BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Southwestern Bell Telephone, L.P. d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues For a Successor Interconnection Agreement to the Missouri 271 Agreement ("M2A").	)))))	Case No. TO-2005-0336

SPRINT COMMUNICATIONS COMPANY L.P.'S COMMENTS ON FINAL ARBITRATOR'S REPORT

Pursuant to Section 252 of the Telecommunications Act of 1996, Commission Rule 4 CSR 240-2.080, Commission Rule 4 CSR 240-36.040(20) and the Arbitrator's Order of April 21, 2005 in this proceeding, Sprint Communications Company L.P ("Sprint") submits its Comments on the Final Arbitrator's Report and respectfully requests that Sprint's positions on each arbitrated issue be accepted by the Commission and incorporated into the Final Commission Arbitration Decision.

I. LIMITATIONS ON SCOPE AND ORGANIZATION OF SPRINT'S COMMENTS

Pursuant to Public Service Commission Rule 4 CSR 240-36.040(20), these Comments are limited to the identification of "factual, legal or technical errors" in the Arbitrator's Report and the repetition of positions taken in the post-hearing briefs must be accorded no weight by the Commission. Accordingly, Sprint's Comments shall be narrowly focused to address the issue permitted by the rules. Sprint's Comments discuss the disputed issues in each contract appendix in the same sequence presented in Sprint's Post-Hearing Brief of June 7, 2005. On June 8, 2005, the Arbitrator issued an Order requiring Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC") and Sprint to submit another comprehensive set of joint Decision Point Lists (DPLs) in a prescribed format and containing any necessary amendments including the settlement of any disputed issues. These revised joint DPLs were submitted by SBC on behalf of Sprint and SBC on June 10, 2005. As the most recent iteration, Sprint's references in these Comments shall be to the issues as numbered and identified in the DPLs of June 10, 2005.

II. APPENDIX GENERAL TERMS AND CONDITIONS

A. Unresolved Issues Number 4, 5, 7 and 13

These disputed issues were properly resolved by the Arbitrator in favor of Sprint. The Commission should order that Sprint's position is adopted and that all Sprint contract language pertaining to these issues be included in the conformed agreement. SBC's proposed language that was disputed by Sprint should be rejected. Sprint hereby adopts the arguments previously set forth in its testimony and post-hearing brief in further support of these rulings of the Arbitration.

B. Resolved Issues Number 10 and 12

Issues 10 and 12 were resolved by negotiation between SBC and Sprint. The resolution of these issues was reflected in the GT&C DPL submitted to the Arbitrator on June 10, 2005. Accordingly, the Arbitrator's reference to these issues at pages 35 and 53 of his report can be stricken from the Final Commission Order as no ruling was required.

C. Unresolved Issue Number 11

The Arbitrator's Report at pages 35-41 indicates that the Arbitrator is adopting the Sprint position and rejecting the SBC position related to Unresolved

Issue Number 11. However, on page 93 of the Arbitrator's Decision Matrix pertaining to Unresolved Issue Number 11 and contract section 8.4, there is an apparent scrivener's error. The Arbitrator apparently intended to adopt the Sprint contract language for section 8.4 as he accepted the Sprint language and rejected the SBC language in the remainder of the GT&C decision matrix pertaining to Issue 11. Accordingly, in order to be consistent with the Arbitrator's adopted rationale in his report, the Commission should accept all Sprint language pertaining to Issue 11 and reject all SBC language pertaining to Issue 11, including those phrases disputed in section 8.4. This was the Arbitrator's apparent intent and is the best ruling.

III. <u>APPENDIX INTERCONNECTION TRUNKING REQUIREMENTS (ITR)</u>

A. Unresolved Issues Number 3(c), 3(d), 5 and 8

These disputed issues were properly resolved by the Arbitrator in favor of Sprint. The Commission should order that Sprint's position is adopted and that all Sprint contract language pertaining to these issues be included in the conformed agreement. SBC proposed language that was disputed by Sprint should be rejected. Sprint hereby adopts the arguments previously set forth in its testimony and post-hearing brief in further support of these rulings.

B. Unresolved Issue Number 6

On pages 9-10 of the Final Arbitrator's Report pertaining to Interconnection, the Arbitrator erroneously suggests the adoption of the SBC language on this issue. But Sprint contends that the SBC language logically contradicts the Arbitrator's rulings on other interconnection issues in this arbitration and that the Sprint language should be adopted. In addition, Sprint has found additional authority from another jurisdiction supporting its position on this issue.

The Arbitrator's ruling on Unresolved Issue 6 on cost sharing for the interconnection facilities is not logically consistent with his rulings on other related interconnection issues. The first sentence of the rationale on page 10 of the Arbitrator's Report on Interconnection states that: "Each Party is financially responsible for facilities on its side of the POI." The Arbitrator also ruled on page 6 of the report that a CLEC must establish a POI within SBC's network, and indeed, Sprint agreed with SBC on this issue, e.g., agreed contract language resolving Issue 2 in the NIM DPL. If both of these rulings are adopted by the Commission as proposed by the Arbitrator, it seems Sprint would be forced to absorb 100% of the cost of the transport facility that physically joins Sprint's network with SBC's network since this interconnection facility resides on Sprint's side of the POI.

However, the conclusion above is undercut by the second sentence of the Arbitrator's rationale on page 10 of the Arbitrator's Report on Interconnection. There, the Arbitrator states: "A Party that agrees to carry traffic that originated on or transited its network to the terminating carrier's nearest tandem may require the other Party to reciprocate." This sentence clearly indicates that when Sprint carries its originating traffic to SBC's tandem, Sprint may require SBC to "reciprocate" and deliver SBC's originating traffic to Sprint's tandem or switch, resulting in both parties being financially responsible for the transport costs necessary to deliver its originated traffic to the terminating carrier's switch. This shared-cost concept can be implemented in a few ways. Both Parties may establish one-way trunks to deliver the traffic onto the terminating Party's network or the Parties may establish shared, two-way facilities that carry traffic originated by both Parties. If shared, two-way facilities are established, Sprint contends that the law, logic and fairness dictate that the cost of this facility must be shared by both Parties. It is not acceptable to require Sprint to absorb 100% of the cost of a transport facility that carries both Parties' originating traffic. The Commission should reconcile this conflict by adopting the Sprint language proposed for ITR Unresolved Issue 6 and ruling that the cost of a two-way interconnection facility should be shared.

The FCC rules require each Party to assume the costs associated with its originating traffic. Specially, 47 CFR 51.709(b) states "the rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of the trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network." In addition, 47 CFR 51.703(b) states that "a LEC may not assess charges on any other telecom carrier for telecom traffic that originates on the LEC's network." These two FCC rules make clear that the FCC's intent is not for Sprint to be burdened with 100% of transport costs relating to interconnection facilities used to carry both Parties' originating traffic even though that facility is physically located on Sprint's side of the POI.

