

ISSUE III.2 This issue is common to AT&T and WorldCom.

Should transit services be priced at TELRIC, regardless of the level of traffic exchanged between AT&T and other carriers?

Attorney: IV Mellups/Ellen Schmidt
Witness: Dave Talbott

AT&T's Position:

Yes. Transit services should be priced at TELRIC, regardless of the level of traffic exchanged between AT&T and other carriers. Verizon's proposed Transit Service Trunking Charge and the Transit Service Billing fee are charges in excess of the cost to provide the transit service and thus do not meet the TELRIC standard.

Proposed Remedy:

Section 4.0 *et. seq.* of the attached proposed contract sets forth the contract terms and conditions necessary to support AT&T's position on this issue.

Verizon's Position:

Verizon proposes that AT&T pay, in addition to the basic Transit Service Charge, an additional Transit Service Trunking Charge and a Transit Service Billing Fee. The Transit Service Billing Fee is applied if the tandem is used to route the transit traffic beyond an initial 180 days, or if the DS1 threshold is exceeded for three consecutive months, or any three months during the first 6 months of the Agreement. This fee, Verizon states, insures that "Verizon does not suffer because of the CLECs failure to

interconnect with other carriers.”⁴⁸ The Transit Service Trunking charge is equivalent to a tandem port charge and is levied for 60 days after the 180 days (referenced above), or if the traffic levels have exceeded the DS-1 threshold for 3 consecutive months or any three months during the initial 180 day period. This port charge, Verizon states, is assessed to account for the additional capacity to accommodate such traffic beyond the DS-1 threshold.

Relevant Authorities:

Act, §§Section 251(c)(2)(B), 252(d)(1).

Revised Arbitration Award, *AT&T Communications of Texas, L.P. TCG Dallas, and Teleport Communications, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Dkt. No. 22315 at 40 (Sept. 27, 2000).

Explanation of AT&T’s Position Including Discussion of Relevant Authority:

As demonstrated in Issue III.1, Verizon has an obligation to provide transit service as part of its interconnection obligations pursuant to §§ 251(c)(2)(A) and (B). Transit service is nothing more than interconnection for traffic between CLECs. Interconnection, in turn, must be priced pursuant to the pricing standards set forth in § 252(d)(1). Verizon’s charges for tandem service do not meet the pricing standards of § 251(d)(1). Therefore, Verizon’s proposal should not be adopted.

⁴⁸ In re: Applications of AT&T COMMUNICATIONS OF VIRGINIA, INC., TCG VIRGINIA, INC., ACC NATIONAL TELECOM CORP ., MEDIAONE OF VIRGINIA, MEDIAONE TELECOMMUNICATIONS OF VIRGINIA, INC., Case No. 000282, Responses of Verizon-Virginia, Inc. To The Issues List Filed By AT&T Communications of Virginia, Inc., *et al.* (Nov. 14, 2000) at 15.

AT&T's proposal, on the other hand, is entirely consistent with the law and adequately compensates Verizon for its costs. AT&T has agreed to compensate Verizon for the cost of the transit services, (including all trunking and billing costs Verizon may experience in providing transit services), but not for any additional charges. AT&T's proposal takes into account Verizon's concern that, because compensation is paid on traffic delivered for termination, the terminating carrier may seek recovery for traffic from Verizon. AT&T's proposal provides that AT&T will compensate Verizon for all charges relating to such traffic levied by the terminating carrier.

There is no legitimate reason to impose any additional charges, such as the Verizon's proposed "Transit Service Trunking Charge" and the "Transit Service Billing Fee." These are simply punitive devices designed to increase AT&T's costs and are contrary to law.

Other proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

ISSUE I.3 This issue is common to AT&T, Cox and WorldCom.

Should AT&T have a reciprocal duty to provide transit services to Verizon?

Attorney: IV Mellups/Ellen Schmidt
Witness: Dave Talbott

AT&T's Position:

No. AT&T does not have a reciprocal duty to provide transit services to Verizon and none need be imposed.

