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December 19, 2005

BY HAND DELIVERY
Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket Nos. 050119-TP and 050125-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint Spectrum Limited Partnership, Nextel South Corporation, Sprint Communications Company Limited Partnership (collectively, "Sprint Nextel) and T-Mobile USA, Inc. is an original and 15 copies of The Direct Testimony of Billy H. Pruitt on behalf of Sprint Spectrum Limited Partnership, Nextel South Corporation, Sprint Communications Company Limited Partnership (collectively, "Sprint Nextel) and T-Mobile USA, Inc. in the above referenced dockets.

Please acknowledge receipt of this document by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

Floyd R. Self
Counsel for T-Mobile USA, Inc.

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Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by electronic mail and U. S. Mail this 19th day of December, 2005

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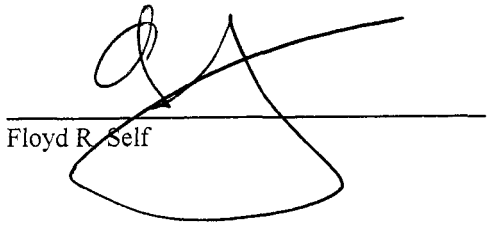


Floyd R. Self

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DIRECT TESTIMONY

OF

BILLY H. PRUITT

DOCKET NO. 050119-TP AND DOCKET NO. 050125-TP

SECTION I - INTRODUCTION

Q. Please state your name, title and business address.

A. My name is Billy H. Pruitt. I am President and Principal Consultant for Pruitt Telecommunications Consulting Resources, Inc. My business address is 59 Lincord Drive, St. Louis, MO 63128-1209.

Q. On whose behalf are you testifying?

A. I am testifying on behalf of Sprint Spectrum Limited Partnership, Nextel South Corporation, Sprint Communications Company Limited Partnership (collectively, "Sprint Nextel") and T-Mobile USA, Inc. ("T-Mobile").

Q. Please outline your educational and business experience.

A. I joined Southwestern Bell Telephone Company in 1968 as a Teletype and Data Repair Technician, and then served as a Central Office Repair technician until 1970. Between 1970 and 1972 I served in the Army. Upon my return to Southwestern Bell in 1972, I was assigned as a Switching Technician and, over time, served in many different outside plant and central office technical positions.

I obtained a Bachelor of Arts in Political Science degree from St. Louis University in 1981. In 1983, I was appointed a Manager in the Access Services group where I performed detailed costs studies and developed rates for multiple switching technologies required to provide switched access services. In 1986, I obtained a Master of Business Administration degree from Webster University. I was also promoted to the position of Area Manager Rates and Cost Studies in 1986 and managed a work group responsible for switched access cost studies, rate development and the associated filings with state and federal regulatory bodies. In 1990, I was appointed Area Manager Regional Sales where I developed and presented competitive proposals for complex network services and served as the Division's regulatory liaison. I retired from Southwestern Bell in December, 1998.

In September, 1999, I accepted a position as a Senior Engineer in the Carrier and Wholesale Interconnection Management group at Sprint PCS. In this assignment I was a lead negotiator responsible for negotiating interconnection agreements between Sprint PCS and other telecommunications carriers. I was also responsible for providing expert witness testimony on behalf of Sprint PCS in regulatory proceedings such as this Docket.

In March, 2003, I was assigned to Sprint's Access Management organization where I provided regulatory policy and contract expertise in support of Sprint long distance, wireless, and local service initiatives. Due to a Sprint reorganization, I was assigned to the Sprint Business Solutions organization where I provided general enterprise support to various Sprint

organizations involved in the development and delivery of products and services to Sprint's wholesale customers. I also negotiated contracts with local exchange carriers ("LECs") and alternate access vendors for services and facilities required in the Sprint network. In addition, I provided general negotiation and contract support to the various negotiation teams at Sprint that negotiated interconnection agreements with incumbent LECs ("ILECs") and other carriers, and continued to provide expert witness testimony when required.

In the performance of my responsibilities at Sprint I was required to understand and implement on a day-to-day basis Sprint PCS' rights and obligations arising under i) the Communications Act of 1934 as amended by the Telecommunications Act of 1996 ("the Act"), ii) the Federal Communications Commission ("FCC") rules implementing the Act, and ii) federal and state authorities regarding the Act and FCC rules.

In December 2004, after 5 years of employment with Sprint, I accepted a voluntary buyout and opened a telecommunications consulting practice providing interconnection support services to telecommunications providers. I have been involved in that consulting practice since that time.

Q. Before what state regulatory Commissions have you previously provided testimony?

A. I have provided testimony regarding interconnection and transit issues similar to the issues in this case before the Iowa Public Utility Board, the Louisiana Public Service Commission, the Missouri Public Service Commission, the

Mississippi Public Service Commission, the Nebraska Public Service Commission, the Oklahoma Corporation Commission, and the Tennessee Regulatory Authority.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to provide the positions of Sprint Nextel and T-Mobile regarding the tentative list of issues identified in Attachment "A" of the Commission's December 6, 2005 Order Establishing Procedure in the consolidated Dockets 050119-TP and 050125-TP. It is my understanding that these issues arise out of BellSouth Telecommunications Inc.'s ("BellSouth's") filing of its General Subscriber Services Tariff A16.1, Transit Traffic Service ("the Tariff"). I understand that a group of Florida independent local exchange telephone companies consisting of TDS Telecom d/b/a TDS Telecom/Quincy Telephone, ALLTEL Florida Inc., Northeast Florida Telephone Company d/b/a NEFCOM, GTC, Inc. d/b/a GT Com, Smart City Telecom, ITS Telecommunications Systems Inc. and Frontier Communications of the South, LLC (collectively "Small LECs") filed a petition and complaint for suspension and cancellation of the Tariff, as did AT&T Communications of the Southern States, LLC ("AT&T").

SECTION II – SUMMARY OF TESTIMONY

Q. Please provide a brief summary of your testimony.

A. It is the position of Sprint Nextel and T-Mobile that the Act provides a specific statutory framework under which Congress granted telecommunications carriers the right to efficiently interconnect their networks directly or indirectly

to exchange traffic in a post-monopoly competitive environment. Upon interconnecting with BellSouth, a carrier is entitled to the same level of service that BellSouth provides itself, which includes the ability to exchange traffic with other carriers that are interconnected to BellSouth's network. The ability to utilize BellSouth's network to reach a third party, i.e. "transiting", is essential to a connecting carrier's right to indirectly interconnect and exchange traffic with other carriers that are interconnected with BellSouth. Although not expressly addressed by FCC rule, state utility Commissions have found transiting to be an interconnection obligation, and the FCC has recognized the vital role of transit services in deployment of competitive networks in its current Intercarrier Compensation proceedings. As such the clear statutory language of 47 U.S.C. § 252(d)(1) that requires rates for interconnection services to be developed pursuant to TELRIC pricing standards compels the conclusion that BellSouth's transit service must also be priced at TELRIC rather than on a price cap, commercial or market basis.

The recent FCC decision, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92, FCC 05-42, Declaratory Ruling and Report and Order (rel. Feb. 24, 2005), referred to herein as "the *T-Mobile Order,*" makes it clear that the appropriate mechanism for establishing compensation arrangements for interconnection services under the Act is through the negotiation and arbitration process. Where carriers choose not to follow that process, no compensation is due. Thus, while BellSouth is clearly entitled to be paid a TELRIC-based rate when a carrier

transits BellSouth's network, the terms under which BellSouth provides and is paid for that service must be established through a negotiated and if necessary, arbitrated interconnection agreement, rather than by a tariff.

SECTION III – THE ACT, INDIRECT INTERCONNECTION AND TRANSIT SERVICE

Q. Can you summarize the duties relevant to this case that are created and imposed upon different carriers pursuant to the Act?

A. Although I am not an attorney, it is evident from the plain reading of 47 U.S.C. § 251 that the Act created a framework under which different statutory duties are imposed upon different types of carriers. Section 251 sets forth three tiers of obligations applicable to three sets of carriers. *See also* 47 C.F.R. § 51.100(A)(1):

> Section 251(a) creates the general obligation imposed upon *all telecommunications carriers* to interconnect directly or indirectly.
>
> Section 251(b) creates five additional obligations applicable to *all local exchange carriers,* such as the Small LECs in this case, including the duty to establish reciprocal compensation arrangements and to provide local dialing parity. *See also* 251(b)(5); 251(b)(3); 47 C.F.R. § 51.207 (local dialing parity). Section 251(c) imposes yet additional obligations solely upon *incumbent local exchange carriers*, such as BellSouth in this case. These additional obligations include the express duties to provide interconnection with BellSouth's network "for the transmission and routing of telephone exchange service and exchange access" traffic "that is at least equal in quality to that provided by" BellSouth to itself, "on rates, terms and conditions that are just, reasonable, and

nondiscriminatory, in accordance with . . . the requirements of . . . section 252" of the Act. 47 U.S.C. § 251(c)(2)(A), (C) and (D).

Section 252(d)(1) is the statutory basis upon which the TELRIC pricing methodology is made applicable to interconnection for the purposes of 251(c)(2). *See also,* 47 C.F.R. §§ 51.501, 51.503, 51.505, 51.507, 51.509 and 51.511.

Q. What is the difference between "direct interconnection" and "indirect interconnection" as those terms are used in section 251(a) of the Act?

A. Direct interconnection is when two telecommunications carriers install dedicated transport facilities between their respective switches to exchange traffic between the two carriers' networks. Direct interconnection may be provisioned directionally, supporting either one-way or two-way traffic. Indirect interconnection occurs when, instead of using dedicated facilities, two carriers' respective switches are connected to a tandem of the same intermediate third-party carrier (typically, but not necessarily to the same tandem). Traffic originated on one carrier's network is exchanged with the other by delivery of such traffic to the intermediate carrier's network which, in turn, delivers it to the terminating carrier's network.

Q. What does it mean for a carrier to provide a transit service?

A. Transit service is typically provided by a third-party LEC that owns a tandem switch, e.g. BellSouth, to which multiple additional carriers are connected, e.g. the Small LECs, Sprint Nextel, T-Mobile, etc. In BellSouth's case, connection to a BellSouth tandem switch generally enables an interconnecting carrier to

send telecommunications traffic to any other carrier that is interconnected with the BellSouth network within the same LATA. BellSouth's transit service is essentially the tandem switching and transport functions that BellSouth provides in the middle of a call path to complete the delivery of one interconnected carrier's originated telecommunications traffic to another interconnected carrier's network for termination.

Q. Can you provide a simple diagram of the network configuration associated with a typical transit scenario?

A. Yes. Please see the diagram attached to my testimony as Exhibit No. _____(BHP-1).

Q. Does BellSouth provide Sprint Nextel and T-Mobile transit service in Florida?

A. Yes. BellSouth has been providing Sprint Nextel (i.e., Sprint Spectrum L.P.) transit service per an interconnection agreement since at least April 1, 1997. BellSouth has been providing T-Mobile transit service per an interconnection agreement since at least March 1, 1998. As a general matter, the Sprint Nextel and T-Mobile interconnection agreements with BellSouth provide for BellSouth to deliver Sprint Nextel and T-Mobile originated traffic to third-party carriers that are also interconnected with a BellSouth tandem (i.e., transit traffic) and to likewise deliver the third-party carriers originated traffic to Sprint Nextel and T-Mobile. Sprint Nextel and T-Mobile pay BellSouth for delivering their originated traffic to third-party carriers. BellSouth does not, however, receive any payment from Sprint Nextel or T-Mobile for either i) the

termination of third-party traffic that BellSouth delivers to Sprint Nextel or T-Mobile, or ii) traffic originated on the Small LECs' networks that is delivered by BellSouth to Sprint Nextel and T-Mobile.

Q. Of what benefit is BellSouth's transit service to Sprint Nextel and T-Mobile?

A. BellSouth's transit service is a classic example of the means by which indirect interconnection contemplated by the Act is accomplished. BellSouth is the historical LATA tandem provider that provides connectivity to virtually all telecommunications carriers operating in BellSouth's territory (i.e., CMRS Providers, CLECs, the Small LECs, other LECs, etc.). Depending on the volumes of traffic exchanged between two carriers, the indirect delivery of traffic between two carriers that are each interconnected to the BellSouth network provides an efficient and economical alternative to establishing expensive, underutilized dedicated direct interconnection facilities. In turn, the efficient and economical exchange of traffic fosters the very competition that enables providers to develop and deliver consumers innovative communications goods and services at the lowest prices.

Q. Is BellSouth obligated to provide the transit service that it has been providing?

A. Yes. There are several statutes and rulings that create and support the obligation of incumbent LEC tandem service providers to provide a transit service to interconnected telecommunications carriers.

For instance, in *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,* 17 FCC Rcd 27,039 (CCB, July 17, 2002) (*Virginia Arbitration Order*), the Wireline Competition Bureau, acting through delegated authority of the FCC, addressed Verizon's transit obligations to WorldCom. The Bureau stated that the Commission had previously held in another context that

> a "fundamental purpose" of section 251 is to 'promote the interconnection of all telecommunications networks by ensuring that incumbent LECs are not the only carriers that are able to interconnect efficiently with other carriers. In this instance, allowing Verizon to "terminate" transit service abruptly, with no transition period or consideration of whether WorldCom has an available alternative, would undermine WorldCom's ability to interconnect indirectly with other carriers in a manner that is inconsistent with the "fundamental purpose" identified above. Moreover, such a result would put new entrants at a severe competitive disadvantage in Virginia, and would undermine the interests of all end users in connectivity to the public switched network.

Id., ¶ 118.

Q. Are you aware of any state public utility Commission decision that may provide additional insight to this issue?

A. Yes, several. In *Petition of Verizon South, Inc., for Declaratory Ruling that Verizon is Not Required to Transit InterLATA EAS Traffic between Third Party Carriers and Request for Order Requiring Carolina Telephone and Telegraph Company to Adopt Alternative Transport Method,* Docket No. P-19, Sub 454 "Order Denying Petition" (North Carolina Utilities Commission, Sept. 22, 2003), Verizon relied upon the *Virginia Arbitration Order* to contend it had no

obligation to provide a transit service at all, claiming that the Competition Bureau had not found "clear [FCC] Commission precedent or rules declaring such a duty." *Id.,* p. 5. The North Carolina Utility Commission ("NCUC") concluded, however, that the *Virginia Arbitration Order* "was not meant to bear such a heavy burden" (*id,* p. 7) and "good cause exists to find that Verizon is obligated to provide the transit service as a matter of law". *Id.,* p. 5.

The NCUC was persuaded and found that 1) a transit obligation can be well supported under both state and federal law; 2) the lack of a transit obligation could lead to absurd results, including the stifling of competition by imposition of uneconomic costs such as construction of redundant facilities, and impairment of "the ubiquity of the telecommunications network"; and 3) the simple fact is that the transiting of traffic has been around since "ancient" times in telecommunications terms. *Id.*, p. 6. The NCUC went on to state that "[i]t strains credulity to believe that Congress in TA96 [Telecommunications Act of 1996] intended, in effect, to impair this ancient practice and make it merely a matter of grace on the part of ILECs, when doing so would inevitably have a tendency to thwart the very purposes that TA96 was designed to allow and encourage". *Id.*, p. 6-7. It is clear that the NCUC believes that there is a legal obligation for ILECs to provide a transit service under the Act. A copy of the NCUC's September 22, 2003 Order Denying Petition in Docket No. P-19, Sub 454 is attached as Exhibit No. _____(BHP-2).

Even more recently, the Public Utility Commission of Texas ("Texas PUC") held that "SBC Texas shall provide transit services at TELRIC rates."

Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement, "Arbitration Award – Track 1 Issues", P.U.C. Docket No. 28821 (TX PUC, February 22, 2005). Given SBC Texas' ubiquitous network and the lack of alternative competitive transit providers, the Texas PUC concluded that requiring SBC Texas "to provide transit services at cost-based rates will promote interconnection of all telecommunications networks." *Id.*, p. 23. The PUC also recognized the reality that, in the absence of alternative transit providers "SBC Texas's proposal to negotiate transit services separately outside the scope of an FTA [Telecommunications Act of 1996] § 251/252 negotiation may result in cost-prohibitive rates for transit service." *Id.*. The foregoing reasoning is equally applicable in this case to support the conclusion that BellSouth is required to provide its transit service pursuant to a section 251/252 interconnection agreement and cannot side-step that obligation by "providing" a grossly inflated transit service pursuant to its tariff. A copy of the Texas PUC's February 23, 2005 Arbitration Award in Docket No. 28821 is attached as Exhibit No. _____(BHP-3).

Q. Is the transit obligation an "interconnection" obligation?

A. Yes. The Act identifies each statutory duty imposed upon an incumbent LEC such as BellSouth. One of those duties is the "interconnection" duty outlined in section 251(c)(2) of the Act. This section requires incumbent LECs to provide "interconnection with the local exchange carrier's network - (A) *for the transmission and routing of telephone exchange service and exchange*

access." There is no limiting language in the statute that allows BellSouth to only provide interconnection for the transmission and routing of traffic between a requesting interconnecting carrier's network and a BellSouth end office. To the contrary, the statute is unlimited with respect to the scope of the routing and transmission that BellSouth must provide an interconnected carrier and, therefore, is clearly broad enough to include the routing and transmission of traffic between an interconnecting carrier's network and any end office (or equivalent facility), including those associated with the networks of other carriers that are interconnected with the BellSouth network – i.e., other CMRS, CLEC, Small LECs, and LEC carriers' networks.

Q. Does BellSouth route/transmit traffic originated by or terminating to its end user customers to/from other carriers interconnected with the BellSouth tandem such as CLECs, rural LECs, IXCs, etc.?

A. Yes. It is indisputable that BellSouth has the legacy architecture required to provide this service for its end user customers and it does so.

Q. What type of traffic does a transit provider such as BellSouth typically exchange (route or transmit) with an interconnecting carrier?

A. The traffic exchanged between BellSouth and an interconnecting carrier is either going to be exchange service traffic (i.e. local exchange and Extended Area Service, or EAS, traffic) or exchange access traffic (interstate and intrastate access traffic).

Q. Does BellSouth have an express obligation to provide interconnection of the same quality that it provides itself?

A. Yes. Pursuant to section 251(c)(3) of the Act, an incumbent LEC must provide interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."

Q. Assume BellSouth is interconnected with Carrier A and Carrier B and in the ordinary course of business BellSouth is compensated to transmit and route its own customers' intraLATA traffic to carrier A's network. Can BellSouth legitimately refuse to transmit and route Carrier B's intraLATA traffic to carrier A's network?

A. No. It would be unfair and discriminatory for BellSouth to refuse to route and transmit the competing Carrier B's traffic to the same destination, i.e. carrier A's network, that BellSouth transmits and routes its own customers' traffic.

Q. What is the logical result when sections 251(c)(2)(A), (C) and (D) are read together?

A. Transiting is clearly encompassed within the statutory obligation to interconnect. The Act creates strict obligations and the FCC's rules impose strict regulations on the ILECs to assure nondiscriminatory interconnection because of the ILEC's market power. The ILECs control the historical, legacy network architecture that serves vast populations of consumers and that other carriers must interconnect with to provide competing service to such consumers. ILECs have the incentive and ability to abuse this control to harm competitors and, ultimately, negatively impact consumers.

Q. What public interest is served by this Commission concluding that BellSouth's transit service is an interconnection service that BellSouth is obligated to provide to a requesting telecommunications carrier?

A. Transiting is a key component for a competitor to be able to economically obtain interconnection with an ILEC network and, therefore, it is in the public interest for both consumers and competitors that the service be provided within the framework of the Act. Consumers would be harmed if incumbent LEC transiting was not required. To force other competitors to directly interconnect with each other, when it would be more efficient to connect indirectly, would artificially drive up the costs to all interconnecting carriers and, again, consumers. Unnecessary expense may be further compounded where "new construction" must occur before a direct connection can even be installed. Similarly, forcing competitors to pay inflated prices for ILEC transiting would have the same result.

As previously explained, and recognized by the NCUC, indirect interconnection through a transit service that is generally provided by an incumbent LEC, such as BellSouth, can be the most efficient means for CMRS providers to i) quickly and economically expand their network to serve ever increasing numbers of subscribers, and ii) provide and maintain economically efficient levels of service in less populated areas that may not otherwise be served if the cost of direct facilities outweighs the benefits of providing service in that area. CMRS providers use transit service particularly in rural areas where sufficient volumes of traffic are not generated to justify deploying its

own network facilities. The FCC has recognized the vital role of transit services in deployment of competitive networks in the current Intercarrier Compensation proceeding and stated the following:

> the record suggests that the availability of transit services is increasingly critical to establishing indirect interconnection – a form of interconnection explicitly recognized and supported by the Act. It is evident that competitive LECs, CMRS carriers, and rural LECs often rely on transit services from the incumbent LECs to facilitate indirect interconnection with each other. Without the continued availability of transit services, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks.

Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Further Notice of Proposed Rulemaking at ¶ 125 (Rel. March 3, 2005).

Absent decisions from states and the FCC further validating this vital role of incumbent LECs, the inevitable increase in unnecessary costs will slow competition and, in turn, leave consumers with little if any service choices.

Q. How are the prices for interconnection service established under the Act?

A. Section 251(c)(2)(D) unambiguously requires that the rates, terms and conditions under which interconnection is provided must be "just, reasonable, and nondiscriminatory, *in accordance with . . . the requirements of . . . section 252*" (emphasis added).

Section 252(d)(1) of the Act establishes (in its title and substantive provisions) the "Pricing Standards" applicable to interconnection services provided pursuant to 251(c)(2). The price for such services "shall be . . . (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection . . . , and (ii)

nondiscriminatory, and . . . may include a reasonable profit." 47 U.S.C. § 252(d)(1). FCC regulations further elaborate upon these pricing standards. *See* 47 C.F.R. §§ 51.501, 51.503, 51.507, 51.509, and 51.511.