The Maryland Commission agreed with this Sprint position and decided this issue between AT&T and Verizon. See In the Matter of the Petition of AT&T Communications of Maryland, Inc. Pursuant to 47 U.S.C. 252(b) Concerning Interconnection Rates, Terms and Conditions (Order No. 79250), Case No. 8882 (Public Serv. Comm. of Maryland, July 7, 2004). Specifically, the Maryland Commission stated that:

> Each Party is responsible for the cost of delivering its traffic through its network and into the interconnection facility that connects the two networks. The cost of the interconnection facility itself is shared consistent with the rules set for by the FCC in paragraph 1062 of 1996 First Report and Order. In sum, those rules require that the carriers share the cost of the interconnection facility based upon each carrier's percentage of the traffic passing over the facility. Id., pp. 9-10.

Furthermore, the Maryland Commission states that:

> Each carrier is responsible for the cost of transporting its traffic through its network. Both carriers then equitably share the cost of the interconnection facility which connects the two networks, based on each carrier's share of the traffic that passes over the interconnection facility. Id., p. 10

Finally, Sprint points out that SBC's position in this docket is notably inconsistent with the interconnection arrangements it has with other carriers, including the interconnection arrangement it has with Sprint PCS as well as the arrangement it has with its own affiliate, Cingular. SBC finds the FCC rules applicable in a wireless context and will acknowledge a responsibility to share interconnection facility costs with CMRS carriers, yet SBC claims without basis that those same FCC rules do no apply to interconnection arrangements with CLECs.

Sprint asks that the Commission find that SBC must share the cost of the interconnection facility that physically links the Sprint network with the SBC network and not allow SBC to burden Sprint with 100% of the cost. Sprint's proposed language requires that the cost be shared 50%/50% by both Parties assuming an equal balance of traffic. Sprint would also accept contract language that allows for cost sharing to be based on a proportionate use of the facility -- language which is acceptable to SBC when negotiating and interconnecting with CMRS carriers and its own affiliate.

IV. APPENDIX NETWORK INTERCONNECTION METHODS (NIM)

A. Unresolved Issues Number 1 and 5

These disputed issues were properly resolved by the Arbitrator in favor of Sprint. The Commission should order that Sprint's position is adopted and that all Sprint contract language pertaining to these issues be included in the conformed agreement. SBC's proposed language that was disputed by Sprint should be rejected. Sprint hereby adopts the arguments previously set forth in its testimony and post-hearing brief in further support of these rulings.

Sprint notes that -Unresolved Issue 5 in the NIM DPL overlaps with Unresolved Issue 6 in the ITR DPL and Appendix discussed immediately above in these Comments as well as Unresolved Issues 3(c) and 5 in the ITR DPL that were ruled in Sprint's favor by the Arbitrator. It is clear from the Arbitrator's Report regarding Transiting at pages 1-7 that interconnection facilities must be provided under this agreement at TELRIC prices. The Arbitrator correctly rejected SBC's argument that such facilities are not available to be leased at TELRIC-based rates because the FCC has determined that entrance facilities no longer qualify as an unbundled network element ("UNE"). Sprint has not claimed that an entrance facility is a UNE. Sprint merely contends that when this facility is obtained for interconnection, it must be priced at TELRIC-based rates. The FCC in paragraph 140 of the Order on Remand, <u>Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers</u>, CC Docket No. 01-338, stated:

> We note in addition that 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 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.

Even prior to the FCC providing this clear guidance, the Maryland Commission reached a similar conclusion regarding this issue in the Verizon/AT&T arbitration. Specifically, the Commission found the following:

> ...Verizon is correct in its argument that the facilities in question cannot be considered an unbundled network element – unbundled dedicated transport – given the *Triennial Review Order*. However, that *Order* only reduced Verizon's obligations with respect to unbundled network elements and nothing in that Order reduced Verizon's interconnection obligations. As noted above, the issue here is interconnection, and interconnection must be priced at TELRIC, like unbundled network elements, pursuant to the Act

> and the *Local Competition Order*. Petition of AT&T of Maryland (Order No. 79250), Case No. 8882 (PSC of Maryland, 2004), p. 22.

Sprint's proposed language regarding this issue is found in the NIM DPL and Appendix at Unresolved Issue Number 5. Specifically, Sprint proposed the following language in the Final Joint DPL:

> Interconnection facilities leased from SBC for the transmission and routing of telephone exchange and exchange access service shall be provided to Sprint at SBC's TELRIC-based rates and subject to cost sharing provisions in this Section.

Though it seems clear from the Arbitrator's rationale that the Arbitrator agrees with Sprint's position that these facilities be available to CLECs at cost-based rates for interconnection purposes, the Sprint language quoted above was not expressly adopted by the Arbitrator. Sprint believes this was an oversight and requests that all Sprint proposed language in the NIM DPL for Issue 5 be adopted. Sprint also notes that TELRIC-based rates for these facilities can be found in the price schedule to the current M2A in the section pertaining to unbundled dedicated transport.

V. APPENDIX INTERCARRIER COMPENSATION

A. Unresolved Issues Number 7 and 8

These disputed issues were properly resolved by the Arbitrator in favor of Sprint. The Commission should order that Sprint's position is adopted and that all Sprint contract language pertaining to these issues be included in the conformed agreement. SBC proposed language that was disputed by Sprint should be rejected. Sprint hereby adopts the arguments previously set forth in its testimony and post-hearing brief in further support of these rulings.

Sprint agrees with the Arbitrator's conclusion that SBC must provide transiting services at TELRIC-based rates. The Arbitrator correctly found that SBC has a 251/252 obligation to provide a transit service and consequently, this service must be provided at cost-based rates. Sprint is concerned, however, that the Arbitrator may have inadvertently overlooked Sprint's position that transit must be provided at TELRIC-based rates. Sprint addressed this issue in Sprint Intercarrier Compensation Unresolved Issue 7 and did not list it as a separate issue. Specifically, Sprint proposed the following language:

> 17.2.1 Transit service providers are rightly due compensation for the use of their tandem switching and common transport elements when providing a transit service. This compensation is based on TELRIC pricing and appears in Appendix PRICING.- All Traffic.

Sprint simply asks that the Commission clarify that SBC must provide Sprint transit services at TELRIC-based rates and adopt Sprint's language as proposed in Sprint Intercarrier Compensation Issue 7. Sprint also notes that TELRIC-based tandem switching and common transport prices are available for adoption in the price schedule proposed by SBC.

VI. <u>APPENDIX LAWFUL UNEs</u>

A. Unresolved Issue Number 1

Based on his conclusion that the terms "Lawful UNE" should not be used in this agreement, the Arbitrator rejected the proposed language of both Sprint and SBC. Sprint is amenable to editing its language to remove the term "Lawful UNE" as proposed by the Arbitrator. But in addition, Sprint urges the Commission to order that the remainder of Sprint's language should be adopted and SBC's language rejected as proposed for Unresolved Issue 1. Sprint relies upon its previous arguments and testimony that its language is simply clearer and more specific in defining the obligations under the interconnection agreement.

