrangements within ILEC wire centers and the provision of transport facilities between the collocation arrangement and the ALEC switch. We believe this is a reasonable method of serving a geographic area pursuant to Rule 51.711. Witness Argenbright also describes the use of enhanced extended links (EELs) to reach geographic areas where an ALEC's network does not currently reach. Since the ALEC would still be providing its own switching under this approach, we believe this too is a reasonable method of serving a comparable geographic area pursuant to Rule 51.711.

While we believe the above-mentioned methods of serving a comparable geographic area should qualify an ALEC for the tandem rate, we do not want to limit an ALEC's ability to qualify for the tandem rate by serving a particular area through some other combination of its own switch/facilities and facilities leased from an ILEC. We merely hold these out as present examples of methods utilized to serve a comparable geographic area that would qualify an ALEC for the tandem rate pursuant to FCC Rule 51.711.

Finally, the issue of what actually constitutes a comparable geographic area must be established. BellSouth witness Ruscilli maintains that an ALEC must be serving customers in each of the exchanges served by its tandem switch. He contends that an ALEC must be serving the "same" geographic area as BellSouth's tandems. However, it appears that no other parties to this proceeding hold to such a strict interpretation. Verizon witness Beauvais states that the area served by the ALEC's switch should be "about the same physical area as that served by the ILEC's tandem switch." AT&T in its brief states that an ALEC "need only show that its switch is *capable of serving* an area *comparable to* the area served by the ILEC's switch, not that it is *currently serving* customers in an *identical* geographic area." (emphasis in original) Sprint witness Maples contends that comparable does not mean identical, but rather similar. Joint ALEC witness Selwyn agrees, stating that there is no requirement that an ALEC switch serve an identical area. He

argues that the ALEC switch should serve an area "essentially the same size" as that served by the ILEC tandem. We agree. We do not believe FCC Rule 51.711 requires an ALEC switch to serve "the same" area as that of an ILEC tandem switch, but rather a "comparable" area. We believe a geographic area comparable to that served by an ILEC tandem would be an area roughly the same size in comparison, but not necessarily identical.

Conclusion

We find that a "comparable geographic area," pursuant to FCC Rule 51.711, is a geographic area that is roughly the same size as that served by an ILEC tandem switch. We find that an ALEC "serves" a comparable geographic area when it has deployed a switch to serve this area, and has obtained NPA/NXXs to serve the exchanges within this area. In addition, we find that the ALEC must show that it is serving this area either through its own facilities, or a combination of its own facilities and leased facilities connected to its collocation arrangements in ILEC central offices.

IV. RESPONSIBILITIES OF CARRIERS AND COMPENSATION FOR TRANSPORT

The issue to be addressed is what are the responsibilities of an originating local carrier to transport its traffic to another local carrier and what should be the corresponding compensation. Before we address this issue we must consider what the point of interconnection designation will be.

A. Point of Interconnection Designation

The ILECs present three separate views on how POIs should be designated, only one of which we believe can be substantiated by the record of the proceeding.

BellSouth witness Ruscilli proposes shared decision making between an ILEC and an ALEC in determining where in a LATA parties will interconnect. If agreement is not possible, witness Ruscilli advocates the parties should be free to choose separate POIs. Further, witness Ruscilli argues, a difference exists between POIs and interconnection points, with the former existing for the physical joining of networks and the latter for determining

compensation. In its brief, Sprint describes witness Ruscilli's attempt to distinguish between a POI and an interconnection point as "a weak argument" that lacks support from FCC rules or orders. While we would have chosen a different adjective to describe witness Ruscilli's efforts to separate a POI from an interconnection point, we agree the argument suffers from a lack of corroborative citations. Similarly, witness Ruscilli offers nothing to support his position that an ILEC has a right to designate POIs in a LATA for the purpose of interconnection. Lacking a foundation in the Act, FCC orders, rules or decisions, we cannot adopt witness Ruscilli's proposals.

BellSouth's brief is unclear to us on this issue. In its brief, filed August 10, 2001, BellSouth states, "As noted, two FCC rules bear on this position. The first is 47 C.F.R. §51.702(b)..." We note that there is no §51.702(b) in the FCC rules. Based on the language of the rule cited in BellSouth's brief, we believe the reference is to Rule 51.703(b), which the brief quotes as follows, "a LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on a LEC's network." We are puzzled as to why BellSouth failed to note in its brief changes to 47 C.F.R. 51.703(b), which Commission staff counsel raised during cross examination of BellSouth witness Ruscilli during the hearing on July 5, 2001. The effect of the FCC's change is to eliminate the word "local" when it appears in the phrase "local telecommunications traffic." During the July 5, 2001, hearing, BellSouth witness Ruscilli said he had no opinion on the FCC changes and had not read them prior to the hearing.

Verizon witness Beauvais asserts that the designation of POIs between an ALEC and an ILEC in an interconnection agreement should be determined through negotiations. We agree with witness Beauvais that negotiation is preferable to confrontation in a regulatory climate. However, this issue exists in the context of a generic proceeding because we have been asked repeatedly to reconcile the interconnection differences between parties during a series of arbitrations (Docket Nos. 000649, WorldCom/BellSouth; 000731 AT&T/BellSouth; 000907 Level 3/BellSouth; 000828 Sprint/BellSouth). Additionally, as is the case with witness Ruscilli's argument, witness Beauvais offers no provision of the Act or any FCC order or rule that gives an ILEC the authority to designate a POI in a LATA.

In its brief, Sprint states "The ALEC has the right to designate the location of the POI for both the receipt and delivery of local traffic with the ILEC at any technically feasible location within the ILEC's network." Sprint maintains its position is consistent with FCC Order No. 96-325, ¶553, which witness Hunsucker testifies, creates an obligation for some build-out as a reasonable accommodation for interconnection.

Joint ALEC witness Selwyn contends the Act is deliberately asymmetrical on the issue of interconnection, creating obligations for ILECs that do not exist for ALECs in order to spur competition. Further, witness Selwyn argues, FCC rules prohibit the imposition of interconnection obligations by state commissions on ALECs, and the FCC has made clear that nothing in the Act can be construed to require a new entrant to interconnect at multiple locations in a LATA.

Level 3 witness Gates cites FCC Order No. 96-325, ¶172, to support his testimony that ALECs can select technically feasible POIs to lower their transport and termination costs, and the FCC's Order No. 00-238, ¶78, that affirms an ALEC need only designate one POI per LATA.

AT&T witness Follensbee contends the FCC Order granting Southwestern Bell interLATA authority in Kansas and Oklahoma makes clear that the ILEC must abide by single, technically feasible, interconnection points, chosen by the ALEC.

B. Originating Carrier Obligations

There appears to be little dispute among the parties that the Act imposes on all carriers the obligation of interconnecting to facilitate the flow of telecommunications traffic. It also appears that the parties do not dispute the obligation of an originating carrier to deliver its traffic to the network of a terminating co-carrier. The disputes emerge when the dialogue turns to where the exchange of traffic will take place, which has been addressed in the POI designation section of this Order, the distance the traffic will have to travel, which is addressed later in this Order, and what compensation -- if any -- applies, which is dealt with later in this recommendation.

C. Compensation Responsibilities

We observe that the disputes among the parties on the issue of compensation in this docket parallel issues on which the FCC is seeking comment on the development of a unified intercarrier compensation regime (Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 01-132). Specifically, ¶113 of the Notice reads as follows:

> If a carrier establishes a single POI in a LATA, should the ILEC be obligated to interconnect there and thus bear its own transport costs up to the single POI when the single POI is located outside the local calling area? Alternatively, should a carrier be required either to interconnect in every local calling area, or to pay the ILEC transport and/or access charges if the location of the single POI requires the ILEC to transport a call outside the local calling area? Further, if we should determine that a carrier establishing a single POI outside a local calling area must bear some portion of the ILEC's transport costs, do our regulations permit the imposition of access charges for calls that originate and terminate within one local calling area but cross local calling area boundaries due to the placement of the POI?

While the ultimate outcome of the FCC's proceedings may result in a seismic restructuring of intercarrier compensation rules, we believe such a conclusion may not be reached for a number of years.

We are persuaded by the record that an originating local exchange carrier is financially responsible for bringing its traffic to the POI in a LATA. AT&T witness Follensbee points out that Section 252(d)(2)(A) establishes a "just and reasonable" standard for compensation that requires "mutual and reciprocal recovery" by each carrier for costs associated with transport and termination. We cannot reconcile the compensation proposals advocated by BellSouth witness Ruscilli, Sprint witness Maples and Verizon witness Beauvais with the Act's requirement for "mutual and reciprocal recovery." If the ILEC proposals are adopted, a terminating carrier would be responsible for paying a portion of the transport costs of an originating carrier's traffic. We believe such a system would provide for asymmetrical recovery and,

in addition, would appear to be contrary to 47 C.F.R. 51.703(b), which prohibits a LEC from assessing charges on any other carrier for traffic originating on the LEC's network. Witness Ruscilli contends FCC Order No. 96-325, ¶199, which discusses technically feasible but expensive interconnections, justifies the compensation scheme he proposes. He acknowledges, however, that the same FCC order limits consideration of technical feasibility to operational or technical concerns and excludes the use of economic factors. Neither witness Beauvais nor witness Maples provide any additional cites to support their positions.

