BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020412-TP

In the Matter of

Petition for arbitration of unresolved issues in negotiation of interconnection agreement with Verizon Florida Inc. by US LEC of Florida Inc.

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PROCEEDINGS:	Hearing
BEFORE:	COMMISSIONER BRAULIO L. BAEZ COMMISSIONER RUDOLPH "RUDY" BRADLEY COMMISSIONER CHARLES M. DAVIDSON
DATE:	February 6, 2003
TIME:	Commenced at 9:30 a.m. Concluded at 9:50 a.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	LINDA BOLES, RPR OFFICIAL FPSC REPORTER (850) 413-6734

APPEARANCES:

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MICHAEL FLEMING, Swidler, Berlin, Shereff, Friedman, LLP, 3000 K Street, N.W., Suite 300, Washington, D.C. 20007, appearing on behalf of US LEC of Florida, Inc., participating telephonically.

AARON M. PANNER and SCOTT H. ANGSTREICH, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., 1615 M Street, N.W., Suite 400, Washington, D.C. 20036, appearing on behalf of Verizon Florida, Inc., participating telephonically.

ADAM TEITZMAN and LEE FORDHAM, Florida Public Service Commission, Office of the General Counsel, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870, appearing on behalf of the Commission Staff.

I N D E X

WITNESSES

EXHIBITS

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P R O C E E D I N G S

COMMISSIONER BAEZ: Okay. We'll call this hearing to order. Counsel, would you read the notice, please.

MR. TEITZMAN: Pursuant to notice issued January 24th, 2003, this time and place has been set for hearing in Docket Number 020412-TP, petition for arbitration of unresolved issues and negotiation of interconnection agreement with Verizon Florida Inc. by US LEC of Florida, Inc.

COMMISSIONER BAEZ: And we'll take appearances. And if you don't mind, we can start with the gentlemen on the phone.

MR. FLEMING: This is Michael Fleming with the firm of Swidler, Berlin, Shereff, Friedman in Washington, DC, on behalf of US LEC of Florida.

COMMISSIONER BAEZ: Good morning.

MR. PANNER: This is Aaron Panner with Kellogg, Huber, Hansen, Todd & Evans for Verizon Florida, Inc.

COMMISSIONER BAEZ: All right.

MR. ANGSTREICH: This is Scott Angstreich, also of Kellogg, Huber, Hansen, Todd & Evans for Verizon Florida, Inc.

COMMISSIONER BAEZ: I'm sorry, sir. I didn't get your name, and if you could please spell it out for, for the court reporter.

MR. ANGSTREICH: Yes. It is Scott, the last name is spelled A-N-G-S-T-R-E-I-C-H.

COMMISSIONER BAEZ: Angstreich?
MR. ANGSTREICH: Yes.
COMMISSIONER BAEZ: Okay. Thank you.
Anyone else on the phone? All right. Mr. McDonnell.
MR. McDONNELL: Marty McDonnell from Rutledge, Ecenia, Purnell and Hoffman on behalf, on behalf of US LEC.
COMMISSIONER BAEZ: Is that everybody?
Mr. Christian, you don't have counsel present. Okay. Great.
MR. TEITZMAN: Commissioner, staff.
COMMISSIONER BAEZ: I'm sorry. Sorry about that.
MR. TEITZMAN: That's okay. Adam Teitzman and Lee Fordham on behalf of the Commission.
COMMISSIONER BAEZ: All right. Mr. Teitzman, we have some preliminary matters I'm showing here.
MR. TEITZMAN: Yes. Staff would just like to note for the record that we've been advised by the parties that they've reached settlement of Issue 4.
COMMISSIONER BAEZ: Is that the parties' understanding as well? Can they confirm that?
MR. FLEMING: This is Mike Fleming. That is our understanding.
MR. PANNER: Yes, Your Honor, that's Verizon Florida's understanding as well.
COMMISSIONER BAEZ: Great. Thank you. And I'm

showing -- now we're on to the stipulation; right?

MR. TEITZMAN: Correct, Commissioner. The parties have agreed to stipulate into the record all prefiled testimony and waive their rights to cross-examination.

COMMISSIONER BAEZ: Very well. And, Mr. Teitzman, should we do it witness by witness or --

MR. TEITZMAN: We could do --

COMMISSIONER BAEZ: -- or just have a general --

MR. TEITZMAN: We could do them in bulk, but I'll leave that up to the parties. I don't know if they have any objections to that.

COMMISSIONER BAEZ: Do the parties have any objections to --

MR. FLEMING: US LEC has no objection.

MR. PANNER: Verizon has no objection.

MR. McDONNELL: No objection.

COMMISSIONER BAEZ: Okay. Then let the record show that the, the prefiled and rebuttal, direct and rebuttal testimony of the witnesses as listed in the prehearing statement will be admitted all at once into the record.

Q: PLEASE STATE YOUR NAME, TITLE, AND ADDRESS FOR THE RECORD.

A: My name is Wanda G. Montano. I am currently Vice President, Regulatory and Industry Affairs for US LEC Corp., the parent company of US LEC of Florida Inc. ("US LEC"), and its operating subsidiaries, including the Petitioner in this proceeding. My business address is 6801 Morrison Blvd., Charlotte, NC 28211.

Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES FOR US LEC.

A: I am responsible for the management of US LEC's relationships with state and federal agencies who oversee our business, as well as for US LEC's relationships with Incumbent Local Exchange Carriers ("ILECs"), alternative local exchange telecommunications companies ("ALECs"), Independent Telephone Companies ("ICOs") and wireless companies.

Q: PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A: I joined US LEC in January 2000. Prior to that, I was employed in various positions by Teleport Communications Group ("TCG") and then by AT&T following AT&T's acquisition of TCG. In 1998-1999, I served as General Manager for North and South Carolina (Sales Executive) for AT&T (Charlotte, N.C.) During 1997-1998 I was Vice President & Managing Executive for North & South Carolina (Sales and Operations Executive) for TCG (Charlotte, N.C.) During 1995-1997, I served as Vice President,

Competitive Local Exchange Carrier Services for TCG (Staten Island, N.Y.) During 1994-1995, I was Director of Process Reengineering for TCG (Staten Island, N.Y.) During 1992-1994, I was Director of Marketing for TCG (Staten Island, NY). During 1990-1992 I was Senior Product Manager for Graphnet (Teaneck, N.J.). From 1982-1990, I was Regulatory Manager for Sprint Communications Corp. in Reston, Virginia and, from 1979-1982 I was a paralegal for GTE Service Corporation in Washington, D.C. I have a B.S. from East Carolina University in Greenville, N.C. (1974). I received my Paralegal Certificate from the University of Maryland in 1980 and I received my M.B.A. in Marketing & Government Affairs from Marymount University of Virginia in 1988.

Q: HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA COMMISSION?

A: Yes, I have testified before this Commission on two occasions. I have also testified before the North Carolina Utilities Commission, the New York Public Service Commission, the Pennsylvania Public Utility Commission, and the Georgia Public Service Commission. In addition, I have submitted pre-filed testimony to the Maryland Public Service Commission and the South Carolina Public Service Commission.

Q: HAVE YOU PARTICIPATED IN US LEC's INTERCONNECTION NEGOTIATIONS WITH VERIZON?

A: Yes, I have participated in the negotiating sessions. In addition, I have

reviewed the points of contention raised during the negotiations to ensure their consistency with state and federal requirements and policy.

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A: The purpose of my testimony is to explain what I understand to be the legal and competitive policy arguments in support of US LEC's position on Interconnection Points ("IPs") (Issues 1 and 2), reciprocal compensation for Voice Information Services Traffic (Issues 3 and 4), the use of "terminating party" or "receiving party" (Issue 5), reciprocal compensation for virtual NXX" traffic (Issue 6), compensation for ISP traffic (Issue 7), and applicability of changes to Verizon's tariffed and non-tariffed rates (Issue 8).

ISSUES 1 AND 2 (INTERCONNECTION ATTACHMENT, SECTIONS 7.1.1.1, 7.1.1.1.1, 7.1.1.2, 7.1.1.3; GLOSSARY, SECTION 2.45)

Q: PLEASE EXPLAIN THE POI AND THE IP TERMS VERIZON USES IN ITS CONTRACT.

A: In order for US LEC and Verizon to exchange traffic between their respective customers, they must interconnect their networks as required by Section 251(c)(2) of the Act. The physical points at which they perform the connection are called Points of Interconnection or POIs under Verizon's defined terms. The billing points that distinguish the financial responsibility of each Party for transporting traffic are called Interconnection Points or IPs under Verizon's defined terms. US LEC is familiar with Verizon's terms, and is willing to use them, so long as the resulting obligations remain

consistent with FCC "rules of the road" that govern interconnection between ALECs and ILECs.

Q: PLEASE EXPLAIN THE FCC'S RULES OF THE ROAD.

A: The first "rule of the road" is that US LEC is entitled to select a single, technically feasible POI in a Local Access and Transport Area ("LATA") for the exchange of traffic with Verizon. The second "rule" is that each LEC bears the burden of delivering local traffic originated by its customers to the POI and recovers such costs in the rates charged to its end users. Unlike Verizon's proposed contract terms, under FCC decisions, the default rule is that the physical connection of the Parties' networks and the demarcation of financial responsibility are at the same point – in other words, the POI is also the default IP. Therefore, together, these rules require that US LEC select the POI/default IP and bear the financial responsibility for carrying traffic originated by its customers to the POI/default IP and, conversely, Verizon must bear the financial responsibility for carrying traffic originated by its customers to the POI/default IP.

Q: HOW DO THESE RULES APPLY TO THE PARTIES' INTERCONNECTION ARRANGEMENTS IN FLORIDA?

A: US LEC has one switch in Florida, located in Verizon's service territory in the Tampa area. This switch currently serves the Tampa LATA and numerous local calling areas within that LATA. US LEC has established POIs at each Verizon Access Tandem where US LEC has been assigned NXX codes and

provides local exchange services to its end users.

Q: HAS THE FLORIDA COMMISSION APPLIED THE FCC'S "RULES OF THE ROAD" BEFORE?

A: Yes. The Commission has generally applied the FCC's rules in a manner that is consistent with the FCC's treatment of the issues. In the recent arbitration involving AT&T and BellSouth, the Commission ruled that "AT&T should be permitted to designate the interconnection points in each LATA for the mutual exchange of traffic, with both parties assuming financial responsibility for bringing their traffic to the AT&T-designated interconnection point."[1] The Commission also generally considered the FCC's rules in Docket No. 000075-TP, when it approved Staff's recommendation that (a) an originating carrier has the responsibility for delivering its traffic to the point(s) of interconnection designated by the ALEC in each LATA; and (b) 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

[1] *Petition by AT&T Communications of the Southern States, Inc., d/b/a AT&T for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. Section 252,* Docket No. 000731-TP, Final Order on Arbitration, Order No. PSC-01-1402-FOF-TP at 41 (Fl. PSC June 28, 2001).

the point(s) of interconnection in a LATA.[2]

In its Response, Verizon mentions the Sprint arbitration decision in which the Commission directed Sprint to compensate BellSouth when BellSouth delivers its originating traffic to a distant Sprint POI outside of the local calling area.[3] Like the AT&T arbitration decision, the Sprint decision was based on the particular facts and circumstances in that arbitration. Moreover, it predated both the AT&T arbitration decision and the Staff Recommendation in Docket No. 000075-TP. It is my understanding that the Staff Recommendation was produced during a generic proceeding to establish guidelines for all carriers that interconnect in Florida. Therefore, because the Docket No. 000075-TP result governs all LECs, and the individual arbitrations are, although persuasive authority, only binding on the ILEC and ALEC that participated in each arbitration, those differences should be considered by the Commission as it makes its decision in this case. US LEC submits that Verizon's Virtual Geographically Relevant Interconnection Points ("VGRIPs") proposal satisfies neither FCC rules nor this Commission's precedent, and we urge the Commission to reject it.

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[2] December 5, 2001 Commission Agenda Conference, Docket 000075-TP, Adoption of November 21, 2001 Staff Recommendation, Issue 14.

[3] *Petition of Sprint Communications Company Limited Partnership for Arbitration of Certain Unresovled Terms and Conditions of a Proposed Renewal of Current Interconnection Agreement with BellSouth Telecommunications, Inc.*, Final Order on Arbitration, Docket No. 000828-TP, Order No. PSC-01-1095-FOF-TP (Fl. PSC May 8, 2001) at 36.

Q: WHAT IS THE CRUX OF THE DISPUTE IN ISSUES 1 AND 2?

A: From a policy perspective, US LEC has three major problems with Verizon's VGRIPs proposal. First, Verizon wants the right to designate the IP (whether physical or virtual) or, given that US LEC has already designated its IP in the Verizon LATA in which it provides service in Florida, to require US LEC to transition to additional IPs (whether physical or virtual) unilaterally designated by Verizon. I believe this is inconsistent with both FCC rules and the Commission's determination that the ALEC is entitled to select the point(s) of physical interconnection between the parties' networks.[4]

Second, Verizon wants to designate the method US LEC must use to interconnect with Verizon, specifically collocation. I believe requiring collocation is inconsistent with FCC rules and is an issue this Commission has not yet addressed. Third, if US LEC fails to establish the physical IPs requested by Verizon, then Verizon wants to penalize US LEC by imposing transport charges for Verizon's originating traffic, from the Verizon end office to US LEC's IP. In other words, Verizon would charge US LEC for transporting Verizon's originating traffic *within the local calling area*, which I believe violates both FCC rules *and* the Commission's prior rulings. The additional technical and network reasons for rejecting Verizon's proposed interconnection structure are addressed in more detail in Frank Hoffmann's

[4] AT&T Arbitration Order at 41.

testimony concerning Issues 1 and 2.

Q: WHAT IS THE POLICY BASIS FOR US LEC'S POSITION THAT VERIZON DOES NOT HAVE THE RIGHT TO DESIGNATE THE IP?

A: The Act and the FCC recognize that new entrants, such as US LEC, must be able to determine the most efficient location for the exchange of traffic. The Act grants ALECs, not Verizon, the right to select the POI/default IP. Under 47 U.S.C. § 251(c)(2)(B), Verizon must provide interconnection at any technically feasible point selected by US LEC. As the Third Circuit recently held (after the Commission's *AT&T/BellSouth* decision):

> The decision where to interconnect and where not to interconnect must be left to WorldCom, subject only to concerns of technical feasibility. Verizon has not presented evidence that it is not technically feasible for WorldCom to interconnect at only one point within a LATA. Nor has Verizon shown that it is technically necessary for WorldCom to interconnect at each access tandem serving area. *The PUC's requirement that WorldCom interconnect at these additional points is not consistent with the Act.*[5]

Under binding FCC rules, unless Verizon can meet its burden of showing that US LEC's requested POI(s) and single IP in the Tampa LATA is not

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[5] *MCI Telecommunications Corp. et al. v. Bell Atlantic-Pennsylvania et al.*, 271 F.3d 491, 518 (3d Cir. 2001) (emphasis added).

technically feasible, it must offer such interconnection to US LEC.[6] Furthermore, the fact that the parties have already interconnected at US LEC's requested POI(s) and single IP in the Tampa LATA (as Frank Hoffmann testifies), is evidence that US LEC's requested form of interconnection is technically feasible.[7]

Q: WHY DOES US LEC OBJECT TO VERIZON'S REQUIREMENT THAT US LEC ESTABLISH AN IP VIA COLLOCATION?

A: As Frank Hoffmann explains, US LEC does not use collocation as its method of interconnection with Verizon and, as such, is not collocated at any Verizon office in any LATA in Florida. Nor does US LEC wish to change its method of interconnecting with Verizon. Rather, US LEC prefers to exercise its right under the Act as well as other agreed-to sections of the contract to choose one of the three methods the parties have identified as acceptable interconnection methods. US LEC's right to select an entrance facility or other method of interconnection is also granted by Section 251(c)(2), which permits US LEC to select any technically feasible method of interconnection that will be used

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[6] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶¶ 198, 205 (1996) (subsequent history omitted) ("*Local Competition Order*").

[7] *Id.* at ¶ 204.

to establish the physical IP.[8]

Under Verizon's proposed contract language, however, Verizon wants US LEC to interconnect through collocation at Verizon's tandems, and to establish a physical IP at any other collocation arrangement US LEC may establish at a Verizon end office, or pay for Verizon's originating tandem switching costs and all of Verizon's transport costs, beginning at the Verizon end office where the call originates. These so-called "options" require US LEC to mirror Verizon 's legacy network architecture (either physically or financially), which may not be the most efficient forward-looking architecture for an entrant deploying a new network, and therefore constitutes a barrier to entry.

Q: PLEASE EXPLAIN THE PROBLEM CONCERNING VERIZON'S TRANSPORT PENALTY IN ITS THIRD OPTION.

A: Verizon's transport penalty, the so-called "third option," is included in Sections 7.1.1.1.1, 7.1.1.2, and 7.1.1.3(b) of its proposed contract language. It provides that US LEC must reduce its reciprocal compensation charges to Verizon if US LEC fails to establish (1) a collocated IP at each Verizon tandem, (2) an IP at US LEC's collocation site at a Verizon end office, or (3) a collocated IP at a Verizon tandem or end office within some unspecified

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[8] *Id.* at 64; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶¶549-54 (1996) ("*Local Competition Order*") (subsequent history omitted).

time period that must be agreed to within thirty (30) days of Verizon's request to transition the parties' existing architecture to the IPs mandated by Verizon. By reducing the termination rate Verizon pays to US LEC, Verizon effectively is charging US LEC for transporting Verizon-originated traffic from Verizon's end office over Verizon's network to the established IP, in other words, both within the local calling area and beyond it. In short, under Verizon's position, US LEC could be "charged" for transport from a Verizon end office to US LEC's IP, even if US LEC's IP were located in the same local calling area. My understanding is that even under the Commission's Sprint arbitration decision—which, as I have already explained, US LEC does not believe should guide the Commission's decision in this case—the Commission only permitted BellSouth to charge Sprint for the cost of facilities *outside* of the local calling area to Sprint's POI. This portion of Verizon's VGRIPs proposal is a penalty that has not been sanctioned by the Commission, and Verizon should be prohibited from imposing it.

Q: HAS THE FCC EVER CLARIFIED AN INTERCONNECTING LEC's OBLIGATION TO CARRY TRAFFIC THEIR CUSTOMER ORIGINATES TO THE POI?

A: Yes. As the FCC recently affirmed, "[u]nder our current rules, the originating telecommunications carrier bears the costs of transporting traffic

to its point of interconnection with the terminating carrier."[9] In other words, as I've already explained, the POI also serves as the IP (using Verizon's terminology). The FCC has explained the basis of requiring each LEC to bear this cost:

> In essence, the originating carrier holds itself out as being capable of transmitting a telephone call to any end user, and *is responsible for paying the cost of delivering the call to the network of the co-carrier* who will then terminate the call. Under the Commission's regulations, *the cost of the facilities used to deliver this traffic is the originating carrier's responsibility*, because these facilities are part of the originating carrier's network. *The originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls.* This regime represents "rules of the road" under which all carriers operate, and which make it possible for one company's customer to call any other customer even if that customer is served by another telephone company.[10]

Verizon's obligation to deliver its originating traffic to US LEC's IP is not conditioned on US LEC establishing the collocated IPs Verizon is trying to require through its contract proposals. As such, we believe Verizon's transport penalty proposal is inconsistent with FCC rules.

Q: ARE YOU AWARE OF A RECENT FCC WIRELINE COMPETITION

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[9] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132, ¶ 70 (rel. April 27, 2001) (*"Intercarrier Compensation NPRM"*).

[10] *TSR Wireless, LLC v. U S West Communications, Inc.*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18m Memorandum Opinion and Order, FCC 00-194, ¶34 (rel. June 1, 2000) ("*TSR Wireless*"). (emphasis added) (footnotes omitted), *aff'd, Quest Corp. et al. v. FCC et al*, 252 F.3d 462 (D.C. Cir. 2001).

BUREAU ARBITRATION ORDER ADDRESSING INTERCONNECTION ISSUES?

A: Yes. In decision released on July 17, 2002, the FCC's Wireline Competition Bureau ("Wireline Bureau") stepped into the shoes of the Virginia State Commission to arbitrate interconnection disputes between Verizon and three ALECs: AT&T, Cox Communications and MCI WorldCom. As such, the Wireline Bureau had to interpret and apply Sections 251 and 252 of the Act and the FCC's implementing regulations to the positions of the parties, just as this Commission must do.

Q: DID THE WIRELINE BUREAU ADDRESS INTERCONNECTION ISSUES SIMILAR TO THOSE THAT THE PARTIES ARE ARBITRATING IN THIS PROCEEDING?

A: Yes, it did. The Wireline Bureau reviewed Verizon's VGRIPs proposal—which is substantially similar to the proposal at issue here—and proposals by the three ALECs involved in the arbitration. The Wireline Bureau described those proposals, and ultimately rejected Verizon's VGRIPs proposal. The FCC Bureau stated its rationale for rejecting Verizon's proposal as follows:

> Under Verizon's proposed language, the competitive LEC's financial responsibility for the further transport of Verizon's traffic to the competitive LEC's point of interconnection and onto the competitive LEC's network would begin at the Verizon-designated competitive LEC IP, rather than the point of interconnection. By contrast, under the petitioners'

> proposals, each party would bear the cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC. The petitioners' proposals, therefore, are more consistent with the Commission's rules for Section 251(b)(5) traffic, which prohibit any LEC from charging any other carrier for traffic originating on that LEC's network; they are also more consistent with the right of competitive LECs to interconnect at any technically feasible point.[11]

Based on this description, I believe that the FCC Bureau considered an ALEC proposal similar to the one that US LEC has offered in this proceeding.

Q: DID THE WIRELINE BUREAU ADDRESS A CLAIM LIKE US LEC'S THAT VERIZON IS FINANCIALLY RESPONSIBLE FOR DELIVERING ITS TRAFFIC TO US LEC'S NETWORK?

A: Yes. The Order states that under current FCC rules, "all LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs' networks for termination."[12] The Order goes on to explain that this means "Verizon must pay petitioners for transporting Verizon-originated traffic from the place where petitioners interconnect with Verizon's network to the petitioner's network" in cases where the petitioner

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[11] *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218 *et al.*, Memorandum Opinion and Order, DA 02-1731, ¶¶ 53 (Wireline Competition Bureau, rel. July 17, 2002) ("*FCC Arbitration Order*").

[12] *FCC Arbitration Order* at ¶ 67.

provides that facility.[13] I believe this supports US LEC's position.

Q: WHY DOES US LEC OBJECT TO ESTABLISHING AN IP TO PICK UP VERIZON'S TRAFFIC AT EACH US LEC COLLOCATION ARRANGEMENT AT A VERIZON END OFFICE?

A: If Verizon were allowed to identify US LEC-IPs for delivery of Verizon's originating traffic to US LEC and require US LEC to build or buy facilities to reach those IPs, it would be able to disadvantage US LEC and impose additional and unwarranted costs on new entrants. In effect, by requiring US LEC to move its IP to Verizon's end office, Verizon is again abdicating its responsibility to transport its own customers' traffic to the IP selected by US LEC. Indeed, if Verizon were allowed such discretion, it could force ALECs essentially to duplicate the incumbent's network. The costs of interconnecting two networks arises in part from the differences between the two networks. If the Commission were to adopt Verizon's proposal, it would have to ignore the fact that Verizon, through its chosen network design, contributes to the cost of interconnecting two different networks. Adopting Verizon's proposal would also favor Verizon's network design by imposing all the costs of interconnecting two different networks on the new entrant. Such a result is not in the public interest and would impede the development of competition.

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13 *FCC Arbitration Order* at ¶ 68.

Q: WHAT ACTION DO YOU RECOMMEND THE COMMISSION TAKE?

A: Because Verizon has not met its burden of showing that it qualifies for an exception to the POI/default IP rules of the road, the Commission should find that US LEC has the right to maintain its chosen IP(s) in each LATA, and, at US LEC's option, its current interconnection method. The Commission should reject Verizon 's attempts to mandate the location of IPs (whether physical or virtual) and the method of interconnection and reject Verizon's transport penalty proposal.

ISSUES 3 AND 4 (GLOSSARY, SECTION 2.75; ADDITIONAL SERVICES ATTACHMENT, SECTIONS 5.1 AND 5.3; INTERCONNECTION ATTACHMENT, SECTION 7.3.7)

Q: PLEASE DESCRIBE THE ISSUES IN DISPUTE.

A: First, in Issue No. 3, Verizon seeks to define an entire category of traffic as a class of service that it wants the Commission to exclude from the parties' reciprocal compensation obligations. Verizon first defines "Voice Information Services Traffic" as a class of traffic that "provides [i] recorded voice announcement information or [ii] a vocal discussion program open to the public." Further, Verizon attempts to utilize this definition—which lacks a sound basis in law or fact—in Section 7.37 of the Interconnection Attachment, to exclude the defined class of traffic from its reciprocal compensation obligations.

Second, with respect to Issue No. 4, if US LEC's customers want to call Voice Information Services connected to Verizon South's network, then Verizon seeks to require US LEC to provide, at its own expense, a separate, dedicated, trunk to carry that traffic.

Q: WHAT IS US LEC'S POSITION ON ISSUE NO. 3?

A: As with its efforts to eliminate reciprocal compensation for calls to ISPs, it appears that Verizon's real thrust here is to deprive US LEC of compensation for providing a valuable service to Verizon customers. In US LEC's view, the categories of traffic that Verizon now wants to define as Voice Information Services Traffic fit completely the definition of "Reciprocal Compensation Traffic" that is the basis for the parties' reciprocal compensation obligations.

Q: PLEASE EXPLAIN.

A: "Reciprocal Compensation Traffic" is defined in the proposed agreement as "Telecommunications traffic originated by a Customer of one Party on that Party's network and terminated to a Customer of the other Party on that other Party's network, except for Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access."

The categories of traffic included in the definition of "Voice Information Services Traffic" fit this definition: Whether the call is a "recorded voice announcement information" or "a vocal discussion program

open to the public," it is originated by a customer of one party on that party's network and is terminated by a customer of the other party on that party's network.

At the same time, the traffic at issue can not be characterized as interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access. In short, there does not appear to be any basis to exclude what Verizon South has defined as "Voice Information Services Traffic" and, as such, the parties should be required to compensate each other for exchanging and terminating such traffic.

Q: ARE THERE ANY TECHNICAL PROBLEMS THAT WOULD ARISE IF THE COMMISSION ADOPTS VERIZON'S POSITION?

A: Yes, there are. As far as I know, there is no technically feasible, cost-effective way to segregate so-called "Voice Information Services Traffic" from other traffic that is eligible for reciprocal compensation, and Verizon has never offered US LEC any proposals for how it believes this can be accomplished. In addition, this is the same problem that plagues Verizon in its drive to eliminate reciprocal compensation for calls to ISPs: the traffic is indistinguishable from all other locally dialed traffic sent over local trunk groups. Unlike intra- or interLATA toll traffic, which clearly is distinguishable, calls to "Voice Information Service Providers" are indistinguishable from all other local traffic.

The only apparent way to segregate the traffic is to program switches

to "flag" calls to an identified database of providers. This is expensive and often inaccurate, because it is not always possible to identify every single number that might be assigned to a Voice Information Service Provider.

It also is intrusive. It would force US LEC, and every other ALEC, to inquire into the proposed business plans of all customers so as to identify those who intend to offer "Voice Information Services". It also would slow the operation of US LEC's switches significantly because it would force the switch to add additional steps in the process of handling every call.

Finally, even assuming the technical issues regarding the call processing can be overcome, Verizon's proposal ignores privacy concerns that customers may raise about sharing information about their business with other companies.

Q: HOW SHOULD THE COMMISSION RESOLVE ISSUE NO. 3?

A: First, US LEC believes that the Commission should reject entirely Verizon's request to separately identify and define "Voice Information Services Traffic" as a separate category of traffic. In that regard, Section 2.75 of the Glossary should be eliminated from the Agreement. Second, those sections which purport to exclude "Voice Information Services Traffic" from the parties' reciprocal compensation obligations should be eliminated as well.

Q: WHAT IS US LEC'S POSITION ON ISSUE NO. 4?

A: Verizon's proposal—to force US LEC to construct a dedicated facility for the delivery of calls from its customers to Voice Information Service Providers

served by Verizon—would impose significant costs on US LEC without any showing, first, that such a dedicated facility even is necessary or, second, that the amount of traffic generated by US LEC's customers and destined for Voice Information Services connected to Verizon's network is sufficiently large as to warrant a separate trunk.