Proposed Remedy:

Section 4.0 *et. seq.* of the attached proposed contract sets forth the contract terms and conditions necessary to support AT&T's position on this issue.

Verizon Position:

Verizon proposes that AT&T has a reciprocal duty to provide transit services to Verizon.

Relevant Authorities:

Act, § 251(c)(2)(B).

First Report and Order, *Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, ¶¶ 172, 176, 220, 1062 ("*Local Competition Order*").

Explanation of AT&T's Position Including Discussion of Relevant Authority:

Verizon's provision of transit services stems from its additional interconnection obligations as an incumbent LEC under § 251(c)(2)(B) of the Act, which requires ILECs to provide any requesting telecommunications carrier interconnection with the ILEC's network "for the *transmission and routing* of telephone exchange service and exchange

access.” (Emphasis supplied.)

The additional obligations imposed upon incumbent LECs stem from their market power achieved over decades as monopoly providers of local exchange services. CLECs do not have such market power. In recognition of this lack of market power, the Act does not impose reciprocal obligations on CLECs. This Commission specifically acknowledged this in ¶ 220 of the *Local Competition Order* which rejected Bell Atlantic’s suggestion that the FCC impose reciprocal interconnection obligations on LECs. In response to Bell Atlantic’s proposal, the FCC stated that “251(c)(2) does not impose on non-incumbent LECs the duty to provide interconnection.”

Accordingly, while AT&T may at its discretion offer transit services to Verizon, as well as any other carrier, there is no basis in law (or in logic, for that matter, given Verizon’s dominant market power in the local exchange market) to force it to do so. Under AT&T’s proposal, if AT&T offers transit services to Verizon, it would do so under a compensation arrangement comparable to that applicable to the transit services provided by Verizon to AT&T.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

ISSUE V.1 This is an issue exclusive to AT&T.

Competitive Tandem Service

Should Verizon be permitted to place restrictions on UNEs so as to preclude AT&T from providing competitive tandem services?

Attorney: IV Mellups/Ellen Schmidt
Witness: Dave Talbott

AT&T's Position:

No. Verizon should not be permitted to place any restriction on the use of UNEs that would preclude, or impede, AT&T's ability, as a CLEC, to offer competitive tandem services to other IXCs.

Proposed Remedy:

Section 4.0 *et. seq.* of the attached proposed contract sets forth the contract terms and conditions necessary to support AT&T's position on this issue.

Verizon's Position:

Yes. Verizon should be permitted to restrict use of its UNEs so that only Verizon can provide tandem access services within the LATAs Verizon serves.

Relevant Authorities:

Act, §251(c)(3).

Local Competition Order, §§ 264, 27, 356, 359.

Decision of Arbitration Panel, *AT&T Communication's of Michigan Inc., and TCG Detroit's Petition for Arbitration*, Case No. U-12465 at 10 (Oct. 18, 2000) (The Michigan Public Service Commission affirmed this portion of the Arbitration Panel by Order dated November 20, 2000).

Order, *AT&T Communications of Indiana TCG Indianapolis, Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Cause No. 40571-INT-03 at 29-31; 50-51 (Nov. 20, 2000).

Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between two AT&T subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)*, O5-MA-120 at 38; 58-61 (Oct. 12, 2000).

Arbitrators Order, *TCG Kansas City, Inc., Petition for Arbitration with Southwestern Bell Telephone Company Pursuant to Section 252 of the Telecommunications Act of 1996*, Dkt. No. 00-TCGT-571-ARB at 12 (August 7, 2000) (The Kansas Public Service Commission affirmed this portion of the Arbitrator Order by Order dated September 8, 2000).

Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, Dkt. No. 00-01-022, at 477-478 (CA PUC Aug. 3, 2000).

Arbitration Panel Report, *AT&T Communications, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. 00-1188-TP-ARB at 16; 29-30 (March 19, 2001).