Witness Ruscilli also alludes to the portion of FCC Order No. 96-325, ¶209, that reads, "Moreover, 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." From this language, witness Ruscilli concludes the FCC expects an ALEC to pay the additional costs it causes ILECs to incur.

ALEC witness Selwyn contends the additional costs referred to by witness Ruscilli are "immeasurably small" and may be covered by the tandem reciprocal compensation rate.

Portions of the TSR Wireless Order cited by Level 3 witness Gates appear to substantiate AT&T witness Follensbee's position: The order places the financial burden of the cost of the facilities used to deliver traffic to a co-carrier on the originating carrier.

BellSouth witness Ruscilli's efforts to refute the application of the TSR Wireless Order in this proceeding appear to be contingent on his belief that the order must be read in context with 47 C.F.R. 51.701(b)(2) and 51.703(b). Witness Ruscilli testifies the effect of this interpretation is to require an ILEC to deliver its originated traffic without charge to the network of a co-carrier only if the POI is within the local calling area in which the call originates. As noted earlier in connection with POI issues in this Order, the definition in Rule 51.703(b) on which witness Ruscilli relies in his testimony and on which BellSouth relies in its brief was changed by the FCC in Order No. 01-131. Asked during the hearing if he had an opinion on what the FCC intended by these changes, witness Ruscilli responded, "No I don't.

This is the first time I have looked at this." As we noted earlier, BellSouth's brief does not reflect the FCC's change.

Conclusion

Point of Interconnection Designation

Neither BellSouth witness Ruscilli nor Verizon witness Beauvais provide any basis supporting the right of an ILEC to have authority in designating POIs. We specifically reject BellSouth witness Ruscilli's argument that a point of interconnection and an interconnection point are separate entities because the distinction lacks any discernable authority. Conversely, Sprint witness Hunsucker and ALEC witnesses Selwyn, Gates and Follensbee, offer specific citations to the Act, FCC orders and rules in support of their position. We find persuasive the extensive authority cited by Sprint witness Hunsucker and the ALEC witnesses, and therefore, we find that ALECs have the exclusive right to unilaterally designate single POIs for the mutual exchange of telecommunications traffic at any technically feasible location on an incumbent's network within a LATA. Nothing in this Order should be construed as an infringement on an ALEC's ability to negotiate this prerogative in exchange for other considerations.

Originating Carrier Obligations

The parties do not dispute their respective obligations under Section 251(a)(1) or Section 251(c)(2)(A) of the Act. Therefore, we find that an originating carrier has the responsibility for delivering its traffic to the point(s) of interconnection designated by the alternative local exchange company (ALEC) in each LATA for the mutual exchange of traffic.

Compensation Responsibilities

We find nothing in the record to support the imposition by us of the intercarrier compensation scheme advocated by the ILEC witnesses. We believe the concerns expressed by the ALEC witnesses are valid and that the mandated sharing of originating carrier transport costs proposed by the ILEC witnesses potentially conflicts with the requirements of Section 252(d)(2)(A) of the Act. Additionally, ALEC witnesses cite recent interpretations of the

FCC's rules at paragraph 34 of the TSR Wireless Order, and in FCC Order No. 01-132, ¶112, that appear to prohibit an originating carrier from imposing any originating costs on a co-carrier.

The undisputed testimony in the record is that the transport costs identified as being at issue in this proceeding are *de minimus*. Whether or not these costs are covered by an ILEC's local calling rates or tandem switching rates paid by ALECs is debatable, but not reconcilable by the record evidence.

Based on the foregoing, we find that an originating carrier is precluded by FCC rules from charging a terminating carrier for the cost of transport, or for the facilities used to transport the originating carrier's traffic, from its source to the point(s) of interconnection in a LATA. These rules require an originating carrier to compensate the terminating carrier for transport and termination of traffic through intercarrier compensation.

V. CONDITIONS FOR ASSIGNMENT OF NUMBERS AND COMPENSATION

In this issue we are presented with two matters for determination. First, we are to determine under what conditions carriers may assign telephone numbers to end users physically located outside the rate center in which the telephone number is homed. Second, we are to determine whether intercarrier compensation for calls to these numbers should be based upon the physical location of the calling and called parties or upon a comparison of the NPA/NXXs assigned to them. We note that due to the FCC's recent *ISP Remand Order*,[3] which removes ISP-bound traffic from state jurisdiction, this issue is limited to intercarrier compensation arrangements for traffic that is delivered to non-ISP customers. Sprint witness Maples explains that when you take ISP-bound traffic out of the equation, any real voice FX traffic is going to be minor. Nevertheless, no party to this proceeding has suggested that our decision on this issue is no longer needed. We merely note that the volume of traffic that will be subject to the our decision on this issue has potentially decreased considerably since this docket was originally opened.

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[3] Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, CC Docket Nos. 96-98 and 99-68; FCC 01-131 released April 27, 2001.

This issue centers around the ALECs' use of so-called "virtual NXXs." A virtual NXX is the practice of assigning NPA/NXXs to end users physically located outside of the rate center to which the NPA/NXX is homed. This is done in order to give virtual NXX customers a local dialing presence in rate centers other than the rate center in which they are physically located. In other words, end users located in a particular rate center can dial a NPA/NXX that is local to them, but it in fact connects them to a virtual NXX customer physically located outside of the rate center traditionally associated with that NPA/NXX.

Verizon witness Haynes contends that ALECs should not be permitted to assign numbers in such fashion unless FX service is ordered. One of witness Haynes' arguments in support of a prohibition on the use of virtual NXXs is number conservation. He contends that the practice of obtaining entire NXX codes for exchanges in which an ALEC has no customers appears to be a sheer waste of numbering resources. As an example, witness Haynes cites a decision in which the Maine Commission ordered the recall of 54 codes from which only a limited number of NPA/NXXs were assigned to customers through virtual NXX.

While we share the concern that entire NXX codes could be obtained for the purpose of actually utilizing only a small percentage of the numbers, there is no evidence in the record that this has taken place in Florida. We agree with Level 3 witness Gates that a decision to prohibit the practice of virtual NXXs should not be based upon evidence not in the record. However, if at some time in the future facts are presented that prove this practice is in fact adversely affecting number conservation in Florida, we believe that we should exercise our authority to reclaim NXX codes that have not been utilized to serve customers, or have only been utilized to serve a select few customers while leaving the remaining numbers from that code to lie dormant. We agree that in those situations, this practice would be a waste of numbering resources.

Level 3 witness Gates argues that ALEC virtual NXX service is a competitive response to ILEC FX service. He states that it is provisioned differently because the networks of ALECs and ILECs are designed differently. He explains that ILECs provision FX service through private lines, made possible by the presence of end offices

in every exchange. Since ALECs do not have end offices in every exchange, witness Gates contends that the only way ALECs can offer this service is through number assignment. Joint ALEC witness Selwyn concurs, stating that the practice of terminating a call in an exchange that is different than the exchange to which the NPA/NXX is assigned is nothing new. He contends that ILECs have been providing this service for decades through their FX service.

We agree. We believe that virtual NXX is a competitive response to FX service, which has been offered in the market by ILECs for years. Differing network architectures necessitate differing methods of providing this service; nevertheless, we believe that virtual NXX and FX service are similar "toll substitute services." Therefore, we believe carriers should be permitted to assign NPA/NXXs in a manner that enables them to provision these competitive services. However, we believe the practice of assigning NPA/NXXs to customers outside of the rate centers to which they are homed raises additional issues that must be addressed.

Several arguments have been made by parties regarding the virtual NXX issue, and we have considered them. However, we believe the primary point of controversy is determining the proper jurisdiction of virtual NXX/FX traffic for the purposes of intercarrier compensation. BellSouth witness Ruscilli states that BellSouth is not asking that we limit an ALEC's ability to assign NPA/NXXs in whatever manner it sees fit, but that we should find that calls terminated to NPA/NXXs assigned to customers located outside of the rate center to which the NPA/NXX is homed are not local calls. This argument appears to be the crux of Verizon's contention that virtual NXX should not be permitted. As Verizon witness Haynes suggests, this is a rating issue. He argues that virtual NXX service undermines the rating of a call as local or toll.

Fundamentally, we believe this issue should not hinge upon how carriers provision/route virtual NXX/FX traffic, or upon the retail services purchased by end users. Instead, we believe the resolution of this issue should be based on the premise of what is a local call for intercarrier compensation purposes. This leads us to the second subpart of this issue, which is whether intercarrier compensation for calls to virtual NXX/FX traffic should be based

upon the end points of the call or upon the NPA/NXX assigned to the calling and called parties. Level 3 witness Gates contends that the telecommunications industry has historically compared NXX codes to determine the appropriate treatment of calls as local or toll. He argues that virtual NXX calls are locally dialed, and treated as local by the incumbents. He explains that because calls are routed based upon NPA/NXX, virtual NXX calls travel over the ILEC's local interconnection trunks. Witness Gates contends that these calls are locally dialed and should be treated as local calls.

In their joint brief, the ALECs contend that Verizon presently treats FX traffic as local, charging reciprocal compensation for terminating calls to its FX customers. Level 3 witness Gates argues that the only reason that BellSouth now separates its FX traffic so that reciprocal compensation is not charged for these calls is because ALECs have had some success with their virtual NXX service.

