

Bell Atlantic
1300 I Street NW, Suite 400W
Washington, DC 20005

Susanne Guyer
Executive Director,
Federal Regulatory Affairs

EX PARTE OR LATE FILED



October 30, 1998

Ex Parte

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

RECEIVED
OCT 30 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Docket CCB/CPD 97-30 and CC Docket No. 96-98, Reciprocal Compensation

Dear Ms. Salas:

Yesterday, Mr. E. Young, III, Mr. M. Glover, Mr. F. Gumper, and I, representing Bell Atlantic, met with Dr. R. Pepper, Chief of the Office of Plans and Policy. The purpose of the meeting was to discuss the significant public policy consequences of the continued application of reciprocal compensation payments to Internet bound calls. During the discussion, the Bell Atlantic representatives discussed many of the points made in the attached ex parte letter filed by Bell Atlantic with the Commission on October 28, 1998.

In accordance with Section 1.1206(a)(1) of the Commission's rules, an original and one copy of this notice are being submitted to the Secretary.

Sincerely,

A handwritten signature in cursive script that reads "Susanne Guyer".

Susanne Guyer

cc: R. Pepper

attachment

No. of Copies rec'd 013
List ABCDE

Bell Atlantic Network Services, Inc.
1320 North Court House Road
8th Floor
Arlington, Virginia 22201
(703) 974-2944
(703) 525-6436 - FAX

Michael E. Glover
Associate General Counsel

October 28, 1998



OCT 30 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Re: Reciprocal Compensation On Internet Traffic (Dkts CCB 97-30 and 96-98)

Dear Ms. Salas:

Earlier today, Tom Tauke, Ed Young, John Thorne and Mike Glover from Bell Atlantic met with Chairman Kennard, Tom Power, Larry Strickling, and Bob Pepper to discuss the issue of reciprocal compensation:

First, clarifying that Internet traffic is not subject to reciprocal compensation will put competing carriers in exactly the same position as Bell Atlantic. Under the FCC's enhanced service provider exemption, the competing carriers will continue to charge the Internet service providers under their state tariffs (just as Bell Atlantic does).

Second, paying reciprocal compensation on Internet traffic deters the deployment of competing facilities. An independent analyst has explained that reciprocal compensation has the "perverse effect of turning customers from assets into liabilities." S. Cleland, "Reciprocal Comp For Internet Traffic-Gravy Train Running Out of Track," Legg Mason Research, June 24, 1998. And the Chairman of Covad, a competing provider of advanced services, explained that reciprocal compensation is a "boondogle" that "slows down the deployment of a high-speed packet-based network." Transcript, Economic Strategy Institute Forum on 706, Sept. 16, 1998.

Third, under the Act and the FCC's prior orders, only local traffic is subject to reciprocal compensation. But the FCC's previous decisions make clear that : 1) Internet traffic is interstate and interexchange in nature; 2) Internet calls consist of a single end to end communication from the end user to a distant Web site or sites; and 3) The FCC's enhanced service provider exemption does not change these facts. Rather, as its name makes clear, the ESP exemption merely exempts Internet service providers from paying

the per-minute interstate access charges that otherwise would apply. It does not, and cannot, make those calls local for any other purpose.

Fourth, Bell Atlantic did not agree in its contracts that Internet traffic is subject to reciprocal compensation. Bell Atlantic agreed only that "local" traffic is subject to reciprocal compensation. It refused to agree that Internet traffic is local or that it is subject to reciprocal compensation. Sample contract language is attached.

Fifth, the bulk of the state commissions that have required reciprocal compensation to be paid based their decisions on a mistaken view that the FCC's previous decisions reclassified Internet traffic as local or as two calls, not on the language of the contracts. The bulk of the state commissions also recognized that this issue is one that the FCC ultimately must resolve, and that their decisions will be modified once the FCC acts. Excerpts are attached.

Sixth, Bell Atlantic's existing interconnection agreements do not expire in the near term; many run through the year 2000 or into 2001.

Seventh, the duration of the current contracts does not define the end of the problem. A recent order from a New Jersey arbitrator allows competing carriers to use the most favored nations provision to clone existing agreements and extend them for another full three year term. This result effectively would allow competing carriers to extend existing contracts indefinitely.

Eighth, a new round of negotiations in 2000 or 2001 would not produce a different result in any event. State decisions not only require Bell Atlantic to pay reciprocal compensation on Internet traffic, but also generally have required Bell Atlantic to pay compensation at the higher tandem (rather than end office) rate as did the FCC's own order before them. An example is attached. With these state decisions in hand, competing carriers have no incentive to negotiate any different result.

Ninth, a question was raised as to whether the FCC can adopt an interpretation of its prior orders that applies prospectively only. The answer is yes. The legal authorities are attached.

Tenth, a question was asked whether adopting such an order would comply with the Administrative Procedures Act. Again, the answer is yes.

As an initial matter, the APA contains an express exemption from the notice and comment requirements for interpretive rules, 5 U.S.C. § 553(b)(3)(A). It also contains an exemption where the agency "for good cause finds" that notice and comments are "impracticable, unnecessary, or contrary to the public interest," *id.*, § 553(b)(3)(B). Examples include where the agency is under a short deadline, and either reviews what data is available to it, *Petry v. Block*, 737 F.2d 1193, 1203 (D.C. Cir. 1984), or adopts interim or temporary rules to be effective immediately pending notice and comment on

permanent rules, American Federation of Gov't Employees v. Block, 655 F. 2d 1153, 1157 (D.C. Cir. 1981).

In any event, the parties here received notice and an opportunity to comment, both in the pending reconsideration of the local interconnection order and in the proceeding initiated in response to the ALTS request for a declaratory ruling. The record addresses such issues as whether Internet traffic is subject to reciprocal compensation, whether competing carriers should receive end office or tandem rates, and competing carriers' own views as to an appropriate cost based compensation rate level. As a result, the requirements of the APA are fully met.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Glover". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael E. Glover

cc: Chairman Kennard
Mr. Powers
Mr. Strickling
Mr. Pepper

Attachments

ATTACHMENT 1

EXCERPTS FROM STATE ORDERS

Excerpts From State Commission Orders On
Internet Reciprocal Compensation

1. "The Commission will adopt the exemption permitted by the FCC. However, the Agreement should indicate that if and when the FCC modifies the access charge exemption, the Agreement will also be modified." MFS Communications Comp., Inc., 1996 WL 787940 *5 (Ariz. Corp. Com'n Oct. 29, 1996).

2. "The Department considers calls originating and terminating between these customers (ISPs and other SNET customers) within the same local calling area to be local, and, therefore, should be subject to the mutual compensation arrangements adopted in the Plan. This is consistent with the FCC's position that ISPs may pay business line rates and the appropriate subscriber lines charge, rather than interstate access rates, even for calls that appear to traverse state boundaries." Petition of the Southern New England Telephone Company For a Declaratory Ruling Concerning Internet Services Provider Traffic, Docket No. 97-05-022 at 9 (Conn. Dept. of Pub. Util. Control, Sept. 17, 1997).

3. "The FCC may someday reach a contradictory conclusion. However, there is no reason to assume in advance that it will." Petition of MCI for the Arbitration of Unsolved Interconnection Issues with Bell Atlantic, Docket No. 97-323, Arbitration Award (Del.. PSC, Dec. 16, 1997).

4. "The FCC has not yet decided whether ISP traffic is subject to reciprocal compensation.... No FCC order delineates exactly for what purposes the FCC intends ISP traffic to be considered local. ... It appears that the FCC has largely been silent on the issue. This leads us to believe the FCC intended for the states to exercise jurisdiction over the local service aspects of ISP traffic, unless and until the FCC decided otherwise." "Indeed, as recently as April, 1998, the FCC itself indicated that a decision has not been made as to whether or not reciprocal compensation should apply." Complaint of WorldCom Technologies, Inc. against BellSouth Telecommunications, Inc. for breach of terms of Florida Partial Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and request for relief, Docket No. 971478-TP, Order No. PSC-98-1216-FOF-TP at 8-9, 20 (Florida P.S.C., Sept. 15, 1998).

5. "This Commission anticipates that if the FCC institutes a change in policy which impacts the interconnection agreements or any other aspect of state policy, the parties will bring that matter to the Commission's attention in an appropriate fashion." Teleport Communications Group v. Illinois Bell, Docket No. 97-0404 (Ill. Comm. Com'n., March 11, 1998).

6. "Moreover, we note this issue is currently being considered by the FCC and may ultimately be resolved by it. . . . In the event the FCC issues a decision that requires revision to the directives announced herein, the Commission expects the parties will so advise it." Letter Order by Daniel Gahagan, Executive Secretary, Maryland Public Service Commission, at 1 (Md. PSC Sept. 11, 1997).

7. "We agree with Bell Atlantic that the FCC has jurisdiction over Internet traffic. Pursuant to that authority, the FCC may make a determination in proceedings pending before it that could require us to modify our findings in this Order." Complaint of WorldCom Technologies, Inc.(successor-in-interest to MFS Intelenet Service of Massachusetts, Inc.) against New England Telephone and Telegraph Company d/b/a Bell 251 and 252 of the Telecommunications Act of 1996, D.T.E. 97-116 at 5, n.11 (Mass. Dept. of Telecom. and Energy, Oct. 21, 1998).

8. "When the FCC rules in the pending docket, the Commission can determine what action, if any, is required." In re Brooks Fiber Communications of Michigan, Inc., Case No. U-1178, et al., at 15 (Mich. PSC Jan. 28, 1998).

9. "The record presented by the parties is not sufficiently persuasive to move this Commission to make a final decision on the reciprocal compensation issue in light of the FCC's pending proceeding on the same issue." "[P]rior to a decision from the Federal Communications Commission on the issue of reciprocal compensation for traffic to ISPs within a local calling scope, the parties shall compensate one another for such traffic in the same manner that local calls to non-ISP end users are compensated, subject to a true-up following the Federal Communication Commission's determination on the issue." In re Birch Telecom of Missouri, Inc., 1998 WL 324141 *3, *5 (Mo. PSC Apr. 24, 1998).

10. "The Telecommunications Act of 1934 authorized the FCC to regulate interstate communications and carefully preserved the states' jurisdiction over intrastate communications. (citations omitted). As the parties recognize, the 1996 Act did not change that delineation of responsibility. Therefore, only if traffic to an ISP is 'interstate' must the Commission refrain from exercising its authority to require reciprocal compensation." Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic, Case No. 97-C-1275, 1998 WL 214795 *1 (N.Y.P.S.C. Mar. 19, 1998).

11. "The FCC has not squarely addressed this issue, although it may do so in the future. While both parties presented extensive exegeses on the obscurities of FCC rulings bearing on ISPs, there is nothing dispositive in the FCC rulings thus far." In re Interconnection Agreement Between BellSouth Telecommunications, Inc. And US LEC of North Carolina, LLC, Docket No. P-55, SUB 1027 at 7 (N.C. PUC Feb. 26, 1998).