B. Unresolved Issues Number 2, 4, 5 and 6

These disputed issues were properly resolved by the Arbitrator in favor of Sprint. The Commission should order that Sprint's position is adopted and that all Sprint contract language pertaining to these issues be included in the conformed agreement. SBC proposed language that was disputed by Sprint should be rejected. Sprint hereby adopts the arguments previously set forth in its testimony and post-hearing brief in further support of these rulings.

C. Unresolved Issue Number 3

There are important technical errors in the Arbitrator's decision matrix regarding Unresolved Issue Number 3 that appear to have caused a substantive error as well. The Commission should correct the technical error and adopt all Sprint proposed language for Issue 3 while rejecting all SBC proposed language that is disputed by Sprint.

The technical error begins on page 124-6 of the Arbitrator's UNE decision matrix, Attachment III. A. Part 1 where the Arbitrator ruled on proposed contract section 8.4.2. The Sprint language that appears on page 125 next to SBC's section 8.4.3 should actually be added to the end of Sprint's proposed Section 8.4.2 that appears in the Arbitrator's decision matrix and also in the joint DPL filed by the parties. The effect of splitting Sprint's proposed language for section 8.4.2 into two pieces in the Sprint column of the decision matrix is to throw off the alignment of the Sprint proposed language in the remainder of the Arbitrator's decision matrix. For instance, Sprint's proposed section 8.4.3 should be lined up with SBC's proposed section 8.4.3. Sprint's proposed section 8.4.3.1 gets pushed down the matrix and is improperly lined up with SBC's proposed 8.4.4 instead of SBC's proposed 8.4.3.1. Again, this should be remedied by tacking the language on page 125, which begins "If Sprint does not dispute the declassification" to the end of Sprint's section 8.4.2, and then realigning the remaining contract sections.

This misalignment may have inadvertently thrown off the Arbitrator's analysis and created a substantive error as well that the Commission needs to correct. The error creeps in where the Arbitrator rules on section 13.5.2.1 on page 128 of the decision matrix. The Arbitrator states that Sprint's language is not consistent with the Arbitrator's report, but Sprint believes this is inaccurate and likely an inadvertent mistake by the Arbitrator because he was comparing Sprint's proposed language for 8.4.4 to SBC's 13.5.2.1. However, Sprint's terms for section 13.5.2.1 (DS1 Dedicated Transport) are essentially identical to Sprint's terms at 13.5.3.1 (DS3 Dedicated Transport) and 14.11.1 (Dark Fiber Dedicated Transport), which the Arbitrator found entirely consistent with his recommendation. Accordingly, Sprint believes that all of its proposed language is consistent with the law and also the Arbitrator's report and should be adopted by the Commission. The conclusion that Sprint's language should be adopted for 13.5.2.1 is further bolstered by the Arbitrator's ruling for Sprint language on almost every other UNE issue. Sprint urges the Commission to adopt Sprint's proposed language in its entirety for the reasons argued in its brief and supported in its testimony.

VII. APPENDIX OUT OF EXCHANGE TRAFFIC

A. Unresolved Issue Number 1

The Arbitrator properly ruled throughout the agreement that SBC's proposed Out of Exchange Traffic Appendix should be rejected as unnecessary and unjustified. Sprint supports this conclusion as argued in its brief and supported in its testimony.

VIII. APPENDIX NUMBERING

A. Unresolved Issue Number 1

For the reasons argued in its brief and supported in its testimony, Sprint contends its language should be adopted for this issue.

IX. CONCLUSION

Based upon the arguments in Sprint's brief, the contract language and position statements set forth in the Decision Point Lists, the evidence in the administrative record, and many of the rulings of the Commission-appointed Arbitrator, Sprint contends that the Commission should rule for Sprint's positions on each disputed issue and that Sprint's proposed contract language should be included in the Final Commission Arbitration Decision and incorporated into the conformed interconnection agreement.

Respectfuly Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 24 day of June, 2005, a copy of the above and foregoing was served via electronic mail to each of the following parties

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ORDER NO. 79250

In the Matter of the Petition of AT&T Communications of Maryland, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b) Concerning Interconnection Rates, Terms And Conditions.	* * * *	Before the Public Service Commission of Maryland Case No. 8882

This proceeding involves the arbitration of an Interconnection Agreement pursuant to Section 252(b) of the Telecommunications Act of 1996 (the "Act")[1] between Verizon Maryland Inc. ("Verizon") and AT&T Communications of Maryland LLC and TCG Maryland (collectively "AT&T"). The parties have appealed various rulings contained in the Proposed Order of Hearing Examiner previously issued in this proceeding. The Commission resolves those issues herein. The Commission adopts all rulings in the Proposed Order which have not been appealed and are therefore not discussed herein.

ISSUE 2

This issue concerns the question of whether carriers should receive Section 251(b)(5) reciprocal compensation when terminating calls to voice information service providers. Voice information service providers offer recorded voice announcement information such as information regarding weather conditions. The Hearing Examiner concluded that voice information services traffic is eligible for reciprocal compensation. The Commission affirms that finding.

[1] 47 U.S.C. 251 *et. seq.*

The types of calls at issue are voice calls and are fundamentally the same as all other local voice calls for which reciprocal compensation is due to the terminating carrier. There is no meaningful distinction between these calls and other voice calls that would lead to a conclusion that these calls are not subject to payment of reciprocal compensation.

Verizon asserts that Section 251(g) of the Act and the Federal Communications Commission's ("FCC's") *Intercarrier Compensation Order*[2] exempt all information services traffic from reciprocal compensation. The argument is not persuasive. The FCC concluded in its *Intercarrier Compensation Order* that Internet Service Provider ("ISP")-bound *data* traffic was "information access" traffic that was excluded from reciprocal compensation obligations under Section 251(g) of the Act. The *Intercarrier Compensation Order* addressed only data calls to **Internet Service Providers.** The FCC did not address any other category of "information access" including voice information services traffic. Moreover, in the AT&T – Verizon Virginia arbitration[3] the FCC rejected the rationale offered by Verizon for excluding this traffic from reciprocal compensation as well as the very same contract language proposed by Verizon here. The FCC explained that:

> We disagree with Verizon's assertion that every form of traffic listed in section 251(g) should be excluded from

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[2] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, *Order on Remand and Report and Order*; CC Docket Nos. 96-98, 99-68; 16 FCC Rcd 9151; FCC 01-131 (2001)("*Intercarrier Compensation Order*" or "*ISP Remand Order*").

[3] Petitions of WorldCom, Inc., Cox Virginia Telecom, Inc. and AT&T Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration, CC Docket Nos. 00-218, 00-249 and 00-251, DA 02-1731, Memorandum Opinion and Order, Wireline Competition Bureau, 17 FCC Rcd at 21939, issued July 17, 2002 ("*Virginia Arbitration Order*").