On the other hand, Sprint witness Maples states that the end points of a call in relation to the definition of local calling area have historically driven intercarrier compensation. BellSouth witness Ruscilli agrees, contending that the FCC has made it clear that traffic jurisdiction is determined based upon the originating and terminating end points of a call.

In an extreme example of the problems associated with determining intercarrier compensation based upon the NXXs assigned to the calling and called parties, witness Ruscilli gives an example of a Jacksonville NPA/NXX being assigned to an ALEC virtual NXX customer physically located in New York. He argues that based upon a comparison of NPA/NXXs, if a BellSouth customer in Jacksonville calls this virtual NXX number, BellSouth would be charged reciprocal compensation even though a long distance call has clearly been made. While Level 3 witness Gates argues that this is "a ridiculous hypothesis," he states that this would still be a local call. Witness Gates contends that the ILEC's responsibilities would not change. He states that the ILEC technical and financial responsibilities would end at the POI, and the ALEC would be responsible for transporting the call 1500 miles to New York. Witness Gates argues that this call is technically feasible, but would never happen. He states that a virtual NXX is usually an

intraLATA offering, and Level 3 has other services that they offer for 1500 miles of transport.

We acknowledge that this scenario is somewhat unlikely, but it does illustrate the controversy related to this issue. We disagree with the ALEC position that jurisdiction of traffic should be determined based upon the NPA/NXXs assigned to the calling and called parties. Although presently in the industry switches do look at the NPA/NXXs to determine if a call is local or toll, we believe this practice was established based upon the understanding that NPA/NXXs were assigned to customers within the exchanges to which the NPA/NXXs are homed. Level 3 witness Gates conceded during cross examination that historically the NPA/NXX codes were geographic indicators used as surrogates for determining the end points of a call.

We believe that a comparison of NPA/NXXs is used as a proxy for determining the actual physical location of the particular customer being called. In other words, the NPA/NXX provides a reasonable presumption of the physical location of a customer as being within the calling area to which the NPA/NXX is homed. Therefore, carriers have been able to determine whether a call is local or toll by comparing the NPA/NXXs of the calling and called parties. However, this presumption may no longer be valid in an environment where NPA/NXXs are disassociated from the rate centers to which they are homed.

We believe that the classification of traffic as either local or toll has historically been, and should continue to be, determined based upon the end points of a particular call. We believe this is true regardless of whether a call is rated as local for the originating end user (e.g., 1-800 service is toll traffic even though the originating customer does not pay the toll charges). We acknowledge that an ILEC's costs in originating a virtual NXX call do not necessarily differ from the costs incurred originating a normal local call. However, we do not believe that a call is determined to be local or toll based upon the ILEC's costs in originating the call. In addition, we do not believe that the proper application of a particular intercarrier compensation mechanism is based upon the costs incurred by a carrier in delivering a call, but rather upon the jurisdiction of a call as being either local or long distance.

This raises the issue of whether reciprocal compensation or access charges should be applied to virtual NXX/FX traffic. We agree with BellSouth witness Ruscilli 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. As such, we believe that they are not subject to reciprocal compensation. In their brief, the Joint ALECs point to the recently revised FCC Rule 51.701(b)(1) in support of their argument. This rule previously stated that telecommunications traffic that is subject to reciprocal compensation is defined 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.

However, in its recent *ISP Remand Order*, the FCC amended this rule to state:

> Telecommunications 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). (FCC Rule 51.701(b)(1))

The Joint ALECs assert that the revised rule clearly eliminates as a requirement for reciprocal compensation the previous language that a call be terminated within a local calling area established by the state commission. That being the case, the Joint ALECs contend that the ILEC position, that a virtual NXX call is not subject to reciprocal compensation because it is not "local telecommunications traffic," has been eliminated. However, we agree with Verizon witness Haynes that the FCC's revision of Rule 51.701 has no effect on the jurisdiction of virtual NXX traffic. We agree with witness Haynes that traffic that originates in one local calling area and terminates in another local calling area would be considered *intrastate exchange access* under the FCC's revised Rule 51.701(b)(1). As such, we believe virtual NXX/FX traffic would not be subject to reciprocal compensation pursuant to Rule 51.701(b)(1).

Witness Ruscilli requests that we find that ALECs must identify calls to virtual NXX customers as long distance and pay BellSouth for originating switched access for these calls. Although it seems reasonable to apply access charges to virtual NXX/FX traffic that originates and terminates in different local calling areas, we believe that separately identifying virtual NXX traffic for the purpose of applying switched access charges raises additional issues that must be considered.

Level 3 witness Gates states that virtual NXX/FX traffic is treated as local because ALEC and ILEC switches are set up to treat locally-dialed calls as local. Level 3 contends that treating virtual NXX calls as toll would impose costs on all LECs by requiring billing system changes. Witness Gates suggests we "keep the status quo," and not require these costly changes be made to the switching architecture.

Sprint witness Maples raises an additional point that we believe to be compelling. He explains that when ISP-bound traffic is removed from the virtual NXX issue, what is left is a relatively small amount of traffic. Witness Maples questions whether the industry would want to incur the cost of billing system modifications for a relatively small amount of voice virtual NXX/FX traffic. He explains that if the volume of non-ISP traffic is small and the required modifications are large, the industry may want to pay reciprocal compensation for this traffic as a compromise. On the other hand, if the volume of traffic is large, then perhaps reciprocal compensation should not be paid.

We are troubled that Verizon insists that reciprocal compensation should not be applied to virtual NXX traffic, while at the same time charging reciprocal compensation for its own FX traffic. However, we recognize that witness Haynes attributes this to the fact that Verizon's billing systems are presently configured to determine whether a call is local or not, based upon the number dialed. He states that Verizon has not as of yet examined the possibility of separating FX traffic from local traffic dialed to the same NPA/NXX. While BellSouth has shown that this approach is technically feasible by developing its own database to separate FX traffic, we hesitate to mandate the development of such a database by all LECs.

Neither do we suggest that we establish an industry task force to examine this matter, as witness Maples suggests. However, we believe that the balance between costly modifications and traffic volumes should be considered when determining what, if any, intercarrier compensation should be applied to virtual NXX/FX traffic. Unfortunately, this factual information is not in the record. We believe that whether reciprocal compensation or access charges should apply to virtual NXX/FX traffic is better left for parties to negotiate in individual interconnection agreements. We note that while virtual NXX calls that terminate outside of the local calling area associated with the rate center to which the NPA/NXX is homed are not local calls, and therefore carriers are not obligated to pay reciprocal compensation, parties are free to negotiate intercarrier compensation terms in their agreements that reflect the most efficient means of interconnection. If parties decide to continue to pay reciprocal compensation instead of making costly modifications to their networks and billing systems, we believe this is reasonable. We also believe parties are free to agree to pay no compensation for virtual NXX/FX traffic, or apply access charges, as they deem fit for the purposes of their interconnection agreements.

Conclusion

We find that carriers shall be permitted to assign telephone numbers to end users physically located outside the rate center to which the telephone number is homed. In addition, we find that intercarrier compensation for calls to these numbers shall be based upon the end points of the particular calls. This approach will ensure that intercarrier compensation will not hinge on a carrier's provisioning and routing method, nor an end user's service selection. We find that calls terminated to end users outside the local calling area in which their NPA/NXXs are homed are not local calls for purposes of intercarrier compensation; therefore, we find that carriers shall not be obligated to pay reciprocal compensation for this traffic. Although this unavoidably creates a default for determining intercarrier compensation, we do not find that we mandate a particular intercarrier compensation mechanism for virtual NXX/FX traffic. Since non-ISP virtual NXX/FX traffic volumes may be relatively small, and the costs of modifying the switching and billing systems to separate this traffic may be great, we find it is appropriate and best left to the parties to

negotiate the best intercarrier compensation mechanism to apply to virtual NXX/FX traffic in their individual interconnection agreements. While we hesitate to impose a particular compensation mechanism, we find that virtual NXX traffic and FX traffic shall be treated the same for intercarrier compensation purposes.

VI. IP TELEPHONY

The issue before us is to determine the appropriate definition of IP telephony, and what intercarrier compensation mechanism to apply to this traffic. We note that all parties to this proceeding (except BellSouth) filed a Joint Position Statement on July 5, 2001, stating:

> Because the term "IP Telephony" covers a range of relatively nascent and changing technologies, and because the entire topic is subject to one or more ongoing proceedings before the FCC, the FPSC should not, in this docket, establish a compensation scheme that would be intended to apply to IP Telephony or change existing compensation methods applied to such traffic.

IP telephony is described by Verizon witness Geddes as "a standard protocol that provides a connectionless, unconfirmed [packet] transmission and delivery service." She explains that "connectionless" means that "no handshake occurs between IP nodes prior to sending data." In addition, "unconfirmed" means that IP sends packets without sequencing or acknowledgment that the packets reached their destination. She explains that in IP networks, voice packets are transmitted over a shared network in a "best effort" manner of delivering the packets to their destination. Witness Geddes states:

> While there may not be a single definition for IP Telephony, IP Telephony generally refers to voice or facsimile telephony services that are at least partially transported over an IP network in lieu of the traditional circuit-switched network.