Moreover, as I discussed above in connection with Issue No. 3, even if Verizon could demonstrate a need for a separate trunk—which it cannot do—it still would put US LEC in the position of trying to segregate traffic which it simply cannot identify through any technically feasible, cost effective means. Also as before, this would slow the operation of US LEC's switch as it would have to identify calls destined for a Verizon South-served Voice Information Services Provider, separate those calls from all other traffic destined for Verizon's customers, and then send that traffic down a dedicated trunk.

Q: WHAT IS VERIZON'S POSITION?

A: As I understand it, Verizon contends that it needs a separate trunk for billing purposes. That may or may not be so, but Verizon should address its billing concerns on its own network, not by imposing the requirement for separate trunking on US LEC. If Verizon wants to measure the traffic, it can probably find a way to do so which does not involve imposing any costs on US LEC. That would accomplish Verizon's goal without requiring US LEC to go to the expense of putting in a separate, dedicated trunk.

Q: HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should adopt US LEC's position and direct that Section 5.3 of the Additional Services Attachment to the Agreement should be deleted.

ISSUE 5: (GLOSSARY, SECTION 2.56; INTERCONNECTION ATTACHMENT, SECTIONS 2.1.2, 8.5.2, AND 8.5.3)

Q: PLEASE DESCRIBE THE DISPUTE AT ISSUE HERE.

A: Historically, as well as currently, when it comes to billing, measuring and engineering purposes, traffic is referred to as either originating or terminating. Thus, in any call, there is an originating party served by an originating carrier and a terminating party served by a terminating carrier. Against this long-standing, historical backdrop, Verizon seeks to interject the entirely new concept of a "receiving party". Verizon does not define the term "receiving party" and US LEC is concerned that Verizon will use the concept of a "receiving party" to escape some of its compensation obligations, which are grounded in the traditional 'originating party—terminating party' designations.

Q: WHAT IS US LEC'S POSITION ON THIS ISSUE?

A: Verizon has not provided any reasonable explanation for its sudden desire to shift from the traditional "terminating party" designation to the as yet undefined "receiving party." US LEC sees no need to disrupt the historic framework that has governed the transport, exchange and billing of traffic for decades.

Q: DOES THE AGREEMENT USE EITHER "TERMINATING PARTY" OR "RECEVING PARTY" CONSISTENTLY THROUGHOUT?

A: No, it does not. For example, in section 7.2, the parties agree that they will compensate each other for the "transport and termination" of Reciprocal Compensation Traffic. In turn, "Reciprocal Compensation" is defined with respect to the "transport and termination" of "Reciprocal Compensation Traffic", which, itself, is defined with reference to traffic that is "terminated on the other Party's Network."

In contrast, in Sections 2.16 of the Glossary and 8.5.2 and 8.5.3 of the Interconnection Attachment dealing with the definition of an "IP" (Interconnection Point), Verizon abandons the "terminating party" designation and, instead, refers to traffic delivered to the "receiving party" and provides no valid reason why, in these limited sections, the term "receiving party" should replace the more standard "terminating party". Similarly, Section 2.56 of the Glossary refers to the "receiving party", not the "terminating party" when defining Measured Internet Traffic.

Q: WHY DOES THIS INCONSISTENCY CONCERN US LEC?

A: In the first place, Verizon has offered no satisfactory explanation for the distinction between "receiving" and "terminating". In the absence of such an explanation, US LEC is not willing to abandon decades of precedence in engineering, measuring and billing for traffic.

Second, the Commission will recall that in several enforcement

actions and arbitration proceedings, Verizon, among other incumbents, argued that it had no obligation to compensate ALECs for calls to ISPs because the traffic did not "terminate" there. US LEC and other ALECs argued differently and the Commission decided on several occasions that, for purposes of reciprocal compensation, calls to ISPs would be treated as local and viewed as terminating at the ISP.

Third, the FCC assumed exclusive jurisdiction over ISP-bound traffic in its April 2001 Internet Order and that Order sets forth the terms and conditions under which the parties will compensate each other for ISP-bound traffic. However, the United States Court of Appeals for the District of Columbia recently remanded that Order to the FCC, while leaving in place the interim compensation framework that it established. In the event that compensation framework is later overturned or vacated by the Court of Appeals, then jurisdiction over ISP-bound traffic could, at least for some period of time, revert to the Commission. In that instance, US LEC believes Verizon would seize on the "receiving party" designation in the Agreement and contend that US LEC is not entitled to any compensation for ISP-bound traffic because US LEC has conceded that the traffic does not terminate at the ISP; rather, it is simply "received" there. In order to avoid that result, US LEC believes that the agreement should refer consistently to the "terminating party" for all purposes—establishing an IP, measuring traffic, billing for traffic and paying for traffic.

Q: HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A: The Commission should accept US LEC's position and direct that all references in the Agreement to a party that is terminating traffic should refer to that party as the "terminating party". Further, all references to the party "receiving" traffic or to the "receiving party" should refer instead to the party "terminating" traffic and to the "terminating party".

ISSUE 6 (GLOSSARY, SECTION 2.56; INTERCONNECTION ATTACHMENT, SECTION 7.2)

Q: PLEASE BRIEFLY DESCRIBE THE DISPUTE ON THIS POINT.

A: There are really two issues in dispute under this single heading. First, US LEC urges the Commission to find that Verizon is obligated to pay intercarrier compensation for all calls originated by Verizon customers to US LEC line numbers with "NXX" codes associated with the calling party's local calling area. Calls are conventionally rated and routed throughout the U.S. telephone industry based upon the NXX codes of the originating and terminating numbers. US LEC submits that there is no reason to deviate from that convention now. These calls are routed to the interconnection point or POI for local traffic and handed off just as any other local call would be. This practice should be continued such that calls between an originating and terminating NXX associated with the same local calling area are rated and routed as local.

The second issue in dispute is whether Verizon should be allowed to

impose per-minute originating switched access charges for carrying such calls to the parties' POI. As this Commission is well aware, according to FCC Rules and Orders, access charges cannot be imposed on locally dialed calls, such as are at issue here. Under any scenario, the only costs Verizon incurs are the transport and switching charges required to bring traffic to the interconnection point between Verizon and US LEC. These costs do not change based upon the location of US LEC's customers, so there is no economic justification for treating these calls differently from any other locally dialed call. Further, it would be inconsistent and anti-competitive to allow Verizon to evade its intercarrier compensation obligations and, at the same time, to charge US LEC originating switched access charges for calls going to a particular NXX code. Not only would Verizon double-recover for carrying such traffic (through local rates and access charges), but it would be compensated for costs it does not even incur and would be given a free ride on US LEC's network. Each of the issues, when considered individually, would put new entrants such as US LEC at an extreme disadvantage in the marketplace if Verizon were to prevail. Taken together, the requirement to pay Verizon access charges on local calls, and being deprived the opportunity to recover any expenses for terminating calls for Verizon, would be a devastating blow to US LEC in its bid to offer competitive local exchange service in Florida.

Q: WHAT IS VERIZON'S POSITION ON THIS ISSUE?

A: Verizon argues for overturning the historical system I describe above, complaining that it should not be required to pay intercarrier compensation even though a call would be rated and billed to end-users as local by comparing the NXX codes of the originating and terminating numbers. Further, Verizon argues that it should be able to charge originating access charges for all calls to an NXX if customers with that NXX are physically located outside the local calling area. Verizon provides no evidence that such calls increase its costs as compared to other local calls in any way such that additional or different cost recovery is justified. Verizon also fails to show that changing this historical system as it suggests would provide any benefits to the public interest. In contrast, maintaining the existing system will provide significant benefits to consumers and would be consistent with the goal of increasing competitive offerings for consumers in Florida.

Q. WHAT ADDITIONAL ARGUMENTS DOES VERIZON MAKE IN ALLEGED SUPPORT OF ITS POSITION?

A. In its Response, Verizon claims that the Staff Recommendation in Docket No. 000075-TP resolved the disputed virtual NXX code issues between the parties. Verizon states that because the Commission found that virtual NXX traffic is not local traffic, no reciprocal compensation is payable on such traffic.

Q. DO YOU AGREE WITH VERIZON'S CLAIMS?

A. No, I do not. US LEC acknowledges that the Staff Recommendation suggested that calls to virtual NXX customers located outside of the local

calling area to which the NXX is assigned should not be considered local calls. We disagree with this finding and I will explain why US LEC urges the Commission to depart from it when it evaluates the merits of our dispute with Verizon.

In addition, I strenuously disagree with Verizon's claim that the Staff Recommendation settles the issue of what compensation mechanism is payable on virtual NXX traffic. Verizon's representation that the Staff Recommendation establishes that such calls are not eligible for reciprocal compensation is simply incorrect. In fact, the Staff Recommendation explicitly states that because the record before it did not include the factual information necessary to make an assessment about whether reciprocal compensation or access charges should apply to virtual NXX traffic, this issue is "better left for parties to negotiate in individual interconnection agreements."[14] The Commission has not resolved the issue of whether reciprocal compensation is payable on such traffic, and has been asked to do so by US LEC in this proceeding.

Q: BEFORE TURNING TO THE SUBSTANCE OF THE DISPUTE, WHAT ARE NXX CODES?

A: NXX codes are the fourth through sixth digits of a ten-digit telephone number. For example, in the main telephone number for the Commission,

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[14] Staff Recommendation at 96.

(850) 413-6100, the NXX code is "413".

Q: HOW ARE CUSTOMERS ASSIGNED AN NXX CODE?

A: Carriers, like US LEC and Verizon, request and are assigned blocks of telephone numbers by the numbering administrator. The carriers then assign numbers to their customers as requested.

Q: HOW IS THE RATING OF CALLS IMPACTED BY THE NUMBERS ASSIGNED TO CUSTOMERS?

A: Standard industry procedure provides that each NXX code is associated with a particular rate center within a local calling area.[15] (A single rate center may have more than one NXX code, but each code is assigned to one and only one rate center.) This uniquely identifies the end office switch serving the NXX code, so that each carrier that is routing a call knows which end office switch to send the call to. However, it is not uncommon for NXX codes to be assigned to customers who are not physically located in the local calling area where the NXX is "homed," and the Staff Recommendation does not prohibit this practice When an ILEC provides this arrangement, it typically is called foreign exchange or FX service. This type of arrangement also may be referred to as "Virtual NXX" because the customer assigned the telephone number has a "virtual" presence in the calling area associated with that NXX. Calls to these customers are still routed to the end office switch associated

[15] A rate center is a geographic location with specific vertical and horizontal coordinates used for determining mileage, for rating local or toll calls.

with the NXX code, but then are routed within the terminating carrier's network to the called party's actual physical location.

Q: WHY WOULD CARRIERS OR THEIR CUSTOMERS WANT A VIRTUAL NXX CODE?

A: Customers want to use virtual NXX codes because it allows them to take advantage of state-of-the-art, currently available technologies to allow consumers to reach their businesses without having the disincentive of a toll call. It also allows businesses and organizations to provide service in other areas before they actually have facilities or offices in those areas. Absent such calling plans, consumers would have to wait for carriers to build out their networks – which could take years and millions of dollars. For instance, so-called virtual NXX arrangements enable ISPs, among other customers, to offer local dial-up numbers throughout Florida, including in more isolated, rural, areas of the State. Access to the Internet is affordable and readily available in all areas of the state because these NXX arrangements allow ISPs to establish a small number of points of presence ("POPs") that can be reached by dialing a local number regardless of the physical location of the Internet subscriber. Rural small businesses especially benefit from low-cost Internet access and increasingly depend on such access to remain competitive. Thus, taking advantage of state-of-the-art technologies through virtual NXX arrangements allows affordable Internet access, particularly in isolated and rural areas, and this not only benefits Florida's consumers but

also promotes economic development.

Other organizations, such as the Florida State government, may also want to make use of virtual NXX arrangements to allow residents to contact state agencies – which may actually reside in Tampa, Tallahassee, or Miami – without incurring the cost of a toll call. Such an arrangement would allow the state to provide services in rural areas without building or renting space in those localities and without relocating employees.

Carriers use virtual NXX codes because they allow them to respond to customer demand through the use of new and innovative services. In 1997 and 1998, there was considerable discussion about the benefits to be expected from competition in the local exchange market. Some of the more important expected benefits were that competition would drive competitors to develop and utilize networks efficiently in order to gain competitive advantages, by allowing them to serve customers at lower cost. Verizon's proposal would constitute an artificial impediment to this natural progression of a developing competitive market, and would deny Florida residents the associated benefits.

Q: IS THIS NXX CODE ISSUE SIMPLY AN ASPECT OF THE ISP COMPENSATION ISSUE?

A: No. Although many ISPs do use virtual NXX arrangements, these services are also used by other businesses and organizations that want to maintain a local telephone number in some community where they do not have a

physical presence. This issue therefore affects ordinary local voice telephone calls as well as ISP traffic.

Q: IS IT UNLAWFUL OR AGAINST ANY RULES FOR ALECS TO PROVIDE VIRTUAL NXX'S TO THEIR CUSTOMERS?

A: No. As the Staff Recommendation recognizes, the use of virtual NXX codes is not unlawful or in any other way improper. Verizon, itself, provides several virtual NXX services, such as FX service, to its customers, including ISPs. Indeed, nobody complained about such uses of NXX codes until ALECs had some success in attracting ISP customers and the ILECs began looking for ways to avoid compensating them for serving and terminating calls to ISPs.

Q: PLEASE DESCRIBE THE IMPACT OF VERIZON'S PROPOSED LANGUAGE WITH RESPECT TO THE CUSTOMER'S PHYSICAL LOCATION IN MORE DETAIL.

A: The language proposed by Verizon and endorsed in the Staff Recommendation—determining the rating of a call by reference to the actual end points, not by reference to the NXXs of the calling and called parties—would have at least three significant negative impacts in Florida. First, if the Commission adopted Verizon's proposed language, Verizon would be able to evade its intercarrier compensation arrangements for a particular class of traffic. Second, and contrary to one of the fundamental goals of the 1996 Act, Verizon's proposed language would have a negative

impact on the competitive deployment of affordable dial-up Internet services in Florida, and on businesses that simply want an affordable way for their distant customers to reach them. This negative impact would result from the increase in costs to both consumers and providers under Verizon's proposal. Finally, Verizon's proposed language would give Verizon a competitive advantage over US LEC in the ISP market. It is for these reasons that US LEC disagrees with the Staff Recommendation's finding that calls should be rated based on the end points of the particular calls.

Q: HOW WOULD VERIZON EVADE ITS INTERCARRIER COMPENSATION OBLIGATIONS TO US LEC BY LIMITING COMPENSATION TO CALLS TERMINATING TO A CUSTOMER WITH A PHYSICAL PRESENCE IN THE SAME LOCAL CALLING AREA AS THE ORIGINATING CALLER?

A: Deviating from the historical practice of rating a call based upon the NXX codes of the originating and terminating number would give Verizon the ability to arbitrarily re-classify local calls as toll calls. This is because under Verizon's proposed language, it would be nearly impossible and much more economically burdensome for US LEC (or any other ALEC in a similar situation) to utilize virtual NXXs in the provision of service to its customers.

As discussed above, Virtual NXXs are used by carriers to provide a local number to customers in calling areas in which the customer is not physically located. If the Commission adopts Verizon's language and allows

Verizon to avoid rating calls based on the NXX of the originating and terminating numbers, calls to "virtual NXX" customers would effectively be reclassified as toll calls (at least in the intercarrier environment, if not in the retail environment), and Verizon would no longer be obligated to compensate US LEC for terminating what for decades have been rated as simple local calls.

Q. DID THE WIRELINE BUREAU ADDRESS FX ARRANGEMENTS IN ITS RECENT ARBITRATION DECISION?

A. Yes. Verizon and the ALECs involved in the arbitration all addressed the issue of whether calls to FX numbers would be entitled to reciprocal compensation. It is apparent that Verizon made precisely the same arguments to the FCC that its affiliate, Verizon Florida makes here. In its conclusion, the Wireline Bureau rejected Verizon's arguments entirely, stating as follows:

> We agree with the petitioners that Verizon has offered no viable alternative to the current system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes. We therefore accept the petitioners' proposed language and reject Verizon's language that would rate calls according to their geographical end points. Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide. The parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time.[16]

Q: IN ADDITION TO COMPENSATION CONCERNS, YOU HAD

[16] *FCC Arbitration Order* at ¶ 301.

MENTIONED THAT VERIZON WOULD CHARGE ORIGINATING ACCESS ON EVERY "VIRTUAL NXX" CALL. DO THE COSTS INCURRED BY VERIZON SOUTH IN ORIGINATING SUCH A CALL JUSTIFY THIS ADDITIONAL CHARGE?

A: No. First, as mentioned elsewhere in my testimony, LECs are not allowed to impose access charges upon local traffic. Nevertheless, and despite this specific prohibition, there is no additional cost incurred by Verizon when a virtual NXX is provided to a ALEC customer, because Verizon carries the call the same distance (to the IP) and incurs the same costs (in terms of local interconnection facilities used) regardless of the physical location of the "virtual NXX" customer. Verizon's obligations and costs are therefore the same in delivering a call originated by one of its customers, regardless of whether the call terminates at a so-called "virtual" or "physical" NXX behind the ALEC switch.

Q: DOES THE USE OF VIRTUAL NXX CODES IMPACT THE HANDLING OR PROCESSING OF A CALL TO A US LEC CUSTOMER?

A: No. Verizon would always be responsible for carrying the call to the IP on its own network and then paying US LEC to transport and terminate the call from that point. The use of a virtual NXX does not impact Verizon's financial and/or operational responsibilities such that it should be able to avoid compensating US LEC or collect additional compensation. Indeed, US

LEC's customer has a presence in the local calling area of the originating caller; it is a virtual presence, not a physical one, but the way the call is handled is the same from Verizon's perspective.

Q: EVEN IF ONE WERE TO OVERLOOK THE FACT THAT VERIZON INCURS NO ADDITIONAL COST IN ORIGINATING VIRTUAL NXX CALLS, DO YOU THINK ACCESS CHARGES WOULD PROVIDE AN APPROPRIATE MEANS OF COST RECOVERY FOR THIS TRAFFIC?

A: Not at all. Setting aside the fact that intercarrier compensation for local traffic is governed by the reciprocal compensation rules of the FCC,[17] and that access charges are imposed on traffic other than local traffic, access charges are not cost-based, and it has been federal and state policy in recent years to drive access charges down to forward-looking economic cost. It makes no sense to impose an out-dated compensation regime on an artificial category of traffic. At a time when regulators and the industry are looking to move to more competitive market models by eliminating implicit subsidies in telecommunications rates and intercarrier payments, it would seem contrary to that movement to suddenly foist originating switched access charges on a certain type of local traffic. The costs of originating this traffic

[17] FCC Rule 51.703(b) states, "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network."

do not differ from any other local call, and thus there is absolutely no economic or policy justification for imposing switched access charges on US LEC for traffic originated by Verizon customers.

Q: IS VERIZON COMPENSATED FOR CARRYING THE TRAFFIC ORIGINATED BY ITS CUSTOMERS TO THE US LEC IP?

A: Yes, it is. The FCC's *TSR Order* is directly on point. The pertinent language with respect to Verizon's compensation is as follows:

> According to Defendants, the *Local Competition Order*'s regulatory regime, which requires carriers to pay for facilities used to deliver their originating traffic to their co-carriers, represents a physical occupation of Defendants property without just compensation, in violation of the Takings Clause of the Constitution. We disagree. *The Local Competition Order requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation.* In essence, the originating carrier holds itself out as being capable of transmitting a telephone call to any end user, and is responsible for paying the cost of delivering the call to the network of the co-carrier who will then terminate the call. *Under the Commission's regulations, the cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network. The originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls.* This regime represents "rules of the road" under which all carriers operate, and which make it possible for one company's customer to call any other customer even if that customer is served by another telephone

company.[18]

By this reasoning, US LEC should not have to pay Verizon for Verizon-originated traffic from the local calling area to US LEC's IP.

Q: THIS QUOTE SAYS THAT VERIZON WOULD RECOVER ITS COSTS THROUGH THE RATES IT CHARGES ITS OWN CUSTOMERS. DO LOCAL RATES COVER THE COST OF CARRYING THIS TRAFFIC TO THE IP?

A: The FCC has clearly stated that Verizon's rates cover these costs. This does not just refer to Verizon's basic local rates. Local revenues include not only the basic local rate, but other revenues from subscriber line charges, vertical services (i.e., call waiting, call forwarding, anonymous call rejection and other star code features), universal service surcharges, extended area service charges and contribution from access charges for intraLATA and interLATA toll.

Q: IT APPEARS THAT YOU HAVE PLACED SPECIAL EMPHASIS ON THE NEGATIVE IMPACTS ON RURAL AREAS OF THE STATE ASSOCIATED WITH THE ADOPTION OF VERIZON'S POSITION. WHY WOULD RURAL AREAS BE PARTICULARLY IMPACTED?

A: One of the most significant advantages of incumbency is the ubiquitous network of the ILEC. For the most part, this network was bought and paid

[18] *TSR Wireless*, at 34.

for by Verizon customers over time, and Verizon had rates approved by the Commission that would allow it to recover its costs of network deployment. Providers such as US LEC are in some cases constrained from offering services on a widespread basis because they do not have the advantage of having the ratepayer financed ubiquitous network that Verizon does. Therefore, market entry is often confined to the more densely populated areas. The intercarrier compensation for virtual NXX service as proposed by US LEC in this arbitration would help to equalize these inherent inequities, at least for some customers, by allowing US LEC to offer service state-wide, even to the more lightly populated areas of Florida. Without this competitive equalization, US LEC would only be able to reach such areas at some point in the future, if at all, thereby denying rural residents and businesses the benefits of competition.

These comments should not be construed as US LEC asking for special treatment because we are a new competitor. Indeed, US LEC's position, supported by the economic and technical arguments I have put forth above, would be just as compelling if US LEC were an ILEC. I only raise the competitive ramification issue here to illustrate the negative impact of adopting Verizon's proposed language.

Q. ARE THERE ANY OTHER REASONS WHY THE COMMISSION SHOULD FIND THAT CALLS SHOULD CONTINUE TO BE RATED AS LOCAL OR TOLL BASED ON THE NXX CODES OF THE

CALLING AND CALLED PARTIES?

A. Yes. There are numerous technical reasons why the Commission should find that calls should continue to be rated as local or toll calls based on the NXX codes of the originating and terminating parties rather than on the end points of the call. First, there is no practical, cost-effective way for the parties to segregate the disputed traffic from other locally dialed traffic: calls dialed to a number assigned a "virtual NXX" are indistinguishable from all other locally dialed traffic sent over local trunk groups. If Verizon were to prevail, US LEC would be required to expend the considerable effort and absorb the cost associated with developing a program to separate the calls so that compensation invoices submitted to Verizon do not include both types of calls.

Second, implementing Verizon's proposal would be unjustifiably burdensome, expensive, and disruptive. Because it has always been standard industry procedure for carriers to use NXX codes as rate center identifiers, the software in the ILEC and ALEC switches and billing systems looks at the NXXs of the calling and called parties to determine whether a call is to be rated and billed as local or toll. Adoption of Verizon's position would require US LEC to devote considerable effort and resources to undo the automated billing systems which have served as the basis for the design of modern switches and to maintain and assure the accuracy of a costly and burdensome alternative tracking system. Verizon's proposal would likewise necessitate

the difficult and expensive step of requiring both parties to establish different ratings for a single telephone number; one set for end user purposes, the other for compensation purposes. Verizon has not addressed these serious considerations, and the Commission should evaluate them when determining whether a departure from industry practice is warranted.

Q: HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A: US LEC asks the Commission to conclude here that calls within a LATA originated by Verizon customers and delivered to US LEC's virtual NXX customers are to be considered local and subject to reciprocal compensation.

ISSUE 8 (INTERCONNECTION ATTACHMENT, SECTIONS 8.1 AND 8.1.1; GENERAL TERMS AND CONDITIONS, SECTION 50.2)

Q: PLEASE EXPLAIN THE NATURE OF THE PARTIES' DISAGREEMENT ABOUT COMPENSATION FOR TERMINATING ISP-BOUND TRAFFIC.

A: It addresses the compensation framework that the parties should utilize in the event the interim compensation framework in the FCC's *ISP Remand Order* is vacated or reversed on appeal.

Q: WHAT IS US LEC'S POSITION WITH RESPECT TO COMPENSATION FOR ISP-BOUND TRAFFIC IN THE EVENT THE INTERIM COMPENSATION FRAMEWORK IN THE FCC'S *ISP REMAND ORDER* IS VACATED OR SET ASIDE?

A: In the interests of certainty and stability, and in order to avoid expensive and

time-consuming negotiations and litigation, US LEC advised Verizon that in the event the interim compensation framework of the FCC's *ISP Remand Order* is set aside, reversed, or remanded, it is willing to forego the opportunity to be compensated at state rates and, instead, has proposed that the parties accept the rate structure—but not the limitations on growth and new markets—set forth in the *ISP Remand Order* for the balance of the term of the Agreement, or until the FCC imposes a permanent rate structure governing that traffic.

Q: HOW DID VERIZON RESPOND TO US LEC'S OFFER?

A: Verizon declined US LEC's offer of compromise and will not address the issue in the Agreement at all. Evidently, Verizon prefers instead to engage in lengthy negotiations and, possibly extensive litigation, with US LEC in order to fix obligations that can, and should be addressed at this stage of the proceeding.

Q: HOW DOES US LEC PROPOSE TO MODIFY THE AGREEMENT?

A: US LEC proposes to modify Section 8.1 of the Interconnection Attachment to provide that the parties will be governed by the FCC's Internet Order and the rate framework set forth therein. Similarly, US LEC added Section 8.1.1 to provide that if that Internet Order is reversed, set aside or vacated on appeal, the parties will continue to compensate each other for exchanging Internet Traffic using the rate structure in that Order, but without applying the growth caps or new market limitations that no longer would be applicable in

the event of a reversal.

Finally, US LEC proposed a modification to Section 50.2 of the General Terms and Conditions to preclude Verizon from terminating payments to US LEC for ISP-bound traffic if the Internet Order is reversed. As Section 50.2 was written by Verizon , it would have allowed Verizon to terminate any provision of the Agreement that provides for the payment by Verizon to US LEC of compensation related to traffic, including, but not limited to, Reciprocal Compensation and other types of compensation for termination of traffic delivered by Verizon to US LEC. Then, if Verizon chose to exercise that right of termination, it would have forced the Parties to negotiate appropriate substitute provisions for compensation related to traffic. Section 50.2 further provided that if, within sixty (60) days after Verizon's notice of termination, the Parties are unable to agree in writing upon mutually acceptable substitute provisions for compensation related to traffic, either Party may submit their disagreement to dispute resolution in accordance with Section 14 of this Agreement.

Q: HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A: US LEC submits that the proposed compromise—a certain rate structure guaranteed for the life of the contract—is a vastly superior alternative and should be adopted by the Commission. As such, the Commission should adopt US LEC's modifications to Sections 50.2 and 8.1 and accept US LEC's addition of section 8.1.1.

ISSUE 9: (PRICING ATTACHMENT, SECTION 1.5)

Q: PLEASE EXPLAIN THE PARTIES' DISAGREEMENT ABOUT THE APPLICABILITY OF CHANGES TO VERIZON'S TARIFFED AND NON-TARIFFED RATES.

A: US LEC and Verizon disagree about whether changes to Verizon's tariffed and non-tariffed rates should affect the parties' agreement. This issue arises out of three separate sections in the proposed template agreement. Section 1.5 of the Pricing Attachment permits Verizon to supercede *any* rates (i.e., both tariffed rates and non-tariffed rates) that the parties have agreed to through tariff filings that supercede the rates in the parties' agreement whenever Verizon alters its existing rates or adds new tariffed rate elements or services.

US LEC disagrees with the language proposed by Verizon in Section 1.5 of the pricing attachment. Although US LEC agrees to be bound by tariffed rates that change during the term of the parties' agreement in those cases where the parties have specified that tariffed rates are to govern (and likewise recognizes that rates may justifiably be altered due to changes in Applicable Law), it disputes Verizon's attempt to retain the discretion to modify its non-tariffed rates at will.