> section 25l(b)(5) reciprocal compensation. In remanding the ISP *Intercarrier Compensation Order* to the Commission, the D.C. Circuit recently rejected the Commission's earlier conclusion that section 251 (g) supports the exclusion of ISP-bound traffic from section 251(b)(5)'s reciprocal compensation obligations. Accordingly, we decline to adopt Verizon's contract proposals that appear to build on logic that the court has now rejected. (*Virginia Arbitration Order,* ¶ 261).

In sum, the Commission finds that calls to voice information service providers are subject to the same reciprocal compensation obligations as all other local voice calls. There is no meaningful basis upon which to distinguish these calls from other voice calls, and the FCC's *Virginia Arbitration Order* specifically rejected the argument that all forms of information access are excluded from reciprocal compensation.

ISSUE 3

This issue concerns the treatment of calls to customers who subscribe to foreign exchange ("FX")-like services. The specific question involves whether these calls are local calls, toll calls, or ISP-bound calls, and what form of intercarrier compensation is due for these types of calls.

Verizon asserts that when a Verizon customer calls an AT&T FX customer, Verizon should be allowed to impose access charges on AT&T; and AT&T should not be allowed to collect reciprocal compensation from Verizon. Verizon argues for this result based upon its assertion that these calls are interexchange calls, not local calls. Verizon characterizes the calls as interexchange based on the physical locations of the calling and called parties, which are frequently a considerable distance from one another. Verizon also asks the Commission to confirm that ISP-bound compensation is not due for FX calls to ISPs. Verizon asserts that this result is compelled by the *ISP Remand Order*, which limits such compensation to delivery of calls from one local exchange carrier's ("LEC's") customer to an ISP in the same local calling area served by a competing LEC.

AT&T argues that both Verizon's and AT&T's FX service is a local service, because standard industry practice, including Verizon's practice, is to rate calls based on the NPA-NXX (telephone numbers) of the calling and called parties, not the physical location of the parties. AT&T notes that calls are rated as local or toll depending upon the telephone numbers of the parties, not upon their geographic location. Thus, FX calls are local because the telephone numbers of the calling and called parties fall within the same local calling scope. AT&T cites the FCC's decision in the *Starpower Damages Award Order,* in which the FCC found that Verizon itself determines the local or toll nature of a call based upon the telephone numbers of the customers, not the physical location of the customers.[4]

With respect to FX calls to ISPs, AT&T asserts that the FCC has ordered that *all* calls to ISPs are subject to ISP compensation. The FCC's rules do not distinguish between FX calls to ISPs and other calls to ISPs. Second, FX calls to ISPs do terminate from one LECs customer to an ISP in the same local calling area served by a competing LEC therefore they are entitled to ISP compensation by the terms of the *ISP Remand Order*.

The Proposed Order accepted AT&T's position on this issue. The Commission affirms that finding. The Commission finds that FX calls are local calls, not

[4] Starpower Communications, LLC v. Verizon South Inc., Memorandum Opinion and Order, FCC 03-278, released November 7, 2003 ("*Starpower Damages Award Order*"), implementing Starpower Communications, LLC v. Verizon South Inc., Memorandum Opinion and Order, 17 FCC Rcd 6873 (2002), reversed on other grounds sub nom. Starpower Communications, LLC v. FCC, 334 F.3d 1150 (D.C. Cir. 2003).

interexchange calls, based on standard industry practice, including Verizon's own practice, and therefore reciprocal compensation is owed to the terminating carrier, and no access charges apply. The calls are local because the status of a call as local or toll is determined, pursuant to standard industry practice, by the telephone numbers of the calling and called parties, not by their physical location. The Commission notes in this regard the FCC's decision in *Starpower* rejecting Verizon's assertion that FX calls should be considered toll calls because the service enables a customer to avoid toll charges. The FCC noted that this argument missed the crucial point that Verizon South itself rated calls to and from its foreign exchange customers as local or toll based upon the telephone number assigned to the customer, not the physical location of the customer.[5]

This same industry standard and practice also means that FX calls to ISPs are local (if the calling and called telephone numbers are local) and therefore access charges would not apply. Rather, ISP compensation applies, and reciprocal compensation does not, pursuant to FCC's *ISP Remand Order.* The Commission notes in this regard that the FCC's *ISP Remand Order* requires ISP call compensation for all calls to ISPs, and the Order does not distinguish between FX calls to ISPs and other calls to ISPs.

<u>ISSUE 5</u>

During the course of this proceeding before the Hearing Examiner, Verizon proposed that the term "Internet service provider" be defined to include "an entity that provides its customers, employees, contractors, representatives, and the like the ability to obtain on-line information through the Internet." The Proposed Order rejected Verizon's proposal, in a discussion of Issue 3 dealing with FX traffic, on the grounds that it lacked

[5] Starpower Damages Award Order, ¶ 14-17.

record evidence and was essentially peripheral to this arbitration case.[6] Verizon has appealed this finding noting that evidence was presented and that the issue is not peripheral.

AT&T notes in reply that the Arbitrator did not make any substantive ruling on Issue 5 (the issue most related to Verizon's proposed definition of ISP) because the parties agreed to address this issue in a separate proceeding. Indeed, the Proposed Order indicates that the parties agreed to address Issues 4 and 5 in a separate proceeding. Proposed Order at 13.

The Commission finds that under the circumstances the most appropriate course of action is to preserve the parties right to litigate this matter in another proceeding, as they have agreed to do. Thus, the Commission finds that the Hearing Examiner's ruling on this issue in the Proposed Order has no precedential effect and the parties are free to pursue their respective positions on this issue in another proceeding.

ISSUE 6

The Hearing Examiner concluded that AT&T is entitled to receive the tandem reciprocal compensation rate if its switches are capable of serving a geographic area comparable to the area served by Verizon's tandem switches. Verizon does not seek reconsideration of the Hearing Examiner's articulation of this rule, but does seek clarification that the contract language must conform to that ruling. That is, Verizon asserts that AT&T (and any other CLEC opting into AT&T's agreement) must affirmatively show that its switches meet the "capable of serving" test adopted in the Proposed Order in order to receive the higher tandem rate. Verizon goes on to assert that

[6] Proposed Order, p. 12, n.4.

although the Hearing Examiner accepted AT&T's proposal to adopt the FCC Wireline Bureau's "capable of serving" standard, he did not determine that AT&T had, in fact, shown in this proceeding that any or all of its switches met that standard. Finally, Verizon asserts that AT&T did not, in fact, present evidence establishing that its switches are "capable of serving" a geographically comparable area, and therefore, AT&T is not entitled to the higher tandem rate unless and until it satisfies that test.

In its Reply Memorandum, AT&T pointed to testimony in this proceeding which demonstrates that AT&T's switches in Maryland are capable of serving a geographically comparable area to those served by Verizon's tandem switches. *See*, AT&T Panel Direct Testimony at 60-71; AT&T Panel Rebuttal Testimony 62, 65-66. The testimony of AT&T's witnesses on this point has not been refuted.