Witness Geddes clarifies that IP telephony does not necessarily involve the World Wide Web. She explains that "Internet Telephony," which encompasses only telephony sent over the

Internet, is actually a subset of IP telephony. However, it is a misconception that IP Telephony only refers to calls carried over the Internet. This issue was framed to address what had appeared to be a matter of considerable contention, requiring our decision in a broad generic sense. However, we now believe this may have been premature. As noted above, the vast majority of parties to this proceeding have filed a Joint Position Statement stating that we should not address this issue at this time.

The only party that did not participate in the Joint Position Statement, BellSouth, argues that a phone-to-phone IP telephony call should be treated no differently than a traditional circuit switched call for purposes of determining the type of compensation due. BellSouth requests that we confirm that "the type of network used to transport a call is irrelevant to the charges that apply, whether reciprocal compensation, toll or switched access. Further, the jurisdiction of a call will be determined by its endpoints, irrespective of the protocol used in the transmission." BellSouth cites to our decision in the BellSouth/Intermedia arbitration, in which we stated:

> A call provisioned using phone-to-phone IP Telephony but not transmitted over the internet, to which switched access charges would otherwise apply if a different signaling and transmission protocol were employed, is nevertheless a switched access call. Except for, perhaps, calls routed over the internet, the underlying technology used to complete a call should be irrelevant to whether or not switched access charges apply. Therefore, like any other telecommunications services, it would be included in the definition of switched access traffic. Therefore, we find that switched access traffic shall be defined in accordance with BellSouth's existing access tariff and include phone-to-phone internet protocol telephony.

PSC-00-1519-FOF-TP, issued August 22, 2000.

However, in their joint brief, ALECs point out that Intermedia sought reconsideration of this ruling, thereby preventing it from becoming effective. While the motion for reconsideration was pending, BellSouth and Intermedia agreed to contractual language

governing the subject of IP telephony. Intermedia then effectively withdrew the IP telephony issue from the list of issues to be arbitrated. The ALECs explain that the "parties indicated that, in withdrawing the issue from the motion, they were relying on their understanding that the provision of the interconnection agreement rendered the treatment of IP Telephony in Order No. PSC-00-1519-FOF-TP a nullity." Because that decision was based on the facts of that case and would only have had direct application to those parties in the development of their final arbitrated agreement, we agree that withdrawal of the issue by the petitioner, Intermedia, did effectively render the decision on that issue a nullity.

We agree in principle with BellSouth that a call is determined to be local or long distance based upon the end points of the particular call. As such, the technology used to deliver the call, whether circuit-switching or IP telephony, should have no bearing on whether reciprocal compensation or access charges should apply. Nevertheless, we believe that a broad sweeping decision on this particular issue would be premature at this time. We agree with the majority of witnesses who argue that IP telephony is a relatively nascent technology with limited market application at this time. That being the case, we are hesitant to make a specific decision in this proceeding that could possibly serve to constrain an emerging technology.

In its brief, Level 3 (jointly with Allegiance Telecom) states:

> Given the multitude of ways in which a session could be initiated and the wide array of services that can be provided using packetized voice technology, the Commission, like the FCC, needs to consider if a particular definition of the service accurately distinguishes between phone-to-phone and other forms of IP telephony, and is not likely to be quickly overcome by changes in technology. The proper classification of IP telephony is a complex technical and legal issue demanding in-depth factual analysis and the consideration of many policy objectives before broad declarations are made about how such services should be characterized.

We agree. We believe that with an emerging technology such as IP telephony, a more in-depth factual examination should be made of specific IP telephony services being provided in the market to determine how they should be compensated between carriers. Unfortunately, such factual information is not in the record of this proceeding.

Level 3 witness Hunt suggests that we examine this issue on a case-by-case basis, stating that "[i]f a LEC believes a particular provider has misclassified its IP-based service to avoid access charges, the LEC may seek relief from the Commission." Given the present circumstances, we believe this is the best approach to deciding this issue at this time.

We note that FCCA witness Gillan disagrees with this approach, stating that "even this would seem to be a 'solution' out of scale with the 'problem'." Witness Gillan states that the FCC has announced that it intends to initiate a general review of intercarrier compensation, and suggests that we simply monitor the FCC's proceeding and developments in the marketplace. However, we disagree and believe that where telecommunications are being provided via IP telephony, intercarrier compensation issues may arise that must be addressed by us. We merely believe that this generic docket is not the appropriate avenue for addressing those issues.

Conclusion

We find that this issue is not ripe for consideration at this time. We believe this is a relatively nascent technology, with limited application in the present marketplace. As such, we reserve any generic judgement on this issue until the market for IP telephony develops further. However, we find this shall not preclude carriers from petitioning us for decisions regarding specific IP telephony services through arbitration or complaint proceedings.

VII. POLICY IMPLEMENTATION

It appears from the parties' briefs that there is consensus that the policies established by us in this docket should stand as a default mechanism, effectively serving as a regulatory standard

to which a carrier may defer in the event negotiations pursuant to §252 of the Act are unsuccessful. This approach appears to be consistent with the Act's expressed preference for voluntary negotiations and mediation prior to a request by a petitioner for compulsory arbitration.

We note that we rejected a request to create expedited complaint procedures in Docket No. 981834-TP (Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth Telecommunications, Inc.'s Service Territory). In that docket, we cited three reasons why an expedited procedure was not desirable. First, we found that existing rules permit the filing of petitions with a request for expedited treatment. Second, we found that an expedited complaint procedure would deprive us of our discretion to exercise our jurisdiction. Third, we found the creation of an expedited complaint procedure for ALECs would entitle ALECs to special treatment that consumers and other parties before us would not receive. We find no compelling evidence or testimony in the record of this proceeding to justify the redux of a request previously rejected by us. We note that in a recent case, an informal, expedited process was employed for a dispute arising out of an interconnection agreement. The dispute, however, was resolved.

In its brief, Allegiance/Level 3 seeks a declaration from us regarding tandem switching rates. We note that tandem switching is addressed earlier in this Order and see no reason to reargue those matters here.

The request by the ALECs for separate proceedings to establish symmetrical reciprocal compensation rates is vague in this context and is unsupported by evidence or testimony not considered in Issue 14; therefore, we have not addressed those matters in this Order.

Conclusion

The parties appear to agree that the policies in this docket should serve as a default mechanism. Therefore, the policies and procedures established in this docket shall be on a going forward basis, allowing carriers, at their discretion, to incorporate provisions into new and existing agreements. Nothing in this Order

is intended to discourage parties from negotiating other, mutually agreed-on terms or conditions.

VIII. LOCAL CALLING AREA

A. Jurisdiction

We believe that we are authorized to address this issue by Sections 364.01(4)(b), 364.01(4)(g), and 364.01(4)(i), Florida Statutes, whereby we are directed to:

> (b) Encourage competition through the flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services.
>
> (g) Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.
>
> (i) Continue its historical role as a surrogate for competition for monopoly services provided by local exchange telecommunications companies.

In particular, we believe that subsection (b), as set forth above, is pertinent in view of the arguments that the definition of what the local calling scope should be for purposes of intercarrier compensation will directly impact "the availability of the widest possible range of consumer choice" in the provision of basic local telecommunications services by ALECs.

As argued by AT&T, we believe that this interpretation is supported by the Florida Supreme Court's decision in Florida Interexchange Carriers v. Beard, 624 So.2d 248, 251 (Fla. 1993), wherein the Court stated that, "The exclusive jurisdiction in section 364.01 to regulate telecommunications gives us the authority to determine local routes." We acknowledge that this decision was prior to the 1995 changes to Chapter 364. Nevertheless, we believe that the general grants of authority set forth in Section 364.01 authorize us to address the specific issue

presented in this case in the same manner as those provisions interpreted by the Court in the Florida Interexchange Carriers v. Beard case.

We also acknowledge that this authority is not limitless, and that Sections 364.16(3)(a), Florida Statutes, and 364.163, Florida Statutes, restrict our authority in the area of access charges. However, as argued by FDN, neither of these provisions address the issue of actually defining the local calling scope. These provisions only address our authority with regard to access charges once the local calling scope has been defined.

Furthermore, as a matter of statutory construction, one should always begin by looking at the plain language of the statutes. In this instance, we believe that Section 364.01, Florida Statutes, is clear in authorizing us to act with regard to this issue.[4] However, even if the pertinent statutory provisions were considered less than clear, applying standard rules of statutory construction results in the same conclusion that we are authorized to act with regard to defining the local calling area for purposes of intercarrier compensation. Specifically, when interpreting a statutory provision(s) that is not clear, one should always attempt to read provisions in a manner that would not create conflict between competing provisions, or such that conflicting statutes are construed to give both statutes an area of operation. City of Punta Gorda v. McSmith, Inc., 294 So.2d 27 (Fla. 2d DCA 1974). See also Order No. PSC-99-0744-FOF-EI, issued April 19, 1999, in Docket No. 980693-EI. In this instance, we believe Sections 364.01(4)(b), (g) and (i) and Sections 364.163 and 364.16(3)(a), Florida Statutes, can and should be read in a manner that does not conflict and gives each statutory provision an area of operation. The provisions of Section 364.01, Florida Statutes, should be read to authorize us to act to define the local calling area where necessary to ensure the widest range of consumer choice and to eliminate barriers to competition, but once that calling area is

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[4] "When the language of a statute is unambiguous and conveys a clear and ordinary meaning, there is no need to resort to other rules of statutory construction; the plain language of the statute must be given effect." Starr Tyme, Inc. v. Cohen, 659 So.2d 1064, 1067 (Fla. 1995). If it is determined that the statute on its face is ambiguous or unclear, then one would resort to the other rules of statutory construction. See Id. "Only when a statute is doubtful in meaning should matters extrinsic to the statute be considered in construing the language employed by the Legislature." Capers v. State, 678 So.2d 330, 332 (Fla. 1996). See Order No. PSC-02-1265-PCO-WS.

defined, our authority is limited by the specific statutory provisions applicable to access charges, Section 364.163, and Section 364.16(3)(a), Florida Statutes. To date, the local calling area for purposes of intercarrier compensation has not been defined, which is why the issue is now before us in this case. Therefore, we believe that we may act to address the issue before it.