Q: WHY DOES US LEC OPPOSE VERIZON'S DESIRE TO UNILATERALLY MODIFY ITS NON-TARIFFED RATES?

A: As I have already explained, US LEC seeks certainty in the pricing of the

services it obtains from Verizon and does not believe that Verizon should be permitted to modify its non-tariffed rates at will. With regard to any rates that the parties have negotiated and incorporated into the parties' interconnection agreement, the rates should remain fixed for the term of the agreement. It would be anticompetitive and detrimental to US LEC if Verizon had the unfettered ability and sole discretion to modify its non-tariffed rates. No justification exists for a pricing approach that puts US LEC at Verizon's mercy and potentially subjects US LEC to an endless array of rate changes which are likely to increase US LEC's costs of doing business with Verizon .

Q: DOES US LEC TAKE THE POSITION THAT NONE OF THE RATES MAY BE MODIFIED DURING THE LIFE OF THE PARTIES' AGREEMENT?

A: No. US LEC acknowledges that tariffed rates may be altered during the term of the agreement due to changes in applicable tariffs where the parties have agreed that tariffed rates will apply to the particular rate element or service in question, and that changes in Applicable Law may result in rate modifications. However, US LEC objects to Verizon's effort to maintain the unilateral authority to change its non-tariffed rates at will, and these rates should remain fixed unless the Applicable Law provisions of the parties' agreement apply. Verizon should not be permitted to exercise the unlimited ability to make subsequent modifications to rates that the parties have already

agreed to.

Q. WAS THIS ISSUE ADDRESSED BY THE WIRELINE BUREAU IN ITS RECENT ARBITRATION DECISION?

A. Yes; in that case, Verizon argued, as it does here, for the right to supercede any price by filing a subsequent tariff. WorldCom pointed out that, among other problems, permitting Verizon to supercede negotiated prices with subsequent tariffs shifts the burden of proof from Verizon (which has the burden of proving reasonableness of its rates in a negotiated interconnection agreement) to an ALEC (which must prove that a filed tariff should be rejected).[19]

The Wireline Bureau "reject[ed] Verizon's proposed language because it would allow for tariffed rates to replace automatically the rates arbitrated in this proceeding. Thus, rates approved or allowed to go into effect by the Virginia Commission would supercede rates arbitrated under the federal Act."[20] Instead, the FCC adopted WorldCom's language that would permit tariff revisions that "materially and adversely" affect the negotiated terms of the agreement to become effective only upon the parties' written consent or upon the affirmative order of the Virginia Commission.[21]

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

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[19] *FCC Arbitration Order* at ¶ 592.
[20] *Id.* at ¶ 600.
[21] *Id.* at ¶ 590.

A. Following the lead of the FCC Wireline Bureau, the Commission should adopt US LEC's proposed language on Issue 9.

Q: DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A: Yes.

Q: PLEASE STATE YOUR NAME FOR THE RECORD.

A: My name is Wanda G. Montano.

Q: ARE YOU THE SAME WANDA G. MONTANO WHO FILED DIRECT TESTIMONY IN THIS DOCKET ON AUGUST 2, 2002?

A: Yes.

Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A: The purpose of my testimony is to address the arguments raised by Verizon's witness Peter J. D'Amico concerning Issues 1 and 2 in US LEC's arbitration petition and Verizon's witness Terry Haynes concerning Issue 6 in US LEC's arbitration petition.

ISSUES 1 AND 2 – INTERCONNECTION

Q: MR. D'AMICO ALLEGES THAT STATEMENTS IN THE FCC'S *1996 LOCAL COMPETITION* ORDER AND *PENNSYLVANIA 271 ORDER* SUPPORT VERIZON'S POSITION THAT THE POI AND IP CAN BE AT SEPARATE LOCATIONS. (D'AMICO DIRECT AT 18-19) DID MORE RECENT DECISIONS BY THIS COMMISSION AND BY THE FCC'S WIRELINE COMPETITION BUREAU ADDRESS THE SEPARATION OF THE POI AND IP?

A: Yes. On September 10, 2002, this Commission released its "*Reciprocal Compensation Order*" in Docket No. 000075-TP.[1] Both BellSouth and Verizon participated in this case. The Commission specifically rejected the

[1] *Investigation Into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Order No. PSC-02-1248-FOF-TP, Docket No. 000075-TP (Fl. PSC. Sept. 10 2002) ("*Reciprocal Compensation Order*").

argument made by both BellSouth and Verizon "that a point of interconnection and an interconnection point are separate entities because the distinction lacks any discernable authority."[2] Instead, the Commission ruled 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."[3]

In addition, as I discussed in my direct testimony, the July 17, 2002 Order from the FCC's Wireline Competition Bureau ("Wireline Bureau") appears to reject Verizon's proposal to establish an IP that is on Verizon's network prior to the point of physical interconnection where the ALEC has agreed to accept Verizon's traffic.[4] In other words, the Wireline Bureau rejected Verizon's proposal to make the ALEC financially responsible for Verizon's originating transport to deliver its traffic to the POI. Therefore, Verizon's position is not supported by decisions from this Commission and the Federal Communications Commission and must be rejected.

Q: WHAT ABOUT THE *SPRINT ARBITRATION ORDER* CITED BY VERIZON (D'AMICO DIRECT AT 5-6)?

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2 *Reciprocal Compensation Order* at 25.

3 *Reciprocal Compensation Order* at 25.

4 *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order, ¶ 53 (Wireline Comp. Bureau, rel. July 17, 2002) ("*FCC Arbitration Order*").

A: Although Mr. D'Amico claims that the Commission approved requirements that "mirror" Verizon's VGRIP proposal in the *Sprint Arbitration Order*,[5] the Commission decision was based on the particular facts and circumstances before it in that case. As I noted in my direct testimony, the *Sprint Arbitration Order* predated both the *AT&T Arbitration Order*[6] and the Staff Recommendation in Docket No. 000075-TP[7], later accepted by this Commission, that support US LEC's position. Significantly, the *Reciprocal Compensation Order* was issued in a generic proceeding that was opened by the Commission to establish guidelines for all carriers that interconnect in Florida. In that case, the Commission held 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.[8]

The Commission's decision supports US LEC's position that Verizon is required to bear the costs of delivering its originating traffic to the POI

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[5] *Petition of Sprint Communications Company Limited Partnership for Arbitration of Certain Unresolved Terms and Conditions of a Proposed Renewal of Current Interconnection Agreement with BellSouth Telecommunications, Inc.*, Final Order on Arbitration, Docket No. 000828-TP, Order No. PSC-01-1095-FOF-TP at 36 (Fl. PSC May 8, 2001) ("*Sprint Arbitration Order*").

[6] *Petition by AT&T Communications of the Southern States, Inc., d/b/a AT&T for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. Section 252*, Docket No. 000731-TP, Final Order on Arbitration, Order No. PSC-01-1402-FOF-TP at 41 (Fl. PSC June 28. 2001) ("*AT&T Arbitration Order*").

[7] December 5, 2001 Commission Agenda Conference, Docket No. 000075-TP, Adoption of November 21, 2001 Staff Recommendation, Issue 14.

selected by US LEC, and to compensate US LEC for the transport and termination functions it performs. This ruling substantiates US LEC's position that Verizon's VGRIPs proposal does not comply with the FCC's rules or Commission precedent, and US LEC urges the Commission to reject it.

Q: PLEASE RESPOND TO VERIZON'S ARGUMENT THAT IT MAY REQUIRE A SEPARATE IP WHERE THE ALEC REQUESTS AN "EXPENSIVE" FORM OF INTERCONNECTION (D'AMICO DIRECT AT 18).

A: I do not believe that Mr. D'Amico's position is viable in light of the Commission's *Reciprocal Compensation Order*. Furthermore, to the extent that there is any validity to Verizon's "expensive" interconnection argument, which appears doubtful, my understanding is that Verizon would be required to support its position with cost studies demonstrating that US LEC's single IP per LATA is "expensive." In order to charge US LEC for "expensive interconnection," Verizon would have to comply with the FCC's pricing rules and prove what costs it incurs to deliver its originating traffic to the POI/ default IP selected by US LEC.[9] Furthermore, Verizon would have to demonstrate that it is not already compensated for the costs of delivering

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[8] *Reciprocal Compensation Order* at 26.

[9] *See* 47 C.F.R. §§ 51.501(b), 51.505(e).

traffic originated by its customers through the revenues it receives for providing the full range of services to those customers.[10]

Q: WHY SHOULD VERIZON BE REQUIRED TO MAKE SUCH A COST SHOWING?

A: Verizon is asking the Commission to impose a cost on US LEC and Verizon claims that it is entitled to impose those costs because, allegedly, US LEC's chosen network design is "expensive." Verizon must be required to prove that allegation.

The costs of interconnecting two networks arise in part from the differences between the configuration of the two networks and in part from the factors noted in Mr. Hoffmann's direct testimony (available facilities, traffic volume, and distance). If the Commission were to adopt Verizon's proposal without also requiring Verizon to prove its "expensive" costs, and despite its finding in the *Reciprocal Compensation Order*, this Commission would have to ignore the fact that Verizon, through its own chosen network design, contributes to the cost of interconnecting its network with US LEC's. The Commission also would have to ignore the fact that Verizon is already receiving compensation from its customers for providing them access to the

[10] *TSR Wireless, LLC. v. U S West Communications, Inc.*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, Memorandum Opinion and Order, FCC 00-194, ¶ 34 (rel. June 21, 2000) ("*TSR Wireless*") (emphasis added), *aff'd, Qwest Corp. et al. v. FCC et al*, 252 F.3d 462 (D.C. Cir. 2001).

PSTN and therefore could be compensated twice for performing one function. Moreover, adopting Verizon's proposal favors Verizon's network design by imposing all the costs of interconnecting US LEC's and Verizon's networks on US LEC. Such a result is not in the public interest and would impede the development of competition.

Q: HAS VERIZON SUBMITTED ANY COST STUDIES IN THIS PROCEEDING?

A: No. In fact, Verizon has admitted in response to US LEC's request for production of documents that it does not have any such studies:

> **Request for Production of Documents Nos. 1 and 2**
>
> 1. Please provide all cost studies and other documents in your possession, custody or control relating to an analysis of Verizon's purported costs based upon a single Interconnection Point ("IP") or Point of Interconnection ("POI") per LATA with an ALEC.
>
> 2. Please provide all traffic studies, cost studies, network planning, and other documents in your possession, custody or control relating to an analysis of Verizon's purported costs of delivering Verizon's originating local traffic to US LEC's IP at its switch in the Tampa (952) LATA:
>
> **Response to Request for Production of Documents Nos. 1 and 2**
>
> Verizon does not possess any traffic studies, cost studies, or other documents referenced in these requests.[11]

[11] Verizon Response to US LEC Request for Production of Documents 1 and 2 (September 20, 2002).

In short, Verizon asks the Commission to conclude that US LEC's chosen form of interconnection is "expensive" without any supporting data whatsoever. The Commission should reject Verizon's unsubstantiated request.

Q: MR. D'AMICO REFERS TO STATE COMMISSION DECISIONS THAT HE CLAIMS SUPPORT VERIZON'S POSITION (D'AMICO DIRECT AT 8-10). ARE YOU AWARE OF OTHER STATE COMMISSION DECISIONS THAT SUPPORT US LEC'S POSITION?

A: Yes, I am aware that some state commissions have ruled in favor of US LEC's position on the POI/default IP issue. Most recently, for example, on September 13, 2002, an Administrative Law Judge recommended that the Pennsylvania Public Utility Commission adopt US LEC's position on Issues 1 and 2 in the pending arbitration between US LEC and Verizon's Pennsylvania affiliate involving the identical issues.[12] US LEC will include information about this and other relevant decisions in its briefs following the hearing.

Q: PLEASE SUMMARIZE YOUR RECOMMENDATION FOR ISSUES ONE AND TWO.

A: The recent *Reciprocal Compensation Order* from this Commission and the Arbitration Order from the FCC's Wireline Bureau confirm that US LEC's

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[12] *See Petition of US LEC of Pennsylvania Inc. for Arbitration with Verizon Pennsylvania, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Recommended Decision, Docket No. A-310814F7000 (Sept. 13, 2002) at 9-17 ("*Pennsylvania Recommended Decision*").

proposal is more consistent with current Commission precedent and FCC rules than Verizon's. The Commission should adopt US LEC's proposal.

ISSUE 6 – COMPENSATION FOR VIRTUAL NXX TRAFFIC

Q. DO YOU AGREE WITH MR. HAYNES' STATEMENT THAT THE COMMISSION "NEED NOT ADDRESS THE APPLICATION OF INTRASTATE ACCESS CHARGES TO VIRTUAL FX TRAFFIC" BECAUSE THEY ARE COVERED IN THE PARTIES' TARIFFS? (HAYNES DIRECT AT 2, 16).

A: Not at all. US LEC acknowledges that the Commission's *Reciprocal Compensation Order* indicated that carriers are not "obligated" to pay reciprocal compensation for non-ISP, voice calls completed using FX, or virtual NXX arrangements because those are not "local" calls.[13] However, my understanding is that the Commission expressly declined to decide whether reciprocal compensation or access charges should apply to that traffic, concluding that the issue was "better left for parties to negotiate in individual interconnection agreements."[14]

Under Verizon's proposed language, FX voice traffic would be viewed as intraLATA toll calls and subject to the parties' tariffs for the purposes of compensation, even though those same calls would still be rated, routed and treated as local for the calling party. Under US LEC's proposal, FX voice traffic would continue to be treated as local and subject to the

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[13] *Reciprocal Compensation Order* at 31.

[14] *Reciprocal Compensation Order* at 33.

parties' reciprocal compensation obligations, which is consistent with that traffic being treated as local for the calling party.

Q: PLEASE RESPOND TO VERIZON'S STATEMENT THAT NXX CODES HAVE TRADITIONALLY BEEN USED TO BILL END USERS FOR CALLS, BUT NOT FOR INTERCARRIER COMPENSATION (HAYNES DIRECT AT 8).

A: By separating the rating and routing of a call, Mr. Haynes is confusing the issue. As he concedes in his testimony, NXX codes typically have been used for determining how a call is rated to the end-user. US LEC agrees with Mr. Haynes on that point. A call from an end user in a given calling area to another end user with an NXX code associated with the same calling center should be rated as a local call for the originating end-user. At the same time, however, Mr. Haynes is incorrect in stating that rating codes have not been used to establish intercarrier compensation. As I understand it, since switching and billing systems cannot distinguish between calls to a "virtual NXX" from calls to a "physical NXX", rating codes have been used for inter-carrier compensation purposes as well. Indeed, Mr. Haynes, himself, admits that "Verizon's billing system, for purposes of billing reciprocal compensation, was designed to compare the NPA-NXX codes of the calling and the called party . . .." (Haynes Direct at 23: 18-20). Moreover, Verizon also has admitted in its responses to US LEC's discovery that it has billed US LEC for reciprocal compensation for calls made by US LEC customers to Verizon customers who are utilizing Verizon's own FX arrangements.

Q: DO YOU AGREE WITH MR. HAYNES'S VIEW OF HOW NXX CODES ARE USED TO RATE A CALL TO AN END USER?

A: Absolutely. An end user can only rely on the NXX codes as an indication as to whether a call will be billed to them as a local or toll call. In fact, as Mr. Haynes notes in his testimony, comparing the rate centers of NXX's is how Verizon in fact rates calls, not by comparing physical location of end users.

Q: IS FX TRAFFIC CONSIDERED TO BE LOCAL TRAFFIC?

A. Yes. For rating and compensation purposes, FX traffic has been treated as local. As noted above, Verizon rates and bills its customers based on the NXX codes of the calling and called party. If the call is rated as local, Verizon bills its customer for a local call; conversely, if the call is rated as toll, Verizon bills the customer for a toll call.

Q. VERIZON CLAIMS THAT ACCESS CHARGES TYPICALLY HAVE BEEN ASSESSED ON FX CALLS. IS THAT CORRECT?

A: No. Verizon is comparing two completely different situations. In the traditional context of interexchange calls, a carrier will compare the originating and terminating point of the call in assessing interstate (as opposed to intrastate) access charges on a third party. But a carrier initially compares the originating and terminating NXXs to determine whether the call is a local call subject to reciprocal compensation or a toll call subject to access charges. As noted above, virtual NXX calls are in fact rated as local calls, are routed precisely the same as local calls, are billed to the end user as such, and have been billed as local for intercarrier compensation purposes, as

well. Moreover, Mr. Haynes confuses the issue by addressing conditions that existed prior to the Telecommunications Act of 1996. In the pre-Act era, there was no local competition in Florida and, therefore, no reciprocal compensation. It is axiomatic that with competition only in interexchange services, all intercarrier compensation would be between interexchange carriers and the incumbent local exchange carriers in the form of access charges that were dependent on the originating and terminating points of the end-to-end call. That just is not the case anymore.

Q. DOES US LEC HAVE ANY FX CUSTOMERS IN FLORIDA?

A. Yes, it appears that within Verizon's serving area, 17 US LEC customers in the Tampa LATA utilize FX arrangements; that is, they have been assigned NXX codes in several local calling areas and, while they have physical locations in at least one of those areas, they also have been assigned an NXX code in at least one area where they have no physical locations.

In this regard, US LEC's practice differs markedly from the scenario presented by Mr. Haynes. For example, US LEC does not obtain an entire exchange code solely for the purpose of designating it for a rate center/exchange area in which it has no customers of its own or no facilities. (Haynes Direct at 7:6-8) Rather, US LEC obtains NXX codes in order to serve customers wherever they may be located. Most often, the numbers are assigned to customers in the rate centers or exchanges where the customer's business is located, but in some instances a customer may purchase an FX arrangement in addition to other physical locations. This service is identical

to FX arrangements offered by Verizon to its customers. Nor does US LEC assign virtual NXX codes only to its customers that are expected to receive a high volume of incoming calls from an incumbent's customers. (Haynes Direct at 7:23-25). Here again, US LEC offers its FX product to all customers, regardless of their expected call volume.

Q. DOES US LEC OFFER ANY OTHER SERVICE THAT APPEARS TO PROVIDE CUSTOMERS WITH A "VIRTUAL" NXX?

A: Yes, US LEC offers a tariffed long-distance service known as "Local Toll Free." Essentially, it allows a customer physically located in another LATA or another state to obtain a local number in a Florida exchange. The difference between Local Toll Free and FX service is that a call to a US LEC "Local Toll Free" number terminates in the exchange associated with that NXX. US LEC then re-originates the call and routes it over long-distance lines to the customer's physical location. US LEC's customer pays the long-distance charges associated with the call.

Q. VERIZON CLAIMS THAT US LEC WANTS A "FREE RIDE" FOR VERIZON'S "VALUABLE SERVICE" IN CARRYING US LEC'S TRAFFIC (HAYNES DIRECT AT 12-14). PLEASE RESPOND.

A: There is no "free ride" at issue here. Regardless of where US LEC's customer is located, Verizon routes the call precisely the same way: it is delivered to US LEC at the IP and, from that point on, US LEC incurs all the costs of transporting the call to its customer's location. As noted in issues one (1) and two (2) of this proceeding, it is Verizon's responsibility to carry

traffic to the IP that US LEC has selected. That responsibility does not change if the called party has an FX arrangement. US LEC assumes the financial responsibility for the traffic at the IP, regardless of the physical location of the terminating customer. These architecture issues are discussed in greater detail by Mr. Hoffmann.

Q: DO YOU AGREE WITH MR. HAYNES' ASSERTION THAT US LEC IS NOT ENTITLED TO COMPENSATION FOR TERMINATING CALLS TO FX CUSTOMERS BECAUSE THOSE CUSTOMERS ALREADY PAY FOR THE SERVICE? (HAYNES DIRECT AT 13-14).

A: No, I do not. Again, Mr. Haynes is confusing the issue. All end users pay their carriers for the privilege of being able to originate and terminate calls. Intercarrier compensation, on the other hand, addresses an entirely different situation—the costs incurred by carriers to terminate calls. The FCC has acknowledged that carriers incur costs in originating and terminating calls and also has acknowledged that in a competitive environment, the carrier originating a call avoids the termination costs associated with that call when it hands the call off to a competing local provider.

Under our traditional 'calling-party-pays' system, the carrier serving the originating party pays the carrier serving the terminating party to compensate that carrier for the costs it incurs in providing the terminating services. Thus, in this situation, US LEC most assuredly provides a valuable service to Verizon customers—it enables those Verizon customers to complete calls to entities or individuals served by US LEC. US LEC incurs

costs in providing those services—costs that, for these purposes, are assumed to equal those incurred by Verizon—and is entitled to be compensated by Verizon for providing those services. Similarly, Verizon provides the same services to its customers and US LEC compensates Verizon for the costs Verizon incurs.

Q: VERIZON CLAIMS THAT TREATING FX CALLS AS LOCAL IS CONTRARY TO INDUSTRY PRACTICE. DO YOU AGREE?

A: Absolutely not. US LEC's FX service is similar to Verizon's Foreign Exchange ("FX") products, in that both products provide local numbers outside of the local calling area of an end user. In Verizon's case, the end user subscribing to the FX service bears the cost of transporting the calls from the local calling area associated with the NXX to the exchange in which the FX customer is physically located. US LEC's customers also are charged for their virtual NXX arrangements, although for a single FX line, it is not the "hundreds of dollars a month" (Haynes Direct at 13) but that misses the point. The key is how these calls are treated for purposes of intercarrier compensation. Based on Verizon's responses to our discovery requests, it is clear that Verizon has treated its FX calls as local and has billed ALECs, including US LEC, for reciprocal compensation for calls to its FX customers.

In support of its dubious position, Verizon cites to an FCC case in which AT&T allegedly could have routed calls from Charleston, South Carolina to Atlanta, Georgia, so that a caller in Charleston would appear to be making a local call when it was, instead, answered in Atlanta. In that case,

the FCC ruled that an *inter*LATA FX call was not a local call for the purposes of compensation and thus access charges were due. However, Verizon does not mention that, in the context of an *intra*LATA FX call, it argued to the FCC that "intraLATA FX service is a type of local exchange service." (*AT&T Corp. v. Bell Atlantic-Pennsylvania*, 14 FCC Rcd 556, 589, ¶ 76 (1998), *reconsideration denied*, 15 FCC Rcd 7467 (2000).

Further, Verizon's example is not at all applicable here. The portion of the *AT&T* case that Verizon refers to dealt with an interstate, interLATA FX service. That is an extreme example that is not at all comparable to US LEC's practice of assigning an FX number to a customer within the same LATA, as is the issue in this proceeding. Nor is it comparable to US LEC's Local Toll Free offering, which is described in US LEC's tariff as a form of remote call forwarding. The Commission should assign no weight to the case and example cited by Verizon.

Q: DO YOU AGREE WITH MR. HAYNES' ASSERTION THAT US LEC DOES NOT HAVE ANY RIGHT TO RECIPROCAL COMPENSATION FOR VIRTUAL NXX TRAFFIC UNDER THE FCC'S RULES? (HAYNES DIRECT AT 21).

A: No, in fact, quite the opposite is true. The FCC's *ISP Traffic Order*[15] supports the conclusion that traffic rated as retail local traffic is eligible for reciprocal

[15] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Dkt Nos. 96-98, 99-68, Order on Remand and Report and Order, FCC 01-131 (rel. Apr. 27, 2001) ("*ISP Traffic Order*"), *rev'd, WorldCom v. FCC*, 01-1218 (D.C. Cir., May 3, 2002).

compensation in the intercarrier context. In the *ISP Traffic Order*, the FCC addressed the decision of the United States Court of Appeals for the District of Columbia Circuit that vacated and remanded the FCC's earlier decision regarding intercarrier compensation for ISP-bound traffic.[16] The FCC viewed the D.C. Circuit's remand order as:

> question[ing] whether this traffic should be considered 'local' for purposes of section 251(b)(5) in light of the ESP exemption, by which the Commission has allowed information service providers at their option to be treated for compensation purposes (but not for jurisdictional purposes) as end users.[17]

Upon further review of the *Declaratory Ruling*, the FCC concluded that the D.C. Circuit may have been right in its analysis of FCC precedent:

> We do recognize, however, that the court was concerned by how one would categorize this traffic under our *prior* interpretation of section 251(b)(5), which focused on whether or not ISP-bound calls were 'local.' That inquiry arguably implicated the compensation mechanism for the traffic (which included a local component), as well as the meaning of 'termination' in the specific context of section 251(b)[.][18]

The FCC decided that, under its precedent, the term "local call" "could be interpreted as meaning . . . *traffic subject to local rates*" in addition to "traffic that is jurisdictionally intrastate."[19] In other words, FCC precedent justifies the payment of reciprocal compensation for traffic that is treated as local

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[16] *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000), *vacating and remanding*, Declaratory Ruling in Docket 96-98 and Notice of Proposed Rulemaking in Docket No. 99-68, 14 FCC Rcd 3689 (1999) ("*Declaratory Ruling*").

[17] *ISP Traffic Order* at ¶ 28.

[18] *Id.* at ¶ 56 (italics in original).

[19] *Id.* at ¶ 45 (emphasis added).

traffic, in addition to traffic whose end points are within specific local calling areas. In short, the *ISP Traffic Order* supports a determination that reciprocal compensation for non-ISP-bound traffic using FX arrangements is appropriate.

Further, in conjunction with the *ISP Traffic Order*, the FCC issued a Notice of Proposed Rulemaking to completely overhaul the existing intercarrier compensation regimes and replace them with a single, unified intercarrier compensation regime.[20] The FCC has identified the use of "virtual central office codes" as an issue to be resolved in its rulemaking proceeding on such a unified intercarrier compensation regime.[21] Thus, the issue of the proper regulatory treatment of traffic using virtual central office codes ultimately will be addressed by the FCC. Until that time, however, this Commission retains the jurisdiction to determine, as it should, that calls using virtual NXX arrangements properly are eligible for reciprocal compensation under an interconnection agreement.

Q. DO YOU AGREE WITH MR. HAYNES' CHARACTERIZATION OF THE COMMISSION'S *RECIPROCAL COMPENSATION ORDER* REGARDING VIRTUAL NXX TRAFFIC (HAYNES AT DIRECT 10-11)?

A: No, I do not. Verizon claims that the Commission decision resolved the issue of disputed FX compensation issues between Verizon and various ALECs in

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[20] *Developing a Unified Intercarrier Compensation Regime*, CC Dkt. No. 01-92, Notice of Proposed Rulemaking, FCC 01-132 (rel. Apr. 27, 2001).

[21] *Id.* at ¶ 115.

Verizon's favor.[22] Verizon argues that because the Commission found that virtual NXX traffic is not local traffic, no reciprocal compensation is payable on such traffic.

Q. IS VERIZON'S POSITION CORRECT?

A: No, not entirely. The Commission concluded that calls to FX customers located outside of the local calling area to which the NXX is assigned are not local calls for purposes of reciprocal compensation,[23] a decision with which US LEC respectfully disagrees. However, Verizon's claim that the *Reciprocal Compensation Order* settled the issue of what compensation mechanism is applicable to FX traffic is wrong. In fact, the Commission specifically states otherwise, concluding that while carriers may not be "obligated" to pay reciprocal compensation for FX traffic, the Commission declined to "mandate a particular intercarrier compensation mechanism" for FX traffic.[24] Rather:

> [s]ince 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.[25]

The Commission acknowledged that the parties could agree to continue to pay each other reciprocal compensation for the traffic, or could agree to pay

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22 Haynes Direct at 10-11.

23 *Reciprocal Compensation Order* at 33.

24 *Id.*

25 *Id.* at 33-34.

each other access charges or could agree to a form of so-called 'bill and keep.'[26]

Q. WHAT ABOUT THE OTHER STATE COMMISSION DECISIONS CITED BY MR. HAYNES (HAYNES DIRECT AT 19-20)?

A: Mr. Haynes refers to several state commission decisions which he claims support Verizon's position on Issue 6. Even if Mr. Haynes is correct on this point, numerous other commissions have ruled in favor of US LEC's interpretation. The rulings favorable to US LEC's position include the recent *Pennsylvania Arbitration Decision*.[27] We will address those decisions in our Brief.

Q. MR. HAYNES CLAIMS THAT VERIZON HAS RECENTLY TAKEN STEPS TO DEVELOP METHODS TO MEASURE THE VOLUME OF ALEC TRAFFIC TERMINATED TO VERIZON FX NUMBERS (HAYNES DIRECT AT 24-25). PLEASE COMMENT ON VERIZON'S PROPOSAL.