Most of the discussion in the Proposed Order addresses the legal standard to be applied to this issue (the geographic comparability test). The Proposed Order does not specifically address the evidence. As Verizon notes, the standard adopted in the Proposed Order has not been appealed, and since the record does contain the needed evidence, the Commission finds that AT&T's switches are capable of serving a geographic area comparable to the area served by a Verizon tandem switch. Therefore, AT&T is in fact entitled to the tandem reciprocal compensation rate.

ISSUE 7

This issues concerns the interconnection of Verizon's and AT&T's networks. More specifically, the issue concerns the point(s) of interconnection at which the carriers will exchange traffic. Although the Proposed Order adopted Verizon's position on this issue, Verizon requests that the Commission clarify that AT&T's proposed language is incorrect, because it requires Verizon to drop off its traffic to an AT&T switch. Verizon requests that the Commission make clear that it is adopting Verizon's position, which provides that Verizon may exchange its traffic with AT&T at the *same* point of interconnection (i.e., a point on Verizon's network) chosen by AT&T to drop off its traffic. For its part, AT&T has appealed this aspect of the Proposed Order and asserts that a Verizon point of interconnection would normally be mutually agreed upon, but failing agreement would default to the AT&T switch location to which Verizon has built out its network facilities.

The Commission has carefully considered the arguments presented by Verizon and AT&T in support of their respective positions and provides the following direction to the parties. The Commission does not find persuasive Verizon's arguments that its obligation to deliver its traffic ends at its tandem because the point of interconnection is for the "mutual exchange of traffic" and because the point of interconnection must be on Verizon's network. The FCC's rules define the act of interconnection as 'the linking of two networks for the mutual exchange of traffic' but this does not mean that multiple points of interconnection for the "mutual exchange of traffic" are prohibited. The FCC's rules do not require a single point of interconnection for the mutual exchange of traffic, as Verizon asserts, rather they allow the requesting carrier to establish a single point of interconnection, at its option.[7]

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[7] For example, the FCC has held that "Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA." In the Matter of Application by SBC Communications Inc. Pursuant to Section 271, FCC 00-238, Released June 30, 2000 (*Texas 271 Order*) ¶ 78.

The Act and FCC rules provide requesting carriers (in this case AT&T) with the right to designate any technically feasible point of interconnection.[8] The Act and FCC rules do not provide incumbent local exchange carriers with the right to designate points of interconnection. Verizon's position allows it to designate the point of interconnection for its traffic and therefore runs counter to the FCC's rules.

The Commission finds persuasive the fact that the FCC adopted AT&T's proposed contract language with respect to this issue in the *Virginia Arbitration Order*. The Commission adopts the same language herein.

This dispute concerns AT&T's and Verizon's respective obligations to deliver their originating traffic to one another. The issue concerns each party's respective responsibility for the cost of transporting traffic from its switch to the other company's switch. The FCC's rules make each party responsible for delivering its traffic to the other party.[9] Therefore, Verizon is financially responsible for transporting its traffic to AT&T's switch location and AT&T is financially responsible for transporting its traffic to Verizon's switch location. Two points of interconnection are appropriate. Each party is responsible for the cost of delivering its traffic through its network and into the interconnection facility that connects the two networks. The cost of the interconnection

[8] 47 C.F.R. § 51.305(a)(2).
[9] The FCC has expressed the obligations of each carrier as follows: "The Local Competition Order requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation. In essence, the originating carrier holds itself out as being capable of transmitting a telephone call to any end-user, and is responsible for paying the cost of delivering the call to the network of the co-carrier who will then terminate the call. <u>Under the Commission's regulations, the cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network</u>. The originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls. This regime represents "rules of the road" under which all carriers operate, and which make it possible for one company's customer to call any other customer even if that customer is served by another telephone company." In the matter of TSR Wireless v. U.S. West, FCC 00-194, Released June 21, 2000 (<u>TSR Wireless</u>) ¶ 34 (emphasis added).

facility itself is shared consistent with the rules set forth by the FCC in ¶1062 of the 1996 First Report and Order.[10] In sum, those rules require that the carriers share the cost of the interconnection facility based upon each carrier's percentage of the traffic passing over the facility.

The interconnection architecture described above is fair to both carriers. Each carrier is responsible for the cost of transporting its traffic through its network to the edge of its network. Both carriers then equitably share the cost of the interconnection facility which connects the two networks, based on each carrier's share of the traffic that passes over the interconnection facility.

ISSUE 8

This issue concerns the right of a terminating carrier to charge a rate, equivalent to the rate for dedicated transport, to the originating carrier, when the terminating carrier provides the transport of the originating carrier's traffic between the two networks. Specifically, AT&T has proposed charging the unbundled transport rate when it provides transport service for Verizon traffic from the point of interconnection (when the point of interconnection is located at Verizon's switch) to the AT&T switch. The Proposed Order rejected this proposal and AT&T appealed.

As previously noted with respect to Issue 7, FCC precedent makes each carrier financially responsible for the cost of delivering its traffic to the other carrier's network for termination. AT&T asks the Commission to clarify that the unbundled dedicated

[9] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*; CC Docket Nos. 96-98, 95-185; 11 FCC Rcd 15499; FCC 96-325 (1996) ("*Local Competition Order*" or "*First Report and Order*"*)*, ¶ 1062.

transport rates the Commission has established apply to the service at issue here, such as if AT&T were to provide transport of Verizon traffic from a point of interconnection in Annapolis to AT&T switches in Baltimore.

Verizon asserts that the only payment to a terminating carrier is the 'transport and termination rate' as established by the Commission in the reciprocal compensation charge. No change to the existing reciprocal compensation rate is called for. Verizon notes that the only reciprocal compensation rate a carrier is entitled to is the end office switching rate, the tandem switching rate, and the common transport rate. AT&T has offered no cost studies to show it is entitled to any other additional rate.

The Commission finds that AT&T's proposal is appropriate and that language reflecting the proposal should be included in the Interconnection Agreement. The language should be mutual and provide for either AT&T or Verizon to charge a rate equal to the rate for unbundled dedicated transport anytime either party provides the transport of the other party's originating traffic between the point of interconnection and the terminating carrier's switch.

The rate described above recovers the cost of the interconnection facility and is prescribed by the FCC in ¶1062 of the *Local Competition Order*. The contract language should reflect the guidance provided in that Order. The Commission notes that a rate mechanism to cover the cost of the interconnection facility, or to cover the cost of transport between the two networks, is separate from the reciprocal compensation rate. The reciprocal compensation payment only reflects costs starting at the terminating carrier's switch.[11] If the terminating carrier provides interconnection service to the other carrier (i.e., service before its switch, dedicated transport, in effect) it is entitled to compensation (in addition to reciprocal compensation) at total element long run incremental costs ("TELRIC") rates, pursuant to ¶ 1062 of the *Local Competition Order*.