We note that it appears the ILEC parties are failing to distinguish between access rates and access revenues. It is clear from the plain language of Section 364.163, Florida Statutes, that the Legislature has reserved for itself the authority to determine access charge rates. What is not clear from the ILECs' briefs is how Section 364.163 governs access charge revenues. We do not believe a decision by us to establish LATAs as a default local calling area translates into rate-setting. While the parties appear to agree that using LATAs as default local calling areas would reduce access charge revenues, revenues and rates are distinct entities in intercarrier compensation schemes and under the law.

BellSouth cites our decision in the Telenet order (Order No. PSC-97-0462-FOF-TP) that upheld the proposition that an ALEC with a retail local calling area different than that of the ILEC's retail must pay access charges pursuant to Section 364.16(3)(a), Florida Statutes. We note, however, the Telenet order was issued in 1997 on an issue involving call forwarding. Given that the Telenet order addressed a specific issue in an arbitration proceeding, we appreciate its conclusions but do not believe that decision has precedential value in the instant proceeding.

Furthermore, FCC 96-325, ¶1035 appears unequivocal in granting authority to state commissions to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under Section 251(b)(5) of the Act. ILEC parties offer nothing to dispute what appears to be a clear delegation of authority from the FCC to state commissions to make determinations as to the geographic parameters of a local calling area.

Further, no party to this proceeding has provided evidence or testimony based in fact or law that would prohibit us from defining

a local calling area - including defining a LATA as a local calling area - for purposes of reciprocal compensation.

In summary, we find that we are authorized to address the issue of defining what the local calling area is and to establish a default local calling area pursuant to Sections 364.16(3) and 364.163, Florida Statutes. Also, pursuant to Section 364.01(4)(b), Florida Statutes, we are directed to encourage competition through flexible regulatory treatment.

B. Adoption of a Default Local Calling Area

All the parties express the view that negotiations are the preferred method of dispute resolution. A number of parties, however, advocate adoption of a default in the event negotiations are unfruitful.

BellSouth witness Shiroishi testifies the issue of defining local calling areas for interconnection agreements has not been contentious and need not be addressed by us. BellSouth's brief emphasizes that its experience in negotiating agreements with ALECs does not compel a need to adopt a default at this time.

Sprint asserts in its brief that we should establish a default because the issue of local calling scope has proven "contentious" in its negotiations with ALECs. Verizon espouses the view that if we adopt a default, the default should be the ILEC's retail calling area. Both FDN and AT&T advocate the adoption of a default, although their proposed solutions differ from those of the ILECs and from each other.

Other than stating preferences, the parties devote little testimony or argument to the issue of whether we should adopt a default, directing their energies instead to what the default should be in the event we elect to establish a default. It appears from the testimony and the briefs that those parties advocating a default do so to create a definitive endpoint to unsuccessful negotiations.

It would appear that the perceived need for a default local calling area is contingent on the extent to which we believe such a default is necessary or desirable. AT&T witness Cain and FDN

witness Warren testify a default - particularly one recommended in their testimony - is necessary to spur competition. Verizon witness Trimble, BellSouth witness Shiroishi, Sprint witness Ward, and ALLTEL witness Busbee contend a default is not desirable because of the potential negative consequences that would stem from a change in the status quo.

C. Structure of a default

The parties offer four options regarding the election of a default local calling area. ALLTEL, Verizon and Sprint advocate using the ILEC's retail local calling area if parties are unable to negotiate an agreement. BellSouth recommends using the originating carrier's local calling area if this approach is administratively feasible and if this option is not viable, to use the ILEC's retail local calling area.

AT&T recommends establishing the LATA as the default local calling area, and FDN recommends the default be the LATA providing the originating carrier transports the call to the access tandem serving the end user and charges retail rates for intraLATA calls that are not toll rates.

1. Use of the ILEC's Retail Local Calling Areas

The ILEC parties contend the use of existing retail local calling areas provides simplicity, competitive neutrality, avoids arbitrage opportunities, preserves the existing universal service support, and is consistent with the findings of other state commissions.

Verizon witness Trimble contends the existing system, which defines reciprocal compensation obligations based on ILEC-tariffed local calling areas, "has the advantage because it has worked well over the years and it is easier to maintain an existing, proven system than to implement and administer a new one."

AT&T witness Cain counters the "unique geography" of the telecommunications industry involving local calling areas, extended calling areas, LATAs and - in the case of wireless carriers - major trading areas (MTAs) creates costs that new entrants incur to provide service to customers. Applying the ILEC retail local

calling areas, which AT&T argues in its brief predate the Act, works to restrict consumer choice and results in higher rates for consumers.

FDN witness Warren concurs that the ILECs' local service areas create "artificial retail pricing boundaries and should not dictate whether a call is access for intercarrier purposes."

While Verizon apparently believes the use of an ILEC's retail local calling area as the basis for determining compensation is simple, we conclude that the issue of simplicity appears to be in the eye of the beholder. AT&T witness Cain and FDN witness Warren testify the use of ILEC retail local calling areas is hardly a simple solution because it creates artificial price barriers and stifles competitive offerings.

A similar conclusion can be reached on the issue of competitive neutrality, in our view. Verizon witness Trimble testifies the existing system of basing compensation on ILEC retail local calling areas treats all parties - ILECs, ALECs and IXCs - the same. A call that remains within a retail local calling area is subject to reciprocal compensation while a call that crosses a retail local calling area boundary is subject to access charges.

AT&T witness Cain and FDN witness Ward believe the dependence on ILEC retail local calling areas tilts the competitive playing field toward ILECs and effectively bars ALECs from making competitive offerings different from those provided by the ILECs.

We are leery of the competitive neutrality argument advanced by witness Trimble. BellSouth witness Ruscilli acknowledges the ILEC retail local calling areas were delineated, "well before the Act and the envision [sic] of competition." Thus it would seem paradoxical to assume neutrality in a competitive market paradigm will result from the imposition of a compensation structure that is geographically rooted in monopoly era regulation.

BellSouth witness Shiroishi raises the specter of arbitrage opportunities resulting from a change in the existing local calling area structure. Witness Shiroishi testifies "Now that we are in a more competitive environment where many ALECs are IXCs and vice versa, many IXCs are also ALECs, if we go to a LATA-wide local

definition which has no delineation, you have an opportunity for IXCs to try to masquerade that true interexchange traffic as local through the use of, in some instances, even perhaps stripping off ANI or CPN and terminating that to the ILEC or any other LEC as though it were local."

Subsequently in her testimony, witness Shiroishi indicates BellSouth has experienced no difficulties with wireless carriers, who, because of their differing calling plans, work cooperatively with BellSouth to determine which of their calls are interMTA or intraMTA.

ILEC parties in this proceeding deal extensively with the potential threat to universal service support if a system is adopted that reduces access revenues. Verizon witness Trimble testifies that because access charges are profitable for ILECs, they implicitly subsidize basic local rates, thus furthering universal service. Witness Trimble acknowledges access revenues are one of a number of universal service support mechanisms for ILECs and that Florida law gives an ILEC the right to petition us for a change in the interim mechanism.

In a similar vein, BellSouth witness Shiroishi testifies that BellSouth has lost intraLATA access revenues each month since the advent of wireless service. AT&T notes in its brief that despite these losses, "Nonetheless, BellSouth has never petitioned the Commission pursuant to Section 364.025(3), F.S., for a change in its universal service support mechanism based upon the decrease of monthly minutes of intraLATA toll traffic due to competition from wireless carriers."

In its brief, Verizon cites decisions by a number of state commissions that have "refused to apply reciprocal compensation to such calls that do not originate and terminate in the same ILEC local calling area."

We note that of the decisions cited in Verizon's brief, those from the states of Connecticut, Illinois, South Carolina, Georgia, and Missouri were focused on the issue of foreign exchange or virtual NXX service, which we addressed earlier in this Order. We see no reason to reargue those issues.

Verizon also cites guidelines issued by the Ohio Public Utilities Commission which found the ILEC's local calling areas were to be used as the basis for differentiating local calls from toll calls. We point out that this decision was reached by the Ohio Commission in 1995, prior to passage of the Act, rendering its applicability questionable for use in a competitive market proceeding.

Finally, Verizon cites decisions reached by the Texas and Nevada commissions. The Nevada commission ruled in an arbitration previously referenced in this Order that "reciprocal compensation obligations should apply to traffic that originates and terminates within state-defined local calling areas."