Q. What public interest is served by this Commission determining that BellSouth's transit service is an interconnection service which BellSouth is required to provide at a TELRIC price?

A. Left unchecked, incumbent LECs, and particularly a Regional Bell Operating Company ("RBOC") such as BellSouth, have no incentive to provide a service at a TELRIC forward looking cost-based rate. The very same waste of economic resources and ultimate inability to service consumers that results when competitors are required to install inefficient, redundant direct interconnection facilities likewise flows from competitors having to pay for an overpriced RBOC transit service.

The transit rate in BellSouth's tariff is $0.003. By comparison, utilizing BellSouth's historical Florida unbundled network element rates for the comparable element functions that are used in BellSouth's interconnection transit service, it is reasonable to expect that a TELRIC-based rate for BellSouth's transit service should be in the range of $0.0009441. *See* BellSouth Florida rate page "215 of 800" from existing interconnection agreement between BellSouth, Sprint Communications Company Limited Partnership and Sprint Spectrum L.P., attached hereto as Exhibit No. _____(BHP-4) (Tandem Switching per MOU $.0001319 + Tandem Port Shared per MOU $0.0002350 + Common Transport of $0.00014 [assumed 40

miles at .0000035 per mile] + Common Transport Facility per MOU $0.0004372 = $0.0009441). A $.0020559 difference between the tariff transit rate and the approximated TELRIC transit rate reveals a mark-up of over 200%, and demonstrates exactly why Congress placed restraints on the RBOCs via the statutory pricing standards.

SECTION IV – TENTATIVE DOCKET ISSUES

ISSUE 1

Q. Is BellSouth's Transit Service Tariff an appropriate mechanism to address transit service provided by BellSouth?

A. No. Because transit is an interconnection service, it is not subject to being tariffed. The filing of tariffs for interconnection services was addressed in the FCC's *T-Mobile Order*. In this proceeding the FCC amended its rules going forward to make clear its preference for contractual arrangements for non-access traffic. Specifically the FCC amended Section 20.11 of the Commission's rules to prohibit LECs from imposing compensation obligations for non-access traffic pursuant to tariff. Just as the section 251(b)(5) reciprocal compensation obligation addressed in the *T-Mobile Order* is an interconnection service, so is the transit obligation an "interconnection service" that arises through the operation of sections 251(a)(1) and (c)(2). Thus, a requesting carrier is entitled to obtain transit, and BellSouth is required to provide transit, pursuant to a negotiated or arbitrated interconnection agreement, rather than BellSouth being able to require its purchase upon BellSouth's unilateral terms via a tariff.

ISSUE 2

Q. If an originating carrier utilizes the services of BellSouth as a tandem provider to switch and transport traffic to a third party not affiliated with BellSouth, what are the responsibilities of the originating carrier?

A. An originating carrier that utilizes BellSouth as a tandem provider to transit traffic to a third party that is not affiliated with BellSouth is obligated: 1) to deliver its traffic to BellSouth in an industry standard format that will allow BellSouth and the terminating carrier to identify the originating carrier and minutes of traffic originated by such carrier that are transited by BellSouth to the terminating carrier; 2) upon request of BellSouth or the originating carrier, to negotiate (and, if necessary, arbitrate) an interconnection agreement with BellSouth that includes terms and conditions regarding the transit service that BellSouth provides to the originating carrier; and 3) upon request of the terminating or originating carrier, to negotiate (and, if necessary, arbitrate) an interconnection agreement with the terminating carrier regarding the mutual exchange of traffic between the two parties' respective networks.

ISSUE 3

Q: Which carrier should be responsible for providing compensation to BellSouth for the provision of the transit transport and switching services?

A. Pursuant to federal law, an originating carrier is responsible for all costs, including transit costs, associated with delivering traffic originated on its network to the terminating carrier's network.

For the purposes of interconnection with a CMRS network, traffic subject to section 251(b)(5) reciprocal compensation is expressly defined by the FCC in Rule 51.701(b)(2) to be traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same MTA. Under the FCC's Calling Party Network Pays ("CPNP") regime, the originating party is not only responsible for the payment of reciprocal compensation to the terminating network party, the originating party is also responsible for all costs associated with the delivery of its originated telecommunications traffic to the terminating party. This principle is based upon the FCC's rule in Subpart H, Reciprocal Compensation, 47 C.F.R. 51.703(b), which provides, "[a] LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network."

Grounded squarely upon Rule 51.703(b), case law clearly establishes that an originating party (including the Small LECs in this case), are responsible for the cost associated with the delivery of traffic originated on their network to the terminating carrier's network. *See Atlas Telephone Company v. Oklahoma Corporation Commission,* 400 F.3d 1256 (10th Cir. 2005) (CMRS Providers should not have to bear the costs of transporting calls that originated on the networks of rural telephone companies across an incumbent LEC's network); *BellSouth Telecommunications, Inc.'s Petition for a Declaratory Ruling Regarding Transit Traffic,* Docket No. 16772-U, "Order on Clarification and Reconsideration" (Georgia Public Service Commission,

May 2, 2005) (citing *Atlas* in reaffirming initial decision that rural telephone companies, as originating parties, are required to pay transit costs to transport traffic originated on their network), a copy of which is attached as Exhibit No. _____(BHP-5).

Q. When an intraMTA call that originates on a CMRS Provider's network, transits BellSouth's network, and is delivered to the network of a Small LEC for termination, is the originating CMRS Provider obligated to compensate the Small LEC?

A. Yes. The originating CMRS Provider is obligated to compensate the Small LEC for its cost to transport and terminate an intraMTA call on its network. Absent the Small LEC and the originating CMRS Provider agreeing to a negotiated rate or a bill and keep arrangement, the price that the Small LEC may charge for the transport and termination functions it performs must be established under an appropriate pricing methodology that complies with the forward-looking economic cost standards identified in 47 C.F.R. sections 51.505 and 51.511.

ISSUE 4

Q. What is BellSouth's network arrangement for transit traffic and how is it typically routed from an originating party to a terminating third party?

A. As displayed in Exhibit No. _____(BHP-1) and previously explained herein, when two carriers are both connected to the BellSouth network, BellSouth will receive traffic delivered to a BellSouth tandem by an originating carrier over the originating carrier's interconnection facility with BellSouth, translate the

traffic at the BellSouth tandem switch, and route the traffic to wherever the terminating carrier is interconnected with BellSouth in the same LATA. The terminating carrier receives the traffic at the point where its network is interconnected with the BellSouth network, the call continues on the terminating carrier's transport facilities to its end office or, in the case of a CMRS Provider, to its Mobile Switching Center ("MSC"), where it is switched to the facilities (including spectrum airwaves, in the case of a CMRS Provider) connected to its end-user.

ISSUE 5

Q. Should the FPSC establish the terms and conditions that govern the relationship between an originating carrier and the terminating carrier, where BellSouth is providing transit service and the originating carrier is not interconnected with, and has no interconnection agreement with, the terminating carrier? If so, what are the appropriate terms and conditions that should be established?

A. No. As stated earlier, the FCC was clear in its *T-Mobile* decision that interconnecting carriers such as CMRS, CLECs, and the Small LECs follow the Act and the corresponding FCC rules for the negotiation and, if necessary, arbitration of interconnection agreements through the defined arbitration process.

Regarding the Small LECs' relationship with BellSouth as originators of transit traffic, under section 251(a) any telecommunications carrier is required to interconnect on a direct or indirect basis. With this interconnection

obligation, BellSouth is not required to provide transit unless it is "requested" by an interconnecting carrier. To the extent that the most efficient network alternative for Small LECs to use to deliver their customer originated traffic to CMRS providers is by sending that intraMTA traffic to a CMRS provider via BellSouth's transit service, the Small LEC should be required to request and enter into an interconnection agreement with BellSouth.

Q. Is their any precedent to support a conclusion that the FCC expects interconnection agreements to exist between the Small LECs and BellSouth?

A. Yes. The FCC clearly contemplates that interconnection agreements may exist between two incumbent LECs such as BellSouth and the Small LECs. This is apparent from the FCC's discussion regarding the requirements imposed upon incumbent LECs in sections 252(a) and 252(i) of the Act to file and make negotiated interconnection agreements available to other requesting carriers. Recognizing that such arrangements would exist, the FCC found in the First Report and Order that the plain meaning of section 252(i) is that "any interconnection agreement approved by a state commission, *including one between adjacent LECs,* must be made available to requesting carriers pursuant to section 252(i)." *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* 11 FCC Rcd 15499 at ¶ 1323 (1996) (emphasis added).

Thus, to the extent that a Small LEC is utilizing transit services for its originated traffic today without compensating BellSouth, there is no reason

why BellSouth cannot seek to establish a section 251/252 interconnection agreement with such an incumbent Small LEC that is consistent with the requirements of the Act and the FCC's interconnection rules, including the terms and conditions under which BellSouth will provide transit services to the incumbent Small LEC.

ISSUE 6

Q. Should the FPSC determine whether and at what traffic threshold level an originating carrier should be required to forego use of BellSouth's transit service and obtain direct interconnection with a terminating carrier? If so, at what traffic level should an originating carrier be required to obtain direct interconnection with a terminating carrier?

A. No. The originating carrier is responsible for the costs associated with delivering its traffic to the terminating carrier's network. Any direct trunks required between the originating provider's switch and the terminating carrier's switch should be based on the trunk capacity requirements of the traffic and the most economic means of getting that traffic to the terminating carrier. The determination of what is the best business decision for the originating carrier should be left solely to the originating carrier. It is in the originating carrier's best interest to make a prudent business decision based on the crossover point between paying transit charges on a per minute-of-use basis and the monthly recurring charges and overhead costs associated with using a dedicated facility. Facility prices vary by LEC and an artificial threshold could create an unfair economic advantage for both BellSouth and the Small LECs

by requiring the placement of costly dedicated meet-point facilities even though the continuing cost to transit traffic may be cheaper than the combined cost of BellSouth and the Small LECs' jointly provided dedicated meet-point direct facilities.

ISSUE 7

Q. How should transit traffic be delivered to the Small LEC's networks?

A. Transit traffic should be delivered to the Small LECs' networks in the most economically and technically feasible manner possible. In today's environment, it is normally more efficient for CMRS providers to deliver traffic to the Small LECs utilizing the transit service of the incumbent transit provider such as BellSouth. And, as a practical matter, at the present time BellSouth is the primary feasible option. While a market for alternative transit providers is in the very early stages of development, BellSouth's legacy architecture and ubiquitous connections to the Small LECs' territories have not been significantly replicated to provide widespread transit options for interconnecting carriers.

ISSUE 8

Q. Should the FPSC establish the terms and conditions that govern the relationship between BellSouth and a terminating carrier, where BellSouth is providing transit service and the originating carrier is not interconnected with, and has no interconnection agreement with, the terminating carrier? If so, what are the appropriate terms and conditions that should be established?

A. No. 47 U.S.C. section 251(a) imposes a duty upon all telecommunications carriers to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. CMRS Providers have established interconnection agreements with BellSouth that include terms and conditions for the exchange of traffic with BellSouth, including the use of BellSouth's transit service. The relationship between a Small LEC, as a terminator of transited traffic, and BellSouth should also be pursuant to an interconnection agreement between BellSouth and the Small LEC. Any disagreements between them related to BellSouth's provisioning of this traffic should be resolved through the dispute resolution language of the agreement or, for disputes associated with negotiation of a new agreement, through a state Commission's arbitration procedures.

In addition to the standard legal terms and conditions normally included in interconnection agreements, an agreement between BellSouth and a Small LEC should establish how information related to the traffic exchanged will be communicated between the parties. BellSouth routes CMRS traffic along with intraLATA and interLATA toll traffic and other traffic bound for the Small LEC on the same trunk group as an efficient method for terminating third-party originated traffic. By aggregating traffic, all traffic can be carried at a lower cost over fewer trunks. It would also be appropriate for the Small LECs to use the industry standard 11-01-01 records that they receive from BellSouth, which identify the originating carrier and will thereby enable the Small LEC to bill reciprocal compensation to the CMRS Providers. These are

the same records BellSouth presumably provides and the Small LECs use to bill switched access to IXCs. The FPSC should not mandate the implementation of more costly and inefficient network arrangements simply to facilitate the Small LECs' billing.

ISSUE 9

Q. Should the FPSC establish the terms and conditions of transit traffic between the transit service provider and the Small LECs that originate and terminate transit traffic? If so, what are the terms and conditions?

A. For the reasons stated in the answer to Issue 8, the answer to this question is no.

ISSUE 11

Q. How should charges for BellSouth's transit service be determined?

A. Pursuant to 47 U.S.C. section 251(c)(2)(d), interconnection obligations are expressly required to be provided "on rates, terms and conditions, that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252". In addition, section 252(d) provides the pricing methodology that an ILEC must use in the development of costs associated with "transporting or terminating calls." The methodology prescribed is generally referred to as the Total Element Long Run Incremental Cost ("TELRIC") cost methodology.

ISSUE 11a

Q. What is the appropriate rate for transit service?

A. An appropriate transit rate would include the TELRIC cost for each of the network components required to complete a transit call. Generally, the costs included by BellSouth in its transit rate should include a TELRIC-based tandem switching component and a TELRIC-based transport facility component (for per minute of use of the BellSouth portion of the meet-point transport facility between its tandem and the interconnection point between the BellSouth network and the terminating carrier's network). Sprint Nextel and T-Mobile are not presently aware of any reason to presume that BellSouth's tandem switching and transport costs should have *increased* over the past few years. Therefore, as previously discussed in my testimony, Sprint Nextel and T-Mobile submit that a TELRIC-based rate for BellSouth's interconnection transit service should be no higher than $0.0009441.

ISSUE 11b

Q. To what type of traffic do the rates identified in "a" apply?

A. When a CLEC/CMRS provider utilizes the BellSouth provided transit service to originate traffic to a Small LEC, BellSouth should charge the CLEC/CMRS provider a rate consisting of BellSouth's TELRIC tandem switching element plus its TELRIC transport element for the distance from the BellSouth tandem to BellSouth's meet-point with the network of the terminating Small LEC carrier. If BellSouth must route the call between multiple tandems because the originating and terminating carrier are not interconnected at the same tandem, then an additional tandem switch and mileage sensitive transport charges may apply.

Conversely, when the Small LEC originates a transit call to a CLEC/CMRS provider, BellSouth should also charge the Small LEC a rate consisting of BellSouth's TELRIC transport element for the distance from the BellSouth tandem to its meet-point with the network of the Small LEC plus its TELRIC tandem switching element. BellSouth cannot charge a Small LEC for transport to any meet-point with the CMRS Provider because the CMRS Provider has generally already paid for the facilities to directly connect at the BellSouth tandem. However, as previously indicated, if BellSouth must route the call between tandems before delivering the call to the CMRS Provider, then an additional tandem switch and mileage sensitive transport charges may apply.

When a CLEC/CMRS provider utilizes the BellSouth provided transit service to originate traffic to another CLEC/CMRS provider, assuming each carrier is connected in the same building to the same BellSouth tandem, BellSouth should only be charging the originating carrier its TELRIC tandem switching element. No transport should be incurred to hand off a call between two carriers interconnected to BellSouth in the same BellSouth location.

Q. Are there any local dialing parity implications associated with the Small LECs' originated transit traffic?

A. Yes. Pursuant to section 251(b)(3) of the Act and the FCC's "Local dialing parity" Rule 47 C.F.R. section 51.207, *all* LECs are required to allow their end-users to dial a CMRS/CLEC NPA-NXX using the same number of digits that the end-user dials to call a wireline NPA-NXX associated with the same

rate center as the rate center associated with the CMRS/CLEC NPA-NXX. When a Small LEC originates such 7 or 10-digit dialed traffic to such CMRS or CLEC NPA-NXXs it is feasible for the Small LEC to hand this traffic to BellSouth for delivery to the terminating CMRS/CLEC. Indeed, if there is no direct connection between the Small LEC and the terminating CMRS/CLEC, BellSouth's transit service would very likely be the only means of delivering the traffic without an inappropriate toll charge being imposed on the Small LEC end-user. The Small LEC can and should route this call to a common trunk group commonly riding a meet-point facility connected to BellSouth's tandem for delivery to the CMRS/CLEC switch.

Q. Can you summarize the scenarios under which transit rates should apply to a call originated on a Small LEC network?

A. Yes. When a Small LEC customer calls a CMRS or CLEC NPA-NXX that is associated with either one of the Small LEC's own rate centers or another LEC's rate center that is within the Small LEC's Local/EAS calling scope, such a call should be subject to 7 or 10-digit local dialing. Absent a direct connection between the Small LEC and the CMRS/CLEC terminating carrier, the Small LEC should route these calls to the transit LEC and compensate the transit LEC for delivering the Small LEC's traffic through the transit LEC's tandem.

ISSUE 14

Q. What action, if any, should the FPSC undertake at this time to allow the Small LECs to recover the costs incurred or associated with BellSouth's provision of transit service?

A. Sprint Nextel and T-Mobile believe that only those issues that pertain to the carrier-to-carrier aspects of transiting traffic are appropriate in this Docket, and issues pertaining to cost recovery allocation between a given carrier and its customers should be resolved in a rate proceeding. However, if Issue 14 remains in the Docket, Sprint Nextel and T-Mobile believe that the transit costs incurred by a Small LEC to deliver traffic originated by its own end-users to other carriers are the normal costs of doing business. These costs must be incurred to provide service to its end-user customers and exchange traffic with other telecommunications carriers in a post-Act competitive environment. These costs should be borne by the Small LEC and recovered through payments received in conjunction with providing services to its own end user customers.

ISSUE 15

Q. Should BellSouth issue an invoice for transit services and if so, in what detail and to whom?

A. Yes, BellSouth should issue an invoice for transit service to any telecommunications carrier that utilizes transit service to deliver traffic originated on its network to other carriers subtending BellSouth's network. This would include the Small LECs, CMRS providers, and CLECs. These invoices should be provided in an industry standard format that, at a minimum,

includes the number of minutes transited, the elements provided in transiting such minutes (i.e. the number of tandem switching minutes billed and, separately identified, the number of transport minutes billed) and adequate information to allow the party billed for the transit service to identify the Common Language Location Identification code ("CLLI") of the end office of the terminating end user customer. The CLLI information is commonly used by an originating carrier to help validate bills received from the terminating carriers.

ISSUE 16

Q. Should BellSouth provide to the terminating carrier sufficiently detailed call records to accurately bill the originating carrier for call termination? If so, what information should be provided by BellSouth?

A. Yes. It is my understanding that BellSouth already provides Category 11-01-01 records to terminating carriers, including the Small LECs. This information commonly includes the Operating Company Number ("OCN") of the originating carrier, the called and calling telephone numbers, and the call timing information required to determine the minutes of use provided by such carrier.

ISSUE 17

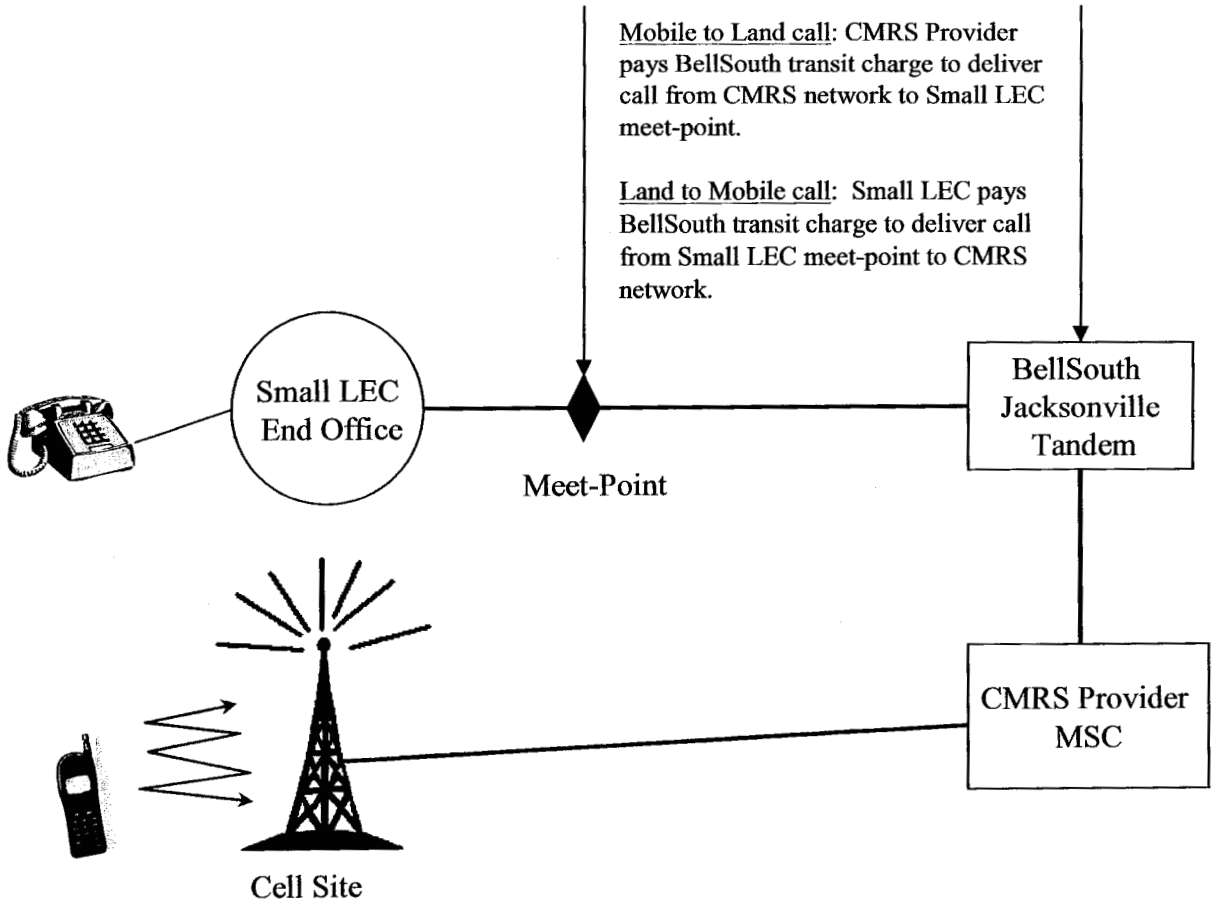
Q. How should billing disputes concerning transit service be addressed?