ISSUE 9

This issue concerns the terms and conditions under which Verizon may collocate in AT&T's premises. The Hearing Examiner properly ruled that the Commission has no authority under the Telecommunications Act to establish the terms and conditions of collocation offered by a competitive local exchange carrier ("CLEC"). He cited the FCC's ruling on this same issue in the Virginia arbitration:

> Verizon argues that fairness dictates that it have collocation choices comparable to those available to competitive LECs. Verizon's collocation obligations, however, arise primarily under section 251 (c)(6) of the Act, which requires incumbent LECs, but not competitive LECs, to provide collocation to other carriers. Indeed, in the Local Competition First Report and Order, the Commission decided not to impose reciprocal section 251 (c)(2) interconnection obligations on non-incumbents. It also determined that a state commission's imposition of section 251(c) obligations on non-incumbents would be inconsistent with the Act. Thus Commission precedent explicitly forecloses our imposition of collocation obligations on petitioners pursuant to section 251 (c)(6). (*Virginia Arbitration Order*, ¶75, cited at page 22 of the Proposed Order).

Verizon does not appeal the finding in the Proposed Order that AT&T is not required to provide collocation to Verizon. But Verizon does seek clarification with respect to the terms and conditions AT&T proposed in its contract and which the parties

[11] It reflects the cost of the terminating carrier's tandem switch, the cost of transport to the terminating carrier's end office switch, and the cost of end office switching.

are disputing in connection with Issue 9. Specifically, Verizon asserts that AT&T has proposed certain terms and conditions that are unnecessary in light of a pre-existing agreement negotiated by the parties and are unreasonable and place onerous restrictions and obligations on Verizon.

Verizon asserts that AT&T has included as part of its proposed contract language a separate set of terms and conditions governing the use of spare capacity of pre-existing facilities and in doing so, AT&T ignores the fact that the parties have previously agreed, in connection with another proceeding, to terms and conditions governing the treatment of the Verizon facilities that already exist within AT&T's switch locations. Verizon requests that the Commission clarify that these same terms and conditions also apply to the spare capacity of those pre-existing facilities to be used to exchange local traffic. Thus, because Verizon's presence at AT&T's premises is already governed by an existing agreement, AT&T's Space License Schedule is unnecessary and should be stricken from the Interconnection Agreement to avoid confusion.

The Proposed Order correctly found that neither the FCC nor a State Commission can impose collocation terms and conditions on a CLEC. Both Verizon and AT&T accept this conclusion. The Commission cannot dictate the terms and conditions for collocation on AT&T's premises. Additionally, the only way in which terms can be included in an Interconnection Agreement is if the Commission orders their inclusion or if the parties agree to their inclusion. Since the Commission cannot compel the inclusion of collocation terms relating to AT&T's premises, any such terms can be included in the Interconnection Agreement only by mutual agreement of the parties. If the parties do not agree on such terms, then there are no such terms to be included in the Interconnection Agreement.

ISSUE 10

Verizon has requested clarification of three separate sub-issues relating to the mid-span fiber meet form of interconnection.

Because the Proposed Order does not clearly address the issue, Verizon requests that the Commission clarify that Verizon has the right to choose the location of its own fiber optic electronics. Verizon asserts that AT&T's proposal would unreasonably permit AT&T to designate unilaterally both the location where the parties' fiber optic cables will meet and the Verizon central office where Verizon will install its own fiber optic electronics. Verizon's mid-span fiber meet proposal would allow each party to provide the appropriate fiber optic electronics in its own "designated wire center." Verizon asserts that its proposal will have no operational or financial impact on AT&T, and that the only compensation AT&T would be required to pay Verizon would be the reciprocal compensation rate determined by the central office area *requested by AT&T*. Verizon's proposal thus guarantees Verizon the ability to design its network efficiently, and yet will have no negative impact on AT&T.

AT&T opposes Verizon's proposal because it would expose AT&T to the risk of improper billing for calls delivered to AT&T- designated central offices and greater cost for dedicated transport used to deliver calls to points beyond the AT&T designated central offices. AT&T notes that Verizon has adduced no proof that it has technical solutions to the concerns raised by AT&T's witnesses regarding the risk that the placement of Verizon's electronics in alternative locations will result in AT&T being improperly charged for traffic sent over an affected mid-span fiber meet arrangement. Nor has Verizon stated specifically that when AT&T orders dedicated transport from the AT&T-designated central office (Verizon's end of a mid-span fiber meet arrangement) to another, more distant Verizon end office, AT&T will only be charged a distance-sensitive rate reflecting that distance alone, rather than the distance between the end office in which Verizon placed its electronics and the more distant Verizon end office.

Notwithstanding these concerns, AT&T notes that if the Commission grants Verizon's appeal, it should explicitly condition such approval on AT&T being held harmless from the operational, technical, and financial risks posed by Verizon placing its electronics in central offices other than the ones designated by AT&T. AT&T proposed three safeguards that should be adopted if Verizon is permitted to choose where to place its electronics.

The Commission concludes that Verizon should be permitted to choose the location of its electronics at its end of a mid-span meet, subject to the safeguards proposed by AT&T. This resolution allows Verizon to efficiently manage its network while also insuring that AT&T receives the advantages of the mid-span interconnection it orders.

The parties are directed to include language in the Interconnection Agreement which: permits Verizon to choose the location of its electronics in a mid-span meet arrangement; describes how Verizon will prevent its billing system from charging the tandem rate for traffic terminated at the AT&T-designated Verizon wire center by way of the alternative Verizon wire center; makes the relevant Verizon billing system subject to periodic audits to determine the effectiveness of Verizon's manual efforts to prevent overcharges; provides for the prompt refund of identified overcharges; provides that when AT&T uses dedicated transport to forward traffic from a mid-span meet arrangement, AT&T must not be charged more for dedicated transport than would have applied had Verizon placed its electronics in the end office designated by AT&T; and provides that AT&T shall compensate Verizon at the end office reciprocal compensation rate, and no other charges would apply in a mid-span meet arrangement, for calls that are not switched at the Verizon tandem switch, calls that are carried on direct trunk groups to Verizon end offices, without regard to the placement of Verizon's electronics.

The second sub-issue which has been raised concerns the location of the point of interconnection on a mid-span meet. Verizon asks the Commission to reject AT&T's dual point of interconnection proposal and to rule that the sole point of interconnection on a mid-span fiber meet occurs at the location where the fiber optic cables of both parties are connected.

Verizon asserts that AT&T's proposal would allow it to demand the use of two separate points of interconnection — one for terminating AT&T's traffic and another for terminating Verizon's traffic. Verizon characterizes AT&T's proposal as unlawful for the reasons it discussed under Issue 7: the FCC's rules permit the CLEC to select the point of interconnection, but Verizon is entitled to exchange its traffic with AT&T at a *single* point of interconnection.

AT&T responds that in a mid-span fiber meet arrangement, each party contributes to the cost of the arrangement and each party thereby acquires an interest in one half of the capacity over the entire span. Because the originating party thus acquires capacity over the entire length of the span for delivery to the terminating party, there is no rationale for the terminating party to charge the originating party for transport, over a mid-span meet, from the splice point to the terminating carrier's end of the span. AT&T proposes that the Commission conclude that in a mid-span meet arrangement, the point of interconnection for a traffic-originating party is at the distant end of the span from the party's perspective and that, as a result, there are two point of interconnections in such arrangements.