12. "[T]he precise issue under review in the instant case is currently being decided by the FCC. . . . Any ruling by the FCC on that issue will no doubt affect future dealings between the parties on the instant case." "Instead of classifying the web sites as the jurisdictional end of the communication, the FCC has specifically classified the ISP as an end user. [citation omitted] Given the absence of an FCC ruling on the subject, this court finds it appropriate to defer to the ICC's finding of industry practice regarding termination." Illinois Bell Tel. Comp. v. Worldcom Technologies, Inc., No. 98 C 1925, Mem. Op. and Order at 18, 27 (N.D. Ill. July 21, 1998).

13. "We also recognize that the FCC is in the process of considering arguments addressing these broader policy implications. The FCC's deliberations could, therefore, have an impact on this Commission's view of the issues presented by the parties in this complaint. We specifically reserve our rights to consider these policy implications in a future proceeding." Complaint of ICG Telecom Group, Inc. v. Ameritech Ohio, Case No. 97-1557-TP-CSS, at 8 (Pub. Util. Com'n. Ohio, Aug. 27, 1998).

14. "[F]ederal law dictates that the termination point of a call to an ISP for reciprocal compensation purposes is the location of the ISP.... [T]he policy established by the FCC and followed by SWBT is that ISPs be treated as end users, and the interconnection agreement should be interpreted in the context of that policy." "Irrespective of how the FCC's 1983 access charge exemption policy might otherwise be interpreted, for purposes of this cause the more recent Telecommunications Act and the FCC's Universal Service Order would provide the controlling federal precedent. . . . No support has been offered to show that the FCC has acted in any manner to limit or dictate the type of compensation local exchange carriers can assess each other under an interconnection agreement for termination of traffic destined to ISPs." In re Application of Brooks Fiber Communications of Oklahoma, Inc., Cause No. 970000548, Order 423626, at 8, 10-11 (Okla. PSC June 3, 1998).

15. Based on MFS's argument that the issue is governed by the enhanced service provider exemption, "[t]here is no reason to depart from existing law or speculating what the FCC might ultimately conclude in a future proceeding." In re MFS Communications Comp., Inc., 1996 WL 768931 *13 (Or. PUC Dec. 9, 1996).

16. An important consideration is "whether or not pending FCC proceedings counsel in favor of deferring action," but "the FCC has had occasion to state its position on the issue and has not, thus far, definitively addressed the issue." Petition for Declaratory Order of TCG Delaware Valley, Inc., P-00971256 at 20 (Pa. PUC June 16, 1998).

17. "All parties agree that the FCC has for many years declared that enhanced service providers, which include ISPs, may obtain services as end users under intrastate tariffs." "Based upon the long-standing position of the FCC that existed years before the execution of the Interconnection Agreement, the Hearing Officer concludes that the term 'Local Traffic' . . . includes, as a matter of law, calls to ISPs." In re Petition of Brooks Fiber, Docket No. 98-00118 (Tenn. Reg. Auth. Apr. 21, 1998).

18. "The Commission agrees with the FCC's view that the provision of Internet service via the traditional telecommunications network involves multiple components;" the FCC has recognized that this position should be reviewed in a future FCC proceeding." Complaint and Request for Expedited Ruling of Time Warner Communications, PUC Docket No. 18082 at 4 (Tex. PUC, Feb. 27, 1998).

“[R]ecognizing all along that the Federal Communications Commission has not decided the specific issue of whether local phone companies are entitled to reciprocal compensation for terminating Internet traffic, the Court’s judgment to deny Plaintiff’s request for declaratory and injunctive relief shall stand.” Southwestern Bell Telephone Company v. Public Utility Commission of Texas, MO-98-CA-43 (W.D. Texas, July 20, 1998).

19. “It is premature to change the treatment of ESPs at this time.” Petition for Arbitration of an Interconnection Agreement Between MCI Communications Company, Inc. and US WEST Communications, Inc. Pursuant to 47 USC Section 252, Docket No. UT-960323, Arbitrator’s Report and Decision at 26 (Wash. Util. and Trans. Com’n., Nov. 1996).

20. “[T]he Commission agrees that a final determination on this matter rests with the FCC. . . . If the FCC should change its position, then the Commission expects interconnection agreements to be applied in accordance with the FCC’s new policy. Moreover, the parties will be directed to bring the FCC’s final determination to the Commission’s attention in order to allow it to consider whether any further action is appropriate.” MCI Telecommunications Corporation, Case No. 97-1210-T-PC at 29-30 (W.Va. PSC Jan. 13, 1998).

21. Recognizing that the issue is pending at the FCC but concluding that “postponing a Commission decision to await a Federal Communications Commission decision is not in the parties’ interest or in the public interest.” Letter Order from Lynda L. Dorr, Secretary to the Public Service Com’n of Wisconsin, to Rhonda Johnson and Mike Paulson, 5837-TD-100, 6720-TD-100 (Wisc. PSC May 13, 1998).

October 22, 1998

ATTACHMENT 2

PROSPECTIVE APPLICATION OF AGENCY INTERPRETATIONS

Prospective Application Of
Agency Interpretations

A question has been raised as to whether the FCC can adopt an interpretation of its prior orders establishing the so-called "enhanced service provider exemption" that applies prospectively only. The answer is yes.

Whether the FCC issues an interpretive ruling in the context of an ongoing adjudication (such as the GTE tariff proceeding) or issues a declaratory ruling (such as in the proceeding initiated in response to the ALTS petition), it has discretion to make that ruling prospective only.

1. Interpretive rules. The courts have long recognized that federal agencies have discretion to limit interpretive rulings adopted in agency adjudications to prospective application:

a. "[A] retrospective application can properly be withheld when to apply the new rule to past conduct or prior events would work a 'manifest injustice.' Clark-Cowlitz Joint Operating Agency v. FERC, 826 F.2d 1074, 1081 (D.C. Cir. 1987), citing Retail, Wholesale & Department Store Union v. NLRB, 826 F.2d 1074, 1081 (D.C. Cir. 1987) (factors to consider include the extent to which a party relied on the former rule, and the degree of burden that retroactive application would impose on a party).

b. "While at one time the determination that a rule was properly established through adjudication would have

compelled the conclusion that it should be applied with full retroactive effect, see Linkletter v. Walker, 381 U.S. 618, 622-24 (1965), 'the accepted rule today is that in appropriate cases the Court may in the interest of justice make the rule prospective.' Id. at 628. The Department [of the Interior] itself has recognized this very principle in its own adjudications. . . . In Safarik [v. Udall], 304 F.2d 944 (D.C. Cir.), cert denied, 371 U.S. 901 (1962)], the Court of Appeals for the District of Columbia Circuit upheld the Department's power to give its decision prospective effect only. Id. at 950." McDonald v. Watt, 653 F.2d 1035, 1042 & n.18 (5th Cir. 1981).

c. "[I]t is a basic tenet of administrative law that agencies have some discretion to choose between adjudication and rulemaking when interpreting statutes and regulations committed to their authority . . . The Administrative Procedure Act does expressly prohibit an agency from retroactively imposing an interpretive rule upon a regulated party. [citation omitted]. Nonetheless, nothing in the APA prohibits an agency from adopting or revising an interpretation of a regulation that has been properly promulgated in an adjudication and applying that interpretation retroactively.... However, courts will not allow

retroactive application of an agency adjudication where doing so would result in a 'manifest injustice.'"

Beazer East, Inc. v. EPA, 963 F.2d 603, 609 & n.4 (3rd Cir. 1992).

2. Declaratory ruling. Likewise, the same rule applies if the agency adopts its interpretation in the form of a declaratory ruling to resolve an ongoing controversy, rather than in an adjudication.

a. Under the Administrative Procedure Act, "[t]he Agency with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty." 5 U.S.C. § 554(e); see also 47 C.F.R. 1.2.

b. "[W]e wish to emphasize that our ruling today will have prospective application only. . . . If we were to make our ruling today retroactive, it would probably create considerable disruption to all concerned." Request by Reagan for President Committee for Declaratory Ruling, 80 FCC 2d 225, 228 (1980).

c. "A determination in a declaratory ruling that a particular carrier practice is unlawful may effectively require a carrier to adopt a different practice for the future." In re AT&T, 3 FCC Rcd 5071, ¶ 7 (1988).

ATTACHMENT 3

NEW JERSEY ARBITRATION ORDER

Before the
STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

In the Matter of the Petition)
of Global NAPS Inc. for Arbitration of Inter-)
connection Rates, Terms, Conditions and Related)
Arrangements with Bell Atlantic-New Jersey)
Pursuant to Section 252(b) of the Telecommuni-)
cations Act of 1996)

Docket No. TO98070426

THE RECOMMENDED INTERIM
FINAL DECISION OF THE ARBITRATOR

DATED: October 26, 1998

I. BACKGROUND

This matter comes before the Arbitrator for decision pursuant to Section 252(b) of the Telecommunications Act of 1996 after the two parties herein were unable to agree upon all of the terms necessary for a complete Interconnection Agreement (IA). Despite efforts to achieve agreement, both parties have submitted the issues set forth below to the Arbitrator for decision.

The petitioner, Global Naps, Inc. (GN) is seeking certification as a competitive local exchange carrier (CLEC) in New Jersey. It already has such status in other states, including some served by the respondent, Bell Atlantic (BA). BA-New Jersey is the incumbent local exchange carrier (ILEC). Prior to 1996, BA held a legally sanctioned monopoly franchise to provide land line local exchange service in the State of New Jersey. That monopoly position, as a legal proposition, was terminated by the Telecommunications Act of 1996. That enactment envisioned and encouraged the end of monopoly local exchange service such as that possessed by BA. One of the means set forth in the statute to promote local telecommunications competition was to impose a series of service obligations on all LEC's (47 USC 251 (b)), and a more stringent set of obligations on ILEC's in particular (47 USC 251(c)), that are designed to open up local calling areas for new entrants. It was in connection with these obligations that the parties attempted to work out an IA. While the parties were able to achieve agreement on some points, the matters set forth below have fallen to the arbitrator to decide.

Both parties submitted a joint statement of the unresolved issues to the Arbitrator on September 28, 1998. On that same day, each party separately submitted a statement of their own responses to the issues. On October 20, 1998, at the request of the Arbitrator, each party submitted its own revised statement of the issues to be resolved by arbitration. An arbitration hearing was conducted on October 21, 1998 at the offices of LeBouef, Lamb, Greene, and MacRae in Boston, Massachusetts. At that hearing, the parties attempted to clarify the issues from each of their points of view, had the opportunity to present witnesses, and made opening and closing arguments. In terms of witnesses, only BA chose to avail itself of the opportunity to present testimony; it offered Mr. Jeffrey Masoner, its Vice President for Interconnection Services as a witness. Each party, on October 23, 1998, submitted post hearing briefs. The record of the Arbitration is now complete and ready for a Recommended Interim Final decision. The recommendation herein, of course, is interim in nature as the Board may want to look at any of the matters raised herein and render policy determinations on a more permanent, and perhaps, generic basis.