A. Transit billing disputes should be addressed pursuant to the dispute resolution provisions of an appropriately negotiated and, if necessary, arbitrated, filed and

Commission approved interconnection agreement between BellSouth and the carrier with whom a dispute may arise.

Q. Does this conclude your Direct Testimony?

A. Yes it does.



Scenario: CMRS Provider customer is assigned NPA-NXX associated in Local Exchange Routing Guide with Small LEC rate center. That NPA-NXX is served by CMRS Provider MSC that is directly connected to BellSouth Jacksonville tandem. The routing point for Small LEC calls to this NPA-NXX is the CMRS Provider's point of interconnection at the BellSouth tandem.

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-19, SUB 454

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of Verizon South, Inc., for Declaratory Ruling that Verizon is Not Required to Transit InterLATA EAS Traffic between Third Party Carriers and Request for Order Requiring Carolina Telephone and Telegraph Company to Adopt Alternative Transport Method	))))))	ORDER DENYING PETITION

BY THE COMMISSION: On January 30, 2002, the Commission issued an Order establishing extended area service (EAS) between the Durham exchange of Verizon South, Inc. (Verizon), the Pittsboro exchange of Carolina Telephone and Telegraph Company (Carolina or, collectively with Central Telephone Company, Sprint), and the Hillsborough exchange of Central Telephone Company (Central or, collectively with Carolina Telephone and Telegraph Company, Sprint) (the EAS Order).[1] This EAS was implemented on June 7, 2002. EAS from the Durham exchange to the Pittsboro exchange and zero-rated expanded local calling from the Durham exchange to the Hillsborough exchange were implemented earlier in the tax flow-through docket, Docket No. P-100, Sub 149.

Shortly after the EAS was implemented, the Public Staff began receiving complaints from customers in the Pittsboro exchange who were unable to complete calls to numbers in the Verizon Durham exchange as either local or toll calls. On investigating these complaints, the Public Staff learned that Verizon was blocking calls from the Pittsboro exchange to competing local provider (CLP) and commercial mobile radio service (CMRS) end-users in the Durham exchange. Verizon stated that it blocked the calls because "the proper interconnections between the CLPs, CMRSs and Sprint have not yet been established."[2] Subsequently, the Public Staff learned that Verizon had also begun blocking calls from Central's Roxboro exchange to CLP customers in Durham, calls that it previously had been completing. The Roxboro/Durham route is a two-way interLATA EAS route that has been in service since February 14, 1998. IntraLATA EAS calls from the Hillsborough exchange to CLP end-users in Durham have not been blocked. In its letters

1 *In the Matter of Carolina Telephone and Telegraph Company – Hillsborough and Pittsboro to Durham Extended Area Service, Order Approving Extended Area Service*, Docket No. P-7, Sub 894 (January 30, 2002).

2 See Verizon's letters from Joe Foster to Nat Carpenter dated July 11, 2002, and October 31, 2002, attached as Exhibits A and B to Verizon's Petition.

to the Public Staff, Verizon agreed to discontinue its blocking until the matter had been resolved by the Commission.

On December 9, 2002, Verizon filed a Petition for Declaratory Ruling (Petition) requesting "that the Commission issue a ruling clarifying that Verizon is not required to transit Sprint's InterLATA EAS traffic destined to third party CLPs/CMRS providers" and "that the Commission direct Sprint to cease delivering traffic destined for third-parties to Verizon and make alternative arrangements for proper delivery of such traffic."

On December 10, 2002, the Commission issued an Order seeking comments and reply comments. Petitions to intervene have been filed by The Alliance of North Carolina Independent Telephone Companies (the Alliance); BellSouth Telecommunications, Inc., (BellSouth); AT&T Communications of the Southern States, LLC, (AT&T); ALLTEL Carolina, Inc., and ALLTEL Communications, Inc., (collectively, ALLTEL); KMC Telecom, Inc. (KMC); ITC^DeltaCom, Inc., (ITC); Level 3 Communications, Inc., (Level 3); US LEC of North Carolina, Inc., (US LEC); and Barnardsville Telephone Company, Saluda Mountain Telephone Company, and Service Telephone Company (collectively, TDS Companies). All petitions to intervene were allowed.

ITC, Level 3 and KMC, US LEC, Sprint, the Public Staff, BellSouth, and AT&T filed initial comments. Verizon, the Alliance, Sprint, and the Public Staff filed reply comments.

On May 16, 2003, the Commission issued an Order scheduling an oral argument on June 19, 2003, to consider:

(1) Whether Verizon is legally obligated to perform a transiting function or to act as a billing intermediary in regards to third-party traffic, and

(2) If so, the principles that should inform the rates, terms and conditions for such services and the appropriate procedure for arriving at a decision about them.

On May 23, 2003, Verizon filed a Motion for Clarification requesting that the Commission make clear that the oral argument would address only legal and not factual issues. On June 3, 2003, Sprint filed a response to Verizon's Motion for Clarification in which it argued that the only issues to be resolved in this matter are legal.

On June 5, 2003, the Presiding Commissioner issued an Order clarifying that the purpose of the oral argument was to decide whether Verizon is obligated as a matter of law pursuant to the Telecommunications Act of 19963 and other applicable provisions of law to perform a transiting function or to act as a billing intermediary with regards to third-party traffic with particular reference to the third-party interLATA EAS calls at issue in this docket. The Order reserved to Commissioners the right to ask questions of the

3 47 U.S.C.A. §§ 151 *et seq.*, "the Act."

participants at the oral argument bearing upon the regulatory process should the matter be decided in one way or another.

The oral argument was heard by the Commission, Commissioner Joyner presiding, on July 15, 2002.

On August 29, 2003, the Commission received briefs and/or proposed orders from the following: Verizon, BellSouth Telecommunications, Inc. (BellSouth), Sprint, the Public Staff, AT&T Communications of the Southern States, Inc. (AT&T), and US LEC of North Carolina, Inc (US LEC). Of these, Sprint, the Public Staff, AT&T, and US LEC may be classified as proponents of the duty to provide the transiting function as a matter of law, while Verizon and BellSouth may be classified as opponents. Since the arguments of the proponents are largely the same, their arguments will be summarized collectively as those of the "Proponents." Likewise, those of Verizon and BellSouth will be summarized collectively as those of the "Opponents." Since many of the citations to the law are the same, but with the Opponents and Proponents putting a different construction on them, the text of the most common citations is set out below.

Most Common Citations

Telecommunications Act of 1996 (TA96)

Sec. 251(a) General Duty of Telecommunications Carriers.—Each telecommunications carrier has the duty—

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers....

Sec. 251(b) Obligations of All Local Exchange Carriers—Each local exchange carrier has the following duties....

(5) Reciprocal Compensation.—The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

Sec. 251(c) Additional Obligations of Incumbent Local Exchange Carriers.—In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:....

(2) Interconnection.—The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself...or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

State Law

G.S. 62-110(f1) The Commission is authorized to adopt rules it finds necessary to provide for the reasonable interconnection of facilities between all providers of telecommunications services....

G.S. 62-42(a) Except as otherwise limited in this Chapter, whenever the Commission, after notice and hearing had upon its own motion or upon complaint, finds: (1) That the service of any public utility is inadequate, insufficient or unreasonably discriminatory...or (5) That any other act is necessary to secure reasonably adequate service or facilities and reasonably and adequately to serve the public convenience and necessity, the Commission shall enter and serve an order directing that such...additional services or changes shall be made or affected within a reasonable time prescribed in the order....

Rule R17-4. Interconnection. (a) Interconnection arrangements should make available the features, functions, interface points and other service elements on an unbundled basis required by a requesting CLP to provide quality services. The Commission may, on petition by any interconnecting party, determine the reasonableness of any interconnection request. (b) Interconnection arrangements should apply equally and on a nondiscriminatory basis to all CLPs....

Summary of Proponents' Arguments

The thrust of the Proponents' arguments was that Verizon is obligated under TA96 as well as under State law to perform a transiting function. They argued that this requirement is clearly in the public interest and is in fact necessary to effectuate the purposes of TA96, which include the preserving and extending of the ubiquitous telecommunications network and the encouragement of competition.

With respect to provisions in TA96, the Proponents argue that the transiting obligation follows directly from the obligation to interconnect and the right of non-incumbent carriers to elect indirect interconnection. *See,* Section 251(a)(1) (all carriers to connect directly or indirectly with other carriers) and Section 252(c)(2) (additional ILEC duties regarding interconnection). Transit traffic is an important option to have available because it offers a simple and economical method of interconnection for carriers exchanging a minimal amount of traffic. It was routinely used without objection prior to the enactment of TA96. Otherwise, such carriers would be forced to created redundant and uneconomic arrangements to deliver their traffic. As such, the obligation to provide transit service is necessary to give meaning to the right to interconnect directly

under TA96 and in fulfillment of its purposes. The right to transit service exists independently of any given interconnection agreement, although such agreements may certainly establish procedures for it.

Concerning the *Virginia Arbitration Order* of the FCC's Wireline Competition Bureau (July 17, 2002), the Proponents noted that, contrary to Verizon's representations concerning the import of that decision, the Bureau expressly refused to declare that an ILEC is not obligated to provide transit service but rather, in view of the fact that the FCC had not previously decided the issue, it declined to rule on the issue in the context of its delegated arbitration authority.

The Proponents also maintained that authority to require the transit function could be found under State law. For example, G.S. 62-110(f1) allows the Commission to enact rules regarding interconnection. Rule R17-4 expresses similar sentiments. G.S. 62-42 bears on the matter of compelling efficient service, which would certainly be impaired if there was no duty to provide transit service. Other states, notably Ohio and Michigan, have held for a transit service obligation. None of the Proponents, however, argued that there was a necessary duty for Verizon to perform a billing intermediary function.

Summary of Opponents' Arguments

The key argument of the Opponents was that the provisions of TA96 cited by the Proponents do not create obligations or duties that are separate from interconnection agreements. No such transit obligation, either explicitly or through fair inference, can be found in TA96. Any provision of transit is purely voluntary on the ILECs' part. The Opponents further argue that, since TA96 in both Sections 251 and 252 creates a comprehensive framework with the negotiation and arbitration of interconnection agreements as its centerpiece, this preempts the states from enacting other obligations, such as a transit obligation, based on state law.

With respect to the *Virginia Arbitration Order*, the Opponents contended that the gravamen of that decision was not only that transit services need not be provided at TELRIC rates, they need not be provided at all, since the Bureau stated that it did not find "clear Commission precedent or rules declaring such a duty."

The Opponents declared that at least one state, New York, had decided against a transit obligation, while several others, such as Maryland, Wisconsin, and Michigan, have expressed skepticism about any billing intermediary obligation.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that good cause exists to find that Verizon is obligated to provide the transit service as a matter of law for the

reasons as generally set forth by the Proponents. Accordingly, Verizon's Petition for Declaratory ruling in its favor is denied.

The Commission is persuaded that a transit obligation can be well supported under both state and federal law. The Commission does not agree with the Opponents' view that duties and obligations under TA96 do not or cannot exist separately from their incarnation in particular interconnection agreements pursuant to the negotiation and arbitration process—or, as Verizon put it, "[TA96] contemplates only duties that are to be codified in interconnection agreements, not duties that apply independent of interconnection agreements."

Aside from not being compelled by the history, structure, or real-world context of TA96, the "interconnection agreements-only" approach suggested by the Opponents would lead to a number of undesirable, even absurd, results. For example, it would call into question the status of generic dockets, which are an efficient means by which the Commission can resolve interconnection issues arising under TA96 *en masse*. Apparently, the state commissions would be limited to arbitrating interconnection agreements one-by-one. There is simply no evidence that Congress intended to abolish generic dockets by the states; indeed, quite the opposite is suggested. *See*, for example, Section 251(d)(3) (Preservation of State Access Regulations). *As* a practical consequence, adoption of the Opponents' view would immoderately multiply the number of interconnection agreements—and the economic costs relating to entering into them—because the corollary of the Opponents' view is that, in order to fully effectuate rights and obligations, everyone must have an interconnection agreement with everybody else, even if the amount of traffic exchanged is minimal. The overall impact would be a tendency to stifle competition by the imposition of uneconomic costs as, for example, by the construction of redundant facilities.

If there were no obligation to provide transit service, the ubiquity of the telecommunications network would be impaired. Indeed, in a small way this has already happened in this case when Verizon refused to transit certain traffic. It should also be noted that the privilege of initiating arbitration proceedings is not symmetrical. Even if an ILEC, such as a smaller one with less than 200,000 access lines, urgently desires an interconnection agreement from a CLP or CMRS, it may not be able to get one. These effects illustrate the ultimate unsupportability of the Opponents' view of their obligations as ILECs to interconnect indirectly—essentially, as matters of grace, rather than duty.

The fact of the matter is that transit traffic is not a new thing. It has been around since "ancient" times in telecommunications terms. The reason that it has assumed new prominence since the enactment of TA96 is that there are now many more carriers involved—notably, the new CMRS providers and the CLPs—and the amount of traffic has increased significantly. Few, if any, thought about complaining about transit traffic until recently. It strains credulity to believe that Congress in TA96 intended, in effect, to impair this ancient practice and make it merely a matter of grace on the part of ILECs, when doing

so would inevitably have a tendency to thwart the very purposes that TA96 was designed to allow and encourage.

The Opponents rely heavily on the *Virginia Arbitration Order* for the proposition that there is no obligation to provide the transit function. The *Order* was not meant to bear such a heavy burden. A close examination of the *Order* yields a more equivocal conclusion. The fact is that the FCC, as is the case in many matters, has not definitively made its mind up on the matter. In the meantime, the telecommunications market and its regulation march on. As much as we would wish for definitive guidance from the FCC, the states cannot always wait for that body to rule one way or another—or somewhere in between.

The Opponents have urged that, in any event, the states are preempted from relying on state law to create a transit obligation. This would seem to follow logically from their view that TA96 has established a comprehensive "interconnection agreements-only" approach. The Commission, as noted above, views this approach as insupportable. In fact, it should be clear that Congress contemplated that states *do* have a role in establishing interconnection obligations as long as they do not thwart the provisions and purposes of Section 251. As alluded to earlier, Sec. 251(d)(3) of TA96 specifically provides that "[i]n prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that (A) establishes access and interconnection obligations of local exchange carriers; (B) is consistent with the requirements of this section; and (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part." It is significant that the wording of this provision mentions both state "policies" and the "purposes" of Sec. 251. It is also useful to observe that the Opponents' "interconnection agreements-only" view would "read out" this savings provision and render it nugatory, because anything done outside of interconnection agreements would, according to the Opponents, be contradictory to Sec. 251. This is yet another example of the consequences of the Opponents' idiosyncratic interpretation of TA96. Establishing a transit obligation and defining reasonable terms and conditions is well within a state's purview, even *arguendo* that no such positive obligation can be derived from TA96.

The real challenge facing the industry and the Commission is not whether there is a legal obligation for ILECs to provide a transit service. The Commission is convinced that there is. The Commission is confident that, should the FCC ever address the issue, it will find the same. The *real* question is what should be the rates, terms and conditions for the provision of that service. Those are matters included or includible under Docket No. P-100, Sub 151. Certainly, interconnection agreements are by and large desirable things, and as many companies as practicable should enter into them. No one really denies that. But it is not always practicable because, among other things, the privilege of petitioning for arbitration under Sec. 252 of TA96 is not symmetrical. This simply reinforces the case that, ultimately, there may need to be a default provision made for those that do not have such agreements or cannot interconnect directly. In such cases, this *may* require ILECs as intermediaries. The equities of the situation are reasonably straightforward—those that

seek to terminate traffic should pay for its termination and the one that transits should be compensated for its services. This *may* also require that an ILEC perform a billing intermediary function—again for reasonable compensation. The system of ubiquitous interconnection and the seamless telecommunications network may well be compromised without this "fail-safe" device. The Commission will move expeditiously on Docket No. P-100, Sub 151 should negotiations come to naught.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of September, 2003.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

pb091903.01

Commissioner Robert V. Owens, Jr. did not participate.

P.U.C. DOCKET NO. 28821

ARBITRATION OF NON-COSTING ISSUES FOR SUCCESSOR INTERCONNECTION AGREEMENTS TO THE TEXAS 271 AGREEMENT	§ § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

ARBITRATION AWARD—TRACK 1 ISSUES

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ARBITRATION OF NON-COSTING ISSUES FOR SUCCESSOR INTERCONNECTION AGREEMENTS TO THE TEXAS 271 AGREEMENT	**§ § § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ARBITRATION AWARD—TRACK 1 ISSUES

This Arbitration Award for Track 1 issues establishes the terms and conditions for the portions of successor interconnection agreements to the Texas 271 Agreement adopted by the Public Utility Commission of Texas (Commission or PUC) in October 1999.[1] In this Track 1 Award, the Commissioners, acting as Arbitrators, address a number of issues including interconnection, reciprocal compensation, general terms and conditions, and performance measures. Issues related to unbundled network elements will be addressed in Track 2 of this proceeding.

Southwestern Bell Telephone Company, L.P. d/b/a SBC Texas (SBC Texas) and each competitive local exchange carrier (CLEC) that has requested arbitration in this proceeding pursuant to § 252 of the Federal Telecommunications Act of 1996[2] shall incorporate the decisions approved in this Award, including the Award matrix.

I. JURISDICTION

If an incumbent local exchange carrier (ILEC) and CLEC cannot successfully negotiate rates, terms, and conditions in an interconnection agreement (ICA), FTA § 252(b)(1) provides that either of the negotiating parties "may petition a State commission to arbitrate any open issues." The Commission is a state regulatory body responsible for arbitrating ICAs approved

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[1] *See Investigation Into Southwestern Bell Telephone Company's Entry Into In-Region Interlata Service Under Section 271 of the Telecommunications Act of 1996*, Docket No. 16251, Order No. 55 (Oct. 13, 1999).

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C.) (FTA).

pursuant to the FTA. Pursuant to FTA § 252(b)(1) the Commission severed the non-costing issues for arbitration in this proceeding on October 31, 2003, as described more fully below.

II. PROCEDURAL HISTORY

On May 1, 2002, the Commission initiated Docket No. 25834[3] to address the cost issues severed from Docket No. 24542.[4] Docket No. 25834 was abated on March 28, 2003, until (1) the Commission concluded its Triennial Review process;[5] (2) the Commission's obligations under the *Triennial Review Order* were relieved or lifted; or (3) until such time as the Commission voted to un-abate the proceeding. On August 25, 2003, AT&T Communications of Texas, LP, TCG Dallas, and Teleport Communications Houston, Inc. (collectively referred to as AT&T) filed a petition for arbitration with SBC Texas that was assigned Docket No. 28412.[6] At its September 18, 2003 open meeting, the Commission expressed its intention to process all arbitrations for successor agreements to the Texas 271 Agreement (T2A) and T2A-based ICAs expiring on October 13, 2003 on a consolidated basis under FTA § 252(g). SBC Texas agreed to extend AT&T's current interconnection agreement and the widely-adopted T2A agreements until June 30, 2004, or until such time as those agreements are replaced by new ICAs.[7] On September 23, 2003, the Commission initiated Docket No. 28600 to address the unbundled network element (UNE) costing and pricing issues, the non-recurring charges related to the same UNEs at issue in Docket No. 25834, and all non-costing and pricing issues at issue in Docket No. 28412. On October 8, 2003, Docket No. 28412 was abated until the conclusion of this proceeding.[8] Docket

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[3] *Proceeding on Cost Issues Severed from Docket No. 24542*, Docket No. 25834 (Oct. 23, 2003).

[4] *Petition of MCIMetro Access Transmission Services, LLC, Sage Telecom, Inc., Texas UNE Platform Coalition, McLeod USA Telecommunications Services, Inc., and AT&T Communications of Texas, LP for Arbitration with Southwestern Bell Telephone Company Under the Telecommunications Act of 1996*, Docket No. 24542 (May 1, 2002).

[5] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competitive Provisions of the Telecommunications Act of 1996*, and *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-388, 96-98, 98-147, Order, FCC 03-36 (Aug. 21, 2003) (*Triennial Review Order*).

[6] *Petition of AT&T Communications of Texas, LP, TCG Dallas, and Teleport Communications Houston, Inc. for Arbitration with Southwestern Bell Telephone d/b/a SBC Texas Pursuant to Section 252(b)(1) of the Federal Telecommunications Act of 1996*, Docket No. 28412 (pending).

[7] Open Meeting Tr. at 151 (Sept. 18, 2003); *See* Docket No. 28412, Letter to Judge Cooper and Judge Klaus (Sept. 22, 2003).

[8] *See* Docket No. 28412, Order No. 3 (Oct. 8, 2003).