The Texas Public Utilities Commission determined, "Consequently, the Commission declines to adopt AT&T's LATA-wide proposal because it has ramifications on rates for other types of calls, such as intraLATA toll calls, that are beyond the scope of this proceeding."

Regarding the Nevada case, we believe the limited circumstances of an arbitration between parties are instructive, but hardly precedential in a generic proceeding of this nature. As for the Texas decision, it appears to us that the Texas commission chose not to accept AT&T's proposal because the AT&T proposal was beyond the scope of the proceeding. A decision not to rule by a state commission does not appear to support either side in this dispute.

2. Use of an Originating Carrier's Retail Local Calling Area

BellSouth witness Shiroishi believes using an originating carrier's local calling area is technically feasible, but also appears to acknowledge potential administrative concerns. Witness Shiroishi testifies:

> BellSouth's position is that, for purposes of determining the applicability of reciprocal compensation, a "local calling area" can be defined as mutually agreed to by the parties and pursuant to the terms and conditions contained in the parties' negotiated interconnection

> agreement with the originating Party's local calling area determining the intercarrier compensation between the parties. BellSouth currently has the arrangement described above in many of its interconnection agreements, and is able to implement such arrangement [sic] through the use of billing factors. These factors allow the originating carrier to report to the terminating carrier the percent of usage that is interstate, intrastate, and local.

Witness Shiroishi testifies that while BellSouth believes its plan is feasible, BellSouth, "does understand the concerns raised as to the implementation of different calling areas."

These concerns are articulated by Sprint witness Ward, who believes, "it would be administratively burdensome for all carriers, not just ILECs, to change their billing systems to maintain the varying local calling areas of each ALEC."

Verizon witness Trimble concurs that the use of an originating carrier's local calling area to determine compensation obligations is administratively infeasible. Witness Trimble testifies:

> Each ALEC may have its own originating local calling area, or may have multiple local calling options; given their regulatory freedoms, these ALECs may change their calling areas any time virtually at will. Not only the ILECs - but every ALEC - would have to attempt to track these changes and build and maintain billing tables to implement each local calling area and associated reciprocal compensation application. Administration is even further complicated if one assume [sic] that local calling areas may extend within or beyond LATA, or even state boundaries.

In its brief, FDN relies on BellSouth witness Shiroishi's testimony that billing factors can be used to jurisdictionalize traffic, providing an indication of the viability of using the originating carrier's local calling area as the basis for reciprocal compensation. FDN does not address in its brief the administrative and cost issues raised by Verizon witness Trimble and Sprint witness Ward.

Data on the potential cost to reconfigure billing systems is not in the record of this proceeding. It appears reasonable to us, based on the testimony, however, that some costs would be incurred to implement proposals using the originating carrier's retail local calling area for reciprocal compensation purposes.

3. Use of the LATA as the Local Calling Area

AT&T and US LEC of Florida argue for the adoption of the LATA as a default local calling area between ILECs and ALECs when parties are unable to negotiate an agreement. We note that US LEC did not present witnesses or testimony in Phase IIA, basing its post-hearing arguments on testimony filed in Phase II of this docket.

AT&T witness Cain testifies that the benefits of using a LATA as a local calling area are administrative ease and enhanced competition. Witness Cain testifies "A LATA-wide calling area would simplify retail call rating as well as intercarrier billing of reciprocal compensation. All intraLATA calls would be treated the same for reciprocal compensation purposes, with each minute billed the same way." Witness Cain also believes a LATA-wide local calling area would simplify billing systems, requiring only the re-rating of calls to a single-per-minute rate within a LATA regardless of dialing pattern.

A modicum of support for the ALEC position may be found in the testimony of BellSouth witness Ruscilli, who, when asked if administrative efficiencies could be realized by having a single LATA-wide definition of a local calling area, answered, "I imagine there could be some."

Witness Cain contends establishing the LATA as the local calling area will enhance competition by allowing ALECs to offer consumers calling plans distinct from those offered by ILECs.

In its brief, AT&T contends BellSouth already offers LATA-wide local calling in interconnection agreements with AT&T, Level 3 Communications, ALLTEL Florida, US LEC of Florida and Time Warner Telecom of Florida. The existence of these agreements, AT&T argues, illustrates "the absurdity of BellSouth's position that LATA-wide local calling violates Section 364.16(3)(a)..."

The issue of whether or not BellSouth offers LATA-wide local calling for purposes of reciprocal compensation is a source of conflicting testimony by BellSouth witnesses in distinct phases of this docket.

In Phase II of this docket, BellSouth witness Ruscilli engaged in the following dialogue with staff counsel:

> Q. Now, BellSouth has entered into some agreements with carriers for a LATA-wide calling area, is that correct?
>
> A. For reciprocal compensation purposes, yes.
>
> Q. Well, would BellSouth object if this Commission were to determine that for purposes of reciprocal compensation a local calling area should be defined as a LATA-wide area?
>
> A. Well, no, I don't really think we would be able to object, simply because the provisions of the Act, I think it is 252(i), indicates that when we establish an agreement with a carrier, other carriers can opt into that agreement if they so choose. You know, subject to making sure they take the same terms and conditions. So we have done it once, so it is open to any carrier that wants to do it. There is not a need for the Commission to order it.

In Phase IIA of this proceeding, BellSouth witness Shiroishi appears to dispute the testimony of witness Ruscilli when she testifies:

> BellSouth has entered into agreements that expand what is considered local traffic for reciprocal compensation purposes; however, in those agreements switched access is specifically exempted from being considered as local traffic. The AT&T/BellSouth Agreement which AT&T references does NOT make all calls which originate and terminate in the LATA local for reciprocal compensation purposes. The agreement clearly excludes switched access from the local traffic definition (See Attachment 3, Section 5.3.1.1 of the Interconnection Agreement).

In its brief, BellSouth references witness Shiroishi's testimony quoted above and concludes that "BellSouth does not have any current agreements that implement the LATA-wide local definition that the ALECs are proposing in this docket."

We find the apparent contradiction between the testimony of the two BellSouth witnesses disconcerting. That BellSouth fails in its brief to make any effort to reconcile the conflicting statements leaves us with a record marked by a glaring inconsistency on a disputed issue of fact.

FDN asserts that the LATA should be the default, but to overcome controversy over cost issues, transport obligations should be addressed by requiring the originating carrier to bring its traffic to the tandem serving the end user. In this way, FDN witness Warren argues, transport obligations are met and facilities-based competition is promoted.

FDN takes the position that the LATA should be the default local calling area, provided the originating carrier transports its originated traffic to the access tandem serving the end user in the LATA and the originating carrier charges retail rates for in-LATA calls that are not toll rates.

In its brief, FDN argues that if a carrier of intraLATA calls could hand off its originated traffic without being charged intraLATA access charges by a terminating carrier, the "complex local calling areas could be erased, the barrier of access costs would be removed, price competition for calls between all of the cities within the LATA would flourish."

Verizon witness Trimble testifies that while he lauds the prospect of requiring an ALEC to deliver its traffic at least as far as the ILEC tandem serving the end user, FDN's proposal with its LATA-wide implications is , "just another attempt to circumvent the established intraLATA access regime, and is thus unacceptable."

The ILEC parties to this docket offer a number of objections to AT&T's proposal, which are discussed above in this Order. Those objections, in summary, are: AT&T's proposal is not competitively neutral; AT&T's proposal creates arbitrage opportunities; AT&T's proposal threatens universal service support and could lead to an

increase in local service rates; and AT&T's proposal is inconsistent with the findings reached by other state commissions.

In addition, the four ILEC parties to this docket filed estimates of losses they anticipate would be incurred if revenue gained from intraLATA access charges were converted to reciprocal compensation payments at currently approved rates. ALLTEL estimates it would lose $700,000 annually, and Sprint estimates its losses by its ILEC, IXC and ALEC would be $14 million annually. BellSouth and Verizon filed comparable figures but did so under claims of confidentiality.

At our special agenda conference on December 5, 2001, we directed our staff to solicit further testimony from the parties after expressing concerns in two areas: First, we questioned whether a default to LATA-wide calling would unfairly give leverage to ALECs in negotiations, thereby creating a disincentive to negotiate; Second, there was concern over the potential for unintended consequences - particularly in the intraLATA toll market - that could result from establishing LATA-wide calling as a default.

Taking the second point, we are unpersuaded by ILEC testimony that arbitrage opportunities will result from a default to LATA-wide calling, as claimed by BellSouth witness Shiroishi. We find it significant that witness Shiroishi acknowledges BellSouth's reliance on the integrity of wireless carriers in reporting to BellSouth whether calls are interMTA or intraMTA in nature for compensation purposes. There is nothing in the record to suggest a similar system could not be used in a LATA-wide calling regime. Witness Shiroishi testifies this system has functioned without incident with wireless carriers, leading us to believe the concern regarding arbitrage opportunities is wholly speculative.

Verizon witness Trimble's concern over universal service obligations, echoed by BellSouth witness Shiroishi, ALLTEL witness Busbee and Sprint witness Ward, seems incomplete. While two of the parties filed public projections of anticipated losses from converting access revenues to reciprocal compensation revenues and two parties filed confidential projections, none of the parties indicated the relative scale of the projected losses. In other words, no party stated whether the projected losses would compel

the respective ILEC to petition us for a change in the interim universal service mechanism pursuant to Section 364.025(3), Florida Statutes.