II. ISSUES

As noted above the parties submitted a joint statement of issues to the Arbitrator on September 28, 1998. On October 20, 1998, each party, at the suggestion of the Arbitrator, submitted its own statement of the issues. Rather than restate each of those herein, for purposes of both analysis and decision, the issues will be restated herein in somewhat different fashion than the parties themselves have offered them. Nevertheless, in the Arbitrator's view, at least, all of the issues raised are subsumed in the recasted issues.

A. IS GN AN ENTITY ELIGIBLE FOR AN INTERCONNECTION AGREEMENT?

BA has raised doubts as to whether or not GN, a carrier which it asserts provides neither "loops nor access to E-911 services," and a company that conducts its business in a manner that BA finds inconsistent with status as a CLEC, is an entity entitled to an IA with it. Among the practices about which BA complains are lack of balance in originating and terminating traffic and misassignment of central office (NXX) codes. GN counters that argument by asserting that it is, like many CLEC's, a young company still formulating its business strategy. Its practices today may very well change over time, but that the evolution of its business should have no bearing on its entitlement to an IA with BA. It further asserts that Section 252(1) of the Telecommunications Act requires only that GN be a "telecommunications carrier," a broad term encompassing many different type of players in the market who provide a "telecommunications service," in order to be eligible for an IA with an ILEC.

B. IS GN ENTITLED TO MOST FAVORED NATION STATUS IN REGARD TO OTHER INTERCONNECTION AGREEMENTS?

Assuming arguendo that GN is an eligible party for an IA, BA has raised questions about its ability to assert most favored nation (MFN) status to obtain those terms that are set forth in the IA BA entered into with MFS in 1996. It contends that GN is not prepared to agree to or meet all of the terms and conditions of the contract to which it seeks to opt in, the 1996 IA between BA and MFS. It also alleges that the costs of GN opting in are far in excess of the costs BA encountered when it entered into agreement with MFS. GN asserts in response, that as a telecommunications carrier under the 1996 Act, it is entitled to MFN status, and that BA's assertions to the contrary are merely that company's unsubstantiated fears of how GN might do business in the future.

C. WHEN OPTING INTO A PREEXISTING INTERCONNECTION AGREEMENT UNDER MFN STATUS, IS A PARTY BOUND TO THE AGREEMENT IN ITS ENTIRETY, OR IS IT FREE TO OPT IN ON A PROVISION BY PROVISION BASIS?

This issue is fairly straightforward. If a party seeks to opt into a preexisting IA under MFN rights, may it do so on a provision by provision basis, or solely on the basis of take it or leave it in its entirety.

D. IF GN IS ABLE TO OPT INTO MFS AGREEMENT, WHAT SHOULD THE DURATION OF THE CONTRACT BE?

The IA between MFS and GN was executed on July 16, 1996 and expires on July 1, 1999. It extends for a period just shy of three full years. GN contends that by opting into the agreement it is entitled to an IA that is identical in terms of its length. It points to numerous provisions of the IA

that require lengthy periods into the contract to fully work out, and asserts that any period less than that set forth in the MFS-BA Agreement could have the effect of negating some of the terms of that document. BA, on the other hand, asserts that if GN is allowed to opt into the Agreement, it should only be allowed to do so for the period remaining in that IA, namely until July 1, 1999. It argues that it did not intend for the terms of its arrangement with MFS to go on in perpetuity, and that that would be the net effect of allowing eligible parties to opt into that IA for the term as set forth in the MFS understanding. In short, GN contends that its MFN rights allow it to have the same contractual term in time as MFS negotiated in 1996 while BA contends that MFN status only allows GN to obtain the identical contractual rights as MFS to a point in time co-terminus with the applicability of those rights to MFS, namely until July 1, 1999.

E. ARE CALLS TO INTERNET SERVICE PROVIDERS ELIGIBLE FOR RECIPROCAL COMPENSATION UNDER THE MFS INTERCONNECTION AGREEMENT?

The IA between MFS and BA envisions a scenario where each party compensates the other for calls that originate from their customers but terminates with a customer of the other. Since the originating caller is almost always the one who is billed for a call, the ability to be compensated for service rendered in terminating the call depends entirely on having the company whose customer originates it passing on the costs of termination to the company whose customer was the recipient of the call. Accordingly, BA and MFS agreed to reciprocally compensate one another for terminating calls in accordance with the schedule set forth in their IA.

BA contends in both testimony and argument that the IA it entered into with MFS never contemplated a severe imbalance in the reciprocal compensation arrangements between itself and MFS, one that would inevitably occur if a CLEC focused its business on signing up Internet Service Providers (ISP's) as customers. That imbalance, BA contends is inevitable because calls to ISP's are almost always incoming. Thus, a CLEC whose customers were, for example, exclusively ISP's would be entitled to significant compensation from BA for call terminations while having to pay virtually nothing in return, because its customers originated few, if any, calls. BA also contends that its reluctance to acquiesce to GN opting into the MFS IA is not motivated entirely by fear of breach or imbalance in reciprocal payments, but also by a desire to avoid entering into a contractual arrangement whose precise terms it already knows are the subject of disagreement among the parties. Indeed, BA's testimony indicated that the disagreement on those terms may not be limited to BA and GN. MFS also appears to have a different view of the IA than BA, and there may be legal action taken on those disagreements, although BA's testimony on that point was very circumspect, given the sensitivity of the subject.

Not surprisingly, GN takes a very different point of view. It argues that the MFS IA makes no reference to requiring any balance in the reciprocal compensation arrangements, and, indeed, at some points appears to contemplate the very imbalance that BA states was never envisioned. In any event, GN further argues, even if such an imbalance was contemplated, BA has little or no basis to assume that it will occur (BA insists that it does based on its

experience with its IA with GN in Massachusetts). GN further contends that, in any event, should BA's worse fears materialize, and the reciprocal compensation arrangements turn out to be very imbalanced in violation of the IA, as interpreted by BA, BA would still have available to it all the legal remedies that are applicable to breach of contract. Accordingly, GN maintains, fear of contract breach or imbalance in the reciprocal compensation arrangements is not grounds for refusing to provide GN with the ability to opt into the MPS IA.

F. ARE THE APPLICABLE RECIPROCAL COMPENSATION RATES THOSE SET FORTH IN THE MPS INTERCONNECTION AGREEMENT, OR THE GENERIC RATES ESTABLISHED BY THE BPU IN DOCKET No. TX 951206317

The MPS IA sets forth a schedule of payments under the reciprocal compensation arrangements. They are \$.009 for local traffic delivered to a tandem switch and \$.007 for local calls delivered to an end office. On December 2, 1997, the BPU issued an order in Docket No. TX 95120631, In The Matter of the Investigation Regarding Local Exchange Competition for Telecommunications Services (Generic Order). In that decision, the Board set rates of \$.003738 for tandem termination and \$.001846 for end office termination. BA contends that the Generic Order supersedes the MPS rates for all IA's entered into subsequent to its issuance, and therefore, that the reciprocal compensation rates should be .003738 and .001846. GN asserts that by opting into the MPS IA it is entitled to the compensation rates set out in that document, namely the rates of .009 and .007. It bases that argument on two premises. The first is that the generic order of the BPU supersedes only arbitrated rates and not, as in the case of the MPS IA, negotiated rates. The second premise is that the rates determined in the Generic Order were based entirely upon the costs of BA and are not applicable to the costs of a CLEC.

III. ANALYSIS AND RECOMMENDATIONS

A. IS GN AN ENTITY ELIGIBLE FOR AN INTERCONNECTION AGREEMENT?

BA has raised questions in regard to whether GN is an CLEC eligible for an IA under the Telecommunications Act of 1996. As noted above, those questions relate to the nature of GN's business strategy and the configuration of its facilities. GN has countered that BA has little or no evidentiary basis to support its questioning of GN's eligibility, and that, even if it did, GN is clearly a "telecommunications carrier" that the Act envisioned as being eligible for an IA.

It seems clear that a key goal of Congress in enacting the Telecommunications Act of 1996 was to open up local exchange service to competition. Ease of entry may well be the sine quo non of actions needed to open the market to competition. It would seem consistent with the intent of the statute to minimize the hurdles for new market entrants and to liberally construe eligibility for an IA. While BA makes it clear that it dislikes what it believes to be GN's business intentions, its own witness admitted that he could not state with certainty what strategy GN might ultimately pursue. The

experience BA has had with GN in Massachusetts may well justify BA's dislike for GN's business activity, but does not rise to the level of providing a rationale for denying the petitioner's status as a "telecommunications carrier" under the Act for purposes of the Recommended Interim Final Decision. GN's application to be certified as a CLEC in New Jersey is currently pending before the Board, and BA may, if it chooses to do so, offer any objections it may have to the BPU itself in that matter. Having spent considerable effort negotiating with GN in an attempt to achieve an IA, however, it would seem peculiar, for purposes of the Arbitration, to now, at the end of that process, to find that GN was never an eligible party for an IA. For purposes of the decision herein, however, for the policy and practical reasons set forth, GN is determined to be a CLEC eligible for an IA with BA.

Decision III. A.

GN is eligible for an Interconnection Agreement with BA.

B. IS GN ENTITLED TO MOST FAVORED NATION STATUS IN REGARD TO OTHER INTERCONNECTION AGREEMENTS?

Having determined that GN is a "telecommunications carrier" under the 1996 Act, it follows that it is eligible for all of the rights and privileges that are associated with that status. One of those rights is to be entitled to MFN into a preexisting IA between the same ILEC and another CLEC. The reason for that right is to assure that there is no undue discrimination in the marketplace that could either skew or preclude competition in the local exchange market. While BA asserts a series of objections to that right, they are insufficiently corroborated by the evidence of record, constitute fears of post-agreement misbehavior rather than contemporaneous barriers to MFN rights at entry, or are not of sufficient public policy gravitas to overcome the rights of a CLEC to assert MFN rights in order to assure against the type of undue discrimination that could serve as a barrier to either market entry or effective participation.

Decision III. B.

GN is entitled to MFN status in regard to opting into other Interconnection Agreements between BA and other CLEC's, including that with MFS.

C. WHEN OPTING INTO A PREEXISTING INTERCONNECTION AGREEMENT UNDER MFN STATUS, IS A PARTY BOUND TO THE AGREEMENT IN ITS ENTIRETY, OR IS IT FREE TO OPT IN ON A PROVISION BY PROVISION BASIS?