No. 28600 effectively provides parties the relief originally sought in Docket No. 25834; therefore, on October 23, 2003, Docket No. 25834 was dismissed as moot.[9]

On October 22, 2003, AT&T, SBC Texas, and numerous CLECs filed a request to modify the existing procedural schedule in Docket No. 28600 to sever non-costing issues.[10] Competitive Telecommunications Group (CTG)[11] did not object to the request to postpone non-costing issues as long as it did not preclude CTG from arbitrating the implementation of the issues relating to the resale of electronic service ordering charges, including charges for suspend/restore orders, resulting from Docket No. 24547.[12] At the October 23, 2003 open meeting, the Commission granted the request to sever the non-costing issues into another proceeding;[13] and granted CTG's request that issues regarding charges for suspend/restore orders continue on the same procedural schedule as the costing issues in Docket No. 28600.[14]

On January 23, 2004, pursuant to Order No. 1 in Docket No. 28821, the following parties individually filed petitions for arbitration to actively participate in the severed proceeding: Denton Telecom Partners, I, L.P. d/b/a Advantex Communications (Advantex); Navigator Telecommunications, LLC (Navigator),[15] Birch Telecom of Texas, Ltd., LLP and ionex

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[9] *See* Docket No. 25834, Order of Dismissal (Oct. 23, 2003). To the extent the documentation filed in Docket No. 25834 is admissible; it may be used in this proceeding. *See* Order No. 1 at 2 (Sept. 30, 2003).

[10] CLECs include MCImetro Access Transmission Services, LLC; MCIWorldcom Communications, Inc.; Brooks Fiber Telecommunications of Texas, Inc.; El Paso Networks, LLC; Sage Telecom of Texas; Birch Telecom of Texas; Posner Telecommunications, Inc.; AMA Techtel, Inc.; Carrera Communications, Inc.; Cbeyond Communications of Texas, LP; ICG Communications, Inc.; KMC Telecom, Inc.; Network Intelligence, Inc.; NTS Communications, Inc.; On Fiber Communications; Time Warner Telecom, LLP; Web Fire Communications, Inc.; Xspedius Management Co., LLC; XO Texas, Inc.; and Z-Tel Communications, Inc.

[11] CTG consists of AccuTel of Texas, LP; BasicPhone, Inc.; BroadLink Telecom, LLC; Capital 4 Outsourcing, Inc.; Cutter Communications, Inc. d/b/a GCEC Technologies; Cypress Telecommunications, Inc.; Express Telephone Services, Inc.; Extel Enterprises, Inc. d/b/a Extel; Connect Paging, Inc. d/b/a Get A Phone; Habla Communicaciones, Inc.; IQC, LLC; National Discount Telecom, LLC; Quick-Tel Communications, Inc.; Rosebud Telephone, LLC; PhoneCo, LP; Smartcom Telephone, LLC; and WesTex Communications, LLC d/b/a WTX Communications.

[12] *Petition of AccuTel of Texas, Inc., d/b/a 1-800-4-A-PHONE and Southwestern Bell Telephone Company for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934*, Docket No. 24547 (May 16, 2002).

[13] *See Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Docket No. 28821 (pending).

[14] Open Meeting Tr. at 128-40, 193-95 (Oct. 23, 2003).

[15] Navigator Telecommunications, LLC consists of Stratos Telecom, Inc., Comcast Phone of Texas, LLC, Heritage Technologies, Ltd., FamilyTel of Texas, LLC.

Communications South, Inc. (Birch/ionex); CLEC Joint Petitioners;[16] MCImetro Access Transmission Services, LLC, MCI WorldCom Communications, Inc., Intermedia Communications, Inc., and Brooks Fiber Telecommunications of Texas, Inc. (collectively MCI); AT&T Communications of Texas, LP, TCG Dallas, and Teleport Communications Houston, Inc. (collectively AT&T); CLEC Coalition,[17] Sage Telecom of Texas, LP (Sage);[18] and SBC Texas.[19]

Parties agreed that negotiations began on September 25, 2003, and that the 270-day period under the FTA concluded on June 21, 2004.[20] On July 16, 2004, the Commission issued a Protective Order to govern access to documents and information the parties designated to be confidential and exempt from public disclosure under the Texas Public Information Act (TPIA).[21]

On April 19, 2004, the Commission issued an order[22] addressing threshold issues and SBC Texas's motion to dismiss non-arbitrable issues. The Commission determined that: 1) it had the authority to adopt a performance-measure remedy plan; 2) it did not have sufficient

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[16] CLEC Joint Petitioners consists of AccuTel of Texas, LP, BasicPhone, Inc., BroadLink Telecom, LLC, Capital 4 Outsourcing, Inc., Cutter Communications, Inc. d/b/a GCEC Technologies, Cypress Telecommunications, Inc., DPI Teleconnect, LLC, Express Telephone Services Inc., Extel Enterprises, Inc. d/b/a Extel, Connect Paging, Inc., d/b/a Get A Phone, Habla Comunicaciones, Inc., IQC, LLC, National Discount Telecom, LLC, Quick-Tel Communications, Inc., Rosebud Telephone, LLC, PhoneCo, LP, Smartcom Telephone, LLC, Tex-Link Communications, Inc., and WesTex Communications, LLC d/b/a WTX Communications.

[17] CLEC Coalition consists of AMA Communications, LLC d/b/a AMA*TechTel Communications, Cbeyond Communications of Texas, LP, ICG Telecom Group, Inc., KMC Telecom Holdings, Inc. on behalf of its certificated entities, KMC Telecom III, LLC, KMC Data, LLC and KMC Telcom V, Inc., d/b/a KMC Network Services, Inc., McLeodUSA Telecommunications Services, Inc., nii Communications Ltd., NTS Communications, Inc., Time Warner Telecom of Texas, LP, XO Texas, Inc., Xspedius Communications, Inc., and Z-Tel Communications, Inc., Carrera Communications, LP, Westel, Inc. OnFiber Communications, Inc., Yipes Enterprise Services, Inc., WebFire Communications, Inc.

[18] On April 26, 2004, Sage filed a request to withdraw its petition from arbitration. Sage's petition to withdraw was granted by Order No. 14 on May 18, 2004.

[19] SBC Texas filed an Omnibus Petition for Arbitration with all CLECs whose interconnection agreements expired on October 13, 2003 or would soon expire. *See* SBC Texas's Omnibus Petition for Arbitration, Appendix A at 15-20 for a listing of applicable CLECs (Jan. 23, 2004).

[20] *See* Docket No. 28412, Letter from SBC Texas to Judges Cooper, Kang and Klaus (Nov. 17, 2003).

[21] Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.002-552.353 (Vernon 1994 & Supp. 2003) (TPIA).

[22] Order Addressing Threshold Issues and Motion to Dismiss (Apr. 19, 2004).

information to determine whether certain issues are FTA § 251 issues and therefore declined to dismiss those issues at that time; 3) only some of the UNEs at issue had been declassified by the Federal Communications Commission (FCC) in the *Triennial Review Order*,[23] while certain other issues should remain in this proceeding; 4) the competing affidavits filed by SBC Texas, Birch and Sage did not provide sufficient information for the Commission to determine whether certain issues were negotiated, and therefore the Commission directed the Arbitrators to hold a separate hearing to further investigate this issue; and 5) consideration of voice over Internet protocol (VoIP) issues should be deferred in light of the FCC's notice of proposed rulemaking (NPRM).[24]

On April 23, 2004, the procedural schedule for this proceeding was temporarily abated allowing the Commission to fully consider SBC Texas's motion for expedited ruling for temporary abatement for sixty days. On May 5, 2004, the Commission granted SBC Texas's motion and abated the proceeding.[25] Among other things, the Commission's Order affirmed that the T2A and T2A-based agreements would be extended, procedural dates would be extended by sixty days, a revised procedural schedule would be developed, and the deadline for processing this case was extended for sixty days. Pursuant to SBC Texas's request, the T2A was extended until February 17, 2005.

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[23] *See Triennial Review Order* at para. 7.

[24] *In re IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 04-28 (Mar. 10, 2004).

[25] *See* Order Abating Proceeding (May 5, 2004).

On July 28, 2004, the Commission issued an order[26] granting the Joint CLECs'[27] motion to sever disputed issues predicated on decisions made by the FCC in its *Triennial Review Order* but potentially affected by the D.C. Circuit's decision in *USTA II*.[28]

On August 18, 2004, the Commission addressed SBC Texas's motion for reconsideration of threshold issues.[29] Specifically, the PUC (1) excluded local switching for enterprise customers at the DS1 level and higher from consideration in this arbitration, and (2) allowed resolution of VoIP-in-the-middle issues in this arbitration. The remainder of SBC Texas's motion was denied.

On September 9, 2004, the Commission abated issues related to UNEs affected by the *USTA II* decision and severed those issues into "Track 2" of this proceeding.[30] The Commission determined that Track 2 issues should be abated pending the issuance of permanent rules by the FCC.[31]

On September 15 and 16, 2004, parties filed their proposed Decision Point Lists (DPL). On July 19, 2004, parties filed their direct testimony, with rebuttal testimony filed on August 23, 2004. The hearing on the merits was conducted on September 22-23, 2004, with the

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[26] *See* Order Severing Issues (June 5, 2004).

[27] The CLECs that joined in this Motion are the following active CLEC participants in this proceeding: AMA Communications, L.L.C. d/b/a AMA*TechTel Communications, Cbeyond Communications of Texas, LP, ICG Telecom Group, Inc., KMC Telecom Holdings, Inc. on Behalf of its Certificated Entities, KMC Telecom III LLC, KMC Data LLC, and KMC Telecom V, Inc., d/b/a KMC Network Services, Inc., McLeodUSA Telecommunications Services, Inc., nii communications, Ltd., NTS Communications, Inc., Time Warner Telecom of Texas, L.P., XO Texas, Inc., Xspedius Communications, LLC, and Z-Tel Communications, Inc. (the "CLEC Coalition"); AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications Houston, Inc.; Birch Telecom of Texas, LTD, L.L.P. and ionex Communications South, Inc.; MCI; AccuTel of Texas, Inc., Basicphone, Inc., BroadLink Telecom, LLC; Capital 4 Outsourcing, Inc., GCEC Technologies, Cypress Telecommunications, Inc., DPI Teleconnect, LLC, Express Telephone Services, Inc., Extel Enterprises, Inc. d/b/a Extel, Connect Paging, Inc. d/b/a Get A Phone, Grande Communications Networks, Inc. d/b/a Grande Communications, Habla Comunicaciones, Inc., IQC, LLC, National Discount Telecom, LLC, Posner Telecommunications, Inc., Quick-Tel Communications, Inc., Rosebud Telephone, LLC, PhoneCo, L.P., Smartcom Telephone, LLC, Tex-Link Communications, Inc., and WesTex Communications, LLC d/b/a WTX Communications (collectively, "Competitive Telecommunications Group").

[28] *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*).

[29] *See* Order Addressing Motion for Reconsideration of Threshold Issues (Aug. 18, 2004).

[30] *See* Order Abating Track 2 (Sept. 9, 2004).

[31] The FCC issued permanent rules on February 4, 2005, with an effective date of March 11, 2005.

Commissioners sitting as arbitrators. Initial post-hearing briefs were filed on November 1, 2004 and reply briefs were filed on November 15, 2004.

III. RELEVANT STATE AND FEDERAL PROCEEDINGS

Relevant Commission Decisions

SWBT Mega-Arbitration Awards

The FTA became effective in February 1996. Soon thereafter, several proceedings—collectively referred to as the Mega-Arbitrations—were initiated and consolidated for the purpose of arbitrating the first interconnection agreements in Texas under the new federal statute. The first Mega-Arbitration Award, issued November 1996, in Docket No. 16189, established rates for interconnections, services, and network elements in accordance to the standards set forth in FTA § 252(d).[32] Interim rates were established and SBC Texas was ordered to revise its cost studies. The Second Mega-Arbitration Award, issued December 1997 in Docket No. 16189, approved cost studies and established permanent rates for local interconnection traffic.[33]

Texas 271 Agreement "T2A"

After a series of "collaborative work sessions" between SBC Texas and CLECs, the Commission approved the T2A on October 13, 1999. As a condition of receiving approval pursuant to FTA § 271 to provide long-distance services within the state, SBC Texas agreed to offer this standard interconnection agreement to all CLECs for a period of four years.[34] Among other things, the T2A established prices, terms and conditions for resale, interconnection, and the use of UNEs. The T2A maintained entirely the rates in effect from the Mega-Arbitrations but

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[32] *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops Agreement Between MFS Communications Company, Inc. and Southwestern Bell Telephone Company,* Docket No. 16189, *et al.*, Award (Nov. 8, 1996) (*First Mega-Arbitration Award*).

[33] *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops Agreement Between MFS Communications Company, Inc. and Southwestern Bell Telephone Company,* Docket No. 16189, *et al.*, Award (Dec. 19, 1997) (*Second Mega-Arbitration Award*).

[34] Certain sections of the T2A expired October 13, 2001; others expired October 13, 2003.

with new rates for collocation developed in a separate proceeding, Docket No. 21333.[35] Pursuant to FTA § 252(i), the majority of the CLECs in Texas subsequently opted into the T2A.

Docket No. 21982

In Docket No. 21982,[36] the Commission sought to resolve reciprocal compensation issues involving the T2A. The Commission solicited participation by carriers that had T2A agreements expiring around January of 2000 or that had selected the first or third reciprocal compensation option of attachment 12.[37] In Docket No. 21982, the Commission established the following bifurcated compensation rate for both local voice traffic and local ISP-bound traffic: $0.0010887 per call + $0.0010423 per minute.[38] In addition, the Commission found that reciprocal compensation arrangements applied to calls originating from and terminating to an end-user within a mandatory single or multi-exchange local calling area. However, the Commission did not resolve foreign-exchange (FX) issues.[39]

Docket No. 24015

In Docket No. 24015, the Commission considered FX issues and determined that the compensation method in the *ISP Remand Order*[40] applied to all traffic bound for ISPs.[41] In addition, the Commission clarified that while the *ISP Remand Order* established a $0.0007 per minute cap for compensation of ISP-bound traffic, the *ISP Remand Order* also contemplated that a state commission may have ordered LECs to exchange traffic on a bill and keep basis or may

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[35] *Proceeding to Establish Permanent Rates for Southwestern Bell Telephone Company's Revised Physical and Virtual Collocation Tariffs*, Docket No. 21333, Order Approving Revised Arbitration Award (June 7, 2001).

[36] *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Docket No. 21982.

[37] Docket No. 21982, Order No. 1 Order Regarding Proceeding, Requesting Statements of Position at 1 (Jan. 14, 2000).

[38] Docket No. 21982, Revised Arbitration Award at 53 (Nov. 15, 2000).

[39] *See* Docket No. 21982, Order Approving Revised Arbitration Award, as Modified, and Approving Implementing Language at 5 (Nov. 15, 2000) and Revised Arbitration Award at 18 n.59 (Nov. 15, 2000).

[40] *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, FCC 01-131 (Apr. 27, 2001) (*ISP Remand Order*).

[41] *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Inter-Carrier Compensation for "FX-Type" Traffic against Southwestern Bell Telephone Company*, Docket No. 24015, Order on Reconsideration (Nov. 4, 2004).

have otherwise not required payment of compensation (effectively bill and keep).[42] Given that the Commission had set a rate for only local ISP-bound traffic in Docket No. 21982, the Commission found that bill and keep applied to ISP-bound FX traffic.

Relevant FCC Decisions

Local Competition Order

In the *Local Competition Order*,[43] the FCC implemented FTA §§ 251 and 252. The FCC identified UNEs that ILECs must make available to competitors, and established minimum requirements for nondiscriminatory interconnection and collocation arrangements.

UNE Remand Order

In late 1999, the FCC issued the *UNE Remand Order* in response to the Supreme Court's January 1999 decision,[44] which directed the FCC to reevaluate the unbundling obligations established by FTA § 251.[45] The Court required the FCC to revisit its application of the "necessary" and "impair" standards in FTA § 251(d)(2).[46] In applying the "necessary" and "impair" standard to individual network elements, the FCC made certain critical determinations. Among them, the FCC modified the definition of the loop network element to include all features, functions, and capabilities of the transmission facilities between an ILEC's central office and the loop demarcation point at the customer premises.[47]

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[42] Docket No. 24015, Order on Clarification (Jan. 5, 2005).

[43] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* and *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket. Nos. 96-98, 95-185, First Report and Order, FCC 96-325 (Aug. 8, 1996) (*Local Competition Order*).

[44] *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999) (*Iowa Utils. Bd.*).

[45] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, (Nov. 5, 1999) (*UNE Remand Order*).

[46] *UNE Remand Order* para. 1.

[47] *UNE Remand Order* at n. 301, (revised definition retains the definition from the *Local Competition Order*, but replaces the phrase "network interface device" with "demarcation point," and makes explicit that dark fiber and loop conditioning are among the "features, functions, and capabilities" of the loop).

ISP Remand Order

The *ISP Remand Order* established a $0.0007 per minute of use cap for compensation of ISP-bound traffic.[48] In conjunction with the $0.0007 cap, the FCC established the "mirroring rule," which requires incumbent LECs to pay the same rate for ISP-bound traffic that they receive for section 251(b)(5) traffic.[49] The *ISP Remand Order* also contemplated that a state commission may have ordered LECs to exchange traffic on a bill and keep basis or may have otherwise not required payment of compensation (effectively bill and keep). The FCC clarified that "because the rates set forth above are *caps* on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps we adopt here or on a bill and keep basis (or otherwise have not required payment of compensation for this traffic)."[50]

Virginia Arbitration Decision

In 2002, the FCC's Wireline Bureau, acting on delegated authority on behalf of the State of Virginia, issued a decision in a compulsory arbitration between Verizon and several CLECs. That decision addressed many key issues, including certain issues on interconnection and reciprocal compensation.[51] This Commission has recognized at least one decision in the *Virginia Arb* as on-point in a recent case. In that case, the Commission applied the *Virginia Arb's* holding to an issue involving reciprocal compensation costs for transporting traffic to the point of interconnection.[52]

In regard to several issues in this proceeding, the parties cited the *Virginia Arb* as precedent that the Commission should follow in making its decisions. The Commission recognizes that no party fully endorses complete deferral to the *Virginia Arb*, as parties have

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[48] *ISP Remand Order* at paras. 8 and 78.

[49] *ISP Remand Order* at paras. 8 and 89.

[50] *ISP Remand Order* at para. 80.

[51] *Petition of Worldcom, Inc., et al, 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, 00-249, and 00-251, DA-02-1731 (July 17, 2002) (*Virginia Arb*).

[52] *See Southwestern Bell Tel. Co, v. PUC,* 348 F.3d 482 (5th Cir. 2003); *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(B)(1) of the Federal Telecommunications Act of 1996,* Docket No. 22315, Order Approving Revised Arbitration Award (Mar. 14, 2002).

found distinguishing factors for reaching different conclusions than those in the *Virginia Arb.* In deciding the issues in the current proceeding, the Commission finds that the *Virginia Arb* is persuasive, but not binding, authority.[53] The FCC's Wireline Bureau (in place of the Virginia State Corporation Commission) arbitrated an interconnection agreement for parties in the state of Virginia in the same way that this Commission now arbitrates an interconnection agreement for parties in the state of Texas. Consequently, the Wireline Bureau played the role of a state commission in the *Virginia Arb.* In the more than two years since the issuance of the *Virginia Arb*, the industry has changed significantly. Therefore, because the parties have presented issues in this arbitration that this Commission has previously addressed, the Commission finds that following its own prior decisions in those instances better reflects circumstances specific to this state not otherwise considered in the *Virginia Arb.*

Triennial Review Order

In the *Triennial Review Order*, the FCC determined what elements ILECs must offer on an unbundled basis. The FCC required unbundled access to: mass market loops, certain subloops, network interface devices (NIDs), switching for mass market and OSS functions.[54] The FCC did not require unbundled access to: enterprise market loops, switching for enterprise market, packet switching.[55] Under certain conditions, the FCC required unbundled access to: transport, signaling networks and call-related databases.[56] In addition, the FCC redefined the dedicated transport network element as those "transmission facilities that connect incumbent LEC switches or wire centers."[57] The FCC found that facilities outside of the ILEC's local network should not be considered part of the dedicated transport network element subject to unbundling.[58] Accordingly, the FCC observed that "[o]ur determination here effectively

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[53] The Commission notes that federal courts have held that arbitration awards do not constitute binding precedent. For example, the Fourth Circuit stated that "arbitration awards have no precedential value." *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 991 F.2d 141, 147 (4th Cir. 1993). The Fifth Circuit noted that "Courts are not bound by arbitral rulings, nor are the arbitrators themselves obliged to follow the rule of *stare decisis*." *Smith v. Kerrville Bus. Co.*, 709 F.2d 914, 918 n.2 (5th Cir.1983).

[54] *Triennial Review Order* at para. 7.

[55] *Triennial Review Order* at para. 7.

[56] *Triennial Review Order* at para. 7.

[57] *Triennial Review Order* at para. 7.

[58] *Triennial Review Order* at para. 366.

eliminates 'entrance facilities' as UNEs . . . ."[59] The FCC also noted that section 271(c)(2)(B) established an independent obligation for ILECs to provide access to loops, switching, transport, and signaling, regardless of any unbundling analysis under section 251.[60] The D.C. Circuit vacated and/or remanded portions of the *Triennial Review Order* in *USTA II*.[61]

Interim UNE Order

The FCC's *Interim UNE Order*[62] required, on an interim basis, ILECs to continue providing unbundled access to switching, enterprise market loops, and dedicated transport under the same rates, terms and conditions that applied under existing interconnection agreements as of June 15, 2004.[63] The FCC recognized that "by freezing in place carriers' obligations as they stood on June 15, 2004, we are in many ways preserving contract terms that *predate* the vacated rules."[64] These rates, terms, and conditions apply until the effective date of the FCC's final unbundling rules or March 13, 2005 (six months after Federal Register publication of the *Interim UNE Order*), except to the extent superseded by: (1) negotiated agreements, (2) an intervening FCC order, or (3) a state commission order raising the rates for UNEs.[65] After the initial six months, in the absence of the FCC subjecting particular UNEs to unbundling, those elements would still be made available to serve existing customers for a subsequent six-month period, but at higher rates.[66]

Triennial Review Remand Order

On February 4, 2005, the FCC issued the *Triennial Review Remand Order*[67] in response to the remand of the *Triennial Review Order* from the D.C. Circuit. The *Triennial*

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[59] *Triennial Review Order*. at para. 366 n.1116.