A: Verizon proposes to "fix" the historical system of rating calls based on the NPA/NXX of the originating and terminating numbers – a system that is not broken. In the first place, it is crystal clear that the "fix", which involves creating a data-base of FX customers, conducting traffic studies and then estimating the amount of traffic that is terminating to FX subscribers, is entirely intrusive, unworkable and expensive. Thus, the "fix" would require both parties to inquire from its customers how they intend to utilize the

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[26] *Id.* at 34.

services they purchase and where they intend to locate all of their facilities. It would require both parties to add wholly unnecessary steps and processes to an already cumbersome billing process. Clearly, given that US LEC has only 17 FX customers in Verizon's territory in Florida, the cost to US LEC of Verizon's "fix" is likely to be substantially more expensive than the amount of reciprocal compensation that US LEC receives from its FX customers and the traffic they generate.

Critically, Verizon's contract proposal does not include or define the proposed "fix" about which Mr. Haynes testifies. Nowhere in the proposed interconnection agreement is there even one word about how Verizon's "fix" will be implemented or monitored. Moreover, US LEC has no way of knowing whether Verizon's "fix" actually works. Verizon states that it is based on a traffic study conduced here in Florida, but nowhere does Verizon state that its "fix" has been implemented, is functioning smoothly and is accurate.

Also missing from Mr. Haynes' testimony is the acknowledgement that there is a clear, irreconcilable conflict between Verizon's proposed contract language—which is all that is at issue here—and its proposed "fix" to distinguish between calls to FX customers and other locally dialed calls. Verizon's contract language states that reciprocal compensation will be paid based on the originating and terminating end-points of the call. In contrast, Verizon's proposed "fix" has nothing whatever to do with the beginning and

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[27] *See Pennsylvania Arbitration Decision* at 29-42.

end-points of a call; rather, like the compensation system it seeks to replace, it still relies on the NPA/NXX of the called party. Mr. Haynes concedes as much: The database of FX subscribers that Verizon proposes to create is not predicated on the endpoints of the calls to those subscribers, but on their NPA/NXX. (Haynes Direct at 25).

Q: WOULD ADOPTION OF VERIZON'S PROPOSAL BE FEASIBLE FROM US LEC'S POINT OF VIEW?

A: No. It would be expensive to implement and maintain and given the relatively small amount of voice FX traffic involved, it would not be either feasible or cost-effective.

Q: WHAT ACTION DOES US LEC RECOMMEND THE COMMISSION TAKE ON THE ISSUE OF VIRTUAL NXX?

A: We suggest that, in light of (a) common practice throughout the industry to rely on the NPA/NXX of calling and called parties to determine the rating and routing of a call, as well as a carrier's compensation obligations for calls, (b) the FCC's recent ruling on the issue adopting the position advocated here by US LEC, and (c) the small amount of the voice, non-ISP traffic involved, the Commission should rule in US LEC's favor on this issue.

Q: DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A: Yes.

Q: PLEASE STATE YOUR NAME, TITLE, AND ADDRESS FOR THE RECORD.

A: My name is Frank R. Hoffmann, Jr. I am Senior Interconnection Manager for US LEC Corp., the parent company of US LEC of Florida Inc. ("US LEC"), and its operating subsidiaries, including the Petitioner in this proceeding. My business address is 6801 Morrison Blvd., Charlotte, NC 28211.

Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES FOR US LEC.

A: My responsibilities include directing and coordinating all activities related to US LEC's Local Interconnection and Termination Agreements and the management of these agreements and relationships with local carriers, and industry organizations. I am charged with ensuring that these agreements address and support the financial and technological goals of the company for local service. My specific duties include actual contract negotiations, staff support for these finalized agreements, day-to-day coordination and point of escalation of service/billing affecting issues surrounding these agreements.

Q: PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A: I received a Bachelor of Science degree and a Masters of Business Administration degree from the University of Maryland, College Park, Maryland in 1986 and 1988, respectively. I was employed by Bell Atlantic, Inc., in Arlington, Virginia, from 1988 through 1996. During that period I held various positions within Service Costs, External Affairs, Carrier Relations, Marketing and Finance. My responsibilities during this period

included cost of service studies, rate development and tariff administration, performance metrics, sales compensation, product management and interconnection agreement negotiations. From 1996 through 1998, I worked for Teleport Communications Group, in Baltimore, Maryland, and negotiated interconnection agreements and managed its relationship with BellSouth. In 1998, Teleport was acquired by AT&T, where I was responsible for establishing collocation, interconnection trunking and E911 networks. In 1999, I went to work for TriVergent Communications, in Greenville, South Carolina, where I was responsible for all outside plant infrastructure build-out within ILEC central offices. In 2001, I joined a voice-over-IP telecommunications company, Cbeyond, Inc. My responsibilities included equipment engineering, vendor selection, procurement and inventory. In 2002, I came to US LEC, in Charlotte, North Carolina, to work in Industry Affairs, where I am currently employed.

Q: HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION?

A: Yes. While at Teleport Communications Group, I testified before this Commission during the hearing on BellSouth's Section 271 application. In addition, I have previously testified before the North Carolina Utility Commission, the Massachusetts Department of Telecommunications and Energy, and the Pennsylvania Public Utility Commission.

Q: HAVE YOU PARTICIPATED IN US LEC's INTERCONNECTION NEGOTIATIONS WITH VERIZON?

A: Yes, I participated in the negotiating sessions. In addition, I have reviewed the points of contention raised during the negotiations to ensure their consistency with US LEC's network planning and design priorities.

Q: PLEASE PROVIDE AN OVERVIEW OF YOUR TESTIMONY.

A: My testimony will address the technical, or network, perspective on Issues 1 and 2 in US LEC's arbitration petition. I will explain how US LEC's single Interconnection Point ("IP") per Local Access and Transport Area ("LATA") proposal in Florida appropriately balances the financial responsibility of each party and is technically feasible, already utilized by the parties in their current network interconnection architecture, and consistent with sound engineering practices.

Q: BEFORE ADDRESSING EACH ISSUE, PLEASE PROVIDE BACKGROUND ON US LEC'S NETWORK ARCHITECTURE.

A: The US LEC network is composed of advanced digital switches from Lucent Technologies Inc. US LEC has a Lucent 5ESS AnyMedia digital switch deploying advanced switching technology that functions as an intraLATA local switch. US LEC uses the "Smart Build" strategy of owning and operating its own digital switching centers while leasing the necessary fiber transport from various network providers across its footprint. US LEC invests time, money and resources into owning and operating our own network because we believe that the quality and reliability of our network translates into improved operations, products and services that we deliver to our customers.

US LEC typically serves a market, or markets, by deploying a single

switch and leasing transport. This transport takes the form of point-to-point circuits and fiber ring facilities. Because US LEC's switch supports both line and trunk connections, the transport is used to provide interconnection with both the ILEC and US LEC's customers' local loops. With this network architecture, US LEC takes advantage of decreased transport costs to provide service over a large area with a single switch. For example US LEC has a single switch in Verizon's service territory in the Tampa area. This switch currently serves the Tampa LATA and numerous local calling areas within that LATA.

Q: PLEASE CONTRAST US LEC'S NETWORK ARCHITECTURE WITH VERIZON'S.

A: In contrast to US LEC's architecture, Verizon's network uses a large number of switches, each serving a relatively small area. Rather than interconnect at every Verizon end office, US LEC interconnects with Verizon's access network that is designed as a hub and spoke network architecture in which traffic from a group of end offices is aggregated and collected at a tandem. Thus, a call from a US LEC customer to a Verizon customer must travel through a tandem switch to reach a Verizon customer or be directly routed to the Verizon end office switch serving that customer. US LEC cannot deliver a call for any Verizon customer to a particular end office except the small number of customers for whom Verizon has established service from that switch. Verizon's local network is comprised of multiple end office connections between each and every end office and may also include one or

more local tandems used to control traffic congestion. This local network is typically referred to as a spider web network architecture in which traffic can be routed directly from an end office to any other end office without the use of a tandem.

ISSUES 1 AND 2 (Glossary, Section 2.45; Interconnection Attachment, Sections 7.1.1.1, 7.1.1.1.1, 7.1.1.2, 7.1.1.3)

Q: PLEASE SUMMARIZE THE DISPUTE BETWEEN US LEC AND VERIZON CONCERNING INTERCONNECTION POINTS.

A: In order for US LEC and Verizon to exchange traffic between their respective customers, they must interconnect their networks. The physical points at which they perform the connection are called Points of Interconnection or "POIs" under Verizon's defined terms. The billing points that distinguish the financial responsibility of each Party are called Interconnection Points or "IPs" under Verizon's defined terms. Issues 1 and 2 relate to the number of IPs that US LEC must establish and how and where US LEC must establish them. US LEC has agreed, in its negotiations with Verizon, to establish multiple POIs in every LATA in which it interconnects with Verizon. US LEC has agreed to establish POIs at every Verizon access tandem within each LATA where it assigns local numbers, and, additionally, US LEC has agreed to establish direct end office trunking to each Verizon end office where US LEC delivers at least 200,000 minutes of use ("MOU") per month. US LEC has also agreed that Verizon may designate multiple Verizon-IPs, one at each tandem in a LATA. However, the parties have been unable to agree on the

location and number of US LEC-IPs.

The location and number of IPs has competitive and operational/service implications, and is governed by the legal framework established in the Telecommunications Act of 1996 ("1996 Act"). My testimony addresses the financial and operational/service implications of multiple IPs while Wanda Montano will provide testimony concerning the legal and competitive policy framework that makes Verizon's position untenable. The Commission must consider all of these factors in making its determination on this issue. The Commission must also take into consideration the fact that Verizon, or at least Verizon's customers, benefit from interconnection that is reasonable and fair because it permits their customers to reach ours.

Q: IS IT TECHNICALLY FEASIBLE FOR VERIZON TO INTERCONNECT WITH US LEC VIA A SINGLE US LEC-IP IN THE MANNER THAT US LEC IS PROPOSING?

A: Yes, as is evidenced by the fact that the parties operate using this architecture today.

Q: SO US LEC IS ALREADY INTERCONNECTED WITH VERIZON IN FLORIDA?

A: Yes. After investing a substantial amount of personnel and financial resources in planning and engineering the interconnection architecture, the parties executed an interconnection agreement and interconnected in the Tampa LATA in 1998.

Q: DOES US LEC MAINTAIN A SINGLE US LEC-IP IN THE LATA IN WHICH US LEC PROVIDES SERVICE?

A: Yes, US LEC offers service in the Tampa LATA and maintains a single US LEC-IP. US LEC delivers its originating traffic to the Verizon-IPs via its point-to-point circuits that connect US LEC's switch to Verizon's tandems. Additionally, US LEC has agreed that where it delivers at least 200,000 minutes of use per month to a Verizon end office, it will deliver such traffic to that end office via direct end office trunks it purchases from Verizon, or via a third party transport provider. Similarly, Verizon is financially responsible for delivering its originating traffic to the US LEC-IP. It is my understanding that Verizon has three tandems in the Tampa LATA, all of which are located within the same building, which is one-third of one mile from US LEC's switch. US LEC has established POIs at two of those tandems where US LEC has numbers and has been assigned NXX codes. US LEC purchases an OC-48 entrance facility from Verizon as its method of interconnection to those tandems.

After accepting Verizon South's traffic at the POIs, US LEC transports that traffic over the same OC-48 entrance facility back to US LEC's switch and bills Verizon a non-distance sensitive entrance facility charge for providing that transport. It is my understanding that the FCC Wireline Competition Bureau ("FCC Bureau") recently confirmed that it is entirely appropriate for an alternative local exchange telecommunications company ("ALEC") to charge an ILEC for the use of this facility because it

is being used to deliver the ILEC's traffic to the ALEC's network.[1]

Q: PLEASE SUMMARIZE YOUR UNDERSTANDING OF VERIZON'S IP PROPOSALS.

A: Verizon calls its IP proposal "Virtual Geographically Relevant Interconnection Points" or "VGRIPs." Through VGRIPs, Verizon is trying to dictate the physical manner in which US LEC establishes its chosen IP. Verizon attempts to dictate US LEC's physical network architecture by giving US LEC the "option," under Verizon-proposed Section 7.1.1.1, of establishing a US LEC-IP through collocation at each Verizon tandem and other wire centers designated by Verizon (so-called "option one"). Similarly, Verizon attempts to dictate US LEC's physical network architecture by giving US LEC the "option," under Verizon-proposed Section 7.1.1.2, of designating a US LEC end office collocation arrangement as a US LEC-IP (so-called "option two"). Even though the parties have operated under our existing network architecture for nearly four years, VGRIPs would give Verizon the right to request that US LEC alter the existing architecture and would require that US LEC agree to the new architecture within thirty days (Section 7.1.1.3).

Verizon calls these "options" because VGRIPs gives US LEC the right to decline Verizon's requests to establish these new collocated IPs.

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[1] *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218 *et al.*, Memorandum Opinion and Order, DA 02-1731, ¶¶ 66, 68 (Wireline Competition Bureau, rel. July 17, 2002) ("*FCC Arbitration Order*").

However, if US LEC exercises this right, the so-called "option three" of VGRIPs shifts the financial responsibility for transporting all of Verizon's originating traffic, beginning at the Verizon *end office*, from Verizon to US LEC. Thus in one way or another, adoption of VGRIPs would dictate US LEC's physical interconnection architecture and establish financial penalties for non-compliance at Verizon's sole discretion. And, if US LEC establishes end office interconnections via collocation at any of Verizon's end offices in the Tampa LATA, and elects not to utilize the end office collocation to exchange traffic with Verizon, VGRIPs would force US LEC to pay for the transport of Verizon's originating traffic *within the local calling area.*

Q: WHY DOES US LEC OBJECT TO CHANGING THE PARTIES' EXISTING ARCHITECTURE?

A: First, the parties have invested a lot of time and resources to plan and implement the existing architecture and US LEC does not believe that Verizon should have the power to change that architecture at its sole discretion. Rather, the parties should mutually agree to any changes in existing network architecture and such changes should be implemented under a mutually agreeable timeframe. The arbitrary and unreasonable thirty (30) day period proposed by Verizon to reach such agreement is not enough time to complete such negotiations and deprives US LEC of bargaining power to negotiate a mutually agreeable time to complete the transition. Second, in order to prevent any disruptions to existing customers, it is important that existing network facilities not be disturbed as the successor agreements are

implemented.

Q: WHY DOES US LEC PREFER TO MAINTAIN THE EXISTING ARCHITECTURE RATHER THAN ADOPT THE NEW ARCHITECTURE PROPOSED BY VERIZON IN CONTRACT NEGOTIATIONS?

A: As I mentioned, US LEC currently maintains a single US LEC-IP in the Tampa LATA where US LEC provides local service. US LEC currently utilizes transport leased from Verizon as its method of interconnection with Verizon. US LEC has not established collocation arrangements with Verizon anywhere in Verizon's territory because collocation, historically, has not been part of US LEC's network architecture. If Verizon were to exercise its right, under Verizon-proposed Section 7.1.1.3, to require US LEC to establish an IP via collocation at wire centers designated by Verizon then US LEC either would have to order collocation from Verizon or seek out a third party collocator with sufficient network capacity to support US LEC's traffic requirements. In other words, transitioning to Verizon's proposed interconnection architecture would impose additional, unnecessary costs and restrictions on US LEC, as well as the burden of accommodating a network design not currently supported, or advocated by US LEC. US LEC believes this is unreasonable and anticompetitive.

Q: DO YOU AGREE WITH VERIZON'S ALLEGATION THAT ITS PROPOSALS DO NOT AFFECT US LEC'S RIGHT TO ESTABLISH A SINGLE PHYSICAL CONNECTION TO VERIZON'S NETWORK

IN A LATA? (RESPONSE AT 14)

A: No. A close reading of the contract reveals that there are very negative financial consequences if US LEC does not comply with Verizon's VGRIPs proposal which seeks to have US LEC establish collocated IPs. Under "option one," US LEC *must* establish its IP through collocation at the Verizon tandem. Similarly, under so-called "option two," US LEC "may" designate an end office collocation arrangement as its IP. Thus under either "option" one or two, if US LEC wishes to avoid Verizon's transport penalty (defined in 7.1.1.1.1), the IP is more than just a point of financial demarcation, it is a physical connection between US LEC's network and Verizon's network.

Q: VERIZON SAYS THAT SECTION 7.1.1.1.1 IS APPROPRIATE COST SHARING. (RESPONSE AT 15) PLEASE RESPOND.

A: Despite Verizon's arguments to the contrary, the text of the Verizon contract language shows that its proposal *requires* US LEC to establish multiple, physical, collocated connections to Verizon's network (under so-called "option one" and "option two") or, if US LEC declines to establish such physical, collocated connections, to pay for Verizon's transport costs *within* the local calling area (so-called "option three").

Verizon's proposed contract language reveals that its "option three," also called a "virtual IP," requires US LEC to pay for Verizon's originating tandem switching costs and *all* of Verizon's originating transport costs, beginning at the *end office* serving the customer that originates the call. The

financial obligation Verizon shifts to US LEC under "option three" is defined in Section 7.1.1.1.1 of the Interconnection Attachment:

> Verizon's transport rate (calculated by taking the dedicated transport per mile rate multiplied by the average mileage between the originating end offices and the CLEC POI plus the fixed dedicated transport rate and dividing the total by the average minutes of use of a DS1), tandem switching rate (to the extent that traffic is tandem switched), and other costs (to the extent Verizon purchases such transport from US LEC or a third party) *from Verizon's originating End Office* to US LEC's IP. (Emphasis added.)

While the mechanics of calculating the transport rate are less than clear, what is clear is that US LEC must pay for Verizon's transport beginning at the originating end office.

Thus, if US LEC does not establish a *collocated IP* at every Verizon tandem, Verizon charges US LEC for transport beginning at each and every Verizon *end office*. This results in US LEC paying for *all* of Verizon's transport costs *within the local calling area*. If US LEC establishes a collocation arrangement at a Verizon end office but declines Verizon's request to designate that collocation arrangement as a US LEC-IP, then US LEC again must pay for *all* of Verizon's transport costs, beginning at that end office. No matter which option one assesses, the result is the same: under Verizon's proposed language, US LEC becomes obligated to pay all of Verizon's transport costs and, as I understand it, that simply does not comply with the requirements of the Act as interpreted by the FCC. In short, VGRIPs would shift to US LEC financial responsibility for <u>all</u> transport of Verizon's originating traffic.

Q: WHY DO YOU STATE THAT THE FINANCIAL RESPONSIBILITY FOR ALL TRANSPORT WOULD BE "SHIFTED" TO US LEC?

A: Today Verizon bears financial responsibility for delivering its originating traffic to US LEC's chosen IP. Under VGRIPs, Verizon would be relieved of that responsibility and US LEC would be required to bear it.

Q: PLEASE RESPOND TO VERIZON's ALLEGATION THAT ITS PROPOSAL IS AN EQUITABLE ALLOCATION OF TRANSPORT COSTS BETWEEN THE PARTIES. (RESPONSE AT 5)

A: Verizon's proposal is not equitable because it forces US LEC either to establish multiple physical, collocated connections to Verizon's network or to bear all costs of transport, for both Verizon's originating traffic and US LEC's originating traffic. When US LEC delivers traffic to Verizon, it is financially responsible for the transport to bring its calls to the Verizon-IP and must pay Verizon reciprocal compensation for terminating the call to the end user. Yet under the virtual IP "option three," when a Verizon customer originates a call, Verizon would have US LEC pay for all of the transport. In short, Verizon's proposal is only "equitable" if the Commission wants to relieve Verizon of any financial obligation to transport the traffic it exchanges with ALECs.

Q: VERIZON ALLEGES THAT US LEC SHOULD BEAR THE COSTS OF ITS CHOICE "NOT TO INVEST IN THE FACILITIES NECESSARY TO ESTABLISH MULTIPLE PHYSICAL POIs". (RESPONSE AT 15) PLEASE RESPOND.

A: First, although it is my understanding that under federal law we are not required to do so, US LEC has invested in the facilities necessary to establish two physical POIs at Verizon's tandems. Second, US LEC does bear the costs of its interconnection choices. When US LEC's switch is located in one local calling area and its customer is located in another, US LEC must transport its customer's traffic to US LEC's switch and deliver that traffic to Verizon at the POI, which is also Verizon's IP. In the case of traffic that will be tandem-switched by Verizon, US LEC has agreed that the Verizon-IP is at the Verizon tandem. Or, where US LEC delivers 200,000 minutes of use per month to a Verizon end office, US LEC has agreed that the Verizon-IP is at the Verizon end office, and that US LEC must pay Verizon (or a third party) for the transport needed to deliver the traffic to Verizon's end office. In addition, US LEC must pay Verizon reciprocal compensation for terminating US LEC's traffic from the Verizon IP to the Verizon end user, whether or not the IP and the end user are located in the same local calling area. Similarly, when a Verizon customer calls a US LEC customer, US LEC must accept the traffic at its designated POI. Because the POI is not at US LEC's switch, Verizon is responsible for paying the cost of the transport necessary to haul its originating traffic to US LEC's switch, which, likes Verizon's switches, is US LEC's IP. Verizon then pays US LEC terminating compensation for terminating the traffic from the IP to US LEC's end user customer. US LEC must transport that traffic to its end user customer for the same termination rate, even if that customer is located in a different local

calling area than US LEC's switch. Thus US LEC bears the cost of its interconnection choices.

Q: VERIZON ARGUES THAT ITS COST-SHIFTING PROPOSALS ARE JUSTIFIED BECAUSE A SINGLE POI PER LATA IS EXPENSIVE. (RESPONSE AT 11-12) DO YOU AGREE?

A: No. Verizon argues that because a single POI per LATA is "expensive," it is permitted to "recover" its costs by moving the point of financial demarcation to shift transport responsibility from Verizon to US LEC.

To support its "expensive interconnection" theory, Verizon relies on paragraph 199 of the *Local Competition Order*, which states:

> The deliberate and explained substantive omission of explicit economic requirements in sections 251(c)(2) and 251(c)(3) cannot be undone through an interpretation that such considerations are implicit in the term "technically feasible." Of course, a requesting carrier that wishes a "technically feasible" but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit.[2]

I understand that the FCC is currently considering rules that would

[2] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 199 (1996) ("*Local Competition Order*") (subsequent history omitted).

clarify whether a particular request for interconnection is "expensive."[3] But Verizon selectively quotes only one of the questions the FCC is considering relative to so-called "expensive" interconnection. (Response at 14-15) The remainder of the paragraph Verizon quoted from shows that the FCC is considering US LEC's position as well:

> Or, by requiring carriers to pay ILECs for transport outside a local calling area, are we forcing the competitive carrier into an inefficient replication of the ILEC network? Assuming that the ILEC receives reciprocal compensation for transporting terminating traffic, how precisely does a distant POI unfairly burden the LEC? Is the efficiency concern limited to those instances in which traffic between two networks is unbalanced and/or where transport is required beyond a certain distance?[4]

These questions posed by the FCC make it clear that a single point of financial demarcation per LATA (an IP in Verizon's parlance) per LATA is not automatically "expensive," as Verizon would have the Commission believe. Verizon would not be permitted to recover supposed expenses of loop provisioning or collocation without demonstrating that it in fact incurred the costs it was seeking to recover, and the same principle should govern here.

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[3] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132, ¶¶ 112-114 (rel. April 27, 2001) ("*Intercarrier Compensation NPRM*").

[4] *Id.* at ¶ 114.

Q: WHAT EVIDENCE DO YOU SUGGEST THE COMMISSION REQUIRE OF VERIZON TO PROVE ITS "EXPENSIVE INTERCONNECTION" THEORY?

A: As Verizon's Response notes, the Third Circuit found that a commission should not consider cost shifting (*i.e.*, in Verizon's terms, establishing an IP that is separate from the POI) without "proof" that the requested POI is expensive. Response at 14. In order to have its cost-shifting proposal adopted, Verizon should be required to show that a single US LEC-IP per LATA causes Verizon to incur specific costs for which it is not already compensated by the services it provides its customers that originate its traffic.

The cost of a single ALEC-IP per LATA could vary substantially depending on the facilities being used to transport traffic to the IP, the traffic volumes, and mileage. For example, depending on the local calling area and LATA, Verizon's costs may be minimal -- it may have facilities already available to carry Verizon's originating traffic from the local calling area to the ALEC-IP, there may be only a *de minimis* traffic volume exchanged for that local calling area, and the distance between the local calling area and the ALEC-IP may be minimal. In short, Verizon's vague allegations of uncompensated costs do not prove that US LEC's requested interconnection arrangement is "expensive."

Q: ARE THERE OTHER FINANCIAL CONSIDERATIONS THE COMMISSION SHOULD TAKE INTO ACCOUNT IN EVALUATING THE PARTIES' POSITIONS?

A: Yes. The Commission must consider the financial impact of Verizon's VGRIPs proposal on competition. As the U.S. Court of Appeals for the Third Circuit recently held:

> To the degree that a state commission may have discretion in determining whether there will be one or more interconnection points within a LATA, the commission, in exercising that discretion, must keep in mind whether the cost of interconnecting at multiple points will be prohibitive, creating a bar to competition in the local service area.[5]

Adopting Verizon's proposal would fundamentally alter the economics of an ALEC's decision to provide service to each and every local calling area in Verizon's serving territory in Florida. Verizon's multiple IP (whether physical or virtual) requirement could deter an ALEC from competing with Verizon until the ALEC has enough customers to justify efficiently utilizing the dedicated facility it is forced to build or lease from Verizon. Adopting Verizon's multiple IP proposal also expresses a policy preference for the incumbent's historical network architecture, effectively penalizing new entrants for any deviation from that architecture. The Commission should therefore also reject Verizon's proposal as inconsistent with the public policy of opening Florida's telecommunications markets to competition.

Q: LET'S RETURN TO THE PHYSICAL NETWORK ARCHITECTURE

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[5] *MCI Telecommunication Corp. et al. v. Bell Atlantic-Pennsylvania et al.*, 271 F.3d 491, 517 (3d Cir. 2001).

IMPACTS OF VERIZON'S PROPOSAL. WHY DOES US LEC OBJECT TO DESIGNATING A COLLOCATION ARRANGEMENT THAT US LEC HAS ESTABLISHED AT A VERIZON END OFFICE AS A US LEC-IP?

A: Verizon's proposal would require US LEC to plan and pay for additional, and potentially inefficient and unnecessary, capacity for each collocation arrangement. For example, although US LEC does not currently collocate in Verizon end offices, if US LEC decided to order collocation in the future, it is possible that US LEC would not know if Verizon wished to designate the new arrangement as a US LEC-IP until *after* that arrangement was provisioned. ALECs typically design and use end office collocation arrangements to access the incumbent's unbundled local loops. The traffic from those loops is aggregated and, where necessary, multiplexed, at the ALEC's collocation site and transported back to the ALEC's switch via transport the ALEC leases from the incumbent or another carrier. Moving the ALEC-IP to an established end office collocation arrangement would require that the ALEC add equipment in its collocation space and extra transport to carry the Verizon-originated traffic from the collocation site back to the ALEC switch. Thus, under Verizon's proposal, the ALEC's space requirements, equipment costs, and transport costs would all increase. Furthermore, because the volume of traffic originating from that end office may not fill a DS-1, US LEC may be forced to provide, and inefficiently strand, a facility that will be underutilized. This is inconsistent with

Section 2.2.4 of the contract. In that section, the parties have agreed that a DS-1 is the volume of traffic that will justify direct end office trunking for the delivery of one party's traffic to the other. However, notwithstanding the lack of sufficient traffic volume, Verizon's proposed language in Section 7.1.1.2 would require that US LEC designate a collocation site US LEC had established at a Verizon end office as a US LEC-IP in order to avoid Verizon's transport penalty (defined in Section 7.1.1.1.1). This would effectively force US LEC to provide an underutilized direct end office facility to carry Verizon's originating traffic back to US LEC's switch even though Verizon itself would not establish a direct end office connection to US LEC if the collocation arrangement did not exist.

Q: DOES US LEC ANTICIPATE DEPLOYING END OFFICE COLLOCATION ARRANGEMENTS DURING THE TERM OF THIS AGREEMENT?