This issue has been the subject of considerable controversy in New Jersey and elsewhere. While the FCC, at 47 CFR 51.801 (a), requires an ILEC to provide any requesting carrier any service or network element contained in any agreement to which that ILEC is a party, that interpretation of the "pick and choose" rule was rejected by the Eighth Circuit Court of Appeals in Iowa

Utilities Board et al. V. FCC, 120 F3d 753, 800 (Eighth Cir. 1997), cert. granted sub nom., AT&T Co. V. Iowa Utilities Board, U.S. , 118 S.Ct. 879, 139 L.Ed. 2d 867 (1998). While Iowa Utilities Board is on appeal, it is critical to note that the BPU itself has spoken to this issue in Docket No. TX 95120631. The Board ruled that Section 252(i) of the telecommunications Act "does not permit a requesting carrier 'pick and choose' any individual rate, term or condition from a prior agreement while rejecting the balance of the agreement." Nevertheless, the Board recognized that this interpretation may have a substantial effect on the State's local exchange marketplace and therefore reserved its right to reconsider its interpretation of the "pick and choose" rule and Section 252(i) upon the conclusion of the Supreme Court's review of the Eighth Circuit decision. Since the Board has spoken so clearly and directly to the matter at hand, the Arbitrator is obliged to follow that precedent.

Decision III. C.

If GN opts into the MFS Agreement, it may only do so on an all or nothing basis. It is not free to "pick and choose" among the provisions of that Agreement and is bound to the terms and conditions as of the date they are permitted to "opt in" to the MFS agreement.

D. IF GN IS ABLE TO OPT INTO THE MFS AGREEMENT, WHAT SHOULD THE DURATION OF THE CONTRACT BE?

This question is a very difficult one. As noted above, BA believes that if GN is entitled to opt into the MFS IA, it can only do so for the duration in time remaining on that contract, namely, July, 1999. GN states that it is entitled to a contract with the very same time duration as that afforded to MFS, namely three years.

It seems obvious that GN is correct when it asserts that the MFS IA contemplated a lengthy period of time to implement, some measure perhaps taking more than the eight months remaining in that agreement. To limit the applicability to GN of the MFS IA to the eight remaining months of that Agreement may have the effect, in the petitioner's eyes, of depriving them of the benefits of some of the provisions of that contract. On the other hand, however, BA retorted that it ought not have to have every IA it signs be 'leap frogged' into perpetuity by successive opt ins by new CLEC's. The MFS IA was an early agreement, and the parties chose to limit their risk exposure under it to three years duration. From BA's perspective, requiring them to allow GN to opt into the MFS IA for a new three year period exposes them to the very risks to which they successfully negotiated avoidance with MFS.

The starting point for analyzing this issue is the very dynamic nature of the telecommunications industry. Few, if any, industries are undergoing as much change on an ongoing basis than is telephony. Given that fact, the law's bias against open ended or perpetual contractual obligations takes on new meaning. It seems unreasonable on its face to require BA, or any other actor in telecommunications to assume obligations extending over indeterminate

periods of time based on an Agreement that was negotiated shortly after the Telecommunications Act was passed. At the time the MFS contract was signed, no one had much experience to draw upon to negotiate such an arrangement. At hearing GN's counsel argued that BA negotiated a very bad deal for themselves with MFS and now wants to avoid its obligations thereunder. While that assertion may or may not be the case, it seems clear that both BA and MFS, perhaps because they recognized their own lack of experience with such an Agreement, chose to limit their exposure to the arrangement to three years. At the end of that period, each party would then have the opportunity to review its experience, survey a changed industry, and then renegotiate their understanding. To allow new CLEC's to opt into the MFS IA for new three year terms would appear to deprive BA of the very risk mitigation terms it negotiated for itself. Holding BA to an open ended obligation, regardless of the fact that BA envisioned only a three year exposure to those terms and conditions, based on the terms of an IA signed very shortly after the passage of the Act seems manifestly unfair. For that reason, it is not at all surprising that BA argues that if GN is able to opt in it may only do so for the time remaining in the MFS IA.

The problem with simply disallowing an unfair result to BA, is that GN is potentially exposed to three equally unfair results. The first is that if by limiting the Agreement to eight months, GN is deprived of some of the provisions in the MFS IA that require considerable lead time to implement, BA will have been effectively been given some of the very same ability to 'pick and choose' what services it offers other carriers that the Board has already decided that CLEC's will be unable to exercise in selecting the services they want from preexisting IA's (see Section III above). The second unfairness is GN will have a very short horizon of certainty in making some very fundamental decisions about business strategy and investment. Part of the uncertainty GN could encounter is to find itself without an IA, the existence of which is critical to its ability to engage in business. The third is that MFS will have been given a discriminatory competitive advantage over other CLECs by having had almost three full years with an arguably superior set of terms and conditions than those offered to its competitors.

A related issue is that BA seems open to allowing a longer term arrangement if GN will agree to allow itself to be bound by whatever new arrangements are negotiated by BA and MFS. Not surprisingly, GN seems not at all inclined to blindly delegate the negotiation of its future IA to another company. Obviously, they cannot be compelled to do so.

It would be ideal if all of these potential inequities could be resolved, but Solomonic solutions are not always readily available. Accordingly, it seems appropriate to look at the public policy context for this decision. This matter only arises because Congress decided that it was the public policy of this country to open local exchanges up to competition. The fulfillment of that policy objective requires that all decisions undertaken pursuant to the 1996 Act keep that objective in mind. In that context, the unfairnesses worked on GN appear graver than those worked on BA. GN is a new competitor whose entry to the market is being blocked by the absence of an IA with BA. The contract it wishes to opt into, as is its right under law, clearly envisions a lengthier period for implementation than would seem possible to fulfill if BA's

position on the duration of the contract for GN was sustained, sets a rate that clearly advantages an existing player in the market, MFS, and provides GN with little or no margin for putting its business strategies to work. That type of barrier to market entry seems considerably higher than is consistent with the Congressional intent of promoting competition. Additionally, by making the contract length identical to that in the MFS IA, the 'pick and choose"effect on the services offered by BA to GN, as noted above, is avoided. For those reasons, GN should be entitled to a contract with a duration identical to that which is set forth in the MFS accord, 19 days shy of three years from the date of execution.

Decision III. D

The duration of the Interconnection Agreement between BA and GN should be nineteen days less than three years from the date of execution.

E. ARE CALLS TO INTERNET SERVICE PROVIDERS ELIGIBLE FOR RECIPROCAL COMPENSATION UNDER THE MFS INTERCONNECTION AGREEMENT?

There are two matters that must be resolved to make a recommendation on this issue. The first is whether calls to ISP's are included in the types of calls for which the MFS IA requires reciprocal compensation. The second is whether calls to ISP's are local calls.

In regard to the first matter, the MFS IA calls for reciprocal compensation for all residential and business calls. BA contends that it never contemplated calls to ISP's when it negotiated the arrangement, and that fact is evidenced by the absence of any reference to ISP's in the document. The record is silent on what MFS had in mind at the time. The problem with BA's contention, however, is that the document's silence on ISP's does not simply mean that calls to ISP's are excluded from reciprocal compensation requirements. It might also be concluded that the terms residential and business customers are so broad that they cover all calls made. Indeed, it is hard to imagine many calls to ISP's that do not fall within that definition. Moreover, it seems implausible that in 1996 two very sophisticated actors in the telecommunications market, such as BA and MFS, could have negotiated an IA without either party having given any thought to calls to the Internet, which was already being widely used at that time and whose growth potential for telecommunications was hardly a secret in the industry. It is plausible that BA did not contemplate the possibility that some CLEC's might focus their marketing on ISP's and thus create the sorts of revenue imbalances that BA complains of, but that has little or no relevance to the matter at hand. The definition of the types of calls set forth in the IA is sufficiently broad that it must be construed as including calls to ISP's.

The second matter that must be resolved is whether or not calls to ISP's are local calls. It seems apparent from the testimony offered in this matter, that calls to ISP's can be local calls. It seems equally possible that they may not be. The only way to make a determination of whether they are local or not is on a call specific basis. For purposes of the matter at hand, however,

it will suffice to note that it is impossible to make a generic statement as to the physical realities of such calls. BA asserts that the FCC is looking into this very question, and suggests suspending judgement until the FCC has the opportunity to decide the matter. Given that there is no basis in the record for determining when, if ever, the FCC will render judgement on the matter, it seems pointless to not proceed to make a determination that will allow the parties to proceed. The fact that calls to ISP's can be local calls seems dispositive of the matter for purposes of the Recommended Interim Final Decision. That is because, local calls are the subject of the MFS IA. To the extent that calls to ISP's are not local in nature, or whether such calls are the result of misassignment of NXX's, or other such matters that BA complains of, those are matters to be looked into in any action BA may take to remedy what it believes to be a breach of the contract. Such fears are simply not relevant to the question of whether local calls to ISP's are entitled to the reciprocal compensation provisions of the MFS IA.

It bears mentioning that many of the issues that BA has raised in the matter at bar appear to emerge from BA's fears that GN will breach the terms of the MFS IA, as BA understands them. Indeed, it seems clear from Mr. Masoner's testimony, that BA believes that MFS itself may be in breach. While the Arbitrator is not unsympathetic to BA's assertion that it should not be compelled to offer contractual terms that are so broad that it could give rise to activities that it believes constitute breach, those fears cannot be allowed to control the outcome of this proceeding. There are two reasons for this. The first is obvious. Nothing in this decision will deprive BA of any remedies it has available to it for breach of contract. It may seek whatever remedies it desires whenever it concludes that a breach has occurred. The second reason is policy based. The 1996 Act envisioned removing unnecessary barriers to entry in the local exchange market in order to hasten the onset of competition. Efforts to perfect contractual language to better define the expectations of the incumbent can also be viewed as the narrowing of the business options available to new market entrants. Such a result would clearly be counterproductive in terms of creating the type of robust competition that was envisioned by the Congress when it passed the 1996 Act.

Decision III. E

Calls to Internet Service Providers are eligible for reciprocal compensation under the MFS Interconnection Agreement.

F. ARE THE APPLICABLE RECIPROCAL COMPENSATION RATES THOSE SET FORTH IN THE MFS INTERCONNECTION AGREEMENT, OR THE GENERIC RATES ESTABLISHED BY THE BPU IN DOCKET NO. TX95120631?

The intent of the Congress in enacting the 1996 Act was, in regard to local exchange service, to promote competition and market mechanisms. For that reason, as suggested in the post-hearing brief of GN, there is a hierarchy of rate setting that has evolved. There are three ways in which reciprocal compensation for call termination can be determined under the law, by negotiation, by regulation, and by arbitration. The mechanism that is most derived from the market place, is, of course, negotiation. As a result, it is

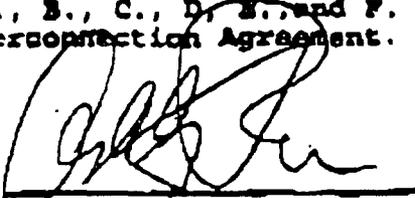
entitled to a position at the top of the hierarchy. The second level is occupied by the de jure authorities, jurisdictional regulatory agencies, and the bottom is occupied by arbitration. In terms of playing cards, negotiation trumps regulation, and regulation trumps arbitration. The issue raised herein is whether the rates negotiated by BA and MFS, including the rates for reciprocal compensation, will apply to GN being that GN is "opting into" the fully negotiated agreement.