The discussion of this issue by the parties reads as though they were debating the physical point of interconnection. In reality, the issue concerns the financial consequences that flow from designation of a point of interconnection. That issue was resolved in Issues 7 and 8 above. The sole distinction associated with this issue – Issue 10 – is that in this instance the form of interconnection being used is a mid-span meet. The distinctive feature of a mid–span meet is that both parties contribute to the cost of its construction. That feature dictates the resolution of the issue of whether or not a charge can be levied for use of the mid-span meet.

The argument over whether there is a single point of interconnection in the middle of the span or whether there are two points of interconnection at either end is not helpful in resolving this issue. The point where the cables connect can, philosophically, be considered the point of interconnection on a mid-span meet because in a mid-span meet each party will pay the cost of constructing the facilities. Either end can also be considered the two points of interconnection. Also, the entire mid-span meet itself can be considered the point of interconnection. However one conceives of the point of interconnection, or points of interconnection, each party is obligated to bring its traffic into the mid-span meet. The designation of either one or two points of interconnection has no effect upon the financial obligations of each party to contribute to building the mid-span meet, or the obligations of each party to deliver its traffic into the mid-span meet facility, or the obligation of each party to pay reciprocal compensation for traffic it delivers to the mid-span meet. Finally, there should be no transport charge for use of the mid-span meet if it is a mutually constructed facility. Neither party should charge the other for the use of a facility built by both parties. If the interconnection is not a mid-span meet, or is not mutually constructed or mutually paid for, transport charges may be levied consistent with ¶1062 of the *Local Competition Order.*

The final mid-span meet related issue concerns the time frame within which the parties must implement a requested mid-span meet. The parties do not dispute that the Mid-Span Fiber Meet facilities shall be activated within 120 days from the initial implementation meeting, which shall be held within 10 business days of receipt of a request for a mid-span meet. However, they do disagree concerning the process to be employed in order to delay the 120-day activation deadline.

Verizon requests that the Commission clarify that the parties are entitled to use the Interconnection Agreement's dispute resolution process to resolve disagreements about extensions of the 120-day implementation deadline. Verizon notes that under AT&T's proposal, in order to extend the activation date for the mid-span fiber meet arrangement, a party must request and be granted a stay of the timeframe by the Commission.

Verizon asserts that AT&T's proposed language fails to address the need for a reasonable and efficient way for the parties to seek to extend the timeline. AT&T's proposed process would be cumbersome and unnecessarily burdensome. Requiring the parties to formally petition the Commission for a stay of the deadline every time they need some additional time to work out the engineering and operational details of a particular mid-span fiber meet arrangement would waste both the parties' and the Commission's resources. Verizon believes that the dispute resolution process is far more likely to yield quick and efficient resolution of implementation issues than litigation of a formal petition before the Commission.

AT&T proposes that the timeframe now effective in Virginia also apply in Maryland. Under that timeframe, a requested mid-span meet arrangement must be operational within 120 days after the parties' initial meeting, which will be held within 10 days of AT&T's request, absent an explicit delay granted by the Commission.

AT&T believes that Verizon's proposal will give Verizon unlimited discretion to divert every request for a mid-span fiber meet arrangement to the open-ended and costly dispute resolution process. AT&T asserts that its right to this form of interconnection would effectively be nullified under Verizon's proposal since AT&T's potential customers will not wait indefinitely for the provisioning of facilities. Instead, they will turn to a competing carrier that can and will give reliable installation dates, and most certainly Verizon will make such commitments to retain and win back customers. AT&T urges the Commission to confirm that Verizon will be subject to the same binding timetable as now applies under the Verizon-AT&T interconnection agreement in Virginia.

The Hearing Examiner clearly adopted a 120-day timeframe within which a mid-span meet must be made operational. However, the resolution of the sub-issue regarding extension of that timeframe is not clear. The Commission confirms the 120-day timeframe and directs that this timeframe can only be extended by explicit Commission order. The importance of timely interconnection cannot be overemphasized. The Commission has recently issued an Order in a separate proceeding, which illustrates the potential for delay that is inherent in the process.[12] The Commission rejects Verizon's proposal, which could allow a unilateral delay in interconnection to occur by invocation of the dispute resolution provisions of the Interconnection Agreement. The Commission concludes that a mid-span meet should be operational within 120 days of the request, absent a Commission order extending the timeframe. The Commission notes that this resolution is consistent with the terms of the party's Virginia Interconnection Agreement.

ISSUE 15

This issue concerns the terms and conditions under which AT&T may purchase trunks for exchange access. The trunks in question would connect AT&T's local switch with Verizon's tandem switch and would haul toll traffic to the interexchange carrier chosen by AT&T's local end use customer. AT&T believes that this situation constitutes interconnection under Section 251(c)(2) of the Act, which must be provided at TELRIC rates. Verizon believes that this situation constitutes retail access service, which must be purchased at the rates set forth in Verizon's access tariffs.

AT&T notes that Section 251(c)(2) requires Verizon to provide interconnection with its network for the transmission and routing of telephone exchange service and

[12] *See*, In the Matter of the Complaint of Core Communications, Inc. v. Verizon Maryland Inc., Case No. 8881, Order No. 78989, February 26, 2004 ("Upon consideration of the record in this case, including the arguments on appeal by Verizon and response thereto by Core and Staff, the Commission agrees with the findings of the Hearing Examiner in the Proposed Order that Verizon wrongfully delayed interconnecting with Core, which delay violated the standards of the parties Interconnection Agreement in contravention of that Agreement.") Order No. 78989 at 5.

exchange access**.** AT&T notes further that interconnection trunks must be priced at TELRIC pursuant to Sections 251(c)(2)(D) and 252(d)(1). It cites the *Local Competition Order*, which held at ¶ 620 that "[i]n arbitrations of interconnection arrangements, or in rulemakings the results of which will be applied in arbitrations, states must set prices for interconnection and unbundled network elements based on the forward-looking, long-run, incremental cost methodology we describe below [i.e., TELRIC]." Finally, AT&T notes that the FCC considered the same issue as that presented here and concluded in the *Virginia Arbitration Order* that TELRIC rates must apply.

Verizon requests that the Commission affirm the Proposed Order, which found that AT&T's position would "eliminate the long standing access charge regime" for access toll connecting trunks and "essentially invalidate most access charges, a step neither the Federal Government nor the states have taken." Verizon relies upon the *Triennial Review Order*,[13] in which the FCC made clear that facilities such as access toll connecting trunks are not unbundled network elements and thus need not be made available at unbundled network elements rates. Verizon notes that the FCC ruled that an incumbent local exchange carrier's ("ILEC's") unbundling obligation applies only "to those transmission facilities connecting incumbent LEC switches and wire centers within a LATA" and this definition necessarily excludes access toll connecting trunks, which connect a *CLEC's* switch and an ILEC's access tandem for the sole purpose of transporting exchange access traffic (rather than local traffic). Verizon notes that the

[13] In the Matters of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advances Telecommunications Capability, *Report and Order on Remand and Further Notice of Proposed Rulemaking*; CC Docket Nos. 01-338, 96-98, and 98-147; 18 FCC Rcd 16978; FCC 03-36 (2003) ("*Triennial Review Order*").

dedicated transport unbundled network element does not encompass facilities used to connect a CLEC's network with the ILEC's network.