A: Collocation, historically, has not been part of US LEC's business plan, however, it is possible that US LEC will deploy end office collocation arrangements during the term of this agreement. I do not agree with Verizon that by merely establishing a presence at Verizon's end office we are therefore obligated to pick up (either financially or physically) Verizon's originating traffic from that end office. The parties have agreed that direct end office trunks are only necessary when certain traffic volume thresholds are reached. Requiring US LEC to designate its end office collocation as an IP, or requiring a virtual IP at that end office, regardless of the traffic volume

originated from that end office is just another Verizon attempt to impose additional and unnecessary costs on its competitors.

Q: COULD THE TRANSITION TO NEW PHYSICAL IPs ADVERSELY AFFECT US LEC'S OPERATIONS?

A: Yes, it would. Moving from existing to new physical IPs would interfere with US LEC's growth and ability to add new customers during the transition and impose unnecessary economic costs on US LEC.

Interconnecting two networks requires not only facilities, but also careful planning and other necessary support systems. For example, moving from an existing IP to a new physical IP could involve a facilities build or facilities augmentation, submitting new trunk orders, and switch translations. All of this consumes scarce personnel and network resources that could otherwise be used to grow US LEC's business and expand its customer base. Furthermore, I understand that Verizon imposes a turn-up limit of 10 T-1s per day. This means that after all the planning and network engineering is completed, it could still take an inordinate amount of time to make the transition to a new US LEC-IP. Thus during the transition period, Verizon could effectively stop US LEC's ability to win new customers and jeopardize the growth of US LEC's existing customers' business. Requiring US LEC to transition to a new physical US LEC-IP would therefore give Verizon a competitive advantage in either retaining its existing customers or winning customers new to the market during the transition period.

Q: HOW DOES TRAFFIC VOLUME AFFECT THE ENGINEERING

AND FINANCIAL ASPECTS OF IPs?

A: If the volume of traffic originating from and/or terminating to an additional Verizon tandem or end office is low, it is more efficient for such traffic to be carried on Verizon's common network capacity. Establishing dedicated capacity that would be used solely to carry low traffic volumes would be inefficient.

Each carrier needs to install or lease transmission facilities and equipment to deliver its originating traffic to the other party's IP. Of course Verizon has been in this business for over 100 years and has built ubiquitous facilities to transport traffic throughout its serving area. Since Verizon already has facilities in place that can carry the traffic the parties exchange, and therefore benefits from economies of scale and the technological advances in transport capacity, its costs to switch and transport the incremental traffic it exchanges with US LEC are relatively low. Both parties benefit from these economies of scale -- Verizon for its originating traffic and US LEC for its terminating traffic. Furthermore, the amount of Verizon traffic that is destined for US LEC likely makes up only a very small percentage of the total traffic Verizon transports over its common network capacity.

In contrast, US LEC as a new entrant has not deployed transport facilities throughout Verizon's serving area. Thus, in order for US LEC to reach additional Verizon wire centers, US LEC must either construct new facilities, which requires local permits, digging up streets, etc., or lease existing facilities from Verizon or another carrier. In short, where traffic

volumes from additional wire centers are low, if Verizon requires US LEC to establish a US LEC-IP at the additional wire center, Verizon's avoided costs are negligible but US LEC's costs are high. Furthermore, if US LEC purchases dedicated transport from Verizon to transport Verizon's traffic from the new/additional US LEC-IP back to US LEC's switch, then Verizon has succeeded, through its designation of new/additional US LEC-IPs, in generating a significant amount of revenue for itself from selling dedicated transport to US LEC. Finally, through their proposal, Verizon may also strand PSTN resources since capacity dedicated to calls between Verizon and US LEC customers may be grossly underutilized.

Q: PLEASE SUMMARIZE YOUR PROPOSED RESOLUTION OF THESE ISSUES.

A: The Commission should adopt US LEC's proposal on Issues 1 and 2 because it preserves the parties' existing interconnection architecture, appropriately allocates the financial burden of traffic exchange, is consistent with sound network engineering practices, and promotes efficient network deployment.

Q: DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A: Yes.

Q: PLEASE STATE YOUR NAME FOR THE RECORD.

A: My name is Frank R. Hoffmann, Jr.

Q: ARE YOU THE SAME FRANK R. HOFFMANN, JR. WHO FILED DIRECT TESTIMONY IN THIS DOCKET ON AUGUST 2, 2002?

A: Yes.

Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A: The purpose of my testimony is to address the arguments raised by Verizon's witness Peter J. D'Amico concerning Issues 1 and 2 in US LEC's arbitration petition.

Q: DO YOU AGREE WITH VERIZON'S CHARACTERIZATION OF ITS VIRTUAL IP PROPOSAL AS A COMPROMISE (D'AMICO DIRECT AT 4-5)?

A: No. As the text of the Verizon contract language shows, its proposals *require* US LEC to pay for all of Verizon's originating transport costs, beginning at Verizon's originating end office switch, if US LEC declines Verizon's "request" to establish *collocated* physical IPs. Under Verizon's proposal, US LEC would be forced to bear the cost of both parties' originated traffic. Shifting all of this financial responsibility to US LEC is definitely not a compromise because Verizon provides US LEC nothing in exchange for assuming this burden. Further, as I understand it, Verizon's "compromise" simply does not comply with the requirements of the Act as interpreted by the FCC or this Commission's recent order in Docket No. 000075-TP. As Ms. Montano discusses in more detail, the Commission's

recent order confirms that VGRIPs does not comply with Verizon's obligations under federal law. In short, Verizon would force US LEC to either establish multiple physical *collocated* IPs or assume financial responsibility for *all* of Verizon's transport obligations. This shifting of financial responsibility is what I've termed the "transport penalty."

Q. US LEC ASKED VERIZON TO CALCULATE THE TRANSPORT PENALTY THAT WOULD APPLY IF US LEC DID NOT ESTABLISH THE PHYSICAL IPs REQUIRED UNDER VGRIPs. DO YOU AGREE WITH THE ASSUMPTIONS THAT VERIZON USES AS THE BASIS FOR ITS CALCULATION?

A: No. In response to US LEC's Interrogatory No. 5, Verizon assumes "that no tandem switching is performed and no other costs are incurred." This is highly improbable, as Verizon would only impose its transport penalty if US LEC did not establish *collocated* IPs at Verizon's tandems (or chose not to identify an established US LEC end office collocation arrangement as an IP). Since US LEC does not currently collocate at Verizon's end offices, Verizon's implementation of their transport penalty would only occur if US LEC established either non-collocated POIs at Verizon's tandem(s) (as US LEC does today), or chose a technically feasible POI at a location other than Verizon's tandem(s). Therefore, Verizon's originated traffic will always be tandem switched. The only possible exception to Verizon tandem switching all traffic bound for US LEC's network is in the rare case of when Verizon originates in excess of 200,000 minutes-of-use per month from a specific

Verizon end office to US LEC. Therefore, if the cost of tandem switching is included in the transport penalty that US LEC would incur under VGRIPs (under US LEC's current network architecture), the revised calculation demonstrates that Verizon would deprive US LEC of approximately 87% of the reciprocal compensation rate.

Q: PLEASE EXPLAIN YOUR UNDERSTANDING OF HOW THIS TRANSPORT PENALTY WOULD BE CALCULATED IF THE COMMISSION WERE TO ADOPT VERIZON'S PROPOSAL.

A: My understanding of Verizon's proposed transport penalty, which is included in sections 7.1.1.1.1, 7.1.1.2, and 7.1.1.3 of the Interconnection Attachment, is that first, US LEC shall bill and Verizon shall pay only the lesser of the negotiated intercarrier compensation rate for relevant traffic or the end office rate. As an initial matter, there is no "negotiated intercarrier compensation rate" in the contract. However, there are two reciprocal compensation rates in the interconnection agreement. First, there is a rate for traffic that US LEC originates for termination on Verizon's network through their tandem, which is called the tandem reciprocal compensation rate. There is also an end office reciprocal compensation rate, which is lower, for traffic directly terminated at a Verizon end office. Based on the FCC rule concerning tandem treatment of an ALEC's switch (47 C.F.R. § 51.711(a)(3)), US LEC is compensated at the tandem reciprocal compensation rate for traffic it terminates for Verizon.

Today, all of our originating traffic terminates to Verizon's access tandems. Therefore, US LEC pays Verizon the tandem reciprocal compensation rate. Under the FCC's tandem treatment rule, Verizon pays US LEC the same tandem reciprocal compensation rate. However, when applying the transport penalty, Verizon ignores the FCC rule right off the bat and is immediately going to pay US LEC only the lower end office rate. So that is the first step by which Verizon penalizes US LEC for not conforming to Verizon's preferred physical network interconnection architecture.

Q: WHAT ARE THE NEXT STEPS?

A: The next step is that Verizon will deduct a transport rate, multiplied by the mileage between their originating end office and US LEC's IP. They have told us that they will use their UNE rates for this (D'Amico Direct at 15), but that is not specified in their contract language.

The next step would be deducting the tandem switching rate, to the extent the traffic is tandem switched. As I explained above, Verizon will almost always switch their originating traffic through their tandem before handoff to US LEC, so this rate deduction also applies. Again, Verizon claims that they will use their UNE rate, but that is not explicitly stated in their contract proposal. Finally, Verizon adds "other costs" to its transport penalty. To the extent Verizon buys something—a facility or a service—either from US LEC or a third party, Verizon also deducts that cost from the compensation rate Verizon pays US LEC. These "other costs" are definitely not UNE rates. US LEC has no control over the appropriateness of the other

third-party costs that Verizon may choose to incur in order to transport their traffic to US LEC.

Q: VERIZON CLAIMS THAT US LEC WILL NOT ACCEPT VERIZON-ORIGINATED TRAFFIC AT THE POIs US LEC HAS ESTABLISHED ON VERIZON'S NETWORK (D'AMICO DIRECT AT 17). PLEASE RESPOND.

A: Verizon is correct with respect to the POIs US LEC has agreed to establish at a Verizon end office. However, US LEC is willing to accept Verizon-originated traffic at the POIs US LEC has already established at Verizon's tandems so long as Verizon continues to compensate US LEC, via a non-distance sensitive entrance facility charge, for providing the transport between the POI and US LEC's switch. It is my understanding that the FCC Wireline Competition Bureau ("Wireline Bureau") recently confirmed that it is entirely appropriate for an ALEC to charge an ILEC for the use of this facility because it is being used to deliver the ILEC's traffic to the ALEC's network.[1]

Q: MR. D'AMICO STATES THAT VERIZON WANTS TO DELIVER ITS TRAFFIC TO US LEC AT A MORE CENTRAL LOCATION (D'AMICO DIRECT AT 4). PLEASE RESPOND.

A: Verizon is aggregating and delivering its traffic to US LEC at a central location today – US LEC's switch. As I understand Mr. D'Amico's

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[1] *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos.

testimony, however, he does not equate "central location" with "single location." Rather, by "central location," what he really means is at Verizon's tandem switches; via collocation no less!

Q: DO YOU KNOW WHY VERIZON'S VGRIPs PROPOSAL REQUIRES US LEC TO USE A COLLOCATION ARRANGEMENT TO ESTABLISH AN IP AT VERIZON'S TANDEMS?

A: No. In our interrogatories (No. 9), we asked Verizon to explain the financial, technical, or other reasons why US LEC could not meet its VGRIPs obligation by establishing an IP through a means other than collocation. In its response, Verizon offers no explanation of why VGRIPs requires a collocated IP. In fact, at an earlier stage in negotiations, Verizon offered US LEC a slightly different, and more onerous proposal known as Geographically Relevant Interconnection Points ("GRIPs"). Under GRIPs US LEC would be permitted to choose the type of physical IP (Interconnection Attachment, Section 2.1.3), but would be forced to establish a physical IP in every Verizon local calling area. This further indicates the anticompetitive nature of Verizon's proposals, both GRIPs and VGRIPs, which are designed to foist unnecessary costs on US LEC and to improve Verizon's bottom line through increased collocation revenues.

Verizon's response to our Interrogatory No. 9 states that they would be willing to consider a proposal from US LEC that includes multiple interconnection options. As I stated earlier, US LEC is willing to allow

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00-218 *et al.*, Memorandum Opinion and Order, DA 02-1731, ¶¶ 66, 68 (Wireline Competition Bureau, rel. July 17, 2002) (*"FCC Arbitration Order"*).

Verizon to deliver its traffic to US LEC at POIs US LEC has established at Verizon tandems via entrance facilities, provided that (1) US LEC does not have to change its established method of interconnection at Verizon's tandems and (2) Verizon continues to compensate US LEC for a non-distance sensitive entrance facility, at the rate contained in Verizon's own state access tariff, to transport Verizon's traffic from the POI to US LEC's switch.

Q: MR. D'AMICO SUGGESTS THAT US LEC HAS "MISREAD" VERIZON'S PROPOSED CONTRACT LANGUAGE (D'AMICO DIRECT AT 15, 16). PLEASE RESPOND.

A: US LEC has not misread Verizon's proposed contract language. Mr. D'Amico may not agree with US LEC's position, or with the words I use to describe their proposed contract language. Verizon prefers words like "choice" and "may refuse" and "significant compromise." But the bottom line is that through VGRIPs, Verizon would force US LEC to "choose" between one of two equally unacceptable options. US LEC would either have to establish multiple physical connections to Verizon's network, at locations dictated by Verizon and using methods dictated by Verizon, or relieve Verizon of its current financial responsibility for transporting Verizon's customers' traffic. In other words, US LEC must either establish and pay for the physical network architecture Verizon prefers today, or pay to transport all of Verizon's originating traffic, including transport within the local calling area, beginning at Verizon's end office switch where the call originated.

Q: VERIZON ARGUES THAT ITS COST-SHIFTING PROPOSALS ARE JUSTIFIED BECAUSE US LEC'S PROPOSAL IS EXPENSIVE (D'AMICO DIRECT AT 12). DO YOU AGREE?

A: No. As I mentioned in my direct testimony, there are a number of factors that contribute to the cost of interconnecting two networks, including available facilities, traffic volume, and distance. At this point, there is nothing in the record to suggest that US LEC's proposal results in an "expensive" form of interconnection.

Q: DO YOU HAVE AN OPINION ON THE COSTS VERIZON INCURS TO TRANSPORT ITS ORIGINATING TRAFFIC TO US LEC?

A: Yes, I assume that the costs are de minimis.

Q: WHY DO YOU ASSUME VERIZON'S COSTS ARE DE MINIMIS?

A: First, I understand that in its recent order in Docket No. 000075-TP, the Commission found that the ILECs' costs of originating traffic to a single POI per LATA were de minimis. I have not seen any factual evidence presented by Verizon in this proceeding to the contrary. Second, for the same rates paid by its end user, Verizon transports traffic within its local calling area, and perhaps even through a Verizon tandem switch, when a Verizon customer calls another Verizon customer in the same local calling area. Third, as the incumbent carrier, Verizon already had a ubiquitous network in place prior to US LEC's entry in the Tampa market and I've seen no evidence from Mr. D'Amico that Verizon had to build new facilities solely to exchange traffic with US LEC. Fourth, US LEC only charges a non-

distance sensitive entrance facility rate to carry Verizon's originating traffic back to US LEC's switch, thus eliminating any concern about the distance between Verizon's existing network (*i.e.* its tandems) and US LEC's switch.

Q: YOU MENTIONED THAT VERIZON DELIVERS TRAFFIC BETWEEN TWO VERIZON END USERS FOR THE SAME RATE. CAN YOU PLEASE EXPLAIN WHY THIS IS IMPORTANT?

A: There are a variety of sources of revenue that compensate Verizon for carrying traffic that its customers originate, including its local rates, explicit universal service subsidies and implicit subsidies from other above-cost rates such as toll and vertical services. Verizon has not presented any evidence on either its costs or its revenues to support its allegations that it incurs "uncompensated costs" to interconnect with US LEC under the parties' current architecture (D'Amico Direct at 12-14). Thus it is entirely possible that even if Verizon's costs of transporting its customers' originating traffic are not de minimis, Verizon may already have been compensated for those costs through the rates it charges its end users for the services they purchase. Verizon will transport traffic within the local calling area, and perhaps even through a tandem switch, when a Verizon end user calls another Verizon end user, but it is not willing to do the same at no cost to US LEC unless US LEC establishes Verizon's preferred physical network architecture. I believe this discriminates against US LEC and US LEC's customers and also shows that Verizon is trying to impose on US LEC costs for which Verizon may already receive compensation.

Q: DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A: Yes.

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH VERIZON, AND YOUR BUSINESS ADDRESS.

A. My name is William Munsell. I am currently a Manager of Interconnection Services with Verizon. My business address is 600 Hidden Ridge, Irving, Texas 75038.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE, INCLUDING NON-VERIZON WORK EXPERIENCE.

A. I have an undergraduate degree in Economics from the University of Connecticut, and a master's degree from Michigan State University in Agricultural Economics. I joined Verizon (then GTE) Florida in 1982. During the course of my career with Verizon, I have held positions in Demand Analysis and Forecasting, Pricing, Product Management, Open Market Program Office, and Contract Negotiations.

Q. HAVE YOU REVIEWED THE DIRECT TESTIMONY OF PETER J. D'AMICO, WHICH WAS FILED IN THIS DOCKET ON AUGUST 2, 2002?

A. Yes. I adopt his testimony with one exception, noted in footnote 1, on page 5.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to address the arguments raised in the testimonies of US LEC's witnesses concerning network architecture (Issues 1 and 2).

Q. DO YOU AGREE WITH MR. HOFFMANN'S CLAIM THAT, IN THE EVENT US LEC FAILS TO ESTABLISH A GEOGRAPHICALLY RELEVANT IP, THEN UNDER "OPTION THREE" US LEC MUST BEAR ALL OF THE COSTS OF TRANSPORTING A CALL FROM THE ORIGINATING END OFFICE TO US LEC'S CHOSEN IP? (Hoffmann Testimony at 10:1-10.)

A. Yes. However, as explained in the initial testimony of Peter D'Amico, under "option one" — where US LEC finds it cost-justified to establish a geographically relevant IP at a Verizon tandem — Verizon can incur more than its share of the transport cost, because Verizon will be responsible for the costs of hauling its traffic from the Verizon customer to the geographically relevant IP, even though the IP may be located beyond the local calling area. *See* D'Amico Testimony at 4:24 - 5:4. Under "option three," US LEC must bear the costs of transporting traffic within the local calling area, calculated using the unbundled network element rate in the parties' agreement. Thus, VGRIP is a compromise proposal that provides US LEC with options based on the network architecture that it finds more advantageous.

The transport and tandem switching rates in the parties' proposed agreement are not the subject of a dispute here. However, as described in the parties' proposed agreement – in language that also is not the subject of a dispute here – these rates will shortly be replaced with the unbundled network element rates this Commission is establishing in Docket No. 990649B-TP. *See* Agreement, Pricing Attachment, App. A,

at 119 n.1.

Q. DO YOU AGREE WITH MS. MONTANO'S CLAIM THAT, IN THE *SPRINT ARBITRATION ORDER*, THIS COMMISSION "ONLY PERMITTED BELLSOUTH TO CHARGE SPRINT FOR THE COST OF FACILITIES *OUTSIDE* OF THE LOCAL CALLING AREA TO SPRINT'S POI"? (Montano Testimony at 11:12-15.)

A. No. In the *Sprint Arbitration Order*, this Commission "require[d] Sprint to pay TELRIC rates for Interoffice Dedicated Transport airline mileage between the V&H coordinates of Sprint's [virtual] POI and Sprint's POI." Final Order on Arbitration, *Petition of Sprint Communications Company Limited Partnership for Arbitration of Certain Unresolved Terms and Conditions of a Proposed Renewal of Current Interconnection Agreement with BellSouth Telecommunications, Inc.*, Docket No. 000828-TP, Order No. PSC-01-1095-FOF-TP, at 62 (Fla. PSC May 8, 2001) ("*Sprint Arbitration Order*"). As this Commission explained, the VPOI must be at a physical point on the ILEC's network that is *inside* the local calling area where the call originates. *See id.* at 58, 63. Therefore, under the *Sprint Arbitration Order*, when an ILEC must transport a call outside of a local calling area as a result of the ALEC's decision to establish its POI in another local calling area, the ALEC must pay for the transport both inside and outside the local calling area. Thus, VGRIP is consistent with this Commission's decision in the *Sprint Arbitration Order*.

Q. DO YOU AGREE WITH MR. HOFFMANN'S CLAIM THAT VERIZON HAS NOT DEMONSTRATED THAT "A SINGLE US LEC-IP PER LATA CAUSES VERIZON TO INCUR SPECIFIC COSTS FOR WHICH IT IS NOT ALREADY COMPENSATED BY THE SERVICES IT PROVIDES ITS CUSTOMERS TO ORIGINATE ITS TRAFFIC"? (Hoffmann Testimony at 18:8-10.)

A. No. As explained in the initial testimony of Peter D'Amico, US LEC's proposal would require Verizon to incur costs for which it would receive no compensation. *See* D'Amico Testimony at 12:20 - 15:13. In that testimony, Mr. D'Amico gave the example of a call between a Verizon customer and a US LEC customer located in Sarasota. A diagram of that example is contained in Exhibit 1 to my testimony.

As the diagram shows, if Verizon customer A calls Verizon customer B, the call does not leave the Sarasota local calling area. However, if Verizon customer A calls US LEC customer A, Verizon must transport the call to US LEC's switch in Tampa, even though the Verizon customer A and US LEC customer A might be next door neighbors. This call would normally be transported over the direct end office trunk between Verizon's end office in Sarasota and US LEC's switch in Tampa (although, if that direct trunk were congested, the call would overflow to the trunk connecting Verizon's end office in Sarasota with its tandem in Tampa, which would switch the traffic, which would then be transported to US LEC's switch in Tampa). Verizon has direct end office trunks from 45 end offices in the Tampa LATA to US LEC's switch in Tampa.

The need to transport this traffic to Tampa — whether over the direct end office trunk or through Verizon's tandem — is solely as a result of US LEC's decision to serve US LEC customer A from a switch located in Tampa; if US LEC had located its switch in Clearwater, Verizon would transport a call from Verizon customer A to US LEC customer A to Clearwater, rather than to Tampa. Yet, under US LEC's proposal, Verizon would not receive any compensation for that transport. The transport at issue, however, is the same transport that Verizon would perform if Verizon customer A called US LEC customer B, who is located in Tampa. In the latter case, Verizon customer A would pay intraLATA toll charges (assuming US LEC customer B's telephone number was assigned to the Tampa local calling area). Finally, although US LEC must transport the call back to US LEC customer A in this example, it can and does receive compensation for that transport from its own customer, because many of the rates US LEC charges are based on the distance the customer is located from US LEC's switch. *See, e.g.*, US LEC Florida Local Exchange Price List § 3.7.[1]

In the *Sprint Arbitration Order*, this Commission, considering an essentially identical factual situation, found that "there are additional costs directly associated with BellSouth completing a local call to a Sprint end-user when Sprint's POI is located outside of the local calling area." *Sprint Arbitration Order* at 58; *see also id.* at 52 (Diagram 29-1). Moreover, this Commission found that, "although facilities may be in place" between the two local calling areas, "there are costs associated

[1] The initial testimony of Peter D'Amico incorrectly cites section 6.1.2 of US LEC's Rate Guide, see D'Amico Testimony at 14:11-15, rather than section 3.6 of US LEC's Florida Local Exchange Price List, which similarly provides that "a customer's rate schedule is dependent on the distance between the customer's respective Bell South, Sprint Florida, or [Verizon] serving wire center and a US LEC switch."

with the use and maintenance of those facilities." *Id.* at 58. The Commission further recognized that the transport required in completing the call between Verizon customer A and US LEC customer A "may be identical" to the transport required to complete the intraLATA toll call between Verizon customer A and US LEC customer B, so that the "costs involved may be identical, although the compensation received for call completion may differ significantly." *Id.* at 59-60. For these reasons, as I described above and in D'Amico's testimony, this Commission required Sprint to establish "at least one [virtual] POI" in each local calling area in which Sprint has obtained an NXX code, and to compensate BellSouth at TELRIC rates for transport from the VPOI to Sprint's POI. *See id.* at 62, 63.

Q. CAN YOU ADDRESS THIS COMMISSION'S RECENT DECISION IN DOCKET 000075-TP (PHASES II AND IIA), INSOFAR AS IT IS RELEVANT TO ISSUES 1 AND 2 IN THIS PROCEEDING?

A. Yes. In that decision, this Commission held 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," which this Commission recognized must be on the ILEC's network. Order on Reciprocal Compensation, *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, at 25-26 (FPSC Sept. 10,

2002). Verizon and ALLTEL have sought reconsideration of that decision.

I note that, in reaching this decision, the Commission did not discuss the *Sprint Arbitration Order*, including both its conclusion in that order that "there are additional costs directly associated with BellSouth completing a local call to a Sprint end-user when Sprint's POI is located outside of the local calling area" and its requirement that Sprint establish "at least one [virtual] POI" in each local calling area where it has an NXX code, and to compensate BellSouth at TELRIC rates for transport from the VPOI to Sprint's POI. *Sprint Arbitration Order* at 58, 62-63. Nor did the Commission discuss the *Pennsylvania 271 Order*, where the FCC concluded that interconnection agreement language that "permits carriers to *physically* interconnect at a single point of interconnection (POI)," but "distinguish[es] between the physical POI and the point at which Verizon and an interconnecting competitive LEC are responsible for the cost of interconnection facilities," "do[es] not represent a violation of our existing rules." Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419, 17474, ¶ 100 & n.341 (2001) ("*Pennsylvania 271 Order*").

Q. DO YOU AGREE WITH MR. HOFFMANN'S CLAIM THAT "THE THIRD CIRCUIT FOUND THAT A COMMISSION SHOULD NOT CONSIDER COST SHIFTING . . . WITHOUT 'PROOF' THAT THE REQUESTED

POI IS EXPENSIVE"? (Hoffmann Testimony at 18:4-7.)

A. No. The Third Circuit Court of Appeals held that, "[t]o the extent . . . [an ALEC's] decision on interconnection points may prove more expensive to Verizon," the Pennsylvania PUC "should consider shifting costs to [that ALEC]." *MCI Telecomm. Corp. v. Bell Atlantic-Pa.*, 271 F.3d 491, 518 (3d Cir. 2001). Although the Third Circuit used the word "prove," I understand "prove" in that sentence to mean that the ALEC's decision "turns out to be" more expensive, not that the ALEC's decision "is proven by Verizon to be" more expensive. In any event, as I have shown and as this Commission has found, "there are additional costs *directly associated with*" US LEC's decision to serve an end user from a switch located far outside the local calling area where that end user is located. *Sprint Arbitration Order* at 58 (emphasis added).

Q. **DO YOU AGREE WITH MR. HOFFMANN'S CLAIM THAT VERIZON'S PROPOSAL "COULD DETER AN ALEC FROM COMPETING WITH VERIZON UNTIL THE ALEC HAS ENOUGH CUSTOMERS TO JUSTIFY EFFICIENTLY UTILIZING THE DEDICATED FACILITY IT IS FORCED TO BUILD OR LEASE FROM VERIZON"? (Hoffmann Testimony at 19:14-16.)**

A. No. Verizon's proposal does not force US LEC to build or to lease a dedicated facility, or any facility of any kind. As explained in the initial testimony of Peter D'Amico, although Verizon's proposal allows Verizon to request, for example, that US LEC establish a geographically relevant IP through collocation at a Verizon tandem, US LEC may refuse to agree

to that request. *See* D'Amico Testimony at 15:19-22. If US LEC refused to agree to such a request, it would not have to establish any facility at all. Instead, US LEC would compensate Verizon, using the TELRIC rates this Commission establishes, for the functions that Verizon actually performs when a local call from a Verizon end user to the end-user customers that US LEC serves must be transported outside of a local calling area.

Q. DO YOU AGREE WITH MR. HOFFMANN'S CLAIM THAT, UNDER VERIZON'S PROPOSAL, US LEC COULD BE FORCED "TO PROVIDE AN UNDERUTILIZED DIRECT END OFFICE FACILITY TO CARRY VERIZON'S ORIGINATING TRAFFIC BACK TO US LEC'S SWITCH"? (Hoffmann Testimony at 21:8-9.)

A. No. Although Verizon may request that a collocation site that US LEC has established at a Verizon end office be designated as a geographically relevant IP, US LEC is free to refuse that request. If US LEC refused that request, it would not have to establish a direct end office facility, even if such a facility would be efficiently utilized.