Witness Shiroishi's testimony that BellSouth has seen a monthly erosion of intraLATA minutes attributable to the proliferation of wireless calling plans with expanded calling areas without a collateral petition under Section 364.025(3), Florida Statutes, would appear not to support the ILEC's universal service concerns.

As noted earlier in this Order, we find little in the decisions by other states cited by the ILEC parties that is dispositive in this matter.

We are concerned with the impact on the intraLATA toll markets that would result from adoption of the ALEC's proposals. As offered by AT&T witness Cain, in a LATA-wide calling regime, ALECs and ILECs would exchange all traffic in a LATA and compensate each other on the basis of reciprocal compensation rates. An IXC, however, would continue to be required to pay originating access and terminating access to the respective LEC, essentially creating a separate, more costly form of intraLATA toll service. AT&T witness Cain offers no remedy for this disparity, suggesting instead that erosion of the IXC's competitive position is inevitable and attributable to layers of non-cost-based prices in the access charge regime. Whether or not witness Cain's projection that economic Darwinism will consume IXCs providing intraLATA toll service is accurate, we believe this possibility deserves notice as a potential consequence of LATA-wide local calling.

On the issue of providing leverage in negotiations, given the ALEC's advocacy of LATA-wide local calling and the ILEC's opposition to LATA-wide local calling, it would appear that setting LATA-wide local calling as the default would provide ALECs with a disincentive to negotiate. This appears to us to be counterproductive if the preference is to have a business solution, as opposed to a regulatory solution, to industry disputes.

4. Use of Originating Carrier's Retail Local Calling Area

We agree that using either the ILEC's retail local calling area or the LATA as a wholesale local calling area seems to suffer from a lack of competitive neutrality.

Using the ILEC's retail local calling area appears to effectively preclude an ALEC from offering more expansive calling scopes. Although an ALEC may define its retail local calling area as it sees fit, this decision is constrained by the cost of intercarrier compensation. An ALEC would be hard pressed to offer local calling in situations where the form of intercarrier compensation is access charges, due to the unattractive economics.

A LATA-wide wholesale calling regime appears to discriminate against IXCs. While ALECs and ILECs would exchange all traffic in a LATA at reciprocal compensation rates, IXCs would continue to pay originating and terminating access charges for carrying traffic over some of the same routes.

We believe it is important that the default be as competitively neutral as possible. A default which is defined in accordance with the ILECs' preference for their existing retail local calling areas or the ALECs' preference for LATA-wide local calling may create a disincentive to negotiate. Adopting either of these two options would seem counterproductive, as it could chill negotiations and lead to one-sided outcomes.

At the same time, we believe it is important that we establish a default local calling area for purposes of reciprocal compensation. This issue is becoming too commonplace in arbitration cases filed with us, and some finality is important in order to avoid litigating this issue multiple times.

One approach to defining the wholesale local calling area which receives less attention from the parties is to use the originating carrier's retail local calling area. BellSouth witness Shiroishi actually supports this approach and believes that such a plan is "administratively manageable," while acknowledging that there may be some concerns. In addition, she testifies that "BellSouth currently has the arrangement . . . in many of its interconnection agreements." Of the options presented, we believe this approach is more competitively neutral than the others.

Verizon witness Trimble and Sprint witness Ward believe that BellSouth's proposal is administratively complex and illogical on the basis that wholesale compensation should not vary depending on the direction of a call. With respect to the administrative issues, Verizon witness Trimble speaks to the need to "build and maintain billing tables to implement each local calling area." Sprint witness Ward expresses concern about carriers having "to change their billing systems to maintain the varying local calling areas of each ALEC." We note, however, that BellSouth witness Shiroishi explains that her company has implemented this approach through the use of billing factors. She states that these factors "allow the originating carrier to report to the terminating carrier the percent of usage that is interstate, intrastate, and local." The testimony suggests that a system based on the originating carrier's retail local calling area could be implemented in one of two ways. The Verizon and Sprint witnesses seem to envision a method whereby the various local calling areas would be coded into their billing systems, while the BellSouth witness describes a method based on billing factors, which would not necessitate such extensive coding. Consequently, we believe that using the originating carrier's retail local calling area for wholesale purposes need not be as complicated to implement as the Verizon and Sprint witnesses would lead us to believe.

The second complaint, that wholesale compensation should not vary depending on the direction of the call, is more thought-provoking since directional differences in compensation appear to be anomalous and inequitable. While we believe that such a plan may result in directional differences initially, we question whether these differences will be sustainable over time. As carriers experiment with different retail local calling areas, market forces will eventually determine which plans are most viable, and more uniformity will emerge as a result. In the short run, it is important to encourage experimentation, and this plan accomplishes that objective.

Conclusion

Based on the foregoing, we find that it is appropriate to establish a default local calling area for purposes of reciprocal compensation. This issue appears with enough frequency that a default definition is needed for the sake of efficiency. A default

should be as competitively neutral as possible, thereby encouraging negotiation and development of business solutions. On this basis, we find that the originating carrier's retail local calling area shall be used as the default local calling area for purposes of reciprocal compensation.

IX. COMPENSATION MECHANISM: BILL AND KEEP

In this issue, we are presented with several matters for consideration. First, is whether we should establish mechanisms governing the transport and delivery or termination of traffic subject to Section 251 of the Act in the absence of parties reaching an agreement. Second, what compensation mechanism should be established.

Previously, our staff recommended that we adopt as a default the compensation mechanisms outlined in 47 C.F.R., Part 51, Subpart H, *Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic*. Our staff further recommended that the applicable default rates be those established by us in Docket No. 990649-TP.

In Phase IIA of this docket, the parties were again asked whether we should establish a default compensation mechanism and, if so, what the default mechanism should be. In addition, we sought an expanded record on the impacts of bill-and-keep as a default, with an emphasis on traffic flows between ILECs and ALECs, and the policy ramifications of presuming traffic volumes are roughly balanced as a precursor to the imposition of bill-and-keep.

As noted at the outset, the parties agree that we have authority to establish bill-and-keep, though not on whether we should adopt bill-and-keep as a default. In addition, the parties agree that in order to impose bill-and-keep, a definition of what constitutes "roughly balanced" traffic is necessary, although what the definition should be elicits some dissent. The potential financial impact on the parties of a bill-and-keep system and the potential advantages and disadvantages of bill-and-keep draw contrary responses from the parties.

BellSouth advocates adoption of a bill-and-keep default, a presumption by us that traffic between carriers is "roughly

balanced," and a definition of "roughly balanced" that would include all traffic below a threshold of 3:1. We agree with BellSouth that according to the provision of 47 C.F.R. Rule 51.713(c) we can presume traffic between carriers is roughly balanced and that such a presumption is rebuttable. We find no support, however, for BellSouth's proposal that a 3:1 ratio constitutes a rough balance between carriers. As pointed out by Sprint in its brief, the FCC's use of a 3:1 presumption is intended to determine whether traffic is ISP-bound or local for compensation purposes (FCC 01-131, ¶8). We believe that to presume that traffic is roughly balanced when one carrier terminates 50 percent more traffic than it originates is, as AT&T witness Cain points out, "an extremely 'rough' definition of roughly balanced."

By comparison, Verizon and FDN recommend that a difference of 10 percent or less during any three-month period for traffic be considered "roughly balanced." AT&T recommends the difference between traffic exchanged should be "almost insignificant", and FCTA and Time Warner argue against "large traffic imbalances."

FDN witness Warren supports bill-and-keep in situations where an originating carrier hands off its call as far as the ILEC tandem serving the geographic location of the end user, and the traffic balance between two carriers is within 10 percent.

Essentially, FDN argues, one condition for bill-and-keep should be the incorporation of its recommendation for a default local calling area, which we have previously addressed and found inappropriate. While we appreciate FDN's effort to sustain consistency on the issues for resolution, the merits of establishing local calling areas and the method by which compensation is determined were deemed to be separate considerations.

FDN's recommendation that "roughly balanced" be defined as occurring when originating and terminating local traffic flows between two carriers are within 10 percent appears to be reasonable and enjoys explicit support from Verizon and implicit support from FCTA and Time Warner.

FDN's recommended imposition of a minimum traffic volume of 500,000 minutes of use per month as a condition for a default

symmetrical rate, appears ill-advised. Traffic flow data filed by BellSouth witness Shiroishi indicates 28 of the 62 ALECs with whom BellSouth reports exchanging traffic do not reflect traffic volumes of 499,999 minutes per month. Similar data filed by Sprint witness Hunsucker shows two of the 26 ALECs with whom Sprint exchanges traffic do not reflect traffic volumes of 499,999 minutes per month. We see no reason to impose a traffic volume standard that would interfere with the relationships among carriers or work to exclude carriers from participating in a bill-and-keep regime if the carriers determine such an arrangement is to their advantage.

It does not appear that FDN's vision of a bill-and-keep system predicated on the adoption of its local calling area default and the imposition of traffic volume standards for triggering compensation mechanisms reflects an awareness of the ramifications of its recommendation on other carriers. We cannot, therefore, approve its adoption.

No other parties to this docket recommend adoption of a bill-and-keep default mechanism. Sprint witness Hunsucker and all other ALEC witnesses other than FDN oppose adoption of a bill-and-keep default on a number of grounds. Verizon witness Trimble advises restraint in the presence of the FCC's Notice of Proposed Rulemaking (*Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 01-132), which he testifies will consider all compensation schemes, including bill-and-keep.