Decision III. F.

The reciprocal compensation rates applicable to GN and BA if GN opts into the MFS Interconnection Agreement, are, for the duration of the time that the terms therein are applicable between BA and GN, those set forth in that agreement.

IV. CONCLUSION

For the reasons set forth above it is the Recommended Interim Final Decision of the Arbitrator that Decisions III. A., B., C., D., E., and F. be adopted by the parties for purposes of their Interconnection Agreement.



Ashley C. Brown

ATTACHMENT 4

STATE DECISION REQUIRING PAYMENT AT TANDEM RATE

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
HARPISBURG, PA 17101-3265**

Public Meeting held November 1, 1996

Commissioners Present:

John M. Quain, Chairman
Lisa Crutchfield, Vice Chairman
John Hanger, Statement attached
David W. Rolka, Dissenting - Statement attached
Robert K. Bloom

Petition of TCG Pittsburgh for
Arbitration to Establish an
Interconnection Agreement with
Bell Atlantic - Pennsylvania,
Inc.

A-310213
F0002

OPINION AND ORDER

absolutely controlling. We do, however, consider the approach taken by the FCC in the Rules to be instructive.

2. Conditions and Scope of Approval

A second preliminary issue concerns the scope and nature of the Recommended Decision before us. The record shows that TCG and Bell withdrew certain items from arbitration with the caveat that these withdrawn items would be resolved at a later date. The Arbitrator provided a provisional list of withdrawn items that may not, however, be comprehensive.

Our approval of the Recommended Decision, in whole or in part, is conditioned on our requirement that the withdrawn items be thoroughly resolved. We shall herein require that a comprehensive agreement, which agreement will be submitted to this Commission for final approval under the Act and pursuant to our Implementation and Implementation Reconsideration Orders, contain provisions completely resolving the withdrawn items.

We impose this requirement so that TCG's and Bell's resolution of those items may relate back to our action today. In the unlikely event that TCG and Bell do not resolve any item that has been withdrawn from arbitration, we shall require them to re-file on all such unresolved items and to begin the arbitration process anew, consistent with the Act and our orders implementing the Act.

B. Rates for Transport and Termination of Traffic

A major issue in this proceeding is the rate that Bell and TCG should pay to each other for the transport and termination of each other's traffic. A particular component of this issue is the rate that Bell should pay TCG to terminate traffic at Bell's switch.

The Arbitrator relied on an analysis and interpretation of the FCC Order as governing the matter. The Arbitrator stated that the FCC Order sent "conflicting signals" about this important issue. The Arbitrator noted that Sections 1069 to 1089 of the FCC Order discuss "symmetrical" compensation arrangements. Under the symmetrical approach, the incumbent LEC ("ILEC") and the CLEC would pay each other the same rate for the transportation and termination of traffic. For example, in Section 1089, the FCC directs the states "to establish presumptive symmetrical rates based on the incumbent LEC's costs for transport and termination of traffic when arbitrating disputes." (R.D., p. 3.)

The Arbitrator then noted, in contrast to the aforementioned Section 1089, that Section 1090 of the FCC Order and Section 51.711(a)(3) of the FCC Rules provide three exceptions to symmetry. One of these exceptions is involved in the matter before us today. That exception provides that:

Where the switch of a carrier other than an incumbent LEC serves a geographical area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection.

(R.D., p.3.)

TCG claimed that Section 51.711(a)(3) supported its position that the appropriate tandem rate should be \$0.005 because it serves the entire Pittsburgh metropolitan area from a single Pittsburgh switch and that this approach was superior service to Bell's service. TCG further claimed that Bell has multiple tandems within the local access and transport area ("LATA"). (Tr., p. 42.) TCG claimed, in support of this position, at page 8 of its Position Statement, that:

[T]he transport rates for TCG reflect the fact that TCG's fiber optic ring network provides connectivity throughout the Pittsburgh metropolitan area on a shared basis from the TCG switch, whereas the connection from Bell to the TCG switch would be dedicated.

(R.D., pp. 3-4, citing TCG's Position Stmt., 8.)

Bell disputed TCG's position and claimed that Bell was attempting to reconcile conflicting signals in regard to the FCC Rules. Bell argued that it was more appropriate to treat TCG's switch as a blended switch. Bell claimed that a blended pricing was appropriate because Bell provides both end office and tandem functions. Bell continued with a claim that this "blended" approach was fairer and that it would generate "true symmetry" if TCG charged Bell the weighted average of what Bell charged TCG for end office (\$0.003) and tandem office (\$0.005) services, i.e., a blended rate of \$0.004. (R.D., p. 4.)

The Arbitrator recommended that TCG's final rate of \$0.005 would be the most appropriate. The Arbitrator cited Section 1090 of the FCC Order in support of that recommendation. The Arbitrator claimed that Section 1090 allows states to establish transport and termination rates that vary according to whether traffic is routed through a tandem switch or directly to the end office switch. The Arbitrator also referred to Section 1090 for the proposition that states should consider whether new technologies, such as a fiber optic ring, perform functions similar to those provided by the ILEC's tandem switch, and, thus, whether calls terminating on the CLEC's network should be charged the same rate as calls terminating on the ILEC's tandem switch. Section 1090 ends with the language on which TCG relied, similar to the language in Section 51.711(a)(3). The Arbitrator concluded that both Sections 1090 and 51.711(A)(3) supported the recommendation. (R.D., pp. 4-5.)

The Arbitrator noted that TCG's tandem switch and fiber optic ring provide service similar to, and perhaps superior to, the service which Bell's tandem switch provides within the same geographical area. The Arbitrator concluded that the service capability of the TCG tandem switch, along with Section 1090 of the FCC Order and Section 51.711(a)(3) of the FCC Rules, supported TCG's symmetrical rate rather than Bell's proposed blended rate. (R.D., pp. 4-5.)

Bell filed Exceptions to that recommendation. Bell claims that the recommendation is not reciprocal and in direct conflict with or contrary to the Act, 47 U.S.C. §251(b)(5), which establishes, in pertinent part, a "duty to establish reciprocal compensation arrangements for the transport and termination" of calls between their networks. Bell argues that, under the recommendation proposed by the Arbitrator, compensation would not be symmetrical; instead TCG would always pay Bell a combination of end office and tandem rates, while Bell would always TCG the higher tandem rate.

We have reviewed the record in this proceeding, as well as the Act, the FCC Rules, our Implementation and Implementation Reconsideration Orders, the various Position Statements, the Arbitrator's Recommended Decision, and the filed Exceptions of Bell. We agree with the rationale and recommendation of the Arbitrator in this matter.

The Recommended Decision before us, however, rested upon, inter alia, Section 51.711(a)(3) of the FCC Rules which are subject to the Federal Stay. TCG and Bell seek a rate for transport and termination of each other's traffic consistent with Section 51.711 although they dispute the meaning and scope of that Federal Rule.

The Arbitrator's recommendation relied heavily on the FCC Rules on the matter -- especially Section 51.117 of the FCC Rules. We cannot, however, dispose of this dispute solely by reference to this disputed provision because that Rule is subject to the Federal Stay. If we relied solely on that Section, our approval would rest on a stayed regulation whose resolution is uncertain at this date. We shall, therefore, resolve this matter with reference to other legal authority as well as the guidance provided by the FCC Rules even though those Rules are currently stayed by the Eighth Circuit.

In the first instance, we shall rely on the provisions of the Act dealing with interconnection and arbitration of interconnection concerns. Sections 252(a)(1), (e)(1), and (e)(2) of the Act, collectively, allow a state commission to approve an arbitration decision, such as the subject Recommended Decision, provided that the results are not discriminatory or contrary to the public interest. TCG and Bell disagreed on the pricing approach to be used for providing the tandem-end office service necessary for interconnection. They did not, however, claim that either proposal was so unduly discriminatory or so contrary to the public interest as to warrant immediate rejection if either of the proposed pricing options were to be adopted by this Commission. Consequently, we conclude that this Commission may approve a tandem-based approach to pricing the interconnection under these Sections of the Act even if any Rules relied upon by the Arbitrator are subject to the Federal Stay.

In addition, Section 252(e)(3) and Section 253(a) of the Act, collectively, preserve state authority with respect to telecommunication service quality service standards or requirements provided they do not prohibit any interstate service. We note that Sections 3001(7) and 3005(3) of Chapter 30 of the Public Utility Code, 66 Pa. C.S. §§3001, et seq., to which Bell is subject, collectively require this Commission to advance

the provisioning of competitive services on equal terms throughout all areas of the Commonwealth and to make the basic service functions ("BSFs") necessary for those services available under nondiscriminatory tariffed terms and conditions, including price. To the extent that the subject Recommended Decision may be construed to constitute a competitive service at the tandem and end-office level, Chapter 30 requires this Commission to ensure nondiscriminatory pricing of those services. Since TCG and Bell did not claim that adoption of either approach would constitute discriminatory pricing and the Act preserves state authority in that respect, Chapter 30 also provides another basis for approving this aspect of the Recommended Decision.

Also, our use of tandem-based pricing for services covered by this Opinion and Order is consistent with the technical evidence in the record. TCG's switch can provide both end office and tandem office functions. This means that TCG requires a reduced level of service from Bell's network, generally limited to services other than Bell's tandem switching capacity, than would be the case with competitors that lack TCG's technical sophistication. We, therefore, conclude that it is appropriate to require that any reciprocal compensation be based on the \$0.005 rate for tandem switching for termination of calls.

Finally, the Federal Stay of the FCC Rules should be temporary. This necessarily means that the issue might have to be revisited once the Federal Stay is lifted and the FCC Rules have finally run the gamut of legal challenges. The interim approach taken in this Opinion and Order will promote competition by not letting a transient development, such as the Federal Stay, hinder the development of competition.

Accordingly, we shall deny Bell's Exceptions on this issue.

ATTACHMENT 5

SAMPLE CONTRACT LANGUAGE

**INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE
TELECOMMUNICATIONS ACT OF 1996**

Dated as of July 16, 1996

by and between

BELL ATLANTIC-VIRGINIA, INC.

and

MFS INTELENET OF VIRGINIA, INC.

1.39. "Line Status Verification" or "LSV" means an operator request for a status check on the line of a called party. The request is made by one Party's operator to an operator of the other Party. The verification of the status check is provided to the requesting operator.

1.40 "Local Access and Transport Area" or "LATA" is As Defined in the Act.

1.41 "Local Exchange Carrier" or "LEC" is As Defined in the Act. The Parties to this Agreement are or will shortly become Local Exchange Carriers.