Q. DO YOU AGREE WITH MS. MONTANO'S CLAIM THAT, UNDER THE FCC'S RULES, "THE POI IS ALSO THE DEFAULT IP." (Montano Testimony at 4:11-12.)

A. No. As explained in the initial testimony of Peter D'Amico, the decisions of the FCC, this Commission, other state commissions, and federal courts recognize that the physical connection of two carriers' networks

can be distinct from the conceptual point where financial responsibility changes hands. As this Commission explained:

> We note that the term "POI" refers to the place where BellSouth's and Sprint's network[s] physically interface for the mutual exchange of traffic. We also note that the term "VPOI" refers to an *implicit* "POI" for billing purposes. The VPOI is *not a physical interface*; however, it refers to a physical point on BellSouth's network beyond which BellSouth would be entitled to recover costs for delivery of BellSouth-originated local traffic to Sprint's end-users.

Sprint Arbitration Order at 58 (emphases added).

Furthermore, I note that US LEC states that, under the parties' current arrangements, the POIs and the US LEC IP are in *different* locations. Mr. Hoffmann states in his testimony that US LEC "has established POIs at two of [Verizon's] tandems." Hoffmann Testimony at 8:13-14. Mr. Hoffmann states further that "US LEC's switch . . . is US LEC's IP." *Id.* at 15:19-20. Mr. Hoffmann also states explicitly that "the POI is not at US LEC's switch." *Id.* at 15:17-18. As I understand US LEC's proposal, the POIs and the IP would remain at their current, separate locations. I also note that Ms. Montano's incorrect belief that the POI is the default IP also leads her to make inconsistent statements about her understanding of Verizon's obligations under federal law. At one point, Ms. Montano claims that "Verizon's obligation [is] to deliver its originating traffic to US LEC's IP." Montano Testimony at 12:22. At another point, however, she

claims that Verizon "bears the burden of delivering local traffic originated by its customers to the POI."

Id. at 4:7-8.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION WITH VERIZON.

A. My name is Terry Haynes. My current business address is 600 Hidden Ridge, Irving, Texas 75015. I am a manager in the State Regulatory Policy and Planning Group supporting the Verizon states formerly associated with GTE. I am testifying here on behalf of Verizon Florida Inc. ("Verizon").

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I received a Bachelor of Arts Degree in Philosophy from the University of South Carolina in 1973. Since 1979, I have been employed by Verizon and its predecessor companies. I have held positions in Operations, Technology Planning, Service Fulfillment and State and Federal Regulatory Matters.

Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.

A. I will address US LEC's Issue 6, which asks "Should the parties be obligated to compensate each other for calls to numbers with NXX codes associated with the same local calling area?" This issue addresses contract language in Verizon's Glossary section 2.56 and its Interconnection Attachment section 7.2.

I will explain why reciprocal compensation does not apply to calls that originate and terminate in different local calling areas, defined by

reference to the actual originating and terminating points of the complete end-to-end communication. I will also explain why US LEC's proposal – to require payment of reciprocal compensation by reference to the NPA-NXX of the called number, rather than the terminating point of the complete communication – is inconsistent with this Commission's ruling on the same issue in its generic reciprocal compensation docket, as well as the FCC's rules and sound regulatory policy. To aid in understanding the issues associated with these questions, I will provide a detailed description of the nature of so-called "virtual NXX" or "virtual FX" traffic. I will explain why virtual FX traffic should not be subject to reciprocal compensation. I will also describe US LEC's "Local Toll Free" service, an interLATA, interstate FX-type service that US LEC offers its customers. US LEC's proposed contract language would require Verizon to pay reciprocal compensation on such interstate, interexchange calls, even though US LEC should be paying interstate access charges for them.

I will also explain why the Commission need not address the application of intrastate access charges to virtual FX traffic. In fact, application of access charges to such traffic is justified, because US LEC is using Verizon's local exchange facilities when a customer initiates an interexchange call that would be subject to toll charges, if not for the virtual FX arrangement. The proposed agreement, however, does not govern access charges, which are instead governed by the parties' tariffs.

Finally, I will address Verizon's recommended approach to determining the volume of FX and virtual FX traffic that carriers exchange.

Q. BEFORE DISCUSSING THE VIRTUAL FX ISSUE, PLEASE DEFINE THE TERMS RELEVANT TO THE DISCUSSION.

A. Several terms and concepts discussed in my testimony, though commonly used, are often misapplied or misunderstood. As a foundation for understanding the virtual FX discussion, I use the following definitions:

An "**exchange**" is a geographical unit established for the administration of telephone communications in a specified area, consisting of one or more central offices together with the associated plant used in furnishing communications within that area.

An "**exchange area**" is the territory served by an exchange.

A "**rate center**" is a specified location (identified by a vertical and horizontal coordinate) within an exchange area, from which mileage measurements are determined for the application of toll rates and private line interexchange mileage rates.

An "**NPA**," commonly known as an "area code," is a three-digit code that occupies the first three (also called "A, B and C") positions in the 10-digit number format that applies throughout the North American Numbering Plan ("NANP") Area, which

includes all of the United States, Canada, and the Caribbean islands. There are two kinds of NPAs: those that correspond to discrete geographic areas within the NANP Area, and those used for services with attributes, functionalities, or requirements that transcend specific geographic boundaries (such as NPAs in the N00 format, *e.g.*, 800, 500, etc.).[1]

An "**exchange code**" is a three-digit code – also known as an "NXX," an "NXX code," a "central office code" or a "CO code" – that occupies the second three ("D, E and F") positions in the 10-digit number format that applies throughout the NANP Area.[2] Exchange codes are generally assigned to specific geographic areas. However, some exchange codes are non-geographic, such as "N11" codes (411, 911, etc.) and "special codes" such as "555." An exchange code that is geographic is assigned to an exchange located, as previously mentioned, within an area code.

When a four-digit line number ("XXXX") is added to the NPA and exchange code, it completes the 10-digit number format used in the NANP Area and identifies a specific customer located in a specific exchange and specific state (or portion of a state, for those states with multiple NPAs). This 10-digit number is also known as a customer's unique telephone number or "address."[3]

Q. WHY IS A CUSTOMER'S 10-DIGIT ADDRESS SIGNIFICANT?

A. A customer's telephone number or address serves two separate but

related functions: proper call routing and rating. Each exchange code or NXX within an NPA is typically assigned to ***both a switch,*** identified by the Common Language Location Identifier ("CLLI"), ***and a rate center.*** As a result, telephone numbers provide the network with specific information (*i.e.*, the called party's end office switch) necessary to route calls correctly to their intended destinations. At the same time, telephone numbers traditionally identify the exchanges of both the originating caller and the called party to provide for the proper rating of calls – *i.e.*, the determination of whether and how much the calling party should be billed for a call.

Q. CAN YOU EXPLAIN THE BASIC PRINCIPLES GOVERNING THE MANNER IN WHICH CUSTOMERS ARE CHARGED FOR THE CALLS THAT THEY MAKE?

A. Yes. One basic principle is the distinction between local calls and toll calls. The basic telephone exchange service rate typically includes the ability to make an unlimited number of calls within a confined geographic area at modest or no additional charge. This confined geographic area consists of the customer's "home" exchange area and additional surrounding exchanges, together designated as the customer's "local calling area." Calls outside the local calling area, with limited exceptions noted in the paragraph below, are subject to an additional charge, referred to as a "toll" or Message Telecommunications Service ("MTS") charge. Toll service is generally priced at higher rates, on a usage-sensitive basis, than local calling. The local/toll distinction is rooted in

the decades-old public policy goal of assuring the widespread availability of affordable telephone service.

A second industry pricing convention is the principle that, generally, the calling party pays to complete a call – with no charge levied on the called party. There are a few exceptions, such as where a called party agrees to pay toll charges in lieu of applying those rates on the calling party (*e.g.*, 800/877/888-type "toll-free" service, "collect" and third-party billing, and FX services).

Q. HOW DOES THE TELEPHONE NUMBER OR ADDRESS PLAY A ROLE IN RATING AN INDIVIDUAL CALL?

A. Local exchange carriers' ("LECs'") retail tariffs and billing systems use the NXX codes of the calling and called parties to ascertain the originating and terminating rate centers/exchange areas of the call. This information, in turn, is used to properly rate the call for purposes of billing the calling party. If the rate center/exchange area of the called party, as determined by the called number's NXX code, is included in the originating subscriber's local calling area, then the call is established as a local call. If the rate center/exchange area of the called party – again determined by the NXX code of the called number – is outside the local calling area of the caller, then the call is determined to be toll. Thus, the rate centers of calling and called parties, as expressed in the unique NXX codes typically assigned to each rate center/exchange area, enable LECs to properly rate calls as either local or toll.

Q. WHAT IS VIRTUAL FX SERVICE, AND WHAT IS A VIRTUAL NXX?

A. A CLEC establishes virtual FX service whenever it assigns a customer a telephone number with an NXX code designated by the carrier for a rate center/exchange area other than the one in which its customer is physically located; such an NXX is called a virtual NXX. Indeed, the carrier may obtain an entire exchange code solely for the purpose of designating it for a rate center/exchange area in which the carrier has no customers of its own, or facilities to serve customers of its own. Instead, the exchange code is used by the carrier for the sole purpose of assigning telephone numbers to its end users physically located in exchanges other than the one to which the code was assigned.

Q. HOW DOES THE EXISTENCE OF SO-CALLED VIRTUAL FX SERVICE AFFECT EITHER THE ROUTING OR RATING OF TELEPHONE CALLS?

A. A CLEC's assignment of numbers to end users not physically located in the exchange area associated with that NXX does ***not*** affect the routing of the call from the caller to the called party. The ILEC's network recognizes the carrier-assigned NXX code and routes the call to that carrier's switch for delivery by the carrier to its end user, the called party.

The NXX assignment does, however, affect the rating of the call. The CLEC typically assigns virtual NXX codes to its customers that are expected to receive a high volume of incoming calls from ILEC customers within the exchange of that NXX, and the CLEC's virtual NXX

arrangement allows such calls to be made without the imposition of a toll charge on the calling party. In one common arrangement, a CLEC allows an ISP to collocate with its switch, and then assigns that ISP telephone numbers associated with every local calling area within a broad geographic area (potentially a LATA). The ISP would then be able to offer all of its subscribers a locally rated access number without having to establish a single physical presence in that geographic area. If the ISP had been assigned an NXX associated with the calling area in which it is physically located, many of those calls would be rated as toll calls.

Q. HAVE NXX CODES TRADITIONALLY BEEN USED TO GOVERN INTERCARRIER COMPENSATION?

A. No. To the extent that US LEC makes this argument, it is confusing the rating of calls for the purpose of assessing end-user charges and the treatment of calls for intercarrier compensation purposes. Before the widespread introduction of local competition following the adoption of the 1996 Act, the most important type of intercarrier compensation was the access charges that interLATA long distance carriers paid to local telephone companies. Such intercarrier compensation has always been governed by the originating and terminating points of the end-to-end call, not the NPA-NXX of the calling and called party.

For example, AT&T has offered customers interLATA FX service, described by the FCC as one "which connects a subscriber ordinarily

served by a local (or 'home') end office to a distant (or 'foreign') end office through a dedicated line from the subscriber's premises to the home end office, and then to the distant end office." *AT&T Corp. v. Bell Atlantic-Pennsylvania*, 14 FCC Rcd 556, 587, ¶ 71 (1998) ("*AT&T v. BA-PA*"), *reconsideration denied*, 15 FCC Rcd 7467 (2000). An airline with a reservation office in Atlanta could provide customers in Charleston a locally rated number, but all calls would still be routed to Atlanta. The FCC ruled, in that situation, that AT&T was required to pay access charges for the Charleston end of that call – even though the call was locally rated for the caller, because AT&T was still using access service to complete an interLATA call to the called party. *Id.* at 590, ¶ 80. The fact that the calling party and the called party were assigned NPA-NXX's in the same local calling area was totally irrelevant to the proper treatment of the call for intercarrier compensation purposes. In this regard, I note that US LEC itself advertises what appears to be an interLATA FX service – which US LEC refers to as "Local Toll-Free Service" – on its website. I have attached a print-out of the website to my testimony. (See Exhibit No. 1)

Another example is "Feature Group A" access, one method that interexchange carriers ("IXCs") use to gain access to the local exchange. In that arrangement, the caller first dials a seven-digit number to reach the IXC, and then dials a password and the called party's area code and number to complete the call. Notwithstanding this dialing sequence, the service the LEC provides is considered *interstate*

access service, not a separate local call, and the IXC must pay access charges.

Q. DOES THE PRINCIPLE THAT INTERCARRIER COMPENSATION IS GOVERNED BY THE ORIGINATING AND TERMINATING POINTS OF THE END-TO-END COMMUNICATION APPLY TO RECIPROCAL COMPENSATION?

A. Yes. The FCC has always held that reciprocal compensation does not apply to interexchange traffic, whether interstate or intrastate, but only to traffic that remains within a single local calling area. The FCC confirmed this in its April 2001 *ISP Remand Order*,[4] when it ruled that reciprocal compensation does not apply to "exchange access, information exchange access, or exchange services for such access." 47 C.F.R. § 51.701(b)(1). As the FCC has made clear, this includes all "provision of exchange services for the purpose of originating or terminating interexchange telecommunications." 16 FCC Rcd at 9158, ¶ 37 n.65. Whether a particular call is interexchange does not depend on the telephone number, it depends on whether the call remains within the local calling area or travels outside it.

Q. DOES THIS COMMISSION AGREE THAT RECIPROCAL COMPENSATION DEPENDS ON THE PHYSICAL ORIGINATING AND TERMINATING POINTS OF A CALL?

A. Yes. The Commission already ruled on this issue in its generic reciprocal compensation docket (number 000075-TP). There, the

Commission agreed with its Staff's assessment that "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."[5] It squarely held that reciprocal compensation depends on where a call physically originates and terminates – not on "the NPA/NXXs assigned to the calling and called parties."[6] The Commission, therefore, concluded that virtual NXX traffic is not subject to reciprocal compensation because it does not physically terminate in the same local calling area in which it originates[7]: "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."[8]

Q. IS IT IMPROPER FOR US LEC TO ASSIGN VIRTUAL NXX CODES TO THEIR CUSTOMERS?

A. US LEC's ability to assign telephone numbers to its customers in any way that is consistent with regulatory requirements is not at issue here. Rather, Verizon wants to ensure that the parties' agreement does not require payment of reciprocal compensation for any interexchange traffic, including virtual FX calls. Such calls are not subject to reciprocal compensation under the FCC's current rules.

Q. DO YOU HAVE ANY OTHER CONCERNS ABOUT VIRTUAL NXX TRAFFIC?

A. Yes. Another concern is related to interconnection architecture. In this proceeding, US LEC is insisting that it has a right to interconnect with

Verizon at any point within a LATA and require Verizon to bear the cost of transporting traffic to that point of interconnection.

The use of virtual NXXs by CLECs makes calls appear local that are actually toll service from the Verizon customer's physical location to the CLEC customer's physical location, thereby denying Verizon the opportunity to collect just compensation for the transport it provides to the CLECs on the call. When an ILEC's customer initiates a call to a CLEC virtual NXX, the ILEC's switch sees the NXX code as being assigned to the exchange area/rate center of the originating caller or to an exchange area within the originating caller's local calling area and, therefore, does not rate the call as a toll call. In fact, the call is delivered by the CLEC to its end user located ***outside*** the local calling area of the originating customer, and toll charges properly apply and would be assessed save for the assignment of virtual NXX codes. The CLEC, however, does not terminate the call within the local calling area of the originating caller. Rather, the CLEC simply takes the traffic delivered to its switch and delivers the calls to its virtual FX subscriber, often located in the same exchange as its switch – if not physically collocated with the CLEC at its switch.

In short, the CLEC gets a free ride for interexchange traffic on the incumbent's interoffice network. Verizon incurs essentially all of the transport costs, yet is denied an opportunity to recover its costs either from its originating subscriber or from the CLEC. There can be little

doubt why some CLECs have embraced virtual FX service to the exclusion of other service arrangements. I should emphasize, however, that this concern is somewhat attenuated so long as the Commission adopts Verizon's proposals concerning interconnection architecture. So long as US LEC bears the cost of transporting the traffic that it receives from Verizon beyond the local calling area where that traffic originated, US LEC will have less opportunity to shift transport costs to Verizon. But US LEC has refused to accept an agreement that would require US LEC to bear these transport costs. Interconnection architecture issues are discussed in greater detail in the testimony of Mr. Peter D'Amico.

Q. US LEC ARGUES THAT IT IS PROVIDING VERIZON'S CUSTOMERS A VALUABLE SERVICE THROUGH VIRTUAL NXX ARRANGEMENTS. DO YOU AGREE?

A. No. By providing a virtual NXX arrangement, US LEC is giving its own customers the ability to receive locally rated calls from end-users located in a different local calling area – much like a toll-free 800 service. CLECs have heavily marketed virtual FX arrangements and are compensated by their customers for providing this functionality. Although I do not know what US LEC charges its customers for this service in Florida, I know that in Pennsylvania they charge their customers many hundreds of dollars a month for this service.

That is part of the reason that US LEC's effort to collect reciprocal compensation for this traffic is particularly inappropriate as a matter of

sound regulatory policy. US LEC is already being compensated by its own customer for the receipt of these calls, just as an ILEC is compensated for providing a customer a traditional FX arrangement, and just as a long-distance carrier is compensated for providing a customer a toll-free number. It does not make sense to require Verizon to bear the costs of this arrangement, but that is what US LEC is seeking to achieve.

Q. IT SOUNDS LIKE VERIZON IS PROVIDING US LEC'S CUSTOMER A VALUABLE SERVICE. DO YOU AGREE?

A. Yes. Verizon is providing the service of originating the call for transport to the called party's carrier. By definition, in a virtual NXX arrangement, a subscriber is willing to pay its carrier for a "virtual presence" in a distant exchange. The ability to receive calls from that exchange – calls originated on Verizon's network -- is therefore valuable to US LEC's subscriber. And, of course, US LEC is able to offer that service only by virtue of Verizon's network – US LEC may have no facilities at all in the relevant local calling area.

Q. DO YOU AGREE WITH US LEC'S CLAIM THAT VIRTUAL NXX CODES ALLOW CUSTOMERS TO TAKE ADVANTAGE OF STATE-OF-THE ART TECHNOLOGY?

A. No. Virtual FX service is hardly a state-of-the-art technology and is certainly not necessary to provide customers toll-free calling. Telephone companies have been offering toll-free service for decades. The fact is

that the CLEC number assignment causes originating ILECs like Verizon to treat the call at the originating switch as a local call for end-user billing and switch routing purposes. This is much like how Verizon would transport a toll call or an originating access call – existing services for which Verizon would be compensated by the originating toll user or the interexchange access customer, respectively. The only thing that's "new" here is the scheme to manipulate intercarrier transport and compensation in a manner to shift the costs of providing this toll-free number service to the originating ILEC. There is no aspect of the virtual NXX service that can be considered new or state-of-the-art from a technology perspective.

Q. DO YOU AGREE WITH US LEC'S CLAIM THAT ENFORCING THE FCC'S RECIPROCAL COMPENSATION RULES WITH RESPECT TO VIRTUAL FX TRAFFIC WOULD IMPEDE COMPETITION?

A. No. Enforcing the FCC's rules will promote competition, not impede it. US LEC will remain free to market its virtual NXX service and receive whatever compensation for that service that its end-users are willing to pay. But Verizon should not be required to subsidize that service by paying reciprocal compensation on traffic that is interexchange. In other words, Verizon's local customers should not have to defray the costs of providing this service to end-users who are located outside the exchange. Enforcing the rules will simply prevent US LEC from exploiting a potentially lucrative regulatory arbitrage opportunity, to the detriment of competition.

Q. WOULD VERIZON'S POSITION RESTRICT US LEC'S ABILITY TO OFFER THIS SERVICE OR REDUCE ITS UTILITY TO US LEC'S CUSTOMERS?

A. No. US LEC could offer the service, and it would continue to provide the same benefits to US LEC's customers. But US LEC could not collect reciprocal compensation for such traffic, compensation to which it has no right under the FCC's rules.

Q. IS VERIZON CLAIMING ACCESS CHARGES FOR THIS TRAFFIC?

A. The parties' agreement makes clear that access charges are governed by their intrastate and interstate access tariffs, so the issue is not strictly presented in this proceeding. That said, it is clear that US LEC should pay originating access charges for this traffic, because it is a type of toll-free interexchange traffic. Even though a Verizon customer is placing an interexchange call, Verizon cannot impose toll charges because of the way in which US LEC has assigned telephone numbers to its customers. Instead, US LEC receives compensation from *its* customer. There is nothing necessarily wrong with that, but US LEC must compensate Verizon for this originating access service. Access charges have always been applied to toll-free traffic. In fact, this Commission approved its Staff's logic that "it seems reasonable to apply access charges to virtual NXX/FX traffic that originates and terminates in different local calling areas."[9] In addition, I note that if the virtual NXX customer were located in another LATA and another state from the

calling party, *interstate* access charges would apply – even though the call would be rated as local for the calling party.

Q. BUT US LEC CLAIMS THAT VERIZON'S COSTS DO NOT JUSTIFY SUCH CHARGES.

A. Verizon's access charges are set by state and federal regulators and are simply not at issue in this proceeding. If US LEC uses a Verizon access service, as it does in the "virtual FX" arrangements at issue here, it must pay the tariffed rate. And, in any event, the only issue actually presented here is whether Verizon should pay US LEC when Verizon originates an interexchange call that US LEC delivers to its customer and for which US LEC is compensated by its customer. The FCC's rules, decades of consistent regulatory policy, and sound economics all dictate the same answer – Verizon should not be required to pay reciprocal compensation on this traffic.

Q. DO YOU HAVE ANY OTHER CONCERNS ABOUT US LEC'S PROPOSED CONTRACT LANGUAGE?

A. Yes. It has come to my attention that US LEC offers an interstate, interLATA FX-type service, in which US LEC assigns a customer located in one state (say, Maryland) telephone numbers associated with various local calling areas across US LEC's 14-state footprint. Based on US LEC's description of this service in other proceedings, I infer that US LEC has set up this arrangement so that Verizon (or another incumbent LEC) delivers the traffic to US LEC's switch as though it were

local traffic; US LEC may even bill reciprocal compensation for such traffic. But such traffic is interstate, interexchange traffic, and US LEC should be paying interstate access charges on such traffic.

Q. WHAT IS THE BASIS FOR YOUR STATEMENT THAT THIS SERVICE IS LIKE INTERLATA FX SERVICE?

A. I do not know the details of the manner in which US LEC provisions its "Local Toll Free" Service, but from the point of view of regulatory policy, this type of traffic is indistinguishable from interstate FX service -- it provides the same functionality to the customer, at least with respect to in-bound calls. US LEC's "Local Toll Free" service is also reminiscent of Feature Group A ("FGA") access, an access arrangement used by interexchange carriers in the early days of long-distance competition, and an access service that is still available today. With a FGA arrangement, a caller dials a "local" number assigned to the interexchange carrier's FGA service, enters a PIN, and then places a long-distance call. The initial "local" call is, of course, not local at all – it is simply one leg in an interstate, interexchange call.[10] US LEC's "Local Toll Free" service fits this mold. In fact, under the interstate access charge regime, the FCC has repeatedly made clear that intermediate switching is entirely irrelevant to the question of where a call terminates. The fact that a switch may "answer" a call and then "forward" it to another location does not mean that there are two calls – there is only one call for access charge purposes.[11]

Q. WHAT IS THE SIGNIFICANCE OF US LEC'S LOCAL TOLL FREE SERVICE FOR THE COMMISSION'S RESOLUTION OF ISSUE 6?

A. It makes clear that the Commission cannot accept any proposal that makes the payment of intercarrier compensation turn on the NPA-NXX of the dialed number, because the customer to which the NPA-NXX is assigned could be located literally anywhere in the world, let alone anywhere in the LATA. Instead, intercarrier compensation must turn on the physical location of the called party. Any other result would elevate form (*i.e.*, the number assigned to the customer) over substance (*i.e.* the customer's physical location).

Q. YOU'VE ALREADY DISCUSSED THIS COMMISSION'S VIRTUAL NXX RULING. HAVE OTHER STATE COMMISSIONS ADDRESSED THIS ISSUE?

A. Yes. The South Carolina Commission, for example, has squarely held that "reciprocal compensation is not due to calls placed to 'virtual NXX' numbers as the calls do not terminate within the same local calling area in which the call originated."[12] The Commission correctly determined that compensation for traffic depends on the end points of the call – that is, where it physically originates and terminates: in rejecting the claim that "the local nature of a call is determined based upon the NXX of the originated and terminating number," the Commission noted that, "[w]hile the NXX code of the terminating point is associated with the same local service area as the originating point, the actual or physical termination point of a typical call to a 'virtual NXX' number is not in the same local

service area as the originating point of the call."[13]

A number of other state commissions have also held that reciprocal compensation does not apply to virtual NXX traffic because it does not physically originate and terminate in the same local calling area. These state commissions include those in Ohio,[14] Connecticut,[15] Illinois,[16] Texas,[17] Tennessee,[18] Georgia,[19] and Missouri.[20]

Q. ARE YOU AWARE OF ANY STATE COMMISSIONS THAT HAVE ADDRESSED THE ISSUE OF ASSIGNMENT OF TELEPHONE NUMBER TO END USERS LOCATED OUTSIDE OF THE RATE CENTER TO WHICH THEY ARE HOMED?

A. Yes. For example, the Pennsylvania Commission has required CLECs to assign its customers "telephone numbers with NXX codes that correspond to the rate centers in which the customers' premises are physically located."[21] That Commission had explained its rationale as follows:

> [E]ach CLEC must comply with BA-PA's local calling areas. This is imperative to avoid customer confusion and to clearly and fairly prescribe the boundaries for the termination of a local call and the incurrence of a transport or termination charge, as opposed to termination of a toll call in which case an access charge would be assessed.[22]

To cite another example, on June 30, 2000, the Maine Public Utility

Commission ordered a CLEC, Brooks Fiber, to return 54 NXX codes which it was using in a "virtual NXX" capacity and rejected Brooks' proposed "virtual NXX" service. The Commission found that Brooks had no facilities deployed in any of the locations to which the 54 NXX codes were nominally assigned. As such, it rejected Brooks' arguments that it was using the codes to provide local service, and concluded that Brooks' activities had "nothing to do with local competition."[23] It found that Brooks' "extravagant" use of the 54 codes "solely for the rating of interexchange traffic" was patently unreasonable from the standpoint of number conservation.[24] The Commission further observed that Brooks' likely reason for attempting to implement an "FX-like" service, instead of a permissible 800 or equivalent service, was Brooks' "hope that it might avoid paying Bell Atlantic for the interexchange transport service provided by Bell Atlantic."[25]

Q. DOES THE FCC'S *ISP REMAND ORDER* ALLEVIATE VERIZON'S CONCERNS WITH VFX?

A. No. The FCC's *ISP Remand Order* addresses only termination rates, and only with regard to Internet-bound traffic. It does not resolve lost toll revenue and transport cost issues associated with virtual NXX assignments. As I previously explained, these issues are not limited to Internet-bound traffic and are not directly related to termination rates. Virtual NXX assignment shifts transport costs to Verizon and makes toll calls to which toll charges properly apply appear as though they are local calls.

Q. US LEC CLAIMS THAT THE FCC'S *TSR WIRELESS ORDER* SUPPORTS ITS POSITION HERE. DO YOU AGREE?

A. No. The *TSR Wireless Order*[26] actually supports Verizon's position. In that order, the FCC held merely that an incumbent LEC could not charge for existing facilities used to deliver *local* traffic originated on the incumbent's network to a paging carrier's switch. It did not decide any issue related to interconnection architecture or reciprocal compensation, nor did it in any way suggest that an incumbent LEC has any obligation to deliver *non-local* traffic without charge. Moreover, the FCC held that the incumbent *could* charge the paging carrier for a service known as "wide area calling," a service that permits individuals located outside the local calling area in which the paging carrier's facilities to call the paging carrier without incurring toll charges. That service is quite comparable to some virtual NXX arrangements.