[60] *Triennial Review Order* at para. 7.

[61] *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

[62] *Unbundled Access to Network Elements*, WC Docket No. 04-313, Order and Notice of Proposed Rulemaking, FCC 04-179, (Aug. 20, 2004) (*Interim UNE Order*).

[63] *Interim UNE Order* at para. 29.

[64] *Interim UNE Order* at para. 23.

[65] *Interim UNE Order* at para. 23.

[66] *Interim UNE Order* at para. 23.

[67] *Unbundled Access to Network Elements* and *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 01-388 and CC Docket No. 01-388, Order on Remand, FCC 04-290 (Feb. 4, 2005) (*Triennial Review Remand Order*).

Review Remand Order addressed the unbundling of network elements, including dedicated interoffice transport, high-capacity loops and mass market local circuit switching. The *Triennial Review Remand Order* also addressed the conversion of special access circuits to UNEs and the implementation of the unbundling determinations.

Relevant Court Decisions

Iowa Utilities Board v. FCC Cases (Iowa I and Iowa II)

In *Iowa I*, the Eighth Circuit Court of Appeals ruled that the FCC lacked jurisdiction to issue rules regarding the wholesale prices an ILEC could charge competitors to use its facilities to provision local telephone service.[68] The Supreme Court reversed the Eighth Circuit, holding that the FCC did have jurisdiction to design a pricing methodology.[69] On remand in *Iowa II*, the Eighth Circuit held, in relevant part, that FTA § 252(d)(1) does not permit costs to be based on a hypothetical network.[70] However, on appeal of *Iowa II*, the Supreme Court held that under section 252(d)(1) of the FTA, the FCC can require state utility commissions to set rates charged by ILECs for lease of network elements to CLECs on a forward-looking basis untied to historical or past investment.[71] In addition, the Supreme Court found that the total element long run incremental cost (TELRIC) methodology chosen by the FCC to set rates for lease of network elements to CLECs is not inconsistent with the FTA (TELRIC calculates the forward-looking cost by reference to a hypothetical, most efficient element at existing wire-centers, not the actual network element being provided).[72]

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[68] *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 793-800 (8th Cir. 1997) (*Iowa I*).

[69] *AT&T Corp. v Iowa Utils. Bd.*, 525 U.S. 366, 385 (1999).

[70] *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 751-752 (8th Cir. 2000) (vacating 47 C.F.R. § 51.505(b)(1)) (*Iowa II*).

[71] *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 498-501 (2002).

[72] *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 501 (2002).

USTA I

In *USTA I*,[73] the D.C. Circuit considered the *Line Sharing Order*[74] and the *Local Competition Order* and remanded both to the FCC for further review. The D.C. Circuit disagreed with the FCC's impairment standard for determination of UNEs under the *Local Competition Order*, holding that the FCC did not differentiate between cost disparities between new entrants and incumbents.[75] The D.C. Circuit also objected to broad unbundling standards in markets that did not track relevant market characteristics and capture significant variation between markets.[76] The D.C. Circuit also reversed the FCC's unbundling of the high-frequency portion of the loop under the *Line Sharing Order*, finding that the FCC had failed to adequately consider intermodal competition from cable providers.[77]

USTA II

In *USTA II*,[78] the follow-up case to *USTA I*, the D.C. Circuit addressed the *Triennial Review Order* and again, remanded a majority of that order to the FCC for further consideration. In large part, the D.C. Circuit found that the FCC lacked authority to subdelegate to the states the nationwide impairment determination. Thus, among other findings, the D.C. Circuit vacated the FCC's decision to order unbundling of mass market switches and its impairment findings with respect to dedicated transport elements.[79] The D.C. Circuit also remanded for further consideration the issue of whether entrance facilities are "network elements."[80]

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[73] *United States Telecom Ass'n v. FCC*, 290 F. 3d 415, (D.C. Cir. 2002) (*USTA I*).

[74] *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 98-147, Third Report and Order, FCC 99-355 (Dec. 9, 1999).

[75] *USTA I* at 428.

[76] *USTA I* at 423.

[77] *USTA I* at 429.

[78] *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*).

[79] *USTA II* at 571, 574.

[80] *USTA II* at 586.

IV. DISCUSSION OF MAJOR ISSUES

This proceeding addresses the issues in the Joint DPL admitted as Joint Exhibit 1. The Commission's detailed decisions with respect to each of the DPL issues are attached to this Order, and incorporated herein. Below, the Commission provides an expanded discussion of its decisions on the major issues presented at hearing.[81]

Network Architecture/Interconnection

Impact of the Triennial Review Order on Entrance Facilities/Interconnection (DPL Issue Nos. 1, 11, 32, 93 and 97)

Under FTA § 251, ILECs have a duty to provide for interconnection of the ILEC's network with the facilities and equipment of CLECs. Prior to the *Triennial Review Order*, CLECs commonly used entrance facilities, a UNE, to interconnect with the ILECs' networks. Since TELRIC pricing applied to both entrance facilities and interconnection facilities,[82] any distinction between these two had no significance until the *Triennial Review Order*[83] and *Triennial Review Remand Order*[84] eliminated entrance facilities (transmission facilities that connect competitive LEC networks with incumbent LEC networks)[85] as UNEs. SBC Texas claimed that since the FCC no longer required unbundled access to entrance facilities, SBC Texas did not have to provide such facilities for interconnection at TELRIC rates.[86] CLEC parties claimed that the *Triennial Review Order* only modified the availability of entrance facilities as UNEs and ILECs should continue to provide facilities at TELRIC rates for interconnection purposes.[87] In the *Triennial Review Remand Order*, the FCC clarified that:

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[81] The Commission considered five major topics at the hearing: network architecture/interconnection, reciprocal compensation, general terms and conditions, performance measures and resale. Only pre-filed testimony addressed all other issues submitted by the parties but not addressed at the hearing.

[82] *Local Competition Order* para. 628.

[83] *Triennial Review Order* at para. 366 n.1116.

[84] *Triennial Review Remand Order* at paras. 137-141.

[85] *See Triennial Review Remand Order* at para. 136.

[86] *See* Direct Testimony of Carl C. Albright, Jr., SBC Texas Ex. 1 at 18-23.

[87] *See* Direct Testimony of John D. Schell, Jr. and David L. Talbott (Network), AT&T Ex. 6 at 10-14, 69-76; Rebuttal Testimony of John D. Schell, Jr. and David L. Talbott (Network), AT&T Ex. 7 at 5-12, 43-46.

> our finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. Thus, competitive LECs will have access to these facilities at cost-based rates to the extent that they require them to interconnect with the incumbent LEC's network.[88]

Given that entrance facilities are not available as UNEs,[89] a CLEC should not be able to obtain those facilities at TELRIC rates merely by characterizing those same facilities as interconnection facilities instead of entrance facilities. To do so would contradict the FCC's finding that ILECs do not have to provide entrance facilities as UNEs. This Commission concludes that, whether for interconnection or for unbundled access to network elements, entrance facilities are not subject to TELRIC rates. Although CLECs no longer have access to entrance facilities as UNEs, CLECs continue to have the right to obtain interconnection facilities pursuant to FTA § 251(c)(2) and the FCC's rules[90] for the transmission and routing of telephone exchange service and exchange access service.

Single Point of Interconnection v. Multiple Points of Interconnection (DPL Issue Nos. 84-87).

a. Number of Points of Interconnection (DPL Issue Nos. 3, 6, 116 and 150)

The Commission agrees with SBC Texas that a single point of interconnection (POI) should only be used as a market entry mechanism. The Commission previously made a determination on this issue in Docket Nos. 21791 and 22441.[91] Therefore, consistent with prior Commission decisions, the Commission finds that CLECs may establish a single point of interconnection per LATA, but only as a market entry mechanism. The Commission further concludes that CLECs shall establish additional POIs when traffic exceeds 24 DS1s.

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[88] *Triennial Review Remand Order* at para. 140.

[89] *Triennial Review Remand Order* at paras. 137-141.

[90] *See* 47. C.F.R. § 51.305.

[91] *Petition of Southwestern Bell Telephone Company for Arbitration with MCI Worldcom Communications, Inc. Pursuant to Section Section 251 (b)(1) of the Federal Telecommunications Act of 1996,* Docket No. 21791, Arbitration Award (May 26, 2000); Docket No. 21791, Order Approving Interconnection Agreement (Sept. 20, 2000); *Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252 as amended by the Telecommunications Act of 1996, and PURA for rates, terms and conditions with Southwestern Bell Telephone Company,* Docket No. 22441, Arbitration Award (Aug. 11, 2000).

b. Distant POI and Expensive Form of Interconnection (DPL Issue Nos. 3-5)

On the issue of distant POI and expensive form of interconnection, the courts have previously rejected SBC Texas's position. This Commission has also addressed this issue in Docket No. 28021.[92] The Fifth Circuit remanded the PUC's decision in Docket No. 22315, in which the Commission concluded that AT&T could choose to place its POI wherever AT&T wished within a given LATA, but that AT&T must reimburse SBC Texas for costs incurred in carrying traffic over 14-miles to the POI.[93]

The court found that transport costs incurred by SBC Texas in carrying intraLATA traffic outside a particular local calling area to AT&T's chosen POI "are governed by the FCC's 'reciprocal compensation' rules pursuant to [47 C.F.R.] § 51.703, rather than by 'interconnection terms' under [47 U.S.C.] §§ 251(c)(2)(D) and 252(d)(1)."[94] Therefore, the court prohibited SBC Texas from charging AT&T for the costs of carrying this traffic to the POI and instead required SBC Texas to bear its own costs for delivering such traffic to the POI. On remand, in Docket No. 28021, in keeping with the Fifth Circuit's opinion, this Commission rejected the theory of "expensive interconnection" and affirmed that each party must bear the costs of transporting their own originating traffic to whatever POI(s) that AT&T may select within a given LATA.[95] Consistent with the Fifth Circuit's ruling and Commission precedent, the Commission declines to adopt SBC Texas's rationale and language on Distant POI, expensive form of interconnection, and 14-mile limit.

Tandem Switching v. Direct End-Office Trunking (DPL Issue Nos. 7, 82 and 104)

The Commission agrees with the concerns that tandem exhaust, cost, network integrity and ability to serve multiple CLECs together suggest that CLECs should establish direct end

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[92] *Remand of Docket No. 22315 (Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, LP, TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252 (B)(1) of The Federal Telecommunications Act of 1996)*, Docket No. 28021, Arbitration Award (June 24, 2004).

[93] *Southwestern Bell Tel. Co. v Public Util. Comm'n*, 348 F.3d 482, 487 (5th Cir. 2003); *see* also *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(B)(1) of the Federal Telecommunications Act of 1996*, Docket No. 22315, Order Approving Revised Arbitration Award at 4-6 (Mar. 14, 2002).

[94] *Southwestern Bell Tel. Co. v Public Util. Comm'n of Texas*, 348 F.3d 482, 487 (5th Cir. 2003).

[95] Docket No. 28021, Arbitration Award (June 24, 2004).

office trunking (DEOT) once the parties exchange traffic in excess of 1 DS1.[96] The Commission has already concluded in Docket No. 21791 that DEOTs are necessary, stating that "[g]rowth in traffic exchanged by carriers on a LATA-wide basis, an exchange basis, and a central office basis, however, warrants the addition of POIs and/or direct end-office trunking."[97] Further, in the current proceeding, SBC Texas has offered not to charge CLECs for transport facilities from a POI to end offices located in the same local calling area.[98] This proposal should alleviate the cost concerns raised by the CLECs.[99] Therefore, the Commission concludes that CLECs must establish DEOTs when a CLEC's traffic from a POI to an end office located in the same local calling area exceeds 24 DS0s.

Points of Interconnection at Customer Premises and Outside Plant (DPL Issue No. 1)

SBC Texas claimed that pursuant to the *Triennial Review Order*, a CLEC may interconnect with SBC Texas only on SBC Texas's network. SBC Texas contended that SBC Texas network did not include outside plant facilities and customer premises as defined by the *Triennial Review Order*.[100] In contrast, the CLECs argued that outside plant facilities and the customer premises are "technically feasible" points of interconnection. The CLEC parties argued that they may choose any technically feasible method of interconnection and that SBC Texas may not restrict their right to obtain facilities at TELRIC rates for the purpose of network interconnection.[101]

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[96] *See* Direct Testimony of Carl C. Albright, Jr., SBC Texas Ex. 1 at 34-35; Rebuttal Testimony of Carl C. Albright, Jr., SBC Texas Ex. 2 at 21-23; Rebuttal Testimony of Thomas Mark Neinast, SBC Texas Ex. 29 at 11.

[97] *Petition of Southwestern Bell Telephone Company for Arbitration with MCI Worldcom Communications, Inc. Pursuant to Section 252(B)(1) of the Federal Telecommunications Act of 1996*, Docket No. 21791, Arbitration Award at 16 (May 26, 2000).

[98] *See* Rebuttal Testimony of Carl C. Albright, Jr., SBC Texas Ex. 2 at 21-22; *see also* SBC Texas (Dec. 7, 2004), AIS No. 456, Docket No. 28821.

[99] SBC Texas's specific proposal is as follows: 1.1.4.1 At such time as traffic between any SBC Texas end officeand the tandem switch it subtends exceeds 24 DSOs, measured at peak over a one- month period, AT&T will establish two-way direct end office trunking to that end office. These trunk groups will be established as primary high trunk groups, which will overflow to the local, local/IntraLATA, or local/access tandem serving that end office. SBC Texas will not charge AT&T for the transport facilities, including multiplexing, between the serving tandem switch and the end office used for the direct end office trunk group, irrespective of the number of DS-1 facilities used or the location of AT&T's POI.

[100] *See* Direct Testimony of Carl C. Albright, Jr., SBC Texas Ex. 2 at 18.

[101] *See* Direct Testimony of John D. Schell, Jr. and David L. Talbott (Network), AT&T Ex. 6 at 79, 109, 134-135.

The Commission finds that CLECs may interconnect with SBC Texas only within SBC Texas's network. Furthermore, the Commission finds that carrier hotels, outside plant facilities and customer premises are not a part of SBC Texas's network. As stated earlier, under FTA § 251, ILECs have a duty to provide for interconnection of the ILEC's network with the facilities and equipment of CLECs. Interconnection is accomplished by connecting a CLEC's network with the ILEC's network for the mutual exchange of traffic. The *Triennial Review Order* clarified what constitutes the ILEC's network. Specifically, in paragraph 366, the FCC concluded that:

> We find that transmission facilities connecting incumbent LEC switches and wire centers are an inherent part of the incumbent LEC's local network Congress intended to make available to competitors under section 251(c)(3). On the other hand, we find that transmission links that simply connect a competing carrier's network to the incumbent LEC's network are not inherently a part of the incumbent LEC's local network. Rather, they are transmission facilities that exist *outside* the incumbent LEC's local network.[102]

Thus, the FCC found that links such as entrance facilities, used for connecting ILEC and CLEC networks, are not part of the ILEC's network. The Commission concludes that the ILEC's network does not include entrance facilities (regardless of whether for interconnection or for unbundled access to network elements) and therefore TELRIC rates do not apply.

Combining Traffic (DPL Issue Nos. 16, 21, 80 and 88)

This issue addresses the types of traffic that CLECs should be able to combine on the same trunk and how it relates to network efficiency and billing concerns. CLEC parties argued that the network would be used inefficiently if they were required to segregate their traffic according to SBC Texas's proposal.[103] The CLECs referred to the current ICA, which allows for the combination of multi-jurisdictional traffic on the same trunk.[104] SBC Texas argued that IXC-carried intraLATA and interLATA traffic should be segregated from local or non-IXC carried intraLATA traffic.[105] SBC Texas argued that the segregation of traffic greatly simplifies the billing and tracking of traffic and limits the opportunities for fraud.

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[102] *Triennial Review Order* at para. 366.

[103] *See* Direct Testimony of John D. Schell, Jr. and David L. Talbott (Network), AT&T Ex. 6 at 131-134.

[104] *See* Direct Testimony of John D. Schell, Jr. and David L. Talbott (Network), AT&T Ex. 6 at 131-134.

[105] *See* Direct Testimony of Thomas Mark Neinast, SBC Texas Ex. 28 at 19-26.

The Commission notes that that there has been no change in law or circumstance to support SBC Texas's proposed change to existing T2A provisions which allow multi-jurisdictional traffic on the same trunk. Further, the Commission recently addressed this issue in the context of 00/VAD calls in Docket No. 24306, where the Commission found that traffic combination was limited to local, intrastate intraLATA, and intrastate interLATA traffic.[106] Therefore, the Commission declines to modify existing T2A contract language on this issue.

One Way v. Two-Way Trunks (DPL Issue Nos. 17, 18, 48, 66-68, 82, 98, 103 and 121)

SBC Texas argued that multiple one-way trunks are inefficient and that two-way trunks conserve network resources and optimize the call-carrying capacity of the trunk group by reducing the number of switch ports needed. Additionally, SBC Texas indicated that the Commission has previously rejected the CLECs' proposal to have the ability to select one-way trunking.[107] AT&T, Xspedius, and KMC argued that FCC's interconnection rules allow them to select either one-way or two-way trunking at their discretion.[108] MCI argued that the shared costs of usage on two-way trunks should be proportioned based on a party's use of the shared facilities.[109]

The Commission finds that one-way trunks are less efficient than two-way trunk groups because two-way trunk groups provide the maximum flexibility to carry a call placed in either direction. The Commission notes that using two-way trunk groups reduces the total number of trunks required to carry a particular traffic load.[110] Furthermore, two-way trunk groups provide the maximum flexibility to carry calls placed in either direction.[111] The cost of transport facilities must be equitably shared in proportion to the originating carrier's traffic.[112] If parties

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[106] *Petition of Sprint Communications Company, L.P. dba Sprint for Arbitration with Verizon Southwest, Inc. fka GTE Southwest, Inc. dba Verizon Southwest and Verizon Advanced Data Inc., under the Telecommunications Act of 1996 for Rates, Terms, and Conditions and related arrangements for Interconnection*, Docket No. 24306, Amended Final Order at 4 (May 14, 2004).

[107] *See* Direct Testimony of Thomas Mark Neinast, SBC Texas Ex. 28 at 41.

[108] *See* Direct Testimony of John D. Schell, Jr. and David L. Talbott, AT&T Ex. 6 at 91-96; *See* Direct Testimony of James C. Falvey, Xspedius Ex. 1 at 3-13; *See* Direct Testimony of Douglas Nelson, KMC Coalition Ex. 1 at 18-20.

[109] *See* Direct Testimony of Dennis L. Ricca., MCI Ex. 23 at 19-21.

[110] *See* Direct Testimony of Thomas Mark Neinast, SBC Texas Ex. 28 at 37-38.

[111] *See Id.* at 38.

[112] *See* 47 C.F.R. § 51.709(b).

negotiate to have a mid-span fiber meet, the parties shall also negotiate the cost of transport for two-way trunking.

In Docket Nos. 21791 and 22315, the Commission previously decided that two-way trunking architecture is the appropriate architecture. Two-way trunking is the most efficient method of trunking for the network to minimize the impact on tandem and end office trunk port capacity for both Parties.[113]

Removal of Excessive Bridge Tap (DPL Issue No. 1)

The CLECs contended that they are entitled to have SBC Texas remove all bridged tap. However, the Commission finds that the default conditioning option for the removal of bridged tap should be limited to "excessive" bridged tap only. By doing so, SBC Texas fulfills its obligation to provide a DSL-capable loop while allowing the removal all bridged tap during the maintenance process as an option.[114] The Commission agrees with SBC Texas that bridged tap serves as an important element of the network and the default option should not automatically involve the unnecessary removal of all bridged tap.[115] Furthermore, the Commission finds SBC Texas's proposed language to be consistent with industry standards.[116]

The Commission also finds that SBC Texas's language is consistent with FCC rules and prior Commission decisions in Docket Nos. 20226 and 20272. The applicable FCC rule defines "line conditioning" as:

> the removal from a copper loop or copper subloop of any device that could diminish the capability of the loop or subloop to deliver high-speed switched wireline telecommunications capability, including digital subscriber line service. Such devices include, but are not limited to, bridged taps, load coils, low pass filters, and range extenders.[117]

In Docket Nos. 20226 and 20272 the Arbitrators determined:

> A 2-wire xDSL loop (xDSL Loop) for purposes of this section, is a loop that supports the transmission of Digital Subscriber Line (DSL) technologies. The

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[113] Direct Testimony of Thomas Mark Neinast, SBC Texas Ex. 28 at 41-42.

[114] Direct Testimony of Carol Chapman, SBC Texas Ex. 6 at 13-16.

[115] *Id.* at 12-17.

[116] Rebuttal Testimony of Carol Chapman, SBC Texas Ex. 7 at 3.

[117] *See* 47 C.F.R. § 51.319(a)(1)(iii)(A).

> loop is a dedicated transmission facility between a distribution frame, or its equivalent, in a SWBT central office and the network interface device at the customer premises. A copper loop used for such purposes will meet basic electrical standards such as metallic conductivity and capacitive and resistive balance, and will not include load coils or excessive bridged tap.[118]

The CLEC Coalition failed to provide sufficient evidence that would warrant a reversal on such prior Commission decisions. Accordingly, the Commission adopts SBC Texas's proposed language.

Reciprocal Compensation

Dedicated Transport (DPL Issue Nos. 12 and 13)

The Commission defers this issue to Track 2 of this proceeding. Deferring this issue to Track 2 will allow the Commission and the parties to consider any impact on the present issues from the FCC's decision regarding the availability of entrance facilities as UNEs. In the interim, reciprocal compensation will continue to apply to the usage sensitive components of the network (tandem switching, common transport related to tandem switching and end office switching).