1.42. "Local Serving Wire Center" means a Wire Center that (i) serves the area in which the other Party's or a third party's Wire Center, aggregation point, point of termination, or point of presence is located, or any Wire Center in the LATA in which the other Party's Wire Center, aggregation point, point of termination or point of presence is located in which the other Party has established a Collocation Arrangement or is purchasing an entrance facility, and (ii) has the necessary multiplexing capabilities for providing transport services.

1.43 "Local Telephone Number Portability" or "LTNP" means "number portability" As Defined in the Act.

1.44 "Local Traffic," means traffic that is originated by a customer of one Party on that Party's network and terminates to a Customer of the other Party on that other Party's network, within a given local calling area, or expanded area service ("EAS") area, as defined in BA's effective Customer tariffs. Local Traffic does not include traffic originated or terminated by a commercial mobile radio service carrier.

1.45. "Main Distribution Frame" or "MDF" means the primary point at which outside plant facilities terminate within a Wire Center, for interconnection to other telecommunications facilities within the Wire Center.

1.46 "MECAB" means the Multiple Exchange Carrier Access Billing (MECAB) document prepared by the Billing Committee of the Ordering and Billing Forum ("OBF"), which functions under the auspices of the Carrier Liaison Committee ("CLC") of the Alliance for Telecommunications Industry Solutions ("ATIS"). The MECAB document, published by Bellcore as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an Exchange Access service provided by two or more LECs, or by one LEC in two or more states, within a single LATA.

1.47 "MECOD" means the Multiple Exchange Carriers Ordering and Design (MECOD) Guidelines for Access Services - Industry Support Interface, a document developed by the Ordering Provisioning Committee under the auspices of OBF. The MECOD document, published by Bellcore as Special Report SR-STIS-002643, establishes methods for processing orders for Exchange Access service which is to be provided by two or more LECs.

1.48 "Meet-Point Billing" or "MPB" means an arrangement whereby two or more LECs jointly provide to a third party the transport element of a Switched Exchange Access Service to one

1.58 "Rate Center Area" or "Exchange Area" means the specific geographic point and corresponding geographic area which has been identified by a given LEC as being associated with a particular NPA-NXX code assigned to the LEC for its provision of Telephone Exchange Services. The Rate Center Area is the exclusive geographic area which the LEC has identified as the area within which it will provide Telephone Exchange Services bearing the particular NPA-NXX designation associated with the specific Rate Center Area. A "Rate Center Point" is a specific geographic point, defined by a V&H coordinate, located within the Rate Center Area and used to measure distance for the purpose of billing Customers for distance-sensitive Telephone Exchange Services and Toll Traffic.

1.59 "Rate Demarcation Point" means the point of minimum penetration at the Customer's premises or other point, as defined in a Party's Tariffs, where network access recurring charges and LEC responsibility ends and beyond which Customer responsibility begins.

1.60 "Rating Point" or "Routing Point" means a specific geographic point identified by a specific V&H coordinate. The Rating Point is used to route inbound traffic to specified NPA-NXXs and to calculate mileage measurements for distance-sensitive transport charges of switched access services. Pursuant to Bellcore Practice BR-795-100-100, the Rating Point may be an End Office location, or a "LEC Consortium Point of Interconnection." Pursuant to that same Bellcore Practice, examples of the latter shall be designated by a common language location identifier (CLLI) code with (x)KD in positions 9, 10, 11, where (x) may be any alphanumeric A-Z or 0-9. The Rating Point/Routing Point must be located within the LATA in which the corresponding NPA-NXX is located. However, the Rating Point/Routing Point associated with each NPA-NXX need not be the same as the corresponding Rate Center Point, nor must it be located within the corresponding Rate Center Area, nor must there be a unique and separate Rating Point corresponding to each unique and separate Rate Center.

1.61 "Reciprocal Compensation" is As Described in the Act, and refers to the payment arrangements that recover costs incurred for the transport and termination of Local Traffic originating on one Party's network and terminating on the other Party's network.

1.62 "Service Control Point" or "SCP" means the node in the common channel signaling network to which informational requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from a service switching point and via a Signaling Transfer Point, performs subscriber or application-specific service logic, and then sends instructions back to the SSP on how to continue call processing.

1.63 "Signaling Transfer Point" or "STP" means a specialized switch that provides SS7 network access and performs SS7 message routing and screening.

1.64 "Switched Access Detail Usage Data" means a category 1101XX record as defined in the EMR Bellcore Practice BR-010-200-010.

1.65 "Switched Access Summary Usage Data" means a category 1150XX record as defined in the EMR Bellcore Practice BR-010-200-010.

group, it will supply an auditable Percent Interstate Use ("PIU") report quarterly, based on the previous three months' terminating traffic, and applicable to the following three months. In lieu of the foregoing PLU and/or PIU reports, the Parties may agree to provide and accept reasonable surrogate measures for an agreed-upon interim period.

5.6.4 Measurement of billing minutes for purposes of determining terminating compensation shall be in conversation seconds.

5.7 Reciprocal Compensation Arrangements -- Section 251(b)(5).

Reciprocal Compensation arrangements address the transport and termination of Local Traffic. BA's delivery of Traffic to MFS that originated with a third carrier is addressed in subsection 7.3. Where MFS delivers Traffic (other than Local Traffic) to BA, except as may be set forth herein or subsequently agreed to by the Parties, MFS shall pay BA the same amount that such carrier would have paid BA for termination of that Traffic at the location the Traffic is delivered to BA by MFS. Compensation for the transport and termination of traffic not specifically addressed in this subsection 5.7 shall be as provided elsewhere in this Agreement, or if not so provided, as required by the Tariffs of the Party transporting and/or terminating the traffic.

5.7.1 Nothing in this Agreement shall be construed to limit either Party's ability to designate the areas within which that Party's Customers may make calls which that Party rates as "local" in its Customer Tariffs.

5.7.2 The Parties shall compensate each other for transport and termination of Local Traffic in an equal and symmetrical manner at the rates provided in the Detailed Schedule of Itemized Charges (Exhibit A hereto) or, if not set forth therein, in the applicable Tariff(s) of the terminating Party, as the case may be. These rates are to be applied at the M-IP for traffic delivered by BA, and at the BA-IP for traffic delivered by MFS. No additional charges, including port or transport charges, shall apply for the termination of Local Traffic delivered to the BA-IP or the M-IP, except as set forth in Exhibit A. When Local Traffic is terminated over the same trunks as Toll Traffic, any port or transport or other applicable access charges related to the Toll Traffic shall be prorated to be applied only to the Toll Traffic.

5.7.3 The Reciprocal Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service. Such Switched Exchange Access Service and all Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state Tariffs.

5.7.4 Compensation for transport and termination of all Traffic which has been subject to performance of INP by one Party for the other Party pursuant to Section 14 shall be as specified in subsection 14.5.

5.7.5 The designation of Traffic as Local or Toll for purposes of compensation shall be based on the actual originating and terminating points of the complete end-to-end call, regardless of the carrier(s) involved in carrying any segment of the call.

5.7.6 Each Party reserves the right to measure and audit all Traffic to ensure that proper rates are being applied appropriately. Each Party agrees to provide the necessary Traffic data or permit the other Party's recording equipment to be installed for sampling purposes in conjunction with any such audit.

5.7.7 The Parties will engage in settlements of alternate-billed calls (e.g. collect, calling card, and third-party billed calls) originated or authorized by their respective Customers in Virginia in accordance with the terms of an appropriate billing services agreement for intraLATA intrastate alternate-billed calls or such other arrangement as may be agreed to by the Parties.

6.0 TRANSMISSION AND ROUTING OF EXCHANGE ACCESS TRAFFIC PURSUANT TO 251(c)(2).

6.1 Scope of Traffic

Section 6 prescribes parameters for certain trunks to be established over the Interconnections specified in Section 4 for the transmission and routing of traffic between MFS Telephone Exchange Service Customers and Interexchange Carriers ("Access Toll Connecting Trunks"). This includes casually-dialed (10XXX and 101XXXX traffic).

6.2 Trunk Group Architecture and Traffic Routing

6.2.1 MFS shall establish Access Toll Connecting Trunks by which it will provide tandem-transported Switched Exchange Access Services to Interexchange Carriers to enable such Interexchange Carriers to originate and terminate traffic to and from MFS's Customers.

6.2.2 Access Toll Connecting Trunks shall be used solely for the transmission and routing of Exchange Access to allow MFS's Customers to connect to or be connected to the interexchange trunks of any Interexchange Carrier which is connected to an BA Access Tandem.

6.2.3 The Access Toll Connecting Trunks shall be two-way trunks connecting an End Office Switch MFS utilizes to provide Telephone Exchange Service and Switched Exchange Access in a given LATA to an Access Tandem BA utilizes to provide Exchange Access in such LATA.

6.2.4 The Parties shall jointly determine which BA Access Tandem(s) will be subtended by each MFS End Office Switch. MFS's End Office switch shall subtend the BA Access Tandem that would have served the same rate center in BA's network. Alternative configurations will be discussed as part of the Joint Plan.

6.3 Meet-Point Billing Arrangements

**INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE
TELECOMMUNICATIONS ACT OF 1996**

Dated as of June 5, 1998

by and between

BELL ATLANTIC - PENNSYLVANIA, INC.

and

**ACCELERATED
CONNECTIONS,
INC.**

1.42 "Local Serving Wire Center" means a Wire Center that (i) serves the area in which the other Party's or a third party's Wire Center, aggregation point, point of termination, or point of presence is located, or any Wire Center in the LATA in which the other Party's Wire Center, aggregation point, point of termination or point of presence is located in which the other Party has established a Collocation Arrangement or is purchasing an entrance facility, and (ii) has the necessary multiplexing capabilities for providing transport services.

1.43 "Local Telephone Number Portability" or "LTNP" means "number portability" As Defined in the Act.

1.44 "Local Traffic," means traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that other Party's network, within a given local calling area, or expanded area service ("EAS") area, as defined in BA's effective Customer tariffs, or, if the Commission has defined local calling areas applicable to all LECs, then as so defined by the Commission.

1.45 "Main Distribution Frame" or "MDF" means the primary point at which outside plant facilities terminate within a Wire Center, for interconnection to other telecommunications facilities within the Wire Center.

1.46 "MECAB" means the Multiple Exchange Carrier Access Billing (MECAB) document prepared by the Billing Committee of the Ordering and Billing Forum ("OBF"), which functions under the auspices of the Carrier Liaison Committee ("CLC") of the Alliance for Telecommunications Industry Solutions ("ATIS"). The MECAB document, published by Bellcore as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an Exchange Access service provided by two or more LECs, or by one LEC in two or more states, within a single LATA.

1.47 "MECOD" means the Multiple Exchange Carriers Ordering and Design (MECOD) Guidelines for Access Services - Industry Support Interface, a document developed by the Ordering Provisioning Committee under the auspices of OBF. The MECOD document, published by Bellcore as Special Report SR-SIS-002643, establishes methods for processing orders for Exchange Access service which is to be provided by two or more LECs.