The Commission has carefully considered the arguments presented with respect to this issue and concludes that AT&T's position is correct. The Commission finds most persuasive the FCC's resolution of this issue in the *Virginia Arbitration Order*.[14] As the FCC noted in that *Order*, the situation in question constitutes the joint provision of switched exchange access to an interexchange carrier by two local exchange carriers, in this case AT&T and Verizon. When two local exchange carriers jointly provide such exchange access, Verizon should assess any charges for its access services upon the relevant interexchange carrier, not upon the other local exchange carrier. Thus, the assertion that this resolution of the issue "would eliminate the long standing access charge regime" for access toll connecting trunks and "essentially invalidate most access charges" is incorrect. Access charges remain payable by interexchange carriers, as they have always been. By the same token, the service provided by Verizon to AT&T operating as a local exchange carrier, is interconnection for the purpose of providing exchange access, and interconnection must be priced at TELRIC rates, pursuant to Sections 251(c)(2)(D) and 252(d). The Commission notes in this regard that Verizon is correct in its argument that the facilities in question cannot be considered an unbundled network element – unbundled dedicated transport – given the *Triennial Review Order*. However, that *Order* only reduced Verizon's obligations with respect to unbundled network elements, and nothing in that Order reduced Verizon's interconnection obligations. As noted above, the issue here is interconnection, and interconnection must

[14] *Virginia Arbitration Order*, ¶ 177.

be priced at TELRIC, like unbundled network elements, pursuant to the Act and the *Local Competition Order*. Therefore, the TELRIC rate previously established by this Commission for unbundled dedicated transport is also the correct rate to be charged for this interconnection.

ISSUE 30

AT&T seeks an Order permitting its technicians to do the work of moving the jumper wire when a customer in a multi-tenant environment (such as an office building) changes its service from Verizon to AT&T. The Hearing Examiner denied this request, noting that AT&T's technicians are not trained on Verizon's network.

AT&T notes that the act of disconnecting and connecting facilities involves both AT&T and Verizon networks, and any technician training implications should be just as applicable to Verizon as to AT&T. AT&T has as much incentive as Verizon to preserve the integrity of the networks with which it interconnects, and its technicians are as comprehensively trained as Verizon's.

Verizon asserts that there is no basis in law or fact for the unnecessary and potentially dangerous concept that AT&T technicians have a right to perform work on Verizon's network. Verizon asserts that the work involved could be complex in some instances and could impose a risk of service being interrupted. Verizon also notes that there is no evidence indicating that Verizon has used its right to perform cross connects involving its on-premises wiring to impede competition in multi-tenant environments.

With regard to this issue, the Proposed Order is affirmed. The work of rearranging wiring on Verizon's side of the network interface device shall continue to be

Verizon's responsibility. Of course, AT&T has the right to have its technicians present to observe the work if it wishes.

ISSUE 31.5

Verizon seeks a ruling clarifying that AT&T will be responsible for all of the costs of any necessary modifications to Verizon's Operations Support Systems ("OSS") required by AT&T's decision not to use Verizon's loop qualification database.

AT&T's proposed language provides that "Verizon shall bill and AT&T shall pay any charges incurred by Verizon in connection with modifications to its loop pre-qualification OSS that are made at AT&T's request and as a result of AT&T's decision to use non-Verizon loop prequalification tools." Verizon objects to this language and requests that the Commission clarify that AT&T will be responsible for the charges for modifications to Verizon's OSS that are reasonably required, even if the particular modifications are not explicitly made "at AT&T's request." Verizon requests an Order that clarifies that AT&T must pay any charges incurred by Verizon in connection with modifications to its OSS that are required by AT&T's decision to use its own loop prequalification tools.

This issue was addressed by the FCC in the Virginia Arbitration. The FCC specifically ordered that the language noted above, which Verizon objects to should be included in the Verizon-AT&T Virginia Interconnection Agreement. The Commission finds the FCC's resolution of this issue compelling and directs the parties to include the same language in the Maryland Interconnection Agreement. The FCC noted that:

> Finally, AT&T and Verizon cannot agree on language to implement the Bureau's ruling that, if it is technically feasible and if AT&T is willing to pay, Verizon must

modify its operations support systems (OSS) to permit AT&T to use non-Verizon loop qualification tools for line splitting. Verizon seeks to add language that would require AT&T to pay any charges incurred by Verizon in connection with modifications to its loop pre-qualification OSS that are made "as a result of AT&T's decision to use non-Verizon loop pre-qualification tools." AT&T's proposal would require it to pay any charges incurred by Verizon in connection with modifications to its loop pre-qualification OSS that are made "at AT&T's request." AT&T argues that Verizon's proposal would permit Verizon to charge AT&T for unquantified and unnecessary system modification costs. AT&T also disputes the need for Verizon to modify its OSS at all when AT&T performs an alternate loop qualification. Verizon argues that AT&T's proposal would leave it entirely to AT&T's discretion whether to pay Verizon for modifications that it makes to its OSS to accommodate AT&T's (or a third-party's) loop qualification tools. According to Verizon, such a result would be contrary to the Bureau's ruling.

We find both parties' proposed language to be reasonable, and thus direct the parties to incorporate both proposals into the agreement as follows: "Verizon shall bill and AT&T shall pay any charges incurred by Verizon in connection with modifications to its loop pre-qualification OSS that are made at AT&T's request and as a result of AT&T's decision to use non-Verizon loop pre-qualification tools." Both parties appear to be concerned about extreme interpretations of the other's language that are not supported by the *Arbitration Order*. We do not suggest, nor does the adopted language suggest, that AT&T may enjoy the benefits of modifications without paying for them. Nor may Verizon bill AT&T, as AT&T fears, for OSS modifications that are not reasonably required by AT&T's decision to use non-Verizon loop qualification tools. This must be a collaborative effort and we expect the parties to work together in good faith to address what modifications, if any, are necessary. We also expect Verizon to provide AT&T with information that is both adequate and sufficiently timely so that AT&T may decide whether to proceed with the use of non-Verizon loop qualification tools.[15]

[15] Memorandum Opinion and Order, DA- 02-2576, ¶ 9-10 (October 8, 2002).

IT IS THEREFORE, this **7th** day of **July**, in the Year Two Thousand Four,

ORDERED: That Verizon and AT&T shall file an Interconnection Agreement consistent with the directions given in this Order.

/s/ Kenneth D. Schisler

/s/ J. Joseph Curran, III

/s/ Harold D. Williams

/s/ Allen M. Freifeld

Commissioners