Tandem Switching Rate (DPL Issue No. 15)

The Commission finds that a CLEC employing a multiple-function switch is not entitled to the full tandem interconnection rate on every call terminated on its switch. The FCC's tandem rate rule requires a CLEC to demonstrate that it serves a geographic area comparable to the area served by an ILEC tandem before the CLEC may charge the full tandem interconnection rate.[119] The evidence presented by AT&T, MCI, and the CLEC Coalition failed to show that they should receive the full tandem interconnection rate on every call terminated. The Commission further finds that a CLEC employing a multiple function switch is adequately compensated by applying the blended transport rates as determined in Docket No. 21982. Moreover, the Commission agrees with the CLEC Joint Petitioners that it is appropriate to continue to apply the method for

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[118] *Petition of Rhythms Links, Inc. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company* and *Petition of Dieca Communications, Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company*, Consolidated Docket Nos. 20226 and 20272, Arbitration Award at 11 (Nov. 30, 1999).

[119] *Local Competition Order* at para. 1090.

determining the tandem interconnection rate currently in the T2A.[120] Therefore, the Commission readopts the blended tandem rate and the 3 to 1 traffic threshold rationale for calls terminated on a multifunction switch specified in Docket No. 21982.[121] Additionally, the Commission rejects the LATA-by-LATA test proposed by SBC Texas[122] because of its arbitrary nature and inconsistency with the method adopted by the Commission in Docket No. 21982.

Provision of Transit Services at TELRIC Rates (DPL Issue No. 17)

Consistent with prior Commission decisions in the Mega-Arbitrations, Docket No. 21982 and the predecessor T2A agreement, the Commission finds that SBC Texas shall provide transit services at TELRIC rates. The Commission notes that there has been no change in law or FCC policy to warrant a departure from prior Commission decisions on transit service. Furthermore, a federal court found that a state commission may require an ILEC to provide transiting to CLECs under state law.[123] Given SBC Texas's ubiquitous network in Texas and the evidence regarding absence of alternative competitive transit providers in Texas,[124] the Commission concludes that requiring SBC Texas to provide transit services at cost-based rates will promote interconnection of all telecommunications networks. In the absence of alternative transit providers in Texas, the Commission finds that SBC Texas's proposal[125] to negotiate transit services separately outside the scope of an FTA § 251/252 negotiation may result in cost-prohibitive rates for transit service. The Commission also notes SBC Texas's concerns regarding billing disputes related to transit traffic and reaffirms its decision in Docket No. 21982 that terminating carriers must directly bill third parties that originate calls and send traffic over SBC Texas's network.[126]

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[120] Direct Testimony of Charles D. Land (Attachment 12: Compensation), CLEC Joint Petitioners Ex. 1 at 12-15.

[121] Docket No. 21982, Revised Award at 52-53 (Nov. 15, 2000).

[122] Direct Testimony of J. Scott McPhee, SBC Texas Ex. 24 at 19.

[123] *Michigan Bell Tel. Co. v. Chappelle*, 222 F. Supp. 2d 905, 918 (E.D. Mich. 2002).

[124] Tr. at 252-253 (Sept. 22, 2004).

[125] Direct Testimony of J. Scott McPhee, SBC Texas Ex. 24 at 84.

[126] Docket No. 21982, Revised Arbitration Award at 64 (Aug. 31, 2000).

Retention of Bill and Keep for Certain Services in Birch/ionex-SBC Texas contract (DPL Issue No. 34)

The Commission finds no compelling reason to expand the application of bill and keep as requested by Birch/ionex. The FCC's rules specify when a state commission may impose bill and keep as a form of reciprocal compensation (which only applies to 251(b)(5) traffic).[127] Furthermore, the *ISP Remand Order* provides for bill and keep for ISP-bound traffic in certain circumstances (e.g., when a state commission has not required compensation for ISP-bound traffic).[128] In addition, this Award applies bill and keep to FX voice-traffic to be consistent with the treatment of FX ISP-bound traffic and avoid complications from treating voice traffic differently than ISP-bound traffic. However, expanding bill and keep as requested by Birch/ionex would exceed the scope of bill and keep currently provided for by the FCC and this Commission. The Commission notes that SBC Texas's proposed long term bill and keep, as amended by the Commission in DPL Issue 34, is reasonable because it limits the application of bill and keep to 251(b)(5) traffic and ISP-bound traffic within a local calling area subject to certain conditions, and it comports with FCC rules and prior Commission decisions.

The Commission declines to adopt Birch/ionex's proposal to expand bill and keep to other types of traffic, such as optional EAS and toll traffic.[129] The Commission notes that the existing Birch/ionex agreement applying bill and keep to local traffic and other types of traffic resulted from the adoption of a previously negotiated SBC Texas/Sage reciprocal compensation attachment.[130] Birch/ionex have not provided sufficient justification to warrant a departure from prior Commission decisions regarding bill and keep or to require SBC Texas to perpetuate an expired negotiated provision. Nevertheless, nothing precludes the parties from voluntarily agreeing to rate a structure other than that adopted in this Award.

Bill and Keep Thresholds (DPL Issue 34)

The Commission finds it is appropriate to apply traffic balance thresholds for carriers that enter into a long-term bill and keep option for reciprocal compensation. The Commission finds

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[127] *See* 47 C.F.R. § 51.713.

[128] *ISP Remand Order* at para. 80.

[129] Rebuttal Testimony of John M. Ivanuska, Birch/ionex Ex. 2 at 30-32.

[130] Direct Testimony of John M. Ivanuska, Birch/ionex Ex. 1 at 26.

the threshold SBC Texas has proposed, where traffic is considered to be out-of-balance when the amount of traffic exchanged between the parties exceeds +/-5% away from equilibrium for three consecutive months, is reasonable and is comparable with the thresholds contained in the current ICA.[131] The Commission finds that the out-of-balance threshold of +/-15% proposed by the CLEC Coalition would not ensure that traffic is roughly in balance, as required by the FCC.[132] A 15% out-of-balance threshold would result in a significant difference in traffic amounts in cases when there is a large amount of traffic exchanged between the two carriers and the traffic patterns are consistently close to the threshold. The Commission declines to adopt SBC Texas's proposal for an additional threshold based on the difference in minutes of use (MOU) between the carriers. The Commission finds there is no precedent for the MOU threshold nor has SBC Texas adequately explained the rationale for choosing 750,000 MOU as the specific threshold.

Mirrored vs. Non-Mirrored Rates (DPL Issue No. 34)

The Commission finds it is not appropriate for SBC Texas to offer CLECs different rates for compensation of Section 251(b)(5) traffic and ISP-bound traffic. The only appropriate compensation option set forth by SBC Texas is the exchange of all Section 251(b)(5) and ISP-bound traffic at the same FCC *ISP Remand Order* rate of $0.0007. Having different compensation rates for ISP-bound traffic and 251(b)(5) traffic does not comply with the "mirroring rule" in the FCC's *ISP Remand Order* which "ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic".[133] SBC Texas's proposal would have SBC Texas, as an ILEC, paying a *lower* rate for ISP-bound traffic, where it is a net payor, and receiving a *higher* rate for 251(b)(5) traffic when it is being paid. The FCC was concerned with this exact outcome when it stated in its Order:

> "It would be as unwise a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payors, while permitting them to exchange traffic at state reciprocal compensation rates, which are much higher than the caps we adopt here, when the traffic imbalance is reversed."[134]

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[131] T2A Interconnection Agreement, Appendix 12A Sec. 1.6.1.

[132] *Local Competition Order* at para. 1112.

[133] *ISP Remand Order* at para. 89.

[134] *ISP Remand Order* at para. 89.

Consistent with the mirroring rule, the incumbent LECs must pay the same rate for ISP-bound traffic that they receive for section 251(b)(5) traffic.

Bifurcated End-Office Switching Rate (DPL Issue No. 64)

The Commission finds that the bifurcated end-office switching rate structure[135] adopted in Docket No. 21982 still applies. The Commission agrees with SBC Texas that the bifurcated rate "continues to be the most accurate measurement for determining costs incurred by each party's end-office call termination functions."[136] The Commission disagrees with the CLEC Coalition's argument that the "[a]pplication of the bifurcated rate is not appropriate under the ISP Remand Order's interim regime."[137] The bifurcated rate structure was established to address concerns regarding the overcompensation of long-duration calls, not exclusively ISP-bound calls as the CLEC Coalition argues. The bifurcated rate structure more accurately accounts for the structure of the costs incurred in both the call set-up and duration components of a call.

Compensation for FX Traffic (DPL Issue No. 11)

The Commission finds bill and keep to be the appropriate method of inter-carrier compensation for voice FX traffic. The Commission notes that it recently ruled that bill and keep is the appropriate method of inter-carrier compensation for ISP-bound FX traffic in Docket No. 24015.[138] Therefore, a bill and keep inter-carrier compensation scheme for voice FX-traffic in this proceeding will create a consistent inter-carrier compensation method for both FX-ISP and FX-voice traffic.

Segregation of FX-Traffic (DPL Issue No. 28)

The Commission notes that SBC Texas proposed two alternative methods for segregation FX traffic: (1) adoption of a Percentage of FX (PFX) Usage factor, and (2) the use of ten (10) digit screening. However, the Commission finds that the use of ten-digit screening to track FX-like traffic at this time could prove to be uneconomical, considering that a 10-digit screening requirement may become unnecessary because of future inter-carrier compensation

[135] Docket No. 21982, Revised Arbitration Award at 52 (Aug. 31, 2000).

[136] Direct Testimony of J. Scott McPhee, SBC Texas Ex. 24 at 33.

[137] Direct Testimony of James C. Falvey, CLEC Coalition Ex. 3 at 11.

[138] Docket No. 24015, Order on Clarification (Jan. 5, 2005).

rules that the FCC may implement. Accordingly, the Commission finds that the agreement shall not mandate the use of 10-digit screening. Instead a PFX Usage factor should apply, unless agreed otherwise.

General Terms and Conditions

Changes in Provisioning (DPL Issue No. 4)

Birch/ionex argued that the ICA should contain language that would prevent SBC Texas from making unilateral changes in policy, process, method, or procedure used to perform its obligations under the ICA that causes operational disruption or modification without first providing advance notice to Birch/ionex and having Birch/ionex agree to the modification.[139] Birch/ionex stated that based on several business experiences over the past three years under the existing ICA, SBC Texas made "policy" or "process" modifications unilaterally without notice to Birch, thereby materially and detrimentally affecting Birch's ability to obtain certain UNEs and services.[140]

The Commission concludes that SBC Texas shall give a 45-day notice to Birch/ionex prior to making any unilateral changes in policy, process, method, or procedure that SBC Texas uses to perform its obligations under the ICA that would cause operational disruption or modification unless the implementation of such change or discontinuance of such policy, process, procedure or method is beyond the control of SBC Texas. The Commission finds that the 45-day notice provides sufficient time for Birch/ionex to implement any changes in its computer systems and operational procedures. The Commission further determines that it is not reasonable for Birch/ionex to effectively have veto power over SBC Texas's changes in policy, process, method, or procedures.

Disconnection for Non-Payment (DPL Issue No. 39)

The Commission finds that given the instability in the telecommunications industry, it is reasonable to allow SBC Texas to have non-payment and disconnection language included in the ICA. It is reasonable and accepted business practice to issue final notices to a non-paying party

[139] Direct Testimony of John M. Ivanuska, Birch/ionex Ex. 1 at 12-13.

[140] Direct Testimony of John M. Ivanuska, Birch/ionex Ex. 1 at 13-16.

and furthermore, to disconnect services provided if payment of an invoice is not forthcoming in a specified period of time. This position takes into account the concerns of both SBC Texas, which argued that the ICA should include nonpayment and disconnection language as well as SBC Texas's language regarding terms and conditions that apply in the event a billed party does not pay or dispute its monthly charges,[141] and that of AT&T, which argued in part that SBC Texas should not have the right to disconnect any service being provided to AT&T unless written notice of the termination is given to both AT&T and the Commission and the Commission expressly approves such disconnection.

The Commission finds that a more reasonable time frame for payment of the first and second past-due notices would be 15 calendar days for each notice. Additionally, in order to provide a higher level of protection for the resale end-user, SBC Texas shall send the Commission a list of all resale end-users to whom SBC Texas sends a 30-day notice informing them of the need to designate a new provider. This will allow the Commission to address any potential disruption in service to the consumers before any such disruption could occur. The Commission further determines that in order to avoid having a non-paying party shift customers from one platform to another (i.e., changing customers from UNE to resale) to avoid paying certain charges, SBC Texas shall disconnect the billed account number and not just the individual service for which payment is past-due.

Deposits (DPL Issue No. 35)

The Commission finds that it is reasonable to allow SBC Texas to request a deposit from a new entrant that: has no previous credit history; has no previous credit history and is affiliated with a company that may have good payment history but has an impairment of credit; or a billed party that has established a poor payment history. The Commission concurs that the purpose of requiring a deposit is to protect SBC Texas against losses it incurred when providing services to a party that fails to pay undisputed charges.[142] SBC Texas's proposed deposit provision reasonably guards against risk of loss from nonpayment of undisputed bills. The Commission

[141] Rebuttal Testimony of David J. Egan, SBC Texas Ex. 15 at 18-19.

[142] Direct Testimony of David J. Egan, SBC Texas Ex. 14 at 8-9.

disagrees with MCIm's proposed language which would permit a party to charge a deposit based on the other party's failure to make timely payments under the ICA.[143]

The Commission also concurs with SBC Texas that impairment of credit of the new entrant's affiliate will be determined from information available from financial information providers that the billed-party affiliate has not maintained Standard and Poor's long term debt rating of BBB or better or a short term debt rating of A-2 or better for the prior six months.[144]

Accordingly, the deposit shall be the greater of: 1) an amount equal to three (3) months anticipated charges (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), as reasonably determined by SBC Texas, for the Interconnection, Resale Services, Network Elements, Collocation or any other functions, facilities, products or services to be furnished by SBC Texas under this ICA; or 2) $17,000. The Commission disagrees that SBC Texas may require a deposit from a billed party with a good payment history but who has impaired credit. Impairment of credit does not necessarily indicate future delinquency in payment, especially when the payment history shows that the billed party has continued to timely pay amounts due.

Definition of "End-User" and "End-User Customer" (DPL Issue No. 2)

The Commission finds that the ICA should include a definition of "End User" or "End User Customer." This is consistent with the Commission's decisions in Docket No. 25188 in which the Commission declined to globally replace the term "end user" with the term "customer" in an ICA.[145] The Revised Award in Docket No. 25188 stated that "the term 'customer' cannot be substituted for 'end user.'"[146] Subsequently, the Commission affirmed that "[t]he Revised Award appropriately determined that the term 'customer' cannot be substituted for the term 'end user,' particularly with respect to UNE loops, network interface devices (NID) and enhanced

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[143] *See* Direct Testimony of Earl Hurter, MCIm Ex. 4 at 8-14.

[144] Direct Testimony of David J. Egan, SBC Texas Ex. 14 at 14; Rebuttal Testimony of David J. Egan, SBC Texas Ex. 15 at 10.

[145] *Petition of El Paso Networks, LLC, for Arbitration of an Interconnection Agreement with Southwestern Bell Telephone Company under the Telecommunications Act of 1996*, Docket No. 25188, Order Approving Revised Arbitration Award and Interconnection Agreement at 2 (Aug. 31, 2004).

[146] Docket No. 25188, Revised Arbitration Award at 15 (July 29, 2002).

extended loops (EEL)."[147] The Commission found that the term "end user" is essential in defining the network element known as the local loop (or loop) defined by 47 C.F.R. § 51.319(a)(1) as "the transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point, at an end user premises, including inside wire owned by the incumbent LEC." The use of the term "end user" is critical for distinguishing UNE loops from other UNEs and other network elements that provide transmission paths between end points not associated with end users, such as interoffice transport. In addition, the FCC's *Supplemental Order Clarification* specifically used the term "end user" in defining the local use requirements for obtaining EELs.[148] However, nothing prohibits an IXC, CAP or CMRS provider or other carrier from being an end-user to the extent that such carrier is the ultimate retail consumer of the service (e.g., a CLEC provides local exchange service to an IXC at its administrative offices). In other words, a carrier is an end user when actually consuming the retail service, as opposed to using the service as an input to another communications service.

Performance Measures

Number of Measures and Associated Business Rules (DPL Issue Nos. 1-4)

The Commission concurs with the parties' nearly unanimous position that the current measures—87 measures with 2,482 disaggregations—are cumbersome and warrant significant reduction. The CLECs initially proposed geographic consolidation from four regional disaggregations per measure to a single, cumulative, statewide aggregate per measure, thereby reducing SBC Texas's reporting burden by 75%.[149] However, since the hearing, parties have engaged in collaborative meetings and have agreed to 35 measures with approximately 300 disaggregations. The Commission finds that the proposed Business Rules, Version 4.0, filed January 4, 2005, adequately measures all aspects of SBC Texas's wholesale business operations on which CLECs rely, even though the measures are significantly reduced compared with

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[147] Docket No. 25188, Order Approving Revised Arbitration Award and Interconnection Agreement at 2 (Aug. 31, 2004).

[148] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-183 at para. 22 (June 2, 2000) (*Supplemental Order Clarification*).

[149] Tr. at 554-555 and 637-639 (Sept. 23, 2004).

Version 3.0. Thus, the Commission adopts the parties' negotiated performance measures and associated Business Rules, Version 4.0.

Remedy Plan (DPL Issue Nos. 1 and 2)

The Commission finds that a performance remedy plan is essential to the successful implementation of performance measures. In particular, as outlined in the Order Addressing Threshold Issues[150] in this docket, the Commission finds that it has the authority under FTA §§ 251 and 252 to arbitrate a self-executing performance remedy plan. At the time of the hearing, parties had several substantive issues ready for Commission decision including statistics methodologies, caps on liquidated damages, and clarification surrounding the audit contract language, to name a few. However, since that time, parties have engaged in collaborative meetings, settling many of these issues. As of the January 27, 2005, Open Meeting, parties had not reached agreement on threshold issues relating to the remedy plan, nor had parties filed an updated decision point list specific to the remedy plan. Therefore, the Commission finds that the remedy plan issues shall be addressed in Track 2 of this docket along with the other UNE related issues.

Resale

Suspend/restore (DPL Resale Issue No. 17)

CLEC Joint Petitioners argued that they actually use unbundled network provisioning functions when submitting electronic service orders for suspension/restoral service on behalf of their resale end-user customers and that SBC Texas does not provide any service.[151] CLEC Joint Petitioners asserted that that there were only two kinds of suspension/restoral orders in the retail tariff: (1) retail customer initiated orders, also known as vacation service, and (2) SBC Texas initiated orders used as a collection tool. In addition, CLEC Joint Petitioners asserted that there were no tariff provisions for "CLEC-initiated" suspension/restoral orders.[152] Consequently, CLEC Joint Petitioners argue that for suspension/restoral, SBC Texas should only charge a total

[150] Order Addressing Threshold Issues (Apr. 16, 2004).

[151] Rebuttal Testimony of Kit Morris, CLEC Joint Petitioners Ex. 4 at 16-17.

[152] Rebuttal Testimony of Kit Morris, CLEC Joint Petitioners Ex. 4 at 16.

of $2.56 (the UNE rate for electronically submitting service orders).[153] Moreover, CLEC Joint Petitioners claimed that SBC Texas performed no function, task or service for the $25 retail tariff rate for suspension/restoral service.[154] CLEC Joint Petitioners proposed contract language that would expressly prohibit SBC Texas from charging the $25 retail tariff rate for suspension/restoral service. CLEC Joint Petitioners also argued that the Commission had already heard and decided this issue in their favor in Docket No. 24547.

SBC Texas claimed that suspension/restoral service fundamentally differed from the processing of a service order.[155] SBC Texas distinguished between the operations support systems (OSS) gateway (which creates orders) and the service itself.[156] SBC Texas contended that just because a service is provided seamlessly in response to a service order does not mean that the underlying service becomes a part of the OSS function. SBC Texas stated that suspension/restoral service was a valuable service that CLECs used to assist in collection.[157]

The Commission finds that the TELRIC-based charge for the electronic processing of "resale service orders" and the application of the avoided-cost discount to underlying resold telecommunications services, such as suspension and restoral service, are distinctly separate matters and must be compensated according to applicable FCC rules and regulations. While prior Commission decisions have addressed these matters, pricing for "resold telecommunications services" and electronic "resale service orders" require further clarification. Consistent with the decision in Docket No. 24547, the Commission finds that TELRIC-based charges continue to apply to electronically-processed service orders for resold telecommunications services (as opposed to tariff service order charge(s) less the avoided-cost discount). This, however, does not mean that TELRIC-based charges apply to the underlying, resold telecommunications services themselves. Instead, the avoided-cost discount applies to all resold telecommunications services in SBC Texas's retail tariff.

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[153] Direct Testimony of Terry McBride, CLEC Joint Petitioners Ex. 5 at 17.

[154] Direct Testimony of Terry McBride, CLEC Joint Petitioners Ex. 5 at 16; Direct Testimony of Kit Morris, CLEC Joint Petitioners Ex. 3 at 23-24.

[155] Open Meeting Tr. at 678-679 (Nov. 10, 2004).

[156] Open Meeting Tr. at 676, 682 and 701 (Nov. 10, 2004).

[157] Open Meeting Tr. at 679-680 (Nov. 10, 2004).