Explanation of AT&T's Position, Including Discussions of Relevant Authority:

Issue V.2 addresses one way that AT&T can provide competitive access service – through the deployment of its own assets and facilities. However, AT&T could also provide competitive access service by leasing UNEs from Verizon or by using a combination of leased facilities and its own facilities. For example, AT&T could purchase unbundled local switching from Verizon and use it in combination with its own facilities that would deliver an IXC's traffic to the leased switch which would then

terminate the call to the Verizon end user. In this case, AT&T would be providing competitive access service to IXCs as the sole access provider, rather than providing the service jointly through the meet point arrangements described in Issue V.2.

It is AT&T's position that it has the right to offer service to any inter-exchange carrier that chooses to use AT&T as a tandem provider – either through the joint provision of terminating meet point traffic as described in Issue V.2, or through AT&T's use of UNEs. As the customer, a third-party IXC should have the option to specify how it would have its switched access traffic completed between the parties.⁴⁹ Accordingly, Verizon should not impose any use restrictions on UNEs that would prevent AT&T from providing competitive access services to IXCs through the purchase of UNEs.

As established in AT&T's discussion of Issue III.7, the provisions of the Act and sound public policy preclude Verizon from unilaterally imposing use restrictions on UNE's purchased by AT&T. The arguments set forth in that section which support AT&T's position that there should not be any service related restrictions or requirements imposed in connection with the use of unbundled network elements to substitute for special access service, also apply with respect to any service related restrictions or requirements imposed in connection with the use of unbundled network elements to provide competitive tandem service. AT&T will not repeat those arguments here, but rather refer the Commission to its discussion on use restrictions in Issue III.7. The

⁴⁹ The California Commission agreed with this concept in principle. It rejected Pacific Bell's proposed language that would have only provided for access tandem services to be provided by Pacific Bell to third party carriers. See, *Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Dkt. No. 00-01-022, at 477-478 (CA PUC Aug. 3, 2000).

discussion in that section demonstrates that the imposition of UNE use restrictions are in violation of the ILEC's unbundling obligations set forth in §251(c)(3) of the Act.

Moreover, that discussion indicates that rejecting the imposition of UNE use restrictions in an interconnection agreement is entirely consistent with the Commission's policies on both universal service and access reform.

Use restrictions targeted specifically to prevent a carrier from using UNEs to provide competitive access service were rejected by the Texas Commission in the *Waller Creek* case.⁵⁰ In that case the Commission found that CLECs may use dark fiber or other UNEs to provide wholesale access service to any telecommunications provider.⁵¹ The Order reversed a ruling by arbitrators that precluded Waller Creek from using dark

50 Second Order on Appeal or Order Nos. 9 and 2, *Petition of Waller Creek for Arbitration with Southwestern Bell Telephone Company*, PUC Docket No. 17922; *Complaint of Waller Creek Communications, Inc. for Post Interconnection Agreement Dispute Resolution with Southwestern Bell Telephone Company*, PUC Dkt. No. 20268 (April 1999).

51 *But see*: Decision of Arbitration Panel, *AT&T Communication's of Michigan Inc., and TCG Detroit's Petition for Arbitration*, Case No. U-12465 at 10 (Oct. 18, 2000)(The Michigan Public Service Commission affirmed this portion of the Arbitration Panel by Order dated November 20, 2000); Order, *AT&T Communications of Indiana TCG Indianapolis, Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Cause No. 40571-INT-03 at 29-31; 50-51 (Nov. 20, 2000); Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between two AT&T subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)*, O5-MA-120 at 38; 58-61 (Oct. 12, 2000); Arbitrators Order, *TCG Kansas City, Inc., Petition for Arbitration with Southwestern Bell Telephone Company Pursuant to Section 252 of the Telecommunications Act of 1996*, Dkt. No. 00-TCGT-571-ARB at 12 (August 7, 2000) (The Kansas Public Service Commission affirmed this portion of the Arbitrator Order by Order dated September 8, 2000); Arbitration Panel Report, *AT&T Communications, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. 00-1188-TP-ARB at 16; 29-30 (March 19, 2001).