1.48 "Meet-Point Billing" or "MPB" means an arrangement whereby two or more LECs jointly provide to a third party the transport element of a Switched Exchange Access Service to one of the LECs' End Office Switches, with each LEC receiving an appropriate share of the transport element revenues as defined by their effective Exchange Access tariffs. "Meet-Point Billing Traffic" means traffic that is subject to an effective Meet-Point Billing arrangement.

1.49 "Mid-Span Meet" means an Interconnection architecture whereby two carriers' transmission facilities meet at a mutually agreed-upon point of Interconnection utilizing a fiber

LEC for its provision of Telephone Exchange Services. The Rate Center Area is the exclusive geographic area which the LEC has identified as the area within which it will provide Telephone Exchange Services bearing the particular NPA-NXX designation associated with the specific Rate Center Area. A "Rate Center Point" is a specific geographic point, defined by a V&H coordinate, located within the Rate Center Area and used to measure distance for the purpose of billing Customers for distance-sensitive Telephone Exchange Services and Toll Traffic.

1.59 "Rate Demarcation Point" means the Minimum Point of Entry ("MPOE") of the property or premises where the Customer's service is located as determined by BA. This point is where network access recurring charges and BA responsibility stop and beyond which Customer responsibility begins.

1.60 "Rating Point" or "Routing Point" means a specific geographic point identified by a specific V&H coordinate. The Rating Point is used to route inbound traffic to specified NPA-NXXs and to calculate mileage measurements for distance-sensitive transport charges of switched access services. Pursuant to Bellcore Practice BR-795-100-100, the Rating Point may be an End Office location, or a "LEC Consortium Point of Interconnection." Pursuant to that same Bellcore Practice, examples of the latter shall be designated by a common language location identifier (CLLI) code with (x)KD in positions 9, 10, 11, where (x) may be any alphanumeric A-Z or 0-9. The Rating Point/Routing Point must be located within the LATA in which the corresponding NPA-NXX is located. However, the Rating Point/Routing Point associated with each NPA-NXX need not be the same as the corresponding Rate Center Point, nor must it be located within the corresponding Rate Center Area, nor must there be a unique and separate Rating Point corresponding to each unique and separate Rate Center.

1.61 "Reciprocal Compensation" is As Described in the Act, and refers to the payment arrangement set forth in subsection 5.7 below.

1.62 "Service Control Point" or "SCP" means the node in the common channel signaling network to which informational requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from a service switching point and via a Signaling Transfer Point, performs subscriber or application-specific service logic, and then sends instructions back to the SSP on how to continue call processing.

1.63 "Signaling Transfer Point" or "STP" means a specialized switch that provides SS7 network access and performs SS7 message routing and screening.

1.64 "Switched Access Detail Usage Data" means a category 1101XX record as defined in the EMR Bellcore Practice BR-010-200-010.

1.65 "Switched Access Summary Usage Data" means a category 1150XX record as defined in the EMR Bellcore Practice BR-010-200-010.

5.6.4 Measurement of billing minutes for purposes of determining terminating compensation shall be in conversation seconds.

5.7 Reciprocal Compensation Arrangements -- Section 251(b)(5)

Reciprocal Compensation arrangements address the transport and termination of Local Traffic. BA's delivery of Traffic to ACI that originated with a third carrier is addressed in subsection 7.3. Where ACI delivers Traffic (other than Local Traffic) to BA, except as may be set forth herein or subsequently agreed to by the Parties, ACI shall pay BA the same amount that such carrier would have paid BA for termination of that Traffic at the location the Traffic is delivered to BA by ACI. Compensation for the transport and termination of traffic not specifically addressed in this subsection 5.7 shall be as provided elsewhere in this Agreement, or if not so provided, as required by the Tariffs of the Party transporting and/or terminating the traffic. BA shall provide notice to ACI of any BA filing to the Commission that would alter the classification of particular traffic as Local or IntraLATA Toll Traffic.

5.7.1 Nothing in this Agreement shall be construed to limit either Party's ability to designate the areas within which that Party's Customers may make calls which that Party rates as "local" in its Customer Tariffs.

5.7.2 The Parties shall compensate each other for the transport and termination of Local Traffic in an equal and symmetrical manner at the rates provided in the Detailed Schedule of Itemized Charges (Exhibit A hereto), as may be amended from time to time in accordance with Exhibit A and subsection 20.1.2 below or, if not set forth therein, in the applicable Tariff(s) of the terminating Party, as the case may be. These rates are to be applied at the ACI-IP for traffic delivered by BA, and at the BA-IP for traffic delivered by ACI. No additional charges, including port or transport charges, shall apply for the termination of Local Traffic delivered to the BA-IP or the ACI-IP, except as set forth in Exhibit A. When Local Traffic is terminated over the same trunks as Toll Traffic, any port or transport or other applicable access charges related to the Toll Traffic shall be prorated to be applied only to the Toll Traffic.

5.7.3 The Parties disagree as to whether traffic that originates on one Party's network and is transmitted to an Internet Service Provider (ISP) constitutes Local Traffic as defined herein. The issue of whether such traffic constitutes Local on which reciprocal compensation must be paid pursuant to the Act may be considered by the Commission and is presently before the FCC in CCB CPD 97-30. The Parties agree that the decision of the FCC in that proceeding shall determine whether such traffic is Local Traffic (as defined herein). Absent an FCC determination, any Commission ruling on this issue shall be controlling. If the FCC determines that ISP Traffic is Local Traffic, as defined herein, it shall be compensated as Local Traffic under this Agreement. If the FCC or court of competent jurisdiction determines that ISP Traffic is not Local Traffic, as defined herein, and such decision preempts inconsistent state rulings, the Parties will agree upon appropriate treatment of said traffic for compensation purposes; if the Parties are unable to agree upon an appropriate treatment, either Party may apply to the Commission for a decision on such issue.

5.7.4 Compensation for transport and termination of all Traffic which has been subject to performance of INP by one Party for the other Party pursuant to Section 14 shall be as specified in subsection 14.5.

5.7.5 The designation of Traffic as Local or non-Local for purposes of compensation shall be based on the actual originating and terminating points of the complete end-to-end call, regardless of the entities involved in carrying any segment of the call.

5.7.6 Each Party reserves the right to measure and audit all Traffic, up to a maximum of two audits per calendar year, to ensure that proper rates are being applied appropriately, provided, however, that either Party shall have the right to conduct additional audit(s) if the preceding audit disclosed material errors or discrepancies. Each Party agrees to provide the necessary Traffic data or permit the other Party's recording equipment to be installed for sampling purposes in conjunction with any such audit.

5.7.7 The Parties will engage in settlements of intraLATA intrastate alternate-billed calls (e.g. collect, calling card, and third-party billed calls) originated or authorized by their respective Customers in Pennsylvania in accordance with the terms of an appropriate IntraLATA Telecommunications Services Settlement Agreement between the Parties substantially in the form appended hereto as Exhibit D.

6.0 TRANSMISSION AND ROUTING OF EXCHANGE ACCESS TRAFFIC PURSUANT TO 251(c)(2)

6.1 Scope of Traffic

Section 6 prescribes parameters for certain trunks to be established over the Interconnections specified in Section 4 for the transmission and routing of traffic between ACI Telephone Exchange Service Customers and Interexchange Carriers ("Access Toll Connecting Trunks"), in any case where ACI elects to have its End Offices which subtend a BA Tandem. This includes casually-dialed (10XXX and 101XXXX) traffic.

6.2 Trunk Group Architecture and Traffic Routing

6.2.1 ACI shall establish Access Toll Connecting Trunks by which it will provide tandem-transported Switched Exchange Access Services to Interexchange Carriers to enable such Interexchange Carriers to originate and terminate traffic to and from ACI's Customers.

6.2.2 Access Toll Connecting Trunks shall be used solely for the transmission and routing of Exchange Access to allow ACI's Customers to connect to or be connected to the interexchange trunks of any Interexchange Carrier which is connected to a BA Tandem.

**INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE
TELECOMMUNICATIONS ACT OF 1996**

Dated as of June 19, 1998

by and between

BELL ATLANTIC - NEW YORK

and

AUSTIN COMPUTER ENTERPRISES, INC.

Austin - BELL ATLANTIC Interconnection Agreement

970, 940).

1.39 "Inside Wire" or "Inside Wiring" means all wire, cable, terminals, hardware, and other equipment or materials on the Customer's side of the Rate Demarcation Point.

1.40 "Integrated Digital Loop Carrier" or "IDLC" means a subscriber loop carrier system which integrates within the switch at a DS1 level that is twenty-four (24) loop transmission paths combined into a 1.544 Mbps digital signal.

1.41 "Integrated Services Digital Network" or "ISDN" means a switched network service that provides end-to-end digital connectivity for the simultaneous transmission of voice and data. Basic Rate Interface-ISDN (BRI-ISDN) provides for a digital transmission of two 64 Kbps bearer channels and one 16 Kbps data and signaling channel (2B+D). Primary Rate Interface-ISDN ("PRI-ISDN") provides for digital transmission of twenty three (23) 64 kbps bearer channels and one (1) 64 kbps data and signaling channel (23 B+D).

1.42 "Interconnection" is As Described in the Act and refers to the connection of separate pieces of equipment or transmission facilities within, between, or among networks for the purpose of transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic.

1.43 "Interexchange Carrier" or "IXC" means a carrier that provides, directly or indirectly, InterLATA or IntraLATA Telephone Toll Services.

1.44 "Interim Telecommunications Number Portability" or "INP" is As Described in the Act.

1.45 "InterLATA Service" is As Defined in the Act.

1.46 "IntraLATA Toll Traffic" means those intraLATA calls that are not defined as Local Traffic in this Agreement.

1.47 "Line Side" means an End Office Switch connection that provides transmission, switching and optional features suitable for Customer connection to the public switched network, including loop start supervision, ground start supervision, and signaling for basic rate ISDN service.

1.48 "Local Access and Transport Area" or "LATA" is As Defined in the Act.

1.49 "Local Exchange Carrier" or "LEC" is As Defined in the Act. The Parties to this Agreement are or will shortly become Local Exchange Carriers.

1.50 "Local Traffic", means traffic that is originated by a Customer of one Party on

Austin - BELL ATLANTIC Interconnection Agreement

that Party's network and terminates to a Customer of the other Party on that other Party's network, within a given local calling area, or expanded area service ("EAS") area, as defined in BA's effective Customer tariffs, or, if the Commission has defined local calling areas applicable to all LEC's, then as so defined by the Commission.

1.51 "Main Distribution Frame" or "MDF" means the ultimate point at which outside plant facilities terminate within a Wire Center, for interconnection to other telecommunications facilities within the Wire Center.

1.52 "Meet-Point Billing" or "MPB" means the process whereby each Party bills the appropriate tariffed rate for its portion of a jointly provided Switched Exchange Access Service as agreed to in the Agreement for Switched Access Meet Point Billing.