Although SBC Texas's tariff contains no explicit provision for "CLEC-initiated" suspension/restoral service, the same could be said of all resold services obtained from SBC Texas's retail tariffs. SBC Texas's retail tariffs describe retail services originally offered only to retail customers and consequently do not contain specific language regarding resale by CLECs. Nevertheless, these same retail services have subsequently become available for resale. The fact that these tariffs do not contain any provisions related to "CLEC-initiated" suspension/restoral service is irrelevant. In addition to setting forth the specific rates, terms and conditions of the telecommunications services that SBC Texas provides to its retail customers, SBC Texas's retail tariffs identify the telecommunications service that SBC Texas must make available for resale at wholesale rates pursuant to § 251(c)(4) of the FTA. The Commission finds that suspension/restoral service in SBC Texas's retail tariff is a telecommunications service which must be made available for resale to CLECs. Suspension/restoral service provides a valuable function by circumventing the complications of disconnection and reconnection. If SBC Texas's tariff did not include suspension/restoral service, the CLEC Joint Petitioners' may have a more persuasive argument that SBC Texas should not charge for such service. On the other hand, if SBC Texas's tariff did not include suspension/restoral service, CLECs could not obtain it for resale.

In the Docket No. 24547, the Commission specifically found that $2.58 is the appropriate charge "for the processing of electronic orders of resold services" for new and suspended customers, as opposed to the application of an avoided cost discount to the service order charges found in SBC Texas's retail tariff.[158] The Commission reaffirms this prior conclusion. Moreover, the *AccuTel Arbitration Award* did not preclude SBC Texas from charging for the suspension and restoral service found in Section 31 of its Texas General Exchange Tariff. Suspension and restoral service, like other telecommunications services found in SBC Texas's retail tariff, continues to be available for resale at the 21.6% avoided-cost discount. Pursuant to the FCC's *Local Competition Order*,[159] this Commission finds that the avoided-cost discount applies to suspension and restoral service because it is integral to telecommunications service

[158] *Petition of AccuTel Texas, Inc. dba 1-800-FOR-A-PHONE and Southwestern Bell Telephone Company for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1934*, Docket No. 24547, Arbitration Award at 14 (Jan. 25, 2002) (*AccuTel Arbitration Award*).

[159] *Local Competition Order* at paras. 871 and 872.

(for instance, suspension allows continued access to 911 service, which P.U.C. SUBST. R. 26.5(11) defines as a basic local telecommunications service).

The Commission also finds that the 21.6% avoided-cost discount for resold telecommunications services embodies the wholesale rate at which SBC Texas must offer suspension/restoral services for resale. The fact that electronically-submitted ordering of suspension/restoral service constitutes an OSS function that flows through electronically has no bearing on the rate for the suspension/restoral service itself. The Commission-prescribed avoided-cost discount applies to all of SBC Texas's retail telecommunications services, regardless of whether such services require additional functions or activities on the part of SBC Texas, or whether such services are priced above or below costs. Since the Commission's non-service-specific avoided-cost discount applies indiscriminately to all of SBC Texas's retail telecommunications services, SBC Texas will inevitably either over recover or under recover its costs for any given service, regardless of any function, service or task that SBC Texas may or may not perform in relation to the service.

The Commission further finds that since the terms of SBC Texas's retail tariff only provide for a charge for the suspension/restoral service itself, and does not include a separate service order charge for suspension/restoral service, a service order charge does not apply to orders for suspension/restoral service. Accordingly, suspension/restoral service shall be made available for resale to CLECs at the retail tariff rate for such service less the avoided-cost discount of 21.6%, without any associated service order charge.

V. CONCLUSION

The Arbitrators conclude that the decisions outlined in the Award and the Award matrix, as well as the conditions imposed on the parties by these decisions, meet the requirements of FTA §§ 251 and 252 and any applicable regulations prescribed by the FCC pursuant to FTA §§ 251 and 252.

SIGNED AT AUSTIN, TEXAS the 22nd day of February 2005.

PUBLIC UTILITY COMMISSION OF TEXAS

JULIE PARSLEY, COMMISSIONER

PAUL HUDSON, CHAIRMAN

BARRY T. SMITHERMAN, COMMISSIONER

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DOCKET 28821 – PERFORMANCE MEASURES – Business Rules

SBC Issue #	CLEC Issue and Issue #	SBC Overarching Issue Statement CLEC Specific Issue Statement	PM Number	COMMISSION DECISION
1	LEC #11	What is the appropriate benchmark for "DS1 and above (DS1, OCn and Dark Fiber) Loops and Transport" in PM 39?	39	The Commission finds 4.5 hours (critical z does not apply) to be the appropriate benchmark for "DS1 and above (DS1, OCn and Dark Fiber) Loops and Transport" in PM 39. Based on SBC's provided data, 4.5 hours is both an attainable benchmark that SBC has met 8 out of the last 12 months as well as a benchmark that provides CLECs nondiscriminatory service at parity with SBC retail. Given that geographic consolidation and consolidation of "dispatch" and "non-dispatch" trouble tickets are both new practices for PMs, the Commission finds that the available data and information do not support a benchmark of 4.0 hours as the CLECs suggest. However, the Commission notes that the next annual review will provide a forum to reevaluate the suitability of all benchmarks.
2	LEC #12	What is the appropriate benchmark for EELs in PM 39?	39	The Commission finds that 4.5 hours (critical z does not apply) is the appropriate benchmark for EELs in PM 39. The Commission supports the CLEC position that SBC should provide the same level of service for DS-1 EELs as for DS-1 loops. Moreover, the data provided by SBC indicates that a firm benchmark of 4.5 hours is attainable. SBC has met 4.5 hour standard 8 out of the last 10 months. As above, the next annual review provides for an opportunity to reevaluate all performance benchmarks.
3	LEC #13	What is the appropriate benchmark for "DS1 and above (DS1, OCn and Dark Fiber) Loops and Transport" in PM 41?	41	The Commission finds that 15%, 10% in 6 months (critical z does not apply) is the appropriate benchmark for "DS1 and above (DS1, OCn and Dark Fiber) Loops and Transport" in PM 41. The Commission concurs with the CLEC position that SBC's repeat rate needs significant improvement. Based on SBC's provided data, the 15% benchmark has been met 8 out of the last 12 months, and is thus an attainable starting point. Furthermore, the ramp time frame of 6 months provides SBC with an opportunity to make necessary changes to their repair operations to meet the new 10% standard. As above, this benchmark can be reconsidered at the next annual review.
4	LEC #14	What is the appropriate benchmark for EELs in PM 41?	41	The Commission finds that 15%, 10% in 6 months (critical z does not apply) is the appropriate benchmark for EELs in PM 41. The Commission concurs with the CLEC position that SBC's repeat rate needs significant improvement, and that SBC should provide the same level of service for EELs as for loops. Based on SBC's provided data, the 15% benchmark has been met 4 out of the last 10 months, and is thus an attainable starting point. Furthermore, the ramp time frame of 6 months provides SBC with an opportunity to make necessary changes to their repair operations to meet the new 10% standard. As above, this benchmark can be reconsidered at the next annual review.

28821-Comprehensive Billing-Jt. DPL-Final

SBC Issue	CLEC No. and Ic	SBC Overarching Issue Statement CLEC Specific Issue Statement	Attachment & Section	COMMISSION DECISION
1	[C	**Should the interconnection agreement address the billing for non 251(b) and (c) products and services that are not provided under this agreement?**		SETTLED.
3	[AT] 1 [[C added the pom of AT	[SBC] Which Party should bear the costs of separating out bills into categories and distributing those subset bills within AT&T's organization? [AT&T] Should the Billed Party have the discretion to designate a changed billing address for different categories of bills upon 30 days written notice to the Billing Party?	Attachment 28 2.1.3	The Commission finds that SBC Texas should not bear the costs of separating out bills into categories and distributing the subset of bills to different addresses designated by the CLEC. Monthly bills to CLECs are already delivered to the location that each CLEC provided to SBC Texas. The Access Customer Name Abbreviation (ACNA) is a three digit code assigned to carriers for, among other things, billing and bill verification. (Smith Direct at 47, SBC-TX Ex. 44C) In CABS billing, the ACNA has associated Billing Account Numbers (BANs) that correlate to class of service that may be purchased by the CLEC. (Smith Direct at 47, SBC-TX Ex. 44C) Separate ACNA codes are not assigned for different functions of a CLEC. (Smith Direct at 49, SBC-TX Ex. 44C) The Commission finds that the CLECs provided no convincing testimony to justify the need to modify the existing billing system. In the end, the Commission believes that the CLECs are in the best position to distribute different categories of the bill to the appropriate sub-location. Requiring SBC Texas to do work best suited for CLECs would not lend itself to efficiency. The Commission declines to adopt any contract language as proposed by SBC Texas.
4	[C2	[SBC] Should SBC Texas be required to establish a special bill payment cycle for CJP that is different from the other CLECs? [CJP] Should bill delivery and payment policies provide for additional days to account for the greater extensiveness of carrier bills?	Attach. 28, § 3.1	The Commission finds that SBC Texas bill payment and delivery policies should not be adjusted to allow for additional days to account for the greater extensiveness of carrier bills. CJP pointed to the increasing complexity of the bills and billing process as justification for additional time to pay bills it received from SBC Texas. However, the Commission finds that SBC Texas provides adequate and timely opportunities for CLECs to receive and pay bills. For one, SBC Texas offers electronic distribution of bills through EDI which provides for timely receipt of bills by CLECs. Second, SBC CLECs may pay their bills via the Automated Clearinghouse Method of electronic bill payment which provides for

SBC Issue	CLEC Issue No.	SBC Overarching Issue Statement / CLEC Specific Issue Statement	SBC Attachment & Section	COMMISSION DECISION
				timely crediting of payments. CLECs are also afforded the opportunity to choose the date on which SBC Texas will bill them. (Quate Rebuttal at 10, SBC-TX Ex. 36) The Commission adopts the contract language proposed by SBC Texas.
5	[Q 3	[SBC] Should SBC Texas be required to establish a special bill payment cycle for CJP that is different from the other CLECs? [CJP] Should bill delivery and payment policies provide for additional days to account for the greater extensiveness of carrier bills?	Attach. 28, § 4.3.1	Consistent with the decision reached in Issue No. 4 above, the Commission finds that bill delivery and payment policies should not be altered to provide for additional days to account for the greater extensiveness of carrier bills. The Commission adopts the contract language proposed by SBC Texas.
6	[Q 4	[SBC] Should SBC Texas be required to establish a special bill payment cycle for CJP that is different from the other CLECs? [CJP] Should bill delivery and payment policies provide for additional days to account for the greater extensiveness of carrier bills?	Attach. 28, § 4.4	Consistent with the decision reached in Issue No. 4 above, the Commission finds that bill delivery and payment policies should not be altered to provide for additional days to account for the greater extensiveness of carrier bills. The Commission adopts the contract language proposed by SBC Texas.
7	[AT] 5 [Q aced the pton of AT	[AT&T] Should the Agreement include Attachment 24: Recording?	[AT&T] Attach 28 9.0, 9.1, 9.2, 9.3, 9.5, 9.6, 9.6.1, 9.7, 9.8, 9.8.1, 9.8.2, and 9.9 [CJP] 9.2.1, 9.8 and Attach. 24: Recording	The Commission finds that the Agreement should include Attachment 24: Recording. AT&T explained in written testimony that the Multiple Exchange Carrier Access Billing (MECAB) guidelines for Meet Point Billing (MPB) were substantially changed by the OBF. AT&T also claimed that Attachment 24: Recording was not updated to reflect the new MECAB guidelines. (Fettig Direct 11-12, AT&T Ex. 2) In fact, SWB Texas testified that the Recording Attachment is up to date with current industry processes as outlined by the latest MECAB guidelines. (Read Rebuttal at 2, SBC-TX Ex. 38) The Commission finds that the Attachment should be included in the Agreement given its consistency with the current OBF guidelines relating to MECAB. The Commission adopts the contract language proposed by SBC Texas.

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28821-Comprehensive Billing-Jt. DPL-Final

SBC Issue #	CLEC Issue # and Party #	SBC Overarching Issue Statement / CLEC Specific Issue Statement	Attachment & Section #	COMMISSION DECISION
8	[AT] 2 [C added the posn of AT	[AT&T] a. Must SBC provide the OCN of an originating carrier to AT&T operating as a facilities based carrier, when the originating carrier is utilizing SBC's switch on an unbundled basis? b. If so, must it be provided by a report or may it be provided via the call detail record?	[At&T] Attachment 28 10.3 [CJP] 10.3	The Commission finds that SBC Texas already provides CLECs with the Operating Company Numbers (OCNs) of the originating carriers through a mechanized process which is consistent with industry standard and satisfies the CLEC information needs. SBC Texas uses a mechanized process to provide the OCN of an originating carrier utilizing SBC Texas' switch to originate traffic. (Read Direct at 6, SBC-TX Ex. 37C) The mechanized call detail records provided to CLECs are available for UNE-P and Resale originating calls. (Read Direct at 8, SBC-TX Ex. 37C) The Commission also finds that the CLEC's proposed contract language would require SBC Texas to manually prepare and provide a new report supplying the OCN information. This is the same information that is already provided by a mechanized process. (Read Direct at 8, SBC-TX Ex. 37C) The Commission adopts the contract language proposed by SBC Texas.
9	[C5	[CJP] Should bill delivery and payment policies provide for additional days to account for the greater extensiveness of carrier bills?	Attach. 28, § 11.1	Consistent with the decision reached in Issue No. 4 above, the Commission finds that bill delivery and payment policies should not be altered to provide for additional days to account for the greater extensiveness of carrier bills. The Commission adopts the contract language proposed by SBC Texas.
10	[AT] 3 [C added the posn of AT	[AT&T] a. Should SBC TEXAS be required to provide to AT&T the OCN or CIC, as appropriate, of 3rd party originating carriers when AT&T is terminating calls as an unbundled switch user of SBC TEXAS? b. Should SBC TEXAS be billed on a default basis when it fails to provide the 3rd party originating carrier OCN or CIC, as appropriate, to AT&T when AT&T is terminating calls as the unbundled switch user?	Attach 28 14.4 [CJP] 14.4	The Commission finds that SBC Texas shall provide the OCN and CIC to CLECs of the originating carrier in the usage records it provides for calls originated by 3rd party carriers when that information is available. Second, when 3rd party originating carrier OCN or CIC is not available to SBC Texas, the Commission finds that SBC Texas should not be billed on a default basis for failing to provide information that it does not possess. (Read Direct at 13, SBC-TX Ex. 37C) The CLECs provided no compelling evidence justifying why this should be the default basis. The Commission finds no reason to hold SBC Texas responsible as being the originating carrier in those instances when it is not. The Commission adopts the contract language proposed by SBC Texas.

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SBC Issue	CLEC No. and Id.	SBC Overarching Issue Statement/CLEC Specific Issue Statement	Attachment & Sections	COMMISSION DECISION
12	[AT] 6 [C added the pom of AT	[AT&T] a. Should SBC be required to implement price reductions within 60 days after the effective date of a price reducing order? b. Is AT&T entitled to interest for the period of time between the effective date of a price reducing order and SBC's implementation date?	Attach 28 2.4	The Commission finds that SBC Texas should not be required to implement price reductions 60 days after the effective date of a price reducing order. Second, the Commission finds that AT&T is not entitled to interest for the period of time between a price reducing order and SBC Texas' implementation date. The Commission finds that written notice in this instance is necessary to adequately document a party's request that a rate or price change based upon a Commission or FCC order. (Silver Direct at 33, SBC-TX Ex. 41C) The Commission finds that it is practical to require a party desiring the implementation of rate changes to inform the contract partners of that request. The CLECs provided no compelling testimony justifying interest being paid to CLECs on amounts overpaid as a result of a rate reduction. The Commission adopts the contract language proposed by SBC Texas.
13	[AT] 7 [C added the pom of AT	[SBC] What information should SBC Texas provide to help CLEC validate DUF and monthly CABS bill? [AT&T] Should SBC be required to provide process mapping of DUF call detail information to bill structure?	Attach 28 3.3.1	The Commission finds that SBC Texas provides CLECs with the information necessary for them to validate their CABS bills and therefore should not be required to provide 'process mapping' of the Daily Usage File (DUF) call detail information to bill structure. The DUF is a daily delivery of call detail records and CABS bills are issued monthly. Therefore, the DUF does not easily match up with the information contained in the CABS bills. (Read Direct at 17, SBC-TX EX. 37C) CLECs are allowed access to an online DUF User's guide which provides information on what records can be expected in the DUF file and are also allowed access to call-flows. Call-flows identify the type of records that will be in the DUF for the call scenario and the rate elements that will be billed in CABS for that call scenario. (Read Direct at 18, SBC-TX Ex. 37C) The Commission finds that CLECs are provided with adequate tools and information to validate their bills. The Commission finds no persuasive evidence supporting AT&T's assumption that a correlation exists between the DUF records and the

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SBC Issue #	CLEC Issue #	SBC Overarching Issue Statement / CLEC Specific Issue Statement	Attachment & Sections	COMMISSION DECISION
				UNE-P bills that SBC submits to AT&T. (Fettig Direct at 23-24, AT&T Ex. 2) Further, the Commission believes that any future disputes regarding this issue are best handled in the Ordering and Billing Forum. The Commission declines to adopt any contract language as proposed by SBC Texas.

28821 – Invoicing – Jt. DPL – Final

SBC Issue #	CLEC Issue #	SBC Overarching Issue Statement CLEC Specific Issue Statement	Attachment & Sections	COMMISSION DECISION
1	Im / 1	SBC: What basis should SBC use to determine the interest rate to calculate late payment charges and/or interest on credit adjustments. MCI: For billing out of CRIS and RBS, should interest charges be calculated according to SBC TEXAS's retail tariff or access tariff?	Appendix VII: Invoicing §§ 2.8; 4.1.1	The Commission finds that SBC Texas' billing systems were designed and programmed to bill in accordance with SBC Texas tariffs. (Quate Direct at 25, SBC-TX Ex. 35) Items billed out of the CRIS System mirror the retail tariff and items billed out of the CABS System mirror the access taiff. This method helps to ensure parity between CLECs and other SBC Texas customers. (Quate Direct at 25, SBC-TX Ex. 35) The Commission finds no compelling evidence in the record supporting the use of the intrastate access tariff as the basis for calculating interest for late payments and credit adjustments for charges incurred under the Agreement and billed out of CRIS. The Commission adopts the contract language proposed by SBC Texas.
2	Im / 2	[SBC] When should the Billed Party be entitled to withhold payment on a disputed amount? [MCI] Should the Billed Party be entitled to withhold payments on disputed amounts?	Appendix VII: Invoicing §§ 3.2.1; 3.3; 7.3 (et. seq.)	The Commission finds that the Billed Party should only be allowed to withhold payment when there is an obvious inaccuracy in the bill. More specifically, SBC Texas proposed the standard to determine an "obvious inaccuracy" to be if the bill for services for an account doubled from the average of the previous six months billing on that account. (Egan Direct at 27, SBC-TX Ex. 14) Allowing the Billed Party to withhold a payment without setting objective standards in place helps to guard against the potential for a Billed Party to withhold payments for illegitimate reasons. (Egan Direct at 27, SBC-TX Ex. 14). The Commission adopts the contract language proposed by SBC Texas.
3	Im / 3	Which Party's description of the applicable stake date for Reciprocal Compensation billing should be included in the Agreement?	Appendix VII: Invoicing §§ 5.3; 6.3	The Commission finds that the contract language proposed by the MCIm adequately satisfies the general agreement by parties that no stake date should be established for disputes arising out of the parties' reciprocal compensation obligations. (Hurter Direct at 20-22, MCI Ex. 4) The Commission does not find that the language proposed by MCIm is overly brad and vague to the point where it may lead to future disputes. (McPhee Direct at 60, SBC-TX Ex. 24) The Commission adopts the contract language proposed by MCIm.
4	Im / 4	**MCIm:** For "Other Services" should there also be a limitation on backbilling invoices, and if so, what should that time limitation be?	Appendix VII: Invoicing §§ 5.4; 6.4	For "Other Services", the Commission finds that there should be a limitation on back-billing services. The Commission finds that the back-billing time frame should be 12 months preceeding the Bill Date of the disputed buill in question. In fact, both SBC Texas and MCIm agree on this time frame. (Quate Direct at 23, SBC-TX Ex. 35) The Commission finds that the contract language regarding limitation on backbilling invoices for "other services" proposed by MCIm is sufficient. The Commission finds no compelling evidence in the record justifying

SBC Issue Number	MCIm Issue Number	SBC Consolidated Issue Statement / MCIm's Specific Issue Statement	Attachment / Section	COMMISSION DECISION
				a need to list all "other services" along with their respective Appendix as proposed by SBC Texas. The Commissoin adopts the contract language proposed by MCIm.
5	CIm V 5	SBC: Which Party's language for prospective application should be included in this Agreement? MCIm: Is it necessary to include SBC's provision stating that the terms of the invoicing appendix will apply prospectively?	Appendix VII: Invoicing § 5.5	The Commission finds that by definition, contractual terms and conditions do not apply until a contract becomes effective. (Hurter Direct at 24, MCI Ex. 4) It is counter-intuitive to think that time limits or stake dates are applied any other way than prospectively. The Commission found no compelling evidence in the record supporting SBC Texas' proposed contract language. Additionally, the Commission found no compelling evidence in the record supporting SBC Texas' argument that a new contract could potentially "reach back" into time periods covered by the existing contract. (Quate Rebuttal at 15, SBC-TX Ex. 36) The Commission declines to adopt any contract language as proposed by MCIm.