Q. THE FCC'S WIRELINE COMPETITION BUREAU RECENTLY DETERMINED, IN AN INTERCONNECTION ARBITRATION, THAT RECIPROCAL COMPENSATION SHOULD BE DETERMINED BASED ON THE NPA-NXX CODES, NOT THE PHYSICAL LOCATION OF THE CALLING PARTY AND THE CALLED PARTY.[27] DO YOU HAVE ANY COMMENT ON THAT ORDER?

A. Yes. The Bureau did not rule that reciprocal compensation is required for virtual FX traffic. Rather, what the Bureau said, considering the evidence in that particular proceeding, was that paying reciprocal

compensation based on the physical location of the calling party and the called party – as Verizon proposes here – would raise "billing and technical issues that have no concrete, workable solutions at this time." *Bureau Arbitration Order* ¶ 301. The Bureau's decision was based on the perceived practical difficulty of accurately tracking and billing FX and virtual FX traffic as non-local traffic for reciprocal compensation purposes. But billing reciprocal compensation for virtual FX traffic and FX traffic based on the geographic location of the calling party and the called party poses no significant practical problem. In fact, Verizon has already identified a concrete, workable solution to ensure that FX and virtual FX traffic is properly treated as interexchange traffic for reciprocal compensation and access charge billing purposes, even though such calls are rated as local to the calling party.

Q. WOULD YOU DESCRIBE THE MANNER IN WHICH VERIZON EXCLUDES FX TRAFFIC AND FX-LIKE TRAFFIC FROM RECIPROCAL COMPENSATION BILLING?

A. Yes, but first I would like to offer a bit of background. Verizon's billing system, for purposes of billing reciprocal compensation, was designed to compare the NPA-NXX codes of the calling party and the called party to determine whether a call is in fact local. That is a reasonable method, because the volume of CLEC originated traffic sent to a FX number on Verizon's network – for which that method would not yield a correct answer from the point of view of intercarrier compensation billing – is very small. Based on the traffic study Verizon performed in Florida,

such traffic makes up less than one-half of one percent of the CLEC originated traffic delivered to Verizon for termination to its customers.

But Verizon has learned, since the advent of local competition, that the assumption that a customer's assigned NPA-NXX code most likely corresponds to the customer's physical location is often not a valid assumption in the case of traffic delivered to CLECs. To the contrary, the volume of locally rated interexchange traffic being delivered to some CLECs makes up a significant percentage of the traffic delivered to those CLECs – in fact, I am aware of situations where almost *all* of the traffic that Verizon delivers to certain CLECs is Virtual FX traffic.

To deal with this issue, Verizon has recently taken steps to develop methods to accurately measure the volume of CLEC traffic terminated to Verizon FX numbers. Verizon conducted an inexpensive study to identify those calls that were originated by CLEC customers and terminated to Verizon FX numbers. The study amounted to nothing more elaborate than matching call records that Verizon creates on calls originated from facility based CLEC's to a list of telephone numbers that Verizon assigned to FX service lines. This study was conducted with the intent of providing a means for Verizon to properly estimate the access revenue that CLECs would be entitled to for CLEC originated calls terminated to Verizon FX numbers. At the same time, Verizon considered what approach would be required to properly account for traffic originated by Verizon customers which terminated on CLEC

virtual FX numbers. Two options were identified. One option would be for the CLEC to conduct a study, similar to the one performed by Verizon, to quantify the number of Verizon customer originated minutes that were delivered to the CLEC virtual FX numbers. The other option would be for the CLEC to notify Verizon of the numbers it has assigned as virtual FX numbers. In this scenario, Verizon would modify its traffic data collection system to capture all traffic delivered to the NPA-NXXs associated with the virtual FX numbers. A data query could then be run to identify what portion of the traffic delivered to the NPA-NXXs was actually virtual NXX traffic. A billing adjustment would then be entered into each parties' billing system to properly account for the Verizon traffic delivered to the CLEC virtual FX numbers. For example, US LEC would credit from its reciprocal compensation billing to Verizon all amounts associated with these Virtual FX minutes, while Verizon would bill US LEC access charges for those minutes at whatever rate is found to be appropriate. Verizon is prepared to work with US LEC to implement one of these options so that traffic can be properly billed.

Q. HOW DOES VERIZON RECOMMEND THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should adopt Verizon's proposed contract language, which is consistent with the Commission's generic ruling that reciprocal compensation does not apply to any traffic that is interexchange, defined by reference to the actual originating and terminating points of the complete end-to-end call.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

Q. ARE YOU THE TERRY HAYNES WHO TESTIFIED PREVIOUSLY IN THIS PROCEEDING?

A. Yes.

Q. PLEASE DESCRIBE THE PURPOSE OF YOUR REBUTTAL TESTIMONY.

A. I will address several points in the testimony of Wanda Montano. US LEC has claimed that its effort to reap reciprocal compensation payments on interexchange traffic – and to avoid the access charges that apply to such interexchange traffic – is pro-competitive. That claim is incorrect. In fact, US LEC is attempting to compete, not on the basis of increased efficiency or superior products, but purely on the basis of getting Verizon to bear the costs of the service that US LEC provides to its customers. The FCC has identified this as the kind of regulatory arbitrage that harms competition.

Q. MS. MONTANO SEEMS TO SUGGEST THAT VERIZON OBJECTS TO ROUTING AND RATING CALLS ACCORDING TO THE NXX CODE OF THE DIALED NUMBER. IS THAT CORRECT?

A. No. The parties' dispute has nothing to do with either the routing or the rating of calls. Calls are routed according to their assigned NXX code. As a general rule, each NXX code is identified in the Local Exchange Routing Guide ("LERG") with particular routing information; the LERG tells the originating carrier where to send the traffic. Verizon has not proposed any type of change to that system. And calls likewise are

rated – that is, the charge to the originating caller is determined – by the NXX code of the called number. If the NXX code is associated with the local calling area of the caller, the call will be rated as local. That is true whether the called party is in the same local calling area or in a different local calling area within the same LATA. It would even be true if the called party were located across the country.

Q. IF THE PARTIES AGREE THAT CALLS ARE RATED AND ROUTED ACCORDING TO THE NXX CODE, WHAT IS THE PARTIES' DISAGREEMENT?

A. The parties' sole disagreement for purposes of this proceeding is whether the NXX code should be used to determine intercarrier compensation, *i.e.*, whether reciprocal compensation must be paid when the called party is actually located in a different local calling area from the calling party. In other words, if a Verizon customer in Sarasota places a call to a US LEC customer located in Tampa, the question is whether reciprocal compensation should apply if the US LEC customer has been assigned an NXX code associated in the LERG with Sarasota rather than Tampa. Verizon maintains that reciprocal compensation should not be paid; that is also what the FCC has held, as I explained in my direct testimony.

Q. WHAT REASONS DOES MS. MONTANO GIVE FOR REQUIRING RECIPROCAL COMPENSATION ON VIRTUAL FX TRAFFIC?

A. As I understand her testimony, she offers three basic arguments. First,

she argues that payment of reciprocal compensation is consistent with regulatory rules governing inter-carrier compensation in other contexts. Second, she argues that failure to order reciprocal compensation would discourage the deployment of Virtual FX arrangements. Third, she claims that payment of reciprocal compensation is required by the FCC's *TSR Wireless Order*.[1] None of those arguments is correct.

Q. IS MS. MONTANO CORRECT THAT IT IS INDUSTRY PRACTICE TO PAY INTER-CARRIER COMPENSATION BASED ON NXX CODES?

A. No. In fact, as I explained in my direct testimony, in the access charge context, the FCC has directly held that carriers must pay compensation based on the physical location of the called party, not the NXX code of the called party, which is generally associated with the local calling area of the calling party. In other words, the FCC has already decided that although FX traffic may be treated as local for purposes of rating the call to the originating end-user, it should not be treated as local traffic for purposes of inter-carrier compensation. Thus Ms. Montano's statement that "according to FCC Rules and Orders, access charges cannot be imposed on locally dialed calls" (Montano Testimony at 25:3-4) is flatly wrong.

Q. BUT WASN'T THE TRAFFIC AT ISSUE IN THE FCC ORDER YOU DISCUSSED INTERLATA TRAFFIC?

A. Yes, but the principle is the same. If a local telephone subscriber originates a call to an interLATA FX number, the local exchange carrier

[1] Memorandum Order and Opinion, *TSR Wireless, LLC v. US West Communications, Inc.*, 15 FCC Rcd 11166 (2000) ("*TSR Wireless Order*").

delivers the call to the interexchange carrier's point of presence for onward transmission to a called party; the local exchange carrier is entitled to originating access for such a call, even though the call is *rated* as a local call. Likewise, in the case of virtual FX traffic, the local exchange carrier delivers the traffic to the CLEC's point of interconnection; the CLEC then delivers the call to the called party, which is by definition located in a different local calling area (which may or may not be within the same LATA). Because the call is interexchange, no reciprocal compensation applies. (I should also note that it should not matter from the point of view of inter-carrier compensation what specific technology a carrier uses to complete the interexchange call. US LEC has testified in other proceedings that it uses "remote call forwarding" technology to provision its interLATA FX arrangements. But as US LEC has described its "Local Toll Free" service, it is not a remote call forwarding service, that is, it does not provide a local subscriber the ability to forward a call *from* its home number *to* a different number assigned to a different subscriber, the functionality provided by remote call forwarding. Instead, US LEC assigns its customer a foreign exchange number so that *all* calls to that number will be delivered to the customer's location in another LATA. In any event, from the point of view of regulatory policy, it is the substance of the communication, not the specific technology used, that should matter; otherwise, the regulator will encourage uneconomic regulatory arbitrage.)

Q. BUT VERIZON HAS ADMITTED IN ITS RESPONSE TO US LEC'S DISCOVERY THAT VERIZON ITSELF MAY HAVE CHARGED RECIPROCAL COMPENSATION ON FX TRAFFIC. ISN'T THAT INCONSISTENT WITH YOUR POSITION HERE?

A. Verizon has charged an immaterial amount of reciprocal compensation for CLEC-originated calls bound for Verizon FX numbers. In this regard, I should correct a misimpression that may have been left by my direct testimony. I testified there that FX traffic makes up less than one-half of one percent of traffic originated by CLEC customers and delivered to Verizon. In fact, such traffic makes up only about *five one-hundredths* of one percent of such traffic, or about $130 per month in reciprocal compensation billing for *all CLECs in the state combined.* In other words, Verizon was perfectly justified in estimating reciprocal compensation billings in the way it did – even though FX traffic is not subject to reciprocal compensation – because the amount of such traffic received by Verizon is negligible in relation to the total amount of traffic received.

As I explained in my direct testimony, the same cannot be said of traffic delivered to CLECs. Indeed, it is hard to see why any CLEC would be litigating this issue so aggressively unless it were already exploiting or hoping to exploit a perceived regulatory arbitrage opportunity by implementing non-local Virtual FX arrangements on a substantial scale.

Q. MS. MONTANO ALSO CLAIMS THAT NOT REQUIRING PAYMENT OF RECIPROCAL COMPENSATION MAY DISCOURAGE

DEPLOYMENT OF VIRTUAL FX ARRANGEMENTS. DO YOU AGREE?

A. It is correct that payment of reciprocal compensation on Virtual FX traffic provides an additional incentive for CLECs to deploy those arrangements, but that is an argument against requiring reciprocal compensation, not in favor of it. Payment of reciprocal compensation would permit a CLEC improperly to transfer to Verizon some of the costs of the service that it provides to its customer. That is uneconomic and inefficient. As the FCC has said, in such circumstances, "carriers . . . compete, not on the basis of the quality and efficiency of the services they provide, but on the basis of their ability shift costs to other carriers."[2] The FCC has identified such regulatory arbitrage as a major impediment to the development of genuine local competition.

Q. CAN YOU ELABORATE?

A. Yes. Suppose that a Verizon customer in Sarasota wants to subscribe to a Tampa FX number. Under traditional FX arrangements, the customer would have to subscribe to service from a Tampa wire center, and then pay for transport from the Tampa wire center providing the number to his normal serving wire center in Sarasota, a local channel from the Sarasota wire center to his premises, and applicable usage charges. In that circumstance, the customer is paying for the right to receive calls made to the Tampa exchange and to have those calls transported to Sarasota.

[2] Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151, 9183, ¶ 71 (2001) ("*ISP Remand Order*"), *remanded*, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

In the case of the type of virtual FX service that US LEC wants to be able to offer, the customer in Tampa would be assigned an NXX number associated with a Sarasota exchange. But Verizon – which is the carrier actually bearing the cost of providing service in the Sarasota exchange – receives no compensation from the customer for the provision of local exchange service in Sarasota, even though the customer is benefiting from that service. Moreover, US LEC wants to be able to force Verizon to bear the cost of transporting the traffic from Sarasota to Tampa, without paying Verizon for that service. Verizon would be doing almost as much work under the virtual FX arrangement as under a traditional FX arrangement provided by Verizon, but receiving no compensation from the virtual FX customer. That is a classic example of shifting costs away from the cost causer – the virtual FX customer – and onto Verizon. And that is a very bad result from the point of view of regulatory policy, because it deprives all parties of accurate price signals. Now, on top of that, US LEC wants to be paid a bounty in the form of reciprocal compensation for each call that Verizon originates in Sarasota and transports to Tampa. That result is blatantly anticompetitive.

Q. MS. MONTANO CLAIMS THAT VIRTUAL FX SERVICE OFFERS CUSTOMERS IN REMOTE AREAS (SARASOTA IN THE ABOVE EXAMPLE) ADDITIONAL PROVIDER CHOICES. IS THAT CORRECT?

A. That claim is nonsense – akin to Ms. Montano's claim that US LEC has "a 'virtual' presence in the calling area" (Montano Testimony at 28:19-

20) when it has no presence at all in that local calling area. Providing reciprocal compensation on Virtual FX traffic actually discourages carriers like US LEC from deploying facilities in remote areas that would compete with Verizon's facilities, because US LEC must bear the cost of those facilities. Instead, it is more profitable for US LEC instead to allow Verizon to continue providing service and to search for ways to be paid for the service that Verizon provides, as with virtual FX arrangements. Ms. Montano comes close to admitting as much, when she claims that US LEC should be permitted to take advantage of Verizon's "ubiquitous network" (Montano Testimony at 37:20-21) without constructing facilities of its own. US LEC is seeking a free-ride on that network, pure and simple. Payment of reciprocal compensation on virtual FX traffic would amount to paying US LEC *not* to compete.

I should note in this regard that Ms. Montano's claim that Verizon's proposed language "would give Verizon a competitive advantage over US LEC in the ISP market" (Montano Testimony at 32:5-6) is also nonsense. There is nothing about Verizon's proposed language – which applies equally to Verizon and to US LEC – that would give Verizon any type of regulatory advantage in any market.

Q. YOU HAVE ALREADY EXPLAINED THAT VIRTUAL FX SERVICE DOES NOT INVOLVE ANY STATE-OF-THE-ART TECHNOLOGY. DO YOU HAVE ANYTHING TO ADD ON THAT POINT?

A. I would just like to emphasize that the issue here is simply whether

reciprocal compensation should be paid on interexchange traffic. To the extent that US LEC has a new or innovative service to offer, it can still offer it; it simply will not be able to collect compensation to which it is not entitled.

Q. SO SHOULD THE COMMISSION PROHIBIT VIRTUAL FX ARRANGMENTS?

A. That is not my point, and Verizon is not proposing any sort of impediment on CLECs' implementing Virtual FX arrangements. But Verizon should not be unfairly burdened with the costs of such arrangements. This is partly a matter of requiring parties to bear an appropriate share of the cost of interconnection arrangements. But it is also crucial that the Commission not order payment of reciprocal compensation on this interexchange traffic. Such compensation is not only contrary to law, it is also plainly wrong from the point of view of regulatory policy.

Q. MS. MONTANO CLAIMS THAT THE COMMISSION HAS NOT RESOLVED THE ISSUE WHETHER RECIPROCAL COMPENSATION IS PAYABLE ON VIRTUAL FX TRAFFIC. DO YOU AGREE?

A. No. As I explained in my direct testimony, the Commission has approved the Staff Recommendation on this issue, which squarely provides 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."[3]

[3] Staff Memorandum, *Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecomm. Act of 1996*, Issue 15, at 93 (Nov. 21, 2001), approved at the Commission's Dec. 5, 2001 Agenda Conference.

Q. MS. MONTANO CLAIMS THAT *TSR WIRELESS* SUPPORTS US LEC'S POSITION HERE. DO YOU AGREE?

A. No. As I explained in my direct testimony, *TSR Wireless* did not address the issue presented here. Indeed, that decision merely ruled that incumbent LECs could not charge paging carriers for existing facilities used to deliver *local* traffic generated on the LEC's network to the paging carrier's switch. The FCC did not rule that any *non-local* traffic would be subject to reciprocal compensation, did not rule that *non-local* traffic had to be delivered without charge, and did not address any issues related to network architecture. The question whether the traffic at issue in *TSR Wireless* was interexchange traffic did not arise because, under the FCC's rules, traffic between CMRS providers and LECs is subject to reciprocal compensation so long as it originates and terminates *within the same Major Trading Area*, an area encompassing many exchanges. *See* 47 C.F.R. § 51.701(b)(2).

Q. MS. MONTANO CLAIMS THAT "THERE IS NO PRACTICAL, COST-EFFECTIVE WAY TO SEGREGATE THE DISPUTED TRAFFIC" FROM LOCAL TRAFFIC. DO YOU AGREE?

A. No. As I have explained in my direct testimony, it is a simple and straightforward matter to identify FX traffic; Verizon has offered to do it for US LEC, as long as US LEC supplies Verizon a list of Virtual FX numbers. Ms. Montano's claim to the contrary is without any technical foundation and is incorrect.

Q. MS. MONTANO ALSO CLAIMS THAT IMPLEMENTING VERIZON'S PROPOSAL "WOULD BE UNJUSTIFIABLY BURDENSOME, EXPENSIVE, AND DISRUPTIVE." (MONTANO TESTIMONY AT 39:13-14.) DO YOU AGREE?

A. No. First, as I have noted, determining the volume of FX traffic is neither burdensome, nor expensive, nor disruptive. If US LEC is unsure how to distinguish Virtual FX traffic from local traffic, Verizon would be happy to cooperate with their technical personnel to implement a reliable system; it is not hard to do. And there is nothing "unjustifiable" about ensuring that the parties' billing complies with the requirements of federal law, particularly when failing to do so would lead to uneconomic arbitrage.

Q. MS. MONTANO CLAIMS THAT ACCESS CHARGES SHOULD NOT APPLY TO VIRTUAL FX TRAFFIC. DO YOU AGREE?

A. No. As I explained in my direct testimony, the reason for this is simple: a virtual FX arrangement, like traditional FX arrangements or other toll-free calling arrangements, allows a subscriber to receive calls from a distant exchange without the calling party incurring the toll charges that would normally apply. In place of those toll charges, the called party with FX service must pay for a Local Channel, interoffice transport, plus applicable usage charges. In the case of toll-free service, the customer must pay toll charges for calls received. In the case of toll-free calls, the interexchange carrier then pays originating access charges to the

originating local exchange carrier. The situation is the same here: the CLEC has set up a toll-free calling arrangement for its customer. The customer is thus able to take advantage of the local exchange service that Verizon is providing in that distant exchange, yet Verizon not only receives no subscriber revenue from the CLEC customer; it is also deprived of the toll charges that would ordinarily apply. Access charges provide the originating LEC some measure of compensation for the service that it provides.

Q. MS. MONTANO ARGUES THAT VERIZON DOES NOT INCUR ANY ADDITIONAL COSTS IN DELIVERING VIRTUAL FX TRAFFIC. DO YOU AGREE?

A. The claim is misleading. Obviously, the costs of delivering traffic to a CLEC depend on the interconnection architecture in place; if a virtual FX call is delivered to the same point of interconnection as a local call from the same point, Verizon's costs of delivering the traffic will be the same. But if the Commission were to exempt the CLEC from paying the access charges that ordinarily apply to such interexchange traffic (or, even worse, require Verizon to pay the CLEC reciprocal compensation), the Commission would be encouraging the CLEC to implement these arrangements even when they are inefficient. This is because the CLEC (and the CLEC's customers) would not bear the appropriate costs of providing the services that they consume. Thus, Verizon would have to originate and carry a great deal more traffic, and would therefore be required to bear significantly higher costs, than if access charges were

properly applied.

Moreover, Ms. Montano ignores the fact that virtual FX arrangements mean that Verizon will be unable to collect toll charges from its customers where toll charges would apply (but for the assignment of a virtual NXX code). Again, I am not asserting that there is anything wrong with a CLEC setting up such toll free arrangements for its customers, so long as the CLEC complies with applicable state and federal regulations. But it is wrong for the CLEC to attempt to shift the costs of those arrangements to Verizon, and it is also wrong to exempt the CLEC and its customers from bearing an appropriate share of the costs of providing local exchange service in the distant exchange. As long as Verizon is the carrier providing that local exchange service, it is entitled to be compensated for it, and access charges provide that compensation.

Q. MS. MONTANO CLAIMS THAT VERIZON IS ALREADY COMPENSATED FOR THIS BY ITS END USERS.

A. That is wrong. Local exchange charges compensate Verizon for providing service within the local exchange. If a call travels outside the local exchange, Verizon should be entitled to additional compensation. Virtual FX service should be no exception.

Q. MS. MONTANO ALSO STATES THAT REQUIRING PAYMENT OF ACCESS CHARGES WOULD BE INAPPROPRIATE BECAUSE

ACCESS CHARGES ARE ABOVE COST. DO YOU AGREE?

A. No. This Commission has approved tariffed intraLATA access charges that are designed to ensure that Verizon can recover the costs of providing local exchange service. In the case of virtual FX service, the CLEC customer is benefiting from the local exchange service that Verizon is providing in that distant exchange, and the Commission has determined that access charges provide the appropriate compensation for that service. US LEC cannot challenge those access charges in this proceeding, nor does it give any legitimate reason that it should be exempt from the charges that all other intraLATA interexchange carriers must pay.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH VERIZON, AND YOUR BUSINESS ADDRESS.

A. My name is Pete D'Amico. I am a Senior Product Manager in the Interconnection Product Management Group for Verizon Services Corporation. My business address is 416 7th Avenue, Pittsburgh, Pennsylvania 15219.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE, INCLUDING NON-VERIZON WORK EXPERIENCE.

A. I have a Bachelor of Science in Marketing from Indiana University of Pennsylvania. I have been employed at Verizon and its predecessor companies for 18 years, in positions of increasing responsibility, and have been in product management dealing with interconnection arrangements for the last 12 years.

Q. WHAT ARE YOUR RESPONSIBILITIES IN YOUR CURRENT POSITION?

A. My responsibilities include development, implementation, and product management of interconnection services.

Q. HAVE YOU EVER TESTIFIED BEFORE?

A. Yes. I testified in connection with various section 252 arbitrations and/or section 271 proceedings in Pennsylvania, New Jersey, Maryland, Virginia, New York, Rhode Island, Vermont, New Hampshire, Maine, Delaware, South Carolina and Ohio.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to present Verizon's position on issues that US LEC has raised in this proceeding relating to network architecture (Issues 1 and 2).

Q. CAN YOU PROVIDE AN OVERVIEW OF YOUR TESTIMONY ON NETWORK ARCHITECTURE?

A. Yes. My testimony focuses on explaining how Verizon's Virtual Geographically Relevant Interconnection Point ("VGRIP") proposal is consistent with federal law and with this Commission's precedent regarding interconnection between an incumbent local exchange carrier ("ILEC") and an alternative local exchange carrier ("ALEC"). In addition, my testimony explains why, if US LEC chooses to locate only one point of interconnection ("POI") in a LATA, it should be financially responsible for hauling the Verizon-originated call to its distant POI. Otherwise, Verizon would be forced to subsidize US LEC's costs of interconnection as well as its network design choices.

US LEC's proposal is an impermissible attempt to have Verizon subsidize US LEC's attempts to enter the local telephone market. US LEC attempts to do this by, for example, having Verizon bear costs that are actually caused by US LEC's own decisions or by forcing Verizon to make network architecture decisions for the benefit primarily of US LEC and not for Verizon and its customers. The main premise behind US

LEC's network architecture position is that Verizon should be financially responsible for US LEC's interconnection choices. Simply put, US LEC's demands far surpass its legal entitlements and would have far-reaching effects on Verizon's network architecture, including forcing Verizon to subsidize the cost of US LEC's entry into the local telecommunications market and creating a disincentive to US LEC's deployment of its own network.

Q. WHAT IS A POI AND HOW DOES IT DIFFER FROM AN INTERCONNECTION POINT ("IP")?

A. A POI is where the ILEC and ALEC physically interconnect their respective networks. To exchange traffic, two carriers' networks must be physically linked; the point of that physical linkage is the POI. An IP, on the other hand, is the place in the network at which one local exchange carrier hands over financial responsibility for traffic to another local exchange carrier. A POI and an IP may be at the same place but do not have to be. Pursuant to Verizon's proposal, by definition, Verizon is financially responsible for delivering its traffic to US LEC's IP. Once Verizon transports traffic originating on its network to US LEC's IP, then US LEC takes over financial responsibility (but not necessarily physical responsibility) for delivering the traffic to its customer.

Q. PLEASE DESCRIBE VERIZON'S VIRTUAL GEOGRAPHICALLY RELEVANT INTERCONNECTION POINT ("VGRIP") PROPOSAL.

A. Under VGRIP, Verizon may request that the ALEC establish a POI at a

collocation site in each Verizon tandem wire center where the ALEC chooses to assign telephone numbers. That POI would serve as the ALEC's IP under VGRIP. If Verizon only operates one tandem in a LATA, then Verizon may designate additional VGRIP locations, such as host end office wire centers. In addition, either Party may designate an ALEC collocation site at any Verizon wire center as the ALEC IP for traffic originating from that end office. Under VGRIP, Verizon would incur more than its share of the transport cost, but it would be able to deliver its traffic to the ALECs at a more central location. Verizon would be responsible for the costs of hauling this traffic from the Verizon customer to the designated Verizon VGRIP tandem wire center or end office wire center where the ALEC is collocated, even though that location may be beyond the local calling area of the originating customer. The ALEC is then responsible for delivering the call from this central location to the ALEC customer. If an ALEC elects not to collocate and establish a POI/IP at the VGRIP locations, Verizon proposes that the end office serving the Verizon customer who places the call will act as the "virtual IP." Although Verizon will then transport this traffic from the Verizon customer to the ALEC-designated location, the ALEC will be financially responsible for the transport from the "virtual IP" to the ALEC POI.

Q. DOES VGRIP REPRESENT A COMPROMISE ON VERIZON'S PART?

A. Yes. Under VGRIP, Verizon could incur more than its share of the transport cost, because it would be responsible for the costs of hauling

its traffic from the Verizon customer to the VGRIP location, even though the location may be beyond the local calling area. Verizon is willing to incur this extra transport cost in exchange for the ability to deliver its traffic to US LEC at a more central location. If US LEC elects not to collocate and establish a POI/IP at the VGRIP locations, Verizon will then transport its traffic to the US LEC designated location. However, US LEC will be financially responsible for the transport from the originating end office to the US LEC POI.

Q. HAS THIS COMMISSION EVER ADDRESSED THE QUESTION OF THE PROPER ALLOCATION OF THE COSTS OF AN ALEC'S CHOSEN POINT OF INTERCONNECTION?

A. Yes. This Commission has addressed the question of the appropriate allocation of costs attributable to an ALEC's selection of POI(s) within a LATA in a number of individual arbitrations between ILECs and ALECs. In arbitrating an interconnection agreement between BellSouth and Sprint, this Commission rejected the very type of cost-shifting that US LEC advocates. In that decision, the Commission held that, "where Sprint designates a POI outside of BellSouth's local calling area, Sprint should be required to bear the cost of facilities from that local calling area to Sprint's POI." Final Order on Arbitration, *Petition of Sprint Communications Company Limited Partnership for Arbitration of Certain Unresolved Terms and Conditions of a Proposed Renewal of Current Interconnection Agreement with BellSouth Telecommunications, Inc.*, Docket No. 000828-TP, Order No. PSC-01-1095-FOF-TP, at 60 (Fla.