fiber to provide wholesale access services to any other telecommunications providers unless that provider was carrying traffic that was or will be originated or terminated to a Waller Creek retail local customer. The Commission found that Waller Creek may use UNE dark fiber or other UNEs to provide wholesale access service for any other telecommunications provider regardless of who is serving the retail local end user customers. It found that its decision was consistent with the Act and the FCC's First Report and Order.⁵²

In conclusion, AT&T's position that Verizon should not be permitted to place any use restrictions on the use of UNE's that would preclude or impede AT&T's ability to offer competitive access services to other IXCs, is consistent with the law and pro-competition policies, and should be adopted.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

⁵² The decision included one transitional condition – that if the IXC customer served at wholesale was not also a CLEC, then Waller Creek must collect a Residual Interconnection Charge (RIC) and remit to SWBT, if SWBT was serving the end user customer. The RIC was a transport element related access charge used implicitly to help support SWBT's maintenance of affordable interoffice network connections for SWBT's Texas customers with lower volume, predominantly rural toll calling patterns. At the time of the Order, the Commission was in the process of removing implicit universal service fund subsidies derived from access charges – including the RIC. It has since eliminated the RIC, and thus the condition imposed in this case no longer applies.

Meet Point Interconnection

ISSUE III.3 This issue is common to AT&T and WorldCom.

Should the selection of a fiber meet point method of interconnection (jointly engineered and operated as a SONET ring) be at AT&T's discretion or be subject to the mutual agreement of the parties?

SUB-ISSUE III.3.A.

Should Mid-Span Fiber Meet facilities be established within 120 days from the initial mid-span implementation meeting?

Attorney: IV Mellups/Ellen Schmidt
Witness: Dave Talbott

AT&T's Position:

AT&T has the sole right, pursuant to the Act, FCC regulations, and the *Local Competition Order*, to require any technically feasible method of interconnection, including a Fiber Meet Point arrangement, jointly engineered and operated as a SONET Transmission System. Mutual agreement for the interconnection method chosen by AT&T is not required. Moreover, since AT&T has the right to select the POI, it has the right to designate the location of the meet point, including the terminating facility points.

Proposed Remedy:

Section 4.0 *et. seq.* of the attached proposed contract sets forth the contract terms and conditions necessary to support AT&T's position on this issue.

Verizon's Position:

Verizon claims that parties must mutually agree to a mid-span meet arrangement, and therefore does not agree that specific time frames should be included in a contract that applies solely to Verizon. In addition, Verizon does not wish to include the level of operational detail that AT&T has requested regarding mid-span meets.

Relevant Authorities:

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325, August 8, 1996. (“Local Competition Order”) ¶¶ 549, 553, 198, 202.

Act, §251 (c)(2)(B).

47 C.F.R. §§ 51.321(a); 51.321(b)(2); 51.321(c).

Order, MediaOne Telecommunications of Massachusetts, Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with New England Telephone and Telegraph Company d/b/a/ Bell Atlantic- Massachusetts, D.T.E. 99-42/43, 99-52 at 40; 43-45 (August 25, 1999).

Explanation of AT&T's Position, Including Discussion of Relevant Authority:

AT&T has the right pursuant to the Act, FCC regulations, and the *Local Competition Order*⁵³ to require any technically feasible method of interconnection, including a Mid-Span Fiber Meet Point arrangement. As an incumbent local exchange carrier, Verizon has the duty under the Act to provide interconnection for the facilities and equipment of any requesting telecommunications carrier at any technically feasible

⁵³ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 96-325, (Aug. 8, 1996).

point.⁵⁴ In the *Local Competition Order*, the FCC explained that this obligation includes not only the obligation to permit interconnection at any technically feasible point, but the obligation to allow any technically feasible method of interconnection as well.⁵⁵ Further, the FCC's regulations on interconnection confirm this. They provide that:

Except as provided in paragraph (e) of this section [concerning collocation], an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of this part, *any technically feasible method of obtaining interconnection* or access to unbundled network elements at a particular point upon a request by a telecommunications carrier.