SBC Issue No.	C. Issue No.	SBC Overarching Issue Statement / CLEC Specific Issue Statement	Agreement Section	Staff Recommendation
6	Im I 6	Should changes to SBC TEXAS's billing claim dispute form be subject to approval by the CLEC User Form?	Appendix VII: Invoicing § 5.7.1	The Commission finds that SBC Texas' billing claims dispute form should not be subject to approval by the CLEC User Forum (CUF). No evidence was provided citing instances where changes to the form caused harm or discrimination to any CLEC. In fact, SBC Texas developed the form in response to CLEC requests for an alternative dispute process, and SBC Texas developed this process in conjunction with the CUF. (McNiel Rebuttal at 26, SBC-TX Ex. 23) Additionally, SBC Texas developed the billing claims dispute form for use by both CLECs and IXCs and processes for IXCs are not subject to the CUF. Therefore, requiring SBC Texas to garner approval through the CUF would preclude input by IXCs who would be impacted by any changes. (McNiel Rebuttal at 25, SBC-TX Ex. 23) The Commission finds no reason to change a process that has not proven to be discriminatory toward any party. The Commission adopts the contract language proposed by SBC Texas.
7	Im I 7	Should SBC TEXAS disclaimer about VOIP be included in the Agreement?	Appendix VII: Invoicing § 10	The Commission finds that SBC Texas' disclaimer regarding VoIP should not be included at this time. This issue will be taken up in Phase 2 of this proceeding and the Commission believes that is the appropriate time to rule upon this issue. Once the Commissio hasn't ruled on the issue, the parties can then negotiate an appropriate amendment to this agreement if necessary. The Commission declines to adopt any contract language at this time.

28821-INTERCARRIER COMPENSATION-JT DPL-FINAL

SBC Issue #	CLEC Name and Issue #	SBC Overarching Issue Statement / CLEC Specific Issue Statement	Attachment & Section	COMMISSION DECISION
		Intercarrier Compensation	Attachment 12:	
SBC-2	&T-1 :C Coalition ·7, 9, 12, 24	a. (Joint) What is the proper definition and scope of §251(b)(5) traffic? b. (Joint) What types of traffic should be excluded from the definition and scope of 251(b)(5) traffic? c. (AT&T) What calling area should be used for purposes of 251 b 5 reciprocal compensation and compensation under the FCC ISP terminating compensation plan? c. (SBC) What calling area(s) should be used for purposes of determining compensation for Section 251 (b)(5) Traffic and Section 251(b)(5) Traffic and/or ISP-Bound Traffic under the FCC ISP terminating compensation plan? c.1. Should Section 251(b)(5) Traffic be defined as calls that must originate and terminate to End Users physically located within the same common or mandatory local calling area? c.2. Should ISP-Bound Traffic be defined as calls that must originate from an End User and terminate to an ISP physically located within the same common or mandatory local calling area? d. What is the appropriate form of intercarrier compensation for IntraLATA Interexchange traffic? e. Should non 251/252 services such as Transit Services be negotiated separately? f. Is CLEC's switch(es) "actually serving" a geographically comparable area to SBC Texas' tandem switch(es) such that CLEC is entitled to the tandem interconnection rate? (See SBC Texas' proposed language in Issue AT&T-8) g. If the CLEC switch meets the geographic coverage test should the CLEC be entitled to the mileage sensitive tandem transport element for transport between switches when CLEC only has one switch?	§§1.1, 1.1.1, 1.2, 2.1, 11.0, 11.1.1, 11.1.2, 11.1.4	(a) In the *ISP Remand Order*, the FCC focused on 251(b)(5), as limited by 251(g), instead of "local" to determine the traffic subject to reciprocal compensation. Therefore, the Commission finds it appropriate to use the term "251(b)(5)" instead of the term "local" to describe the type of traffic subject to reciprocal compensation under Section 251(b)(5) of the Act. (c) The Commission also declines to adopt AT&T's LATA-wide compensation plan because it has implications for ILEC revenue streams, such as switched access, and affects rates for other types of calls, such as intraLATA toll calls, that are beyond the scope of this proceeding. This finding is consistent with the Commission's ruling in Docket No. 21982. (c) Consistent with the Commission's holding in Docket No. 21982, the Commission finds that reciprocal compensation arrangements apply to calls that originate from and terminate to an end-user within a mandatory single or multi-exchange local calling area, including the mandatory EAS/ELCS areas comprised of SBC exchanges and the mandatory EAS/ELCS areas comprised of SBC exchanges and exchanges of independent ILECs. This finding is also consistent with the ISP Remand Order. In the ISP Remand Order, the FCC found that 251(b)(5) reciprocal compensation applies to telecommunications traffic other than exchange access, information access, and exchange services for such access provided to IXCs and information service providers. Under section 153 of the Act, "exchange access" means "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." "Telephone toll service" means

SBC Issue #	CC Name and Issue #	SBC Overarching Issue Statement/ CLEC Specific Issue Statement	Attachment & Section	COMMISSION DECISION
		(See SBC Texas' proposed language in Issue AT&T-8)		"telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service." Given the Act's definitions and the FCC's interpretation of 251(b)(5), reciprocal compensation applies to traffic that is not toll and not information access (essentially, reciprocal compensation applies to "local" non-ISP traffic). In contrast to "exchange access," the Act defines "telephone exchange service" as: "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge." Section 251(g) does not "carve out" telephone exchange service, from 251(b)(5) reciprocal compensation (except that the FCC found that 251(g) carved out ISP-bound traffic from reciprocal compensation). Consequently, The Commission's decision in Docket No. 21982 applying reciprocal compensation to calls that originate and terminate within the same mandatory local calling area comports with the FCC's interpretation of 251(b)(5) and the Act's definition of telephone exchange service, since no additional toll charges apply to calls within the mandatory local calling area. However, with respect to ISP-bound traffic, the Commission concluded in Docket No. 24015 that the ISP Remand Order's compensation regime applies instead of reciprocal compensation. (d) Since reciprocal compensation only applies to calls within a commission established local calling area, the appropriate form of intercarrier compensation for IntraLATA Interexchange

SBC Issue #	C Name and Issue #	SBC Overarching Issue Statement/CLEC Specific Issue Statement	Attachment/Sections	COMMISSION DECISION
				traffic which originate or terminate outside the local calling area is therefore access charges. The FCC concluded that "unless and until the Commission by regulation should determine otherwise, Congress preserved the pre-Act regulatory treatment of all the access services enumerated under section 251(g). These services thus remain subject to Commission jurisdiction under section 201 (or, to the extent they are intrastate services, they remain subject to the jurisdiction of state commissions), whether those obligations implicate pricing policies as in CompTel or reciprocal compensation. . . . Section 251(g) expressly preserves the Commission's rules and policies governing 'access . . . to information service providers' in the same manner as rules and policies governing access to IXCs." Since pre-Act regulatory treatment continues to apply to access services, intrastate access charges continue to apply to intrastate interexchange access services. (e) The Commission incorporates, by reference, the rationale and decision on transit issues delineated in SBC Issue 17/AT&T-10. (f) & (g) The Commission incorporates, by reference, the rationale and decision on application of tandem rates delineated in SBC Issue 15/AT&T-8. The Commission finds that the parties should resubmit contract language to reflect the Commission's decision in Docket No. 24015. This issue is partially resolved as to AT&T with respect to language for 11.1.4.
SBC-3 Address		SBC Texas Overarching Issue: Should SBC Texas be required to comply with only generic Texas Commission reciprocal compensation decisions?		Please refer to rationale and contract language decision under SBC DPL Issue – 4.

BELLSOUTH® / CLEC Agreement

Customer Name: SPRINT Communications Company L.P.

EXHIBIT BHP-4

Note: This page is not part of the actual signed contract/amendment, but is present for record keeping purposes only.

By and Between

BellSouth Telecommunications, Inc.

And

Sprint Communications Company Limited Partnership
Sprint Communications Company L.P.
Sprint Spectrum L.P.

CATEGORY	UNBUNDLED NETWORK ELEMENT	Interim	Zone	BCS	USOC	RATES ($)					OSS RATES ($)					
											Svc Order Submitted Elec per LSR	Svc Order Submitted Manually per LSR	Incremental Charge - Manual Svc Order vs. Electronic-1st	Incremental Charge - Manual Svc Order vs. Electronic-Add'l	Incremental Charge - Manual Svc Order vs. Electronic-Disc 1st	Incremental Charge - Manual Svc Order vs. Electronic-Disc Add'l
							Nonrecurring			Nonrecurring Disconnect						
						Rec	First	Add'l	First	Add'l	SOMEC	SOMAN	SOMAN	SOMAN	SOMAN	SOMAN
	2-Wire Voice Unbundled 1-Way Outgoing PBX Hotel/Hospital Discount Room Calling Port			UEPSP	UEPXO	1.40	39.06	18.18	12.35	0.7187		19.99				
	2-Wire Voice Unbundled 1-Way Outgoing PBX Measured Port			UEPSP	UEPXS	1.40	39.06	18.18	12.35	0.7187		19.99				
	Subsequent Activity			UEPSP	USASC	0.00	0.00	0.00								
	FEES			EPSP												
	All Available Vertical Features			UEPSE	UEPVF	2.26	0.00	0.00				19.99				
	EXGE PORT RATES (COIN)															
	Exchange Ports - Coin Port					1.40	3.74	3.63	1.88	1.80		19.99				
	NCransmission/usage charges associated with POTS circuit switched usage will also apply to circuit switched voice and/or circuit switched data transmission by B-Channels associated with 2-wire ISDN ports.															
	NCcess to B Channel or D Channel Packet capabilities will be available only through BFR/New Business Request Process. Rates for the packet capabilities will be determined via the Bona Fide Request/New Business Request Process.															
UNBUNDLED LSWITCHING, PORT USAGE																
	Ene Switching (Port Usage)															
	End Office Switching Function, Per MOU					0.0007862										
	End Office Trunk Port - Shared, Per MOU					0.0001640										
	TaSwitching (Port Usage) (Local or Access Tandem)															
	Tandem Switching Function Per MOU					0.0001319										
	Tandem Trunk Port - Shared, Per MOU					0.0002350										
	Cc Transport															
	Common Transport - Per Mile, Per MOU					0.0000035										
	Common Transport - Facilities Termination Per MOU					0.0004372										
UNBUNDLED LOOP COMBINATIONS - COST BASED RATES																
	Cred Rates are applied where BellSouth is required by FCC and/or State Commission rule to provide Unbundled Local Switching or Switch Ports.															
	Feshall apply to the Unbundled Port/Loop Combination - Cost Based Rate section in the same manner as they are applied to the Stand-Alone Unbundled Port section of this Rate Exhibit.															
	Ene and Tandem Switching Usage and Common Transport Usage rates in the Port section of this rate exhibit shall apply to all combinations of loop/port network elements except for UNE Coin Port/Loop Combinations.															
	Fojia, Kentucky, Louisiana, Mississippi, South Carolina and Tennessee, the recurring UNE Port and Loop charges listed apply to Currently Combined and Not Currently Combined Combos. The first and additional Port nonrecurring charges apply to Not Currently Combined Combos for all in GA, KY, LA, MS, SC and TN these nonrecurring charges are commission ordered cost based rates and in AL, FL and NC these nonrecurring charges are Market Rates and are also listed in the Market Rate section. For Currently Combined Combos in all other states, the noing charges shall be those identified in the Nonrecurring - Currently Combined sections.															
	2-VOICE GRADE LOOP WITH 2-WIRE LINE PORT (RES)															
	Ult/Loop Combination Rates															
	2-Wire VG Loop/Port Combo - Zone 1		1			14.11										
	2-Wire VG Loop/Port Combo - Zone 2		2			18.23										
	2-Wire VG Loop/Port Combo - Zone 3		3			33.04										
	Ulp Rates															
	2-Wire Voice Grade Loop (SL1) - Zone 1		1	UEPRX	UEPLX	12.94										
	2-Wire Voice Grade Loop (SL1) - Zone 2		2	UEPRX	UEPLX	17.06										
	2-Wire Voice Grade Loop (SL1) - Zone 3		3	UEPRX	UEPLX	31.87										
	2-bice Grade Line Port Rates (Res)															
	2-Wire voice unbundled port - residence			UEPRX	UEPRL	1.17						19.99				

Georgia Public Service Commission

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DOCKET NO. 16772-U

IN RE: BELLSOUTH TELECOMMUNICATIONS, INC.'S PETITION FOR A DECLARATORY RULING REGARDING TRANSIT TRAFFIC.

ORDER ON CLARIFICATION AND RECONSIDERATION

This matter comes before the Georgia Public Service Commission ("Commission") on a Motion for Clarification filed by Cbeyond Communications, LLC ("Cbeyond") and a Petition for Reconsideration filed by the Georgia Telephone Association. ("GTA").

Background

On April 2, 2004, BellSouth Telecommunications, Inc. ("BellSouth") filed a Motion to Adopt CLEC Transit Traffic Proposal. On July 1, 2004, the Commission issued a Procedural and Scheduling Order on BellSouth's Motion. On July 29, 2004, BellSouth and the GTA filed a Memorandum of Understanding ("MOU"). On September 10, 2004, the Commission issued an Amended Procedural and Scheduling Order seeking testimony on the MOU. Hearings were held before the Commission on October 5-6, 2004. The Commission issued its Order on Transit Traffic Involving Competitive Local Exchange Carriers and Independent Telephone Companies in this docket on March 24, 2005. On March 29, 2005 Cbeyond Communications, LLC ("Cbeyond") filed a Motion for Clarification ("Motion"), and on April 1st, 2005 GTA filed a Petition for Reconsideration ("Petition").

Discussion

Cbeyond Motion

In its Motion, Cbeyond requested clarification of a number of issues related to the guidelines for the monthly filing requirements. The first issue regarded whether parties were required to make filings beginning April 1, 2005. The Commission has clarified that May 1, 2005 will be the initial filing deadline for the traffic information. The second issue raised in Cbeyond's Motion was which "data month" would best assist the Commission. In recognition of

EXHIBIT BHP-5

the considerable amount of time required to compile the information requested for the traffic study, the term "data month" as used in the Commission's March 24, 2005 Order will represent data from one month prior so that the May 1st filing would include March data. This conclusion resolves in the negative the third issue raised by Cbeyond as to whether the Commission wished to adopt a mid-month filing deadline. Finally, the Commission voted to clarify that the data reported on a NPA-NXX level was appropriate, and that each company should file its traffic information at said level of detail for traffic it originates, terminates, and/or transits.

GTA Petition

In its Petition, GTA advances several arguments in support of reconsideration. On April 12, 2005, BellSouth filed a Brief in support of GTA's Petition. GTA first argues first that the March 25 Order improperly superseded the rights of independent telephone companies ("ICOs") under federal law. (Petition, p. 2). The Petition addresses the portion of the March 25, 2005 Order that modified Paragraph 11 of the MOU. The March 25 Order adopted the CLEC position that they not have to pay the transiting charges for calls that were not originated on their network. (Order, pp. 7-8). GTA argued that absent a *bona fide* request for interconnection and the opportunity to negotiate and, if necessary, arbitrate an interconnection agreements under Section 252 of the Federal Telecommunications Act of 1996 (the "Act"), ICOs are not required to offer an involuntary interconnection arrangement. *Id.* GTA asserts that competitive local exchange carriers ("CLECs") have not requested any such reciprocal compensation arrangement. *Id.* at 3.

GTA next argued that the March 25 Order is inconsistent with the rulings of the Federal Communications Commission ("FCC") regarding the use of indirect interconnection to exchange traffic pursuant to Section 251(b)(5) of the Act. (Petition, p. 4). GTA asserts that an ICO's obligation is to interconnect with local exchange carriers at technically feasible points within its network, but that the Commission has ordered ICOs to pay for the transiting of traffic to a point well beyond its network. *Id.* Relying on the *Texcom Reconsideration Order*,[1] GTA contended that CLECs are only permitted to recover a portion of the costs of using a transit facility. *Id.* at 7.

In addition, GTA argues that requiring ICOs to pay the transiting costs is unreasonably discriminatory in violation of O.C.G.A. § 46-5-164(b). (Petition, p. 8). In support of this position, GTA explains that each carrier is responsible for transport to the point of interconnection established between the two networks. *Id.* Finally, GTA argues that the March 25, Order is adverse and inequitable to rural customers by imposing a new financial and operational burden. *Id.* at 9-11.

Responses to GTA's Petition were filed by AT&T Communications of the Southern States, LLC ("AT&T), jointly by Cellco Partnership d/b/a Verizon Wireless ("Verizon") and Sprint Communications, L.P. and Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint") and jointly by Cbeyond and MCImetro Access Transmission Services, LLC ("MCI"). The AT&T Reply emphasizes that the March 25 Order is consistent with the principle that the calling party pays.

[illegible] Order, FCC 01-347 17 FCC Rcd. 6275 (2002)

(AT&T Reply, p. 2). AT&T disputes GTA's assertion that ICOs are not required to indirectly interconnect with a CLEC pursuant to Section 251(a). For support of this position, AT&T cites to 47 C.F.R. § 51.703 and the 10th Circuit's decision in Atlas Telephone Company v. Oklahoma Corporation Commission, 400 F.3d 1256 (10th Cir. 2005). 47 C.F.R. 51.703, entitled "Reciprocal Compensation Obligation of LECs" provides as follows:

> (a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier.
> b) A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

AT&T reasons that GTA's position that CLECs must bear the transit costs for ICO originated traffic would violate this regulation. (AT&T Reply, p. 2). This regulation that the originating carrier pays for the traffic applies even if the point of interconnection is established on the ICO's network. *Id.* at 3.

AT&T also relies on Atlas for the argument that the originating carrier bears the cost of transporting telecommunications traffic across the transiting carrier's network. (AT&T Reply, p. 4). AT&T also argued that under the *Texcom Reconsideration Order* the originating carrier is ultimately responsible for transit costs; therefore the Commission should not be prohibited from requiring ICOs to pay the transiting costs directly. *Id.* at 5-6.

AT&T also argued that reversal of the Commission Order would result in unreasonable discrimination against CLECs who interconnect indirectly with ICOs. (AT&T Reply, p. 7). Finally, AT&T challenges GTA's assertions regarding the financial impact of the Commission order on ICO's customers. *Id.* at 8.

The Joint Brief of Verizon and Sprint discussed the Atlas decision as well, and similarly concluded that the decision supported the Commission's March 25 Order. The Response of Cbeyond and MCI stated that GTA had not raised any new arguments, that the *Texcom Order on Reconsideration* did not alter the principle that the calling party pays, and that GTA had overstated the impact of the Commission Order on rural customers.

The Commission finds the arguments advanced by the CLECs' persuasive. GTA has not cited to any authority that would alter the principle that the calling party pays. Even if the point of interconnection is established on the ICO's network, 47 C.F.R. 51.703 still applies. Moreover, the *Texcom Reconsideration Order* is consistent as well with the principle that the calling party pays. On reconsideration, the FCC stated that the carrier providing the transit service may charge the terminating carrier "for the cost of the portion of these facilities used for transiting traffic, and [the terminating carrier] may seek reimbursement of these costs from originating carriers through reciprocal compensation." (*Texcom Reconsideration Order,* ¶ 4, footnote omitted). Regardless of whether the terminating carrier was initially charged, the *Texcom Reconsideration Order* did not indicate that the terminating carrier would not be

compensated or that the calling party would not ultimately bear the costs related to transiting the call.

Since the Commission initially voted on this matter, the Tenth Circuit has addressed this issue. In Atlas, the Tenth Circuit concluded that commercial mobile radio service providers should not have to bear the costs of transporting calls that originated on the networks of rural telephone companies across an incumbent LEC's network. 400 F.3d at 1266 fn. 11. The Tenth Circuit also found that the Section 251(a) obligation of all carriers to interconnect directly or indirectly is not superceded by the more specific obligations under Section 251(c)(2).

The Commission finds the reasoning in Atlas compelling. It is consistent with and confirms the principle that the originating party must bear the costs of transiting the call. In addition, the Commission does not agree that the *Texcom Reconsideration Order* allows the terminating carriers to recover only a portion of the costs of using a transit facility of a third party. (see GTA Petition, p. 7). The *Texcom Reconsideration Order* states that the transiting carrier may charge the terminating carrier for "the portion" of the facilities used to transit the traffic. (¶ 4). Therefore, the use of the term "portion" was used merely to distinguish the facilities of the transiting carrier that were not involved in the transiting of the call. The terminating provider, under the *Texcom Reconsideration Order,* may then seek reimbursement of these costs from the originating carrier. *Id.* There is no mention that the terminating carrier would not be able to recover these costs, and no basis for the argument that the terminating carrier should have to bear any of the costs of transporting a call across the transiting carrier's system.

The Commission also disagrees with GTA's contention that the March 25 Order is unreasonably discriminatory against ICOs. To the contrary, the Commission Order holds both ICO and CLECs responsible for the transit costs of calls originating on their network. The Commission also declines to reconsider its decision based on the argument raised by GTA on the adverse financial impact to its customers. First, as discussed above, the Commission finds that its decision is consistent with federal and state law, and not discriminatory against any party. Second, the parties that responded to GTA's Petition raised adequate questions about the accuracy of GTA's claims.

The Commission denies GTA's Petition for Reconsideration to amend the portion of its Order that requires the Independent Telephone Companies to pay to transport traffic beyond a point of interconnection on their own networks, and reaffirms its initial decision to require the originating party to pay said "transit" costs.

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WHEREFORE IT IS ORDERED, that the Commission hereby clarifies that the initial filing deadline is May 1, 2005.

ORDERED FURTHER, that the Commission hereby clarifies the term "data month"

ORDERED FURTHER, that the Commission hereby clarifies that each company file information for traffic it originates, terminates, and/or transits when submitting its monthly filing requirement.

ORDERED FURTHER, that the Commission hereby clarifies that traffic information reported at a NPA-NXX level of detail is appropriate for the Commission's filing requirements in this docket.

ORDERED FURTHER, that the Commission hereby denies GTA's Petition for Reconsideration.

ORDERED FURTHER, that jurisdiction over this proceeding is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion does not stay the effective date of this Order, unless otherwise ordered by the Commission.

The above action of the Commission in Administrative Session on the 19th day of April 2005.

Reece McAlister
Executive Secretary

5-2-05
Date

Angela Elizabeth Speir
Chairman

5/2/05
Date