PSC May 8, 2001) ("*Sprint Arbitration Order*"). The Commission required Sprint to "designate at least one VPOI 'within' a BellSouth local calling area that encompasses that exchange," although it stated that "BellSouth should not be allowed to designate [Sprint's] virtual point of interconnection [("VPOI")]." *Id.* at 63. Nonetheless, the Commission permitted BellSouth to "require Sprint to pay TELRIC rates for Interoffice Dedicated Transport . . . between . . . Sprint's VPOI and Sprint's POI." *Id.* After a detailed discussion of these requirements, which mirror those of Verizon's VGRIP proposal, the Commission determined that they comply with the 1996 Act and the FCC's rules implementing the Act. *See id.* at 58-62.

In other cases in which this Commission has addressed this issue, it has not reached conclusive determinations. For example, in an arbitration between AT&T and BellSouth, the Commission found that, "for purposes of this arbitration," it would require "both parties [to] assum[e] financial responsibility for bringing their traffic to the AT&T-designated interconnection point." Final Order on Arbitration, *Petition by AT&T Communications of the Southern States, Inc. d/b/a AT&T for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252*, Docket No. 000731-TP, Order No. PSC-01-1402-FOF-TP at 46 (Fla. PSC June 28, 2001) ("*AT&T Arbitration Order*"). I note that, while US LEC here seeks to have only one IP per LATA (Petition at 8 n.9), AT&T had agreed to accept BellSouth-originated traffic at "a minimum of two POIs

per LATA," *AT&T Arbitration Order* at 33, 43-44. The Commission also stated that it "may be possible to construct an argument favoring the payment of compensation by competitive local exchange companies for transporting traffic from a local calling area to a distant POI." *Id.* at 45.

Q. CAN YOU ADDRESS THE STAFF'S RECOMMENDATION IN DOCKET NO. 000075-TP, AS IT RELATES TO THIS ISSUE?

A. Yes. In December 2001, the Commission approved its staff's recommendation that "an originating carrier is precluded by FCC rules from charging a terminating carrier for the cost of transport . . . from [the traffic's] source to the point(s) of interconnection in a LATA." Commission Agenda Conference, Docket No. 000075-TP, Vote Sheet at 4 (Issue 14) (Dec. 5, 2001), *approving* Memorandum, *Investigation Into Appropriate Methods To Compensate Carriers for Exchange Of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Docket No. 000075-TP (Fla. PSC filed Nov. 21, 2001) ("*Staff Recommendation*"). The Commission has not yet issued an order in this proceeding.

In approving Verizon's section 271 application in Pennsylvania, however, the FCC found that Verizon's GRIP proposal — which like VGRIP "permits carriers to *physically* interconnect at a single point of interconnection (POI)," but "distinguish[es] between the physical POI and the point at which Verizon and an interconnecting competitive LEC are responsible for the cost of interconnection facilities" — "do[es] not

represent a violation of our existing rules." Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419, 17474, ¶ 100 & n.341 (2001) ("*Pennsylvania 271 Order*"). The FCC's *Pennsylvania 271 Order* thus supports this Commission's ruling in the *Sprint Arbitration Order* and not the staff's conclusion in Docket No. 000075-TP. *See, e.g., Sprint Arbitration Order* at 58 ("in accordance with the FCC Rules and Orders, BellSouth is entitled to recover additional transport costs from Sprint").

Q. HAVE OTHER STATE COMMISSIONS REACHED DECISIONS SUPPORTING VERIZON'S VGRIP PROPOSAL?

A. Yes. For example, the South Carolina Commission found, in arbitrating an interconnection agreement between BellSouth and AT&T, that, although "AT&T's network design is a matter best left to AT&T," "it would be neither equitable nor fair for this Commission to permit AT&T to shift costs to BellSouth as a result of that network design." Order on Arbitration, *Petition of AT&T Communications of the Southern States, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252*, Docket No. 2000-527-C, at 22 (S.C. PSC Jan. 30, 2001) ("*AT&T Arbitration Order*"). That Commission recognized that it was "AT&T's interconnection choices [that] required the transport of local calls from one local calling area to another local calling area where AT&T's POI is located" and that, because "AT&T has

contributed to the need and costs of these facilities, AT&T should pay for the use of the facilities." *Id.* at 24. That Commission also found that requiring AT&T to bear these costs is consistent with the requirement that an ILEC "be allowed to recover the added costs created by a CLEC's 'expensive interconnection,'" because otherwise "a CLEC could select a POI that is more expensive in the aggregate simply because the CLEC need not take into account the costs that it avoids because the costs are transferred to the ILEC." *Id.* (quoting *Local Competition Order*,[1] 11 FCC Rcd at 15603, ¶ 199). In addition, that Commission recently reaffirmed this decision. *See* Order on Arbitration, *Petition of HTC Communications, Inc. for Arbitration of an Interconnection Agreement with Verizon South Inc.*, Docket No. 2002-66-C, Order No. 2002-450, at 58-59 (S.C. PSC June 12, 2002) ("*HTC Arbitration Order*").

The North Carolina Utilities Commission likewise found that "it is equitable and in the public interest" to require AT&T "to compensate BellSouth for, or otherwise be responsible for, transport beyond the local calling area," when AT&T elects to "interconnect at points within the LATA but outside of BellSouth's local calling area from which traffic originates." Recommended Arbitration Order, *Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolinas, Inc., and BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996*, Docket Nos. P-140, Sub 73 & P-646, Sub 7, at 15 (N.C. Utils. Comm'n Mar. 9, 2001) ("*N.C. Arbitration Order*"), *aff'd*, Order Ruling on

[1] First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*") (subsequent history omitted).

Objections and Requiring the Filing of the Composite Agreement, Docket Nos. P-140, Sub 73 & P-646, Sub 7, at 5 (N.C. Utils. Comm'n June 19, 2001).

Similarly, the Public Utilities Commission of Ohio recently held that ILECs should be permitted to charge an ALEC for transporting traffic outside a local calling area to an ALEC's POI so that the ALEC "will have to balance costs and benefits rationally when designing and deploying its network in accordance with the Act and the FCC's . . . rules." Arbitration Award, *Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Sprint, et al.*, Case No. 01-2811-TP-ARB, *et al.*, at 7 (Ohio PUC May 9, 2002). That Commission also rejected Global NAPs "assertion that [an ILEC's] costs to provide transport are *de minimis*." *Id.*

I also note that the Third Circuit Court of Appeals has held that, "[t]o the extent . . . [an ALEC's] decision on interconnection points may prove more expensive to Verizon," the Pennsylvania PUC "should consider shifting costs to [that ALEC]." *MCI Telecomm. Corp. v. Bell Atlantic-Pa.*, 271 F.3d 491, 518 (3d Cir. 2001) (citing *Local Competition Order*, 11 FCC Rcd at 15608, ¶ 209).

Q. HAS THE FCC ISSUED ANY RULINGS ON THIS ISSUE?

A. Yes. In the *Local Competition Order*, the FCC held that "a requesting

carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), *be required to bear the cost of that interconnection*, including a reasonable profit." 11 FCC Rcd at 15603, ¶ 199 (emphasis added). The FCC stated further that, "because competing carriers *must usually compensate incumbent LECs for the additional costs incurred* by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect." *Id.* at 15608, ¶ 209 (emphasis added). Similarly, as noted above, in approving Verizon's section 271 application in Pennsylvania, the FCC found that Verizon's GRIP proposal "do[es] not represent a violation of our existing rules" and rejected claims that "Verizon's policies in regard to the financial responsibility for interconnection facilities fail to comply with its obligations under the Act." *Pennsylvania 271 Order*, 16 FCC Rcd at 17474-75, ¶ 100.

In a recent decision, however, the FCC's Wireline Competition Bureau held that language proposed by WorldCom and other ALECs — under which "each party would bear the cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC" — "more closely conforms to the Commission's current rules governing points of interconnection and reciprocal compensation than do Verizon's proposals." Memorandum Opinion and Order, *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia*

Inc., and for Expedited Arbitration, CC Docket Nos. 00-218 *et al.*, DA 02-1731, ¶¶ 51, 53 (FCC rel. July 17, 2002) ("*Virginia Arbitration Order*"). Notably, the Bureau did not find that Verizon's VGRIP proposal violates the Commission's rules, and expressly recognized that the FCC had "declined to find that policies similar to GRIPs and VGRIPs violated the Act in the *Verizon Pennsylvania 271 Order*." *Id.* ¶ 53 n.123. The Bureau also found that "Verizon raises serious concerns about the apportionment of costs caused by a competitive LEC's choice of points of interconnection." *Id.* ¶ 54. Finally, I note that the Bureau's order has not yet been reviewed by the FCC.

Q. YOU HAVE QUOTED PARAGRAPH 199 OF THE *LOCAL COMPETITION ORDER*, IN WHICH THE FCC STATED THAT, IF AN ALEC WANTS "A 'TECHNICALLY FEASIBLE' BUT EXPENSIVE INTERCONNECTION" IT WOULD "BE REQUIRED TO BEAR THE COST OF THAT INTERCONNECTION." DOES US LEC'S PROPOSAL, UNDER WHICH IT CAN REQUIRE VERIZON TO TRANSPORT ALL VERIZON-ORIGINATED TRAFFIC TO A SINGLE POINT IN A LATA, QUALIFY AS "EXPENSIVE"?

A. Yes. US LEC's proposal would require Verizon to incur costs for which it would receive no compensation.

Assume that a Verizon customer in Sarasota calls another Verizon customer in Sarasota. In completing that call, Verizon bears the costs of switching the traffic in an end office located in the Sarasota local calling

area and, if necessary, of transporting the call between two end offices in that local calling area. The local service rates that Verizon charges its customers compensate Verizon for performing those tasks. Verizon, however, would not normally transport the call outside of that local calling area.

If the called party in the above example were a US LEC customer, however, Verizon would no longer have to perform the terminating switching function involved in completing that call. Instead, it would be performed by US LEC, and Verizon would compensate US LEC through the payment of reciprocal compensation.

Although US LEC would thus be compensated for the switching function that it performs, Verizon would be required to perform additional functions in order to complete the call. Specifically, because US LEC's switch which is located in Tampa is outside the local calling area where the call originated, Verizon would be required to transport the call from Sarasota to Tampa, possibly through one or more tandem switches. Because the calling and called parties in this example would have telephone numbers associated with the same local calling area, Verizon would not be able to collect toll charges from its customer — as it would if a Verizon customer in Sarasota placed a call to a US LEC customer with a telephone number associated with the Tampa local calling area. Under US LEC's proposal, it would not be required to compensate Verizon for that transport and switching. Nor would Verizon receive

compensation for those costs from any other source. Thus, US LEC's propsal would require Verizon to bear uncompensated costs that it incurs as a result of US LEC's decision to serve callers in a local calling area (here, Sarasota) from a switch located far outside that local calling area (Tampa).

Although US LEC's proposal requires Verizon to bear these uncompensated transport costs, I note that when US LEC must transport a call from its switch in Tampa to a customer in Sarasota it can and does receive compensation for that transport from its own customer. Under US LEC's rate guide, the rates it charges often differ based on a customer's distance from US LEC's switch. *See* US LEC Rate Guide § 6.1.2 ("A Customer's rate schedule is dependent on the distance between the Customer's respective ILEC serving wire center and a US LEC switch.")

However, US LEC might not be required to transport the call from Tampa to Sarasota. Instead, US LEC could have assigned a Sarasota telephone number to an end user with no physical presence in the Sarasota local calling area, but who, instead, was located in Tampa, at or nearby US LEC's switch.[2] In this situation, Verizon would still have to bear uncompensated costs in transporting the call from Sarasota to Tampa, but US LEC would transport the call only the short distance between its switch and its customer. In this way, US LEC would enable its customer located in Tampa to receive toll calls at Verizon's expense.

[2] I note that, no matter how the Commission resolves the interconnection architecture issue, such calls should not be subject to reciprocal compensation, but that issue is the subject of a separate dispute between the parties and is addressed in the testimony of Mr. Terry Haynes.

In contract, Verizon's VGRIP proposal would enable Verizon to receive fair compensation for the functions that it provides. Specifically, the VGRIP proposal provides that, US LEC must perform these additional tasks itself – by establishing georgraphically relevant IPs at a Verizon tandem or end office – or must compensate Verizon for performing those tasks. Under VGRIP, the unbundled network element rates that this Commission has established are used to determine the amount of that compensation. Under federal law, those rates must be based on the forward-looking cost of providing those services. See 47 U.S.C. § 252(d)(1)(A)(i); 47 C.F.R. § 51.505. Accordingly, those rates provide a means for calculating the uncompensated expenses that Verizon incurs as a result of US LEC chosen network architecture.

Q. DO YOU AGREE WITH US LEC'S CLAIM THAT SECTION 7.1.1.3 GRANTS VERIZON THE POWER TO CHANGE US LEC'S NETWORK ARCHITECTURE AT VERZION'S SOLE DISCRETION?

A. No. This claim appears to be based on a misreading of section 7.1.1.3. That section allows Verizon to request that US LEC establish POI/IPs that comply with sections 7.1.1.1 or 7.1.1.2 – that is, at a collocation site at either a Verizon tandem or a Verizon end office. However, US LEC is not obligated to agree to that request. If US LEC chooses not to establish POIs that comply with the other provisions of VGRIP, then US LEC will become financially responsible for traffic at Verizon's end offices, through the creation of virtual IPs at those locations. Although

US LEC would be required to bear the cost of transporting this traffic from the virtual IP to its POI, it would not be required to change its network architecture so it becomes physically responsible for transporting that traffic. Although VGRIP enables Verizon to *request* that US LEC establish physical POI/IPs, US LEC remains free to meet its requirements through the establishment of virtual IPs, which do not require it to change its network architecture.

Q. DO YOU AGREE WITH US LEC'S READING OF SECTION 7.1.1.2?

A. No. First, it should be noted that any dispute about this provision is entirely hypothetical at this point. US LEC admits that it "does not currently collocate with Verizon." Because section 7.1.1.2 applies only when an ALEC has established a collocation arrangement in a Verizon end office, US LEC has not shown that this provision will affect it in any way.

Second, under section 7.1.1.2, if US LEC establishes a collocation arrangement at a Verizon end office, Verizon will have the right to request that US LEC designate that site as an IP. However, US LEC is wrong to claim that section 7.1.1.2 would require US LEC to assume the physical responsibility for transporting traffic from the collocation site to US LEC's POI. US LEC is free to elect not to undertake this task, in which case it will simply be financially responsible for the transport of the traffic and not have to alter its chosen network architecture in any way.

Third, US LEC is also incorrect to contend that this proposal is unfair. If US LEC decides to adopt a network architecture whereby it deploys facilities at a collocation site at a Verizon end office, US LEC should assume the financial responsibility for the transport of traffic from that end office to its POI. When US LEC establishes a collocation site at a Verizon end office, it has brought its network into contact with Verizon's. For US LEC to refuse to accept traffic at the point where both carriers have already deployed network facilities – and instead to require Verizon to transport that traffic to a distant location, likely outside of the local calling area where the call originated – means that US LEC is simply shifting costs to Verizon. US LEC should not be permitted to shift costs in this way.

Q. DO YOU AGREE WITH US LEC'S CLAIM THAT IT "HAS AGREED TO ESTABLISH POIs AT EVERY VERIZON ACCESS TANDEM IN THE LATA AND DIRECT END OFFICE TRUNKING TO EACH VERIZON END OFFICE WHERE US LEC DELIVERS AT LEAST 200,000 MINUTES OF USE ('MOU') EACH MONTH"? (Petition at 8.)

A. Yes. However, this statement is potentially misleading. US LEC does not clearly state that, even if it establishes multiple POIs in a LATA, it will only accept Verizon-originated traffic at a single point in the LATA. These other POIs that US LEC refers to appear to be locations where US LEC will hand off US LEC-originated traffic to Verizon.

Q. WOULD YOU PLEASE RESPOND TO US LEC'S CLAIM THAT THE

FCC'S RULES DO NOT DISTINGUISH BETWEEN THE POI AND THE IP?

A. Yes. This is simply incorrect. As explained above, the FCC has expressly found that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), *be required to bear the cost of that interconnection*, including a reasonable profit." *Local Competition Order*, 11 FCC Rcd at 15603, ¶ 199 (emphasis added). In order to require an ALEC to bear the cost of that interconnection, there would need to be a distinction between the physical POI and the points at which the ALEC becomes financially responsible for transporting traffic to that POI, known as IPs under the interconnection agreement. This interpretation is confirmed by the FCC's finding, in approving Verizon's section 271 application in Pennsylvania, that "Verizon's policies," which "distinguish between the physical POI and the point at which Verizon and an interconnecting competitive LEC are responsible for the cost of interconnection facilities," "do not represent a violation of our existing rules." *Pennsylvania 271 Order*, 16 FCC Rcd at 17474-75, ¶ 100. The state commission decisions discussed above similarly distinguish between a POI and an IP.

Nor is US LEC correct in claiming that the FCC's *Intercarrier Compensation NPRM* supports US LEC's position here. *See* Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610 (2001) ("*Intercarrier Compensation NPRM*").

In the *Intercarrier Compensation NPRM*, the FCC acknowledged that "[a]pplication of [its] rules has led to questions concerning which carrier should bear the cost of transport to the POI, and under what circumstances an interconnecting carrier should be able to recover from the other carrier the costs of transport from the POI to the switch serving its end user." *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9651, ¶ 112. However, the FCC did not suggest that those rules clearly resolved those questions. (The portion of the NPRM that US LEC quotes as support for US LEC's position is not where the FCC discusses the allocation of financial responsibility for an ALEC's decision to establish only a single physical POI per LATA. *See* Petition at 7 (quoting *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9634, ¶ 70).) In fact, in the *Pennsylvania 271 Order* the FCC clearly held that those rules do not prohibit the drawing of a distinction between the POI and the IP.

Q. DO YOU AGREE WITH US LEC THAT AN ALEC HAS A UNILATERAL RIGHT TO SELECT ITS INTERCONNECTION POINTS, SUBJECT ONLY TO THE LIMITS OF TECHNICAL FEASIBILITY?

A. No. The suggestion that US LEC is entitled to designate any "technically feasible" IP is contrary to the FCC's statements in the *Local Competition Order*. The technical feasibility standard applies only to the designation of POIs. If US LEC were also entitled to establish IPs at any technically feasible point, then it could avoid bearing responsibility for the costs imposed by its interconnection choices.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

COMMISSIONER BAEZ: And now we're on to exhibits; yes?

MR. TEITZMAN: Correct, Commissioner.

COMMISSIONER BAEZ: Okay. I'm showing staff has, has stipulated exhibits.

MR. TEITZMAN: Correct.

COMMISSIONER BAEZ: Staff exhibits, we'll take them first.

MR. TEITZMAN: Okay. Stipulated Exhibit 1 is titled, US LEC's Revised Responses to Staff's First Set of Interrogatories. I would like that marked as hearing Exhibit Number 1.

COMMISSIONER BAEZ: All right. We'll show staff Exhibit Stip 1 admitted and identified as Exhibit 1. And if there's no objections, we'll admit it.

MR. McDONNELL: No objection.

MR. PANNER: No objection.

(Exhibit 1 marked for identification and admitted into the record.)

COMMISSIONER BAEZ: Okay. Go ahead, Mr. Teitzman.

MR. TEITZMAN: Stipulated Exhibit 2 titled, Composite US LEC's Responses and Supplemental Responses to Staff's Second Set of Interrogatories.

COMMISSIONER BAEZ: Okay. We'll have that -- we'll have that shown as Exhibit 2 and, without objection, admitted

into the record.

(Exhibit 2 marked for identification and admitted into the record.)

MR. TEITZMAN: Staff's stipulated Exhibit 3 titled, Composite Verizon's Responses to Staff's First and Second Set of Interrogatories.

COMMISSIONER BAEZ: We'll show that marked as Exhibit 3 and, without objection, we'll admit it.

(Exhibit 3 marked for identification and admitted into the record.)

MR. TEITZMAN: Staff's stipulated Exhibit 4 titled, Verizon's Responses to Staff's Request for Clarification, Numbers 1 through 7, Interrogatories.

COMMISSIONER BAEZ: We'll show that marked as Exhibit Number 4 and admit it without objection.

(Exhibit 4 marked for identification and admitted into the record.)

MR. TEITZMAN: Commissioner, as staff's fifth stipulated exhibit, we were notified this morning that US LEC intends to file supplemental responses numbered 4 through 8 to staff's interrogatories. We would like that entered into the record as a late-filed hearing exhibit.

COMMISSIONER BAEZ: I'm sorry. Can you reidentify those supplemental responses?

MR. TEITZMAN: Supplemental responses number

4 through 8 to staff's interrogatories.

COMMISSIONER BAEZ: Okay. That's a late-filed exhibit. We'll show it as Exhibit 5.

(Late-Filed Exhibit 5 identified.)

MR. TEITZMAN: Staff has no more exhibits.

COMMISSIONER BAEZ: All right. Mr. Panner, you want to walk us through yours, please, Verizon's exhibits?

MR. PANNER: Thank you, Your Honor. I think Mr. Angstreich should have a list of the, of the titles of US LEC's responses to Verizon's interrogatories.

And the -- our first exhibit, stipulated exhibit would be US LEC's responses to Verizon's first set of discovery requests, and Mr. Christian should have copies of that there. If I've, if I've misidentified it, he has it in front of him and can correct, for the record, the title.

COMMISSIONER BAEZ: Mr. Christian?

MR. PANNER: Excuse me. Actually it's Mr. McDonnell who should have the copies.

COMMISSIONER BAEZ: I'm sorry.

MR. PANNER: We had spoken yesterday, and US LEC should have the copies of US LEC's responses to the discovery.

MR. McDONNELL: I do have copies, Commissioner Baez. And it's entitled, US LEC of Florida, Inc.'s, Responses to Verizon Florida, Inc.'s, First Set of Combined Interrogatories and Document Requests.

COMMISSIONER BAEZ: Okay. We'll show that marked as Exhibit 6. And can you provide the court reporter with a copy?

MR. McDONNELL: Yes, sir.

(Exhibit 6 marked for identification and admitted into the record.)

COMMISSIONER BAEZ: Anything else?

MR. PANNER: Mr. McDonnell, are you going to enter Verizon's responses? Because, if you're not, we would like to.

MR. McDONNELL: No. It was my understanding that each party would, would introduce their own responses to discovery.

COMMISSIONER BAEZ: That's correct, Mr. Panner.

MR. PANNER: That's fine. I mean, it doesn't -- I'll go ahead and enter into the record Verizon's responses to US LEC's first set of interrogatories, document requests and request for admission. And Mr. Christian has copies of those.

COMMISSIONER BAEZ: And we'll mark that as Exhibit 7.

(Exhibit 7 marked for identification and admitted into the record.)

COMMISSIONER BAEZ: Mr. Teitzman, just a question for my clarification. When we admit the prefiled of the witnesses, are we admitting -- we're not admitting the exhibits, the testimony exhibits, or are we?

MR. FORDHAM: If they're a part of the testimony, that would be correct.

COMMISSIONER BAEZ: Okay. So then we don't have to go through the process of identifying them?

MR. FORDHAM: That's correct.

COMMISSIONER BAEZ: Okay.

MR. FORDHAM: If they're part of the testimony, then they're entered.

COMMISSIONER BAEZ: Great. Thank you. Mr. Panner, do you have anything else?

MR. PANNER: No, Your Honor.

COMMISSIONER BAEZ: All right. Mr. McDonnell?

MR. McDONNELL: That's it on behalf of US LEC. Thank you.

COMMISSIONER BAEZ: All right. Just, I want to -- I'm sorry. Go ahead.

MR. FLEMING: This is Mike Fleming for US LEC. Excuse me. We, we had also -- Verizon and US LEC had also agreed to stipulate to the admissibility of the record in two other proceedings, and I have a written stipulation that, if it pleases the Commission, I'll just read into the record.

COMMISSIONER BAEZ: Mr. Panner, is that your understanding as well?

MR. PANNER: Yes, sir. My understanding is that it -- the transcript from two hearings that took place in prior proceedings between the parties in Pennsylvania and in Maryland.

COMMISSIONER BAEZ: Now, Mr. Teitzman, explain to me how we, how we have to treat that to enter it into the record, the transcripts of the --

MR. TEITZMAN: It would just be as a standard exhibit.

COMMISSIONER BAEZ: Okay. And now let, let me hear that one again where -- can you identify the transcripts for me?

MR. FLEMING: Yes, Your Honor. This is Mike Fleming. The -- what the parties have stipulated to is to admit the -- well, the parties agree that the testimony, transcript and exhibits of the following two arbitration proceedings between affiliates of US LEC and Verizon are admissible as evidence in this proceeding. And the proceedings are: Petition of US LEC of Pennsylvania, Inc., for arbitration with Verizon Pennsylvania, Inc., pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket Number A310814F7000, Pennsylvania Public Utility Commission; the second proceeding is Petition of US LEC of Maryland, Inc., for Arbitration with Verizon Maryland, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, Case Number 8922, Maryland Public Service Commission.

COMMISSIONER BAEZ: Okay. And we can accept those as a composite or would you --

MR. TEITZMAN: That's -- they can be as a composite.

However, do the parties have copies here? Otherwise, I think we should note them as late-filed.

MR. FLEMING: Yes. Your Honor, we'd request that we file those as late-filed exhibits. And only to the extent that we need to rely on the evidence, so that we don't anticipate filing the entire documents, only the particular excerpts that we consider to be relevant as late-filed exhibits.

COMMISSIONER BAEZ: Hold on, Mr. Fleming.

MR. TEITZMAN: I'm sorry. Did they say they were only filing excerpts of the proceedings, of the transcripts?

COMMISSIONER BAEZ: I think that's what I heard Mr. Fleming say.

MR. FLEMING: That is what I said. That's what we would propose. Would you rather have the entire documents?

MR. TEITZMAN: Staff would request that it would be the entire transcript.

MR. FLEMING: Okay. That's fine. We'll be happy to do that.

COMMISSIONER BAEZ: All right. Then let composite Exhibit 8, which will be a late-filed exhibit identified as transcripts from the Pennsylvania and Maryland hearings -- as noted by Mr. Fleming, again, those are late-filed exhibits and they'll be filed in their entirety.

(Late-filed Exhibit 8 identified.)

COMMISSIONER BAEZ: Do we have any other exhibits?

MR. McDONNELL: I believe that's all on behalf of US LEC.

Mr. Fleming, are there any additional late-filed exhibits that the parties are requesting that you're aware of?

MR. FLEMING: I'm not aware of any others. Thank you.

COMMISSIONER BAEZ: All right. Mr. Panner, we're done with you; right? Verizon doesn't have anything else to offer?

MR. PANNER: No, Your Honor. You're done with us.

COMMISSIONER BAEZ: Okay. Thank you.

Mr. Teitzman, where to now?

MR. TEITZMAN: I would just like to remind the parties that briefs are due February 20th. And I believe that concludes the matters that we have for today.

COMMISSIONER BAEZ: The late-filed exhibits, by when are they -- by when should they be filed?

MR. TEITZMAN: Within seven days.

COMMISSIONER BAEZ: Is that acceptable to the parties?

MR. FLEMING: Within seven days from today?

MR. TEITZMAN: That is correct.

COMMISSIONER BAEZ: Yes, sir.

MR. FLEMING: Yes. That's acceptable.

COMMISSIONER BAEZ: All right. Let the record show

late-filed exhibits as identified will be filed within seven days of today's date, and that briefs are due again --

MR. TEITZMAN: February 20th.

COMMISSIONER BAEZ: Great. Anything further from the parties?

MR. FLEMING: No, sir.

MR. McDONNELL: No, sir.

MR. PANNER: Not from Verizon, Your Honor.

COMMISSIONER BAEZ: I'm sorry?

MR. PANNER: Not from Verizon. Thank you.

COMMISSIONER BAEZ: Great. Thank you, Mr. Panner. Thank you all for your time, and I guess we're adjourned. Thank you, staff.

(The exhibits attached to the Prefiled Testimony of Witnesses Munsell and Haynes were not marked and admitted into the record. For the convenience of the record, Witness Munsell's Exhibit Number 1 to his Prefiled Rebuttal Testimony is hereby marked for identification as Exhibit Number 9 and admitted into the record. Also, Witness Haynes' Exhibit Number 1 to his Prefiled Direct Testimony is hereby marked for identification as Exhibit Number 10 and admitted into the record.)

(Hearing concluded at 9:50 a.m.)

STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, LINDA BOLES, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 10th DAY OF FEBRUARY, 2003.

LINDA BOLES, RPR
FPSC Official Commissioner Reporter
(850) 413-6734