47 C.F.R. § 51.321(a)(emphasis added).

Interconnection via a mid-span Fiber Meet Point Arrangement is a technically feasible method of interconnection. Indeed, AT&T and other CLECs currently interconnect with various incumbent LECs in this manner. The fact that this method of obtaining interconnection has been employed successfully constitutes substantial

⁵⁴ § 251(c)(2)(B). As set forth in issue Number I-1, AT&T has the right to select the location of the POI. For mid-span interconnection, the POI for AT&T's traffic would be located at the terminating facilities point on Verizon's network that AT&T designates, and the POI for Verizon's traffic would be at the terminating facilities point designated by AT&T on its network. The splice point, or the "meet point" is the point designated by AT&T to which Verizon must build out its facilities. Verizon is obligated to build out its facilities to that meet point, as long as the required build out amounts to a reasonable accommodation of interconnection. See, *Local Competition Order*, ¶¶ 202, 553; *Petition of MediaOne, Inc. and New England Telephone and Telegraph for Arbitration*, D.T.E. 99-42/43, 99-52 at 43-44 (August 1999). Verizon's claims that the meet point cannot be located at arbitrary point on its network ignore these interconnection obligations.

⁵⁵ The FCC stated "We conclude that, under sections 251(c)(2) and 251(c)(3), any requesting carrier may choose any method of technically feasible interconnection or access to unbundled network elements at a particular point. Section 251(c)(2) imposes an interconnection duty at any technically feasible point; it does not limit that duty to a specific method of interconnection or access to unbundled network elements" *Local Competition Order* at ¶ 549.

evidence that such method is technically feasible.⁵⁶

Moreover, the FCC has specifically found that one of the technically feasible methods of obtaining interconnection is a meet point interconnection arrangement.⁵⁷ The FCC has held that “other methods of technically feasible interconnection or access to incumbent LEC networks, such as meet point arrangements, in addition to virtual and physical collocation, must be made available to new entrants upon request.”⁵⁸ The FCC went on to note that “although the creation of meet point arrangements may require some build out of facilities by the incumbent LEC, we believe that such arrangements are within the scope of the obligations imposed by sections 251(c)(2) and 251(c) (3).”⁵⁹ Thus, not only has the FCC concluded that ILECs such as Verizon must provide interconnection via meet point arrangements, it has also concluded that ILECs are obligated to modify their facilities, if necessary, to accommodate such interconnection.⁶⁰

The FCC has explained in this regard that:

For example, Congress intended to obligate the incumbent to accommodate the new entrant's network architecture by requiring the incumbent to provide interconnection “for the facilities and equipment” of the new entrant. Consistent with that intent, the incumbent must accept the novel use of, and modification to, its network facilities to accommodate the interconnector or to provide access to unbundled elements.

Id. ¶ 202.

56 47 C.F.R. § 51.321(c).

57 47 C.F.R § 51.321(b)(2).

58 *Local Competition Order* at ¶ 553.

59 *Id.*

60 *Id.* at ¶ 198.

In sum, the interconnection method sought by AT&T is a technically feasible method of interconnection that is commonly used among telecommunications carriers. It has been found technically feasible by the FCC, and thus AT&T is entitled to a mid-span fiber meet point interconnection, pursuant to the Act and the FCC's regulations, without requiring the mutual agreement of Verizon. The Massachusetts D.T.E. has so found in an arbitration raising the same issue:

Therefore, the Department finds that because a mid-span meet arrangement is technically feasible, Bell Atlantic must provide this method of interconnection to MediaOne and Greater Media. Bell Atlantic cannot condition this type of interconnection, as it claims, on the mutual agreement of the parties, or on the availability of facilities.⁶¹

We urge the FCC to support the law it has helped to develop in this area and find, similar to the Massachusetts D.T.E., that mid-span meets are technically feasible and must be provided by Verizon, upon AT&T's request.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

⁶¹ *Petition of Media One, Inc. and New England Telephone and Telegraph, for arbitration*, D.T.E 99-42/43, 99-52, (Mass. DTE at 40) (Aug. 25, 1999) (citation omitted).

SUB-ISSUE III.3.A. This issue is common to AT&T and WorldCom.

Should Mid-Span Fiber Meet facilities be established within 120 days from the initial mid-span implementation meeting?

AT&T's Position:

Yes. AT&T contends that Verizon must agree to commit to interconnection activation dates associated with meet point interconnection. Specifically, AT&T proposes that mid-span meet facilities be activated no later than 120 days from the initial mid-span implementation meeting.

Proposed Remedy:

Section 4.0 *et. seq.* of the attached proposed contract sets forth the contract terms and conditions necessary to support AT&T's position on this issue.

Verizon's Position:

Verizon claims that parties must mutually agree to a mid-span meet arrangement, and therefore does not agree that specific time frames should be included in a contract that applies solely to Verizon. In addition, Verizon does not wish to include the level of operational detail that AT&T has requested regarding mid-span meets.

Relevant Authorities:

Act, §251(c)(2)(D).

Order, *MediaOne Telecommunications of Massachusetts, Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with New England Telephone and Telegraph Company d/b/a/ Bell Atlantic- Massachusetts*, D.T.E. 99-42/43, 99-52 at 47-48 (Aug. 25, 1999).

Explanation of AT&T's Position, Including Discussion of Relevant Authority:

Verizon must agree to commit to interconnection activation dates for mid-span meet interconnection. A deadline is necessary to ensure that Verizon will follow through on its commitment to implement the interconnection method chosen by AT&T. Without a time commitment, AT&T's service expansion plans could be affected.⁶² Unless it is known with certainty when its interconnection will be operational, a company often cannot finalize sales, marketing or operational support planning – all critical components to any business plan. The imposition of time frames for other forms of interconnection, such as collocation, are commonplace, and recognize the need for certainty when a carrier is growing a network.

AT&T's proposal is to require activation of Mid-Span meet facilities established within 120 days from the initial implementation meeting, which shall be held within 10 business days of the receipt by Verizon of AT&T's response to the Verizon's Mid-Span Fiber Meet questionnaire.⁶³ This proposal is a reasonable one that should be more than

⁶² The Massachusetts Department recognized the importance of including an activation deadline for mid-span meet interconnection. Order, *MediaOne Telecommunications of Massachusetts, Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with New England Telephone and Telegraph Company d/b/a/ Bell Atlantic- Massachusetts*, D.T.E. 99-42/43, 99-52 at 47-48 (Aug. 25, 1999).

⁶³ Verizon's Mid-Span Meet questionnaire is the document that AT&T would submit to initiate its request for mid-span meet interconnection. AT&T proposes that the Parties agree to work together on routing, determining the appropriate facility system size (*i.e.*, OC-n) based on the most recent traffic forecasts, equipment selection, ordering, provisioning, maintenance, repair, testing, augment, and compensation procedures and

adequate for Parties to complete the process.⁶⁴ A refusal to agree to any deadline would amount to an unreasonable term and condition of interconnection in violation of §251(c)(2)(D) of the Act.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

arrangements, reasonable distance limitations, and on any other arrangements necessary to implement the Mid-Span Fiber Meet arrangement and associated interconnection trunking at an initial implementation meeting.

⁶⁴ AT&T recognizes that there could be exceptional circumstances that would prevent Verizon from meeting this deadline, and thus it provides that Verizon can petition the