Among the arguments raised in opposition to adoption of bill-and-keep are those of creating regulatory arbitrage opportunities, a dispute over whether savings will accrue to carriers engaged in bill-and-keep systems, projected losses by ALECs from loss of compensation for transporting and terminating ILEC traffic, and a debate over whether the adoption of bill-and-keep will lead to more or less regulatory intervention.

On the issue raised by Verizon witness Trimble - of holding matters in abeyance until the FCC completes a comprehensive review of intercarrier compensation - we find little merit. In fact, the FCC itself rejected a similar argument advanced by ALECs in FCC 01-131, ¶94:

> Some CLECs take this argument one step further. Whatever the merits of bill and keep or other reforms to intercarrier compensation, they say, any such reform should be undertaken only in the context of a comprehensive review of *all* intercarrier compensation regimes, including the interstate access charge regime. First, we reject the notion that it is inappropriate to remedy some troubling aspects of intercarrier compensation until we are ready to solve all such problems.

We acknowledge witness Trimble's concern that a policy decision in this docket may be subject to subsequent revisions by the adoption of a federal standard should the two conflict. We cannot disallow a bill-and-keep default, however, solely because the FCC may deliver an ultimate solution at an unspecified future date. Instead, we believe, our decision must be based on the relative merits or shortcomings advanced by the parties in the record of this proceeding.

AT&T witness Cain testifies he believes the adoption of a bill-and-keep default mechanism will encourage regulatory arbitrage by causing carriers to seek out customers who originate more calls than they receive, such as telemarketers. This view is shared by US LEC. Verizon witness Trimble sees no merit in AT&T witness Cain's assertion and contends it is not based in fact. Similarly, witness Trimble testifies, there is no evidence to support FCTA witness Barta's belief that bill-and-keep offers ILECs superior bargaining power in negotiations.

We concur with witness Trimble's observation that no factual evidence exists in the record to support claims that adoption of a bill-and-keep default will unfairly advantage ILECs in negotiations or lead to regulatory arbitrage opportunities. In addition, we note the ALEC witness' assertions may be deflected by the testimony of BellSouth witness Shiroishi, who lists a number of ALECs that have entered into bill-and-keep relationships with BellSouth and for which no evidence of coercion or arbitrage exists.

The issue of whether a bill-and-keep default mechanism offers savings to carriers by eliminating transaction costs is one on which the parties do not agree.

Sprint witness Hunsucker testifies significant investment in Sprint's 18-state billing system has already been made, and a switch to bill-and-keep in one of those states will do little to alter the cost to maintain the system.

Verizon witness Trimble believes some transaction costs would be avoided with bill-and-keep and some savings could be realized. FDN witness Warren testifies that bill-and-keep would minimize billing and collection costs and would allow ALECs to refocus resources on competitive activities.

FCTA witness Barta does not dispute that some transaction costs would be avoided under a bill-and-keep system. Witness Barta believes, however, other costs, such as administrative and marketing costs, would rise under bill-and-keep.

We believe the testimony on the issue of whether savings will inure to carriers under a bill-and-keep system is inconclusive. No party provides figures to support their contentions, and we note that efforts during the discovery phase of this proceeding to quantify the increased or decreased costs from adoption of a bill-and-keep regime yielded no specifics from the parties. We also note that those carriers favoring adoption of a bill-and-keep default mechanism project cost savings while those opposing adoption of bill-and-keep as a default contend such a system will result in a net increase in costs. In the absence of data to support any of the positions assumed by the parties, we cannot fully evaluate the respective claims.

Some of the ALEC parties testify conversion to a default bill-and-keep system will create financial losses, which they contend will result if they are not compensated for terminating the traffic of an interconnecting carrier.

AT&T witness Cain believes a default bill-and-keep system will adversely affect ALECs because they will remain responsible for transporting and terminating calls but will receive no compensation for performing these functions. FCTA witness Barta shares this view. Neither witness provides estimates or evidence in support of projected losses.

Indirect support for witness Cain and witness Barta's beliefs that ALECs may experience some financial losses by changing from reciprocal compensation to bill-and-keep may lie in the testimony of Sprint witness Hunsucker, who calculates Sprint would realize net gains of approximately $325,000 annually at current traffic volumes under a bill-and-keep system. Witness Hunsucker explains this is the amount Sprint would no longer pay to interconnected carriers that terminate Sprint's non-ISP traffic.

We believe that while Sprint witness Hunsucker's analysis may corroborate the contentions of AT&T witness Cain and FCTA witness Barta, the analysis is difficult to place into perspective. As witness Hunsucker points out, Sprint elected to opt-in to the FCC's interim compensation regime and for that reason, is bound to exchange reciprocal compensation traffic at a rate of $.001 per minute. No other ILEC witness in this proceeding testified that their company opted-in to the FCC's interim compensation regime. For this reason, it is unknown what net gains, if any, would be realized by other ILECs if comparable analyses were performed.

The parties also debate the issue of regulatory intervention, specifically whether adoption of a bill-and-keep default mechanism will lead to a greater or lesser role for us.

Sprint witness Hunsucker anticipates more regulatory intervention. Witness Hunsucker reasons that the imposition of bill-and-keep must be based on either a determination that traffic is roughly balanced or a presumption that traffic is roughly balanced, subject to rebuttal by a carrier. Because Sprint's data show traffic is not in balance, we would have to presume, subject to rebuttal, that traffic is roughly balanced. This would open the door to rebuttal pleadings, potentially placing a greater workload on us.

AT&T witness Cain predicts a default bill-and-keep system will discourage good-faith negotiations because a party that expects to originate more traffic than it terminates would have no incentive to negotiate. FCTA witness Barta mirrors this belief, testifying that ILECs, as originators of greater traffic volumes than ALECs, will have no incentive to negotiate because they will be "secure in the knowledge" that a bill-and-keep regime is the default.

BellSouth witness Shiroishi appears ambivalent on this point. Witness Shiroishi testifies a bill-and-keep default would eliminate the need to address the "highly contentious" issue of compensation at the tandem interconnection rate, but could lead to disputes over traffic jurisdiction, whether traffic is roughly balanced, and "other tangential issues."

Verizon witness Trimble expects less need for regulatory intervention except for disputes involving whether traffic is in balance. FDN witness Warren shares the belief that less regulatory intervention would result from a bill-and-keep default "as long as the definition and terms of the bill and keep default are adequately specified by the Commission."

Conclusion

None of the parties make a compelling case for regulatory intervention in the form of adopting bill-and-keep as a default compensation mechanism.

The two proponents of bill-and-keep as a default mechanism - BellSouth and FDN - do not address potential revenue losses ALECs allege will result. Further, we believe implementing BellSouth's recommended presumption that traffic volumes below a 3:1 ratio be considered "roughly balanced" for a bill-and-keep default mechanism will lead to a round of regulatory proceedings by ALECs wishing to rebut the presumption. We are unpersuaded that the prescriptive approach proposed by FDN's minutes-of-use threshold for triggering a default symmetrical measurable rate mechanism is warranted.

We are unpersuaded by arguments that a bill-and-keep default will spawn regulatory arbitrage opportunities and finds claims of increased or decreased costs resulting from bill-and-keep vague and irreconcilable given the testimony. There appears to be some substantiation for the belief that a default bill-and-keep mechanism will enhance the financial positions of ILECs at the expense of ALECs, although the extent to which this would impact the overall competitive market is unclear based on the record. It does appear that given the traffic imbalances that exist between ILECs and ALECs, presuming that traffic is roughly balanced and imposing a bill-and-keep default will create, at least initially,

a demand for regulatory intervention. None of these issues alone, or taken together, lead us to its conclusion however.

Most persuasive to us is a record reflecting that bill-and-keep arrangements exist between carriers that have determined the approach best suits their needs. Conversely, the record indicates a number of carriers continue to bill each other for reciprocal compensation. The simultaneous existence of both compensation schemes in the market leads us to conclude that the parties involved in intercarrier relationships are best suited to determine what compensation mechanism is appropriate according to their unique circumstances.

We, therefore, shall not require the imposition of a single compensation mechanism governing the transport and delivery or termination of traffic subject to Section 251 of the Act, to be used in the absence of the parties negotiating a compensation mechanism. While we find that we have jurisdiction to establish a bill-and-keep default mechanism subject to either a determination or a presumption that traffic between carriers is roughly balanced, the record of this proceeding does not support such a determination and argues against a presumption of balance. If we were to establish the imposition of a bill-and-keep default system, we find roughly balanced to mean the traffic imbalance is less than 10 percent between parties in any three-month period.

We have conducted these proceedings pursuant to the directive of Section 251 of the Act. We believe that our decisions are consistent with the terms of Section 251 of the Act, the provisions of the FCC rules, applicable court orders, and provisions of Chapter 364, Florida Statutes. This docket shall be closed upon the expiration of the time to file a motion for reconsideration or an appeal since no further action is required by us.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the specific findings set forth in this Order are approved in every respect. It is further

ORDERED that this docket shall be closed upon the expiration of the time to file a motion for reconsideration or an appeal.

By ORDER of the Florida Public Service Commission this 10th day of September, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

FRB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal

with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.