1.53 "Network Element" is As Defined in the Act.

1.54 "Network Interface Device" or "NID" means the BA-provided interface terminating BA's telecommunications network on the property where the Customer's service is located at a point determined by BA.

1.55 "North American Numbering Plan" or "NANP" means the numbering plan used in the United States, Canada, Bermuda, Puerto Rico and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code), followed by a 3-digit NXX code and 4-digit line number.

1.56 "Numbering Plan Area", or "NPA" is also sometimes referred to as an area code. there are two general categories of NPAs. "Geographic NPAs" and "Non-Geographic NPAs". A Geographic NPA is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A Non-Geographic NPA, also known as a "Service Access Code" or "SAC Code", is typically associated with a specialized telecommunications service which may be provided across multiple geographic NPA areas; 800, 900, 700, 500 and 888 are examples of Non-Geographic NPAs.

1.57 "Number Portability" or "NP" is As Defined in the Act.

1.58 "NXX", "NXX Code", or "End Office Code" means the three-digit switch entity indicator (i.e. the first three digits of a seven digit telephone number).

1.59 "Party" means either BA or Austin and "Parties" means BA and Austin.

1.60 "Permanent Number Portability" or "PNP" means the use of a database or other technical solution that comports with regulations issued by the FCC to provide Number Portability for all customers and service providers.

Austin - BELL ATLANTIC Interconnection Agreement

1.61 "Port Element" or "Port" means a termination on a Central Office Switch that permits Customers to send or receive Telecommunications over the public switched network, but does not include switch features or switching functionality.

1.62 "POT Bay" or "Point of Termination Bay" means the intermediate distributing frame system which serves as the point of demarcation for collocated Interconnection.

1.63 "Rate Center" or "Rate Center Area" or "Exchange Area" means the geographic area that has been identified by a given LEC as being associated with a particular NPA-NXX code which has been assigned to the LEC for its provision of Telephone Exchange Services. The Rate Center Area is the exclusive geographic area which the LEC has identified as the area within which it will provide Telephone Exchange Services bearing the particular NPA-NXX designation associated with the specific Rate Center Area. A "Rate Center Point" is the finite geographic point identified by a specific V&H coordinate (as defined in Bellcore Special Report SR-TSV-002275), located within the Rate Center Area and used by that LEC to measure distance for the purpose of billing Customers for distance sensitive Telephone Exchange Services and Toll Traffic. Rate Centers will be identical for each Party until such time as Austin is permitted by an appropriate regulatory body to create its own Rate Centers within an area.

1.64 "Rate Demarcation Point" means the point where network access recurring charges and BA responsibility stop and beyond which Customer responsibility begins, determined in accordance with FCC rules and BA standard operating practices.

1.65 "Rating Point" or "Routing Point" means a specific geographic point identified by a specific V&H coordinate. The Rating Point is used to route inbound traffic to specified NPA-NXXs and to calculate mileage measurements for the distance-sensitive transport charges of switched access services. Pursuant to Bell Communications Research, Inc. ("Bellcore") Practice BR 795-100-100 (the "Bellcore Practice"), the Rating Point may be an End Office location, or a "LEC Consortium Point of Interconnection." Pursuant to that same Bellcore Practice, each "LEC Consortium Point of Interconnection" shall be designated by a common language location identifier ("CLLI") code with (x)KD in positions 9, 10, 11, where (x) may be any alphanumeric A-Z or 0-9. The Rating Point must be located within the LATA in which the corresponding NPA-NXX is located. However, the Rating Point associated with each NPA-NXX need not be the same as the corresponding Rate Center Point, nor must it be located within the corresponding Rate Center Area, nor must there be a unique and separate Rating Point corresponding to each unique and separate Rate Center.

1.66 "Reciprocal Compensation" is As Described in the Act, and refers to the payment arrangements that recover costs incurred for the transport and termination of Reciprocal Compensation Traffic originating on one Party's network and terminating on the other Party's network.

1.67 "Reciprocal Compensation Call" or "Reciprocal Compensation Traffic" means a

Austin - BELL ATLANTIC Interconnection Agreement

Telephone Exchange Service Call completed between the Parties, which qualifies for Reciprocal Compensation pursuant to the terms of this Agreement and prevailing Commission or FCC rules that may exist.

1.68 "Route Indexing" means the provision of Interim Number Portability through the use of direct trunks provisioned between end offices of BA and Austin over which inbound traffic to a ported number will be routed.

1.69 "Service Control Point" or "SCP" means a node in the Common Channel Signaling network to which informational requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from a service switching point and via a Signaling Transfer Point, performs subscriber or application-specific service logic, and then sends instructions back to the SSP on how to continue call processing.

1.70 "Signaling Transfer Point" or "STP" means a specialized switch that provides SS7 network access and performs SS7 message routing and screening.

1.71 "Single Bill/Multiple Tariff" shall mean that one bill is rendered to the IXC from all LECs who are jointly providing access service. A single bill consists of all rate elements applicable to access services billed on one statement of charges under one billing account number using each Party's appropriate access tariffs. The bill could be rendered by or on behalf of, either of the Parties.

1.72 "Strapping" means the act of installing a permanent connection between a point of termination bay and a collocated interconnector's physical Collocation node.

1.73 "Switched Access Detail Usage Data" means a category 1101XX record as defined in the EMR Bellcore Practice BR-010-200-100.

1.74 "Switched Access Summary Usage Data" means a category 1150XX record as defined in the EMR Bellcore Practice BR-010-200-010.

1.75 "Switched Exchange Access Service" means the offering of transmission or switching services to Telecommunications Carriers for the purpose of the origination or termination of Telephone Toll Service. Switched Exchange Access Services include but may not be limited to: Feature Group A, Feature Group B, Feature Group D, 700 access, 800 access, 888 access, and 900 access.

1.76 "Switching Element" is the unbundled Network Element that provides a CLEC the ability to use switching functionality in a BA End Office switch, including all vertical services that are available on that switch, to provide Telephone Exchange Service to its end user customer(s).

Austin - BELL ATLANTIC Interconnection Agreement

5.6.2 Measurement of billing minutes (except for originating 800-888 calls) shall be in actual conversation seconds. Measurement of billing minutes for originating 800-888 calls shall be in accordance with applicable tariffs.

5.6.3 Where CPN is not available in a LATA for greater than ten percent (10%) of the traffic, the Party sending the traffic shall provide factors to determine the jurisdiction, as well as local vs. toll distinction, of the traffic. Such factors shall be supported by call record details that will be made available for review upon request when a Party is passing CPN but the receiving Party is not properly receiving or recording the information. The Parties shall cooperatively work to correctly identify the traffic, and establish a mutually agreeable mechanism that will prevent improperly rated traffic. Notwithstanding this, if any improperly rated traffic occurs, the Parties agree to reconcile it.

5.7 Reciprocal Compensation Arrangements -- Section 251(b)(5)

5.7.1 Reciprocal Compensation only applies to the transport and termination of Reciprocal Compensation Traffic billable by BA or Austin which a Telephone Exchange Service Customer originates on BA's or Austin's network for termination on the other Party's network within the same LATA except as provided in Section 5.7.6 below.

5.7.2 The Parties shall compensate each other for transport and termination of Reciprocal Compensation Traffic in an equal and symmetrical manner for the application of rates as provided in the Pricing Schedule (Exhibit A hereto). These rates are to be applied at the A-IP for traffic delivered by BA, and at the BA-IP for traffic delivered by Austin. Tandem rates will be applied for traffic terminated to a Primary Switch; End Office rates will be applied for traffic terminated to a Secondary Switch. No additional charges, including port or transport charges, shall apply for the termination of Reciprocal Compensation Traffic delivered to the A-IP or the BA-IP. When Reciprocal Compensation Traffic is terminated over the same trunks as Switched Exchange Access Service, any port or transport or other applicable access charges related to the Switched Exchange Access Service shall be prorated to be applied only to such other Switched Exchange Access Service.

5.7.3 The Reciprocal Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service or to any other IntralATA or InterLATA calls originated on a third party carrier's network on a 1 - presubscribed basis or a casual dialed (10XXX or 101XXXX) basis. All Switched Exchange Access Service and all Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state Tariffs or the terms and conditions of section 6.3, if applicable. Similarly, the Parties agree that the issue of what, if any, compensation is applicable to traffic handed off from one Party to the other Party, within a BA local calling area (or other calling area otherwise applicable for Reciprocal Compensation), for delivery to an Internet Service Provider (ISP) for carriage over the Internet is currently pending before the FCC. Until such

Austin - BELL ATLANTIC Interconnection Agreement

time as the issue is resolved by the FCC or by an applicable order of the Commission or Court with jurisdiction over the appropriate compensation for such traffic exchange, the Parties agree that the Reciprocal Compensation arrangements contained in this subsection 5.7 shall not apply to such traffic. To the extent that either Party is unable to measure the volume of such traffic, the Parties agree to work cooperatively to estimate such traffic volume. Unless otherwise provided under Applicable Law, Reciprocal Compensation arrangements shall apply to IntraLATA Toll Traffic originated on one Party's network and delivered by that Party to the other Party's network.

5.7.4 The rates for termination of Reciprocal Compensation Traffic are set forth in Exhibit A which is incorporated by reference herein.

5.7.5 The designation of Traffic as Local or Toll for purposes of compensation shall be based on the actual originating and terminating points of the complete end-to-end call, regardless of the entities involved in carrying any segment of the call.

5.7.6 Compensation for transport and termination of all traffic which is subject to performance of INP by one Party for the other Party pursuant to Section 14.0 shall be as specified in subsection 14.6.

5.7.7 Each Party reserves the right to measure and audit all Reciprocal Compensation Traffic, up to a maximum of two audits per calendar year, to ensure that proper rates are being applied appropriately, provided, however, that either Party shall have the right to conduct additional audit(s) if the preceding audit disclosed material errors or discrepancies. Each Party agrees to provide the necessary Reciprocal Compensation Traffic data or permit the other Party's recording equipment to be installed for sampling purposes in conjunction with any such audit.

5.7.8 When either Party delivers seven (7) or ten (10) digit translated IntraLATA toll-free service access codes (e.g.: 800/888) service to the other Party for termination, the originating Party shall provide the terminating Party with billing records in industry standard format (EMR) if required by the terminating Party. The originating Party may bill the terminating Party for the delivery of the traffic at local reciprocal compensation rates. The terminating Party may not bill the originating Party reciprocal compensation under this Agreement. The Party that is providing the toll-free service access codes (e.g.: 800 888) service shall pay the database inquiry charge per the Pricing Schedule to the Party that performed the database inquiry.

RE: Reciprocal Compensation on Internet Traffic (Dkts. CCB 97-30 and 96-98)

We do not address here what affect this clarification has on existing interconnection agreements, or state decisions interpreting those existing agreements, with respect to the issue of the payment of reciprocal compensation on Internet traffic under existing agreements. State regulatory commissions are in the best position to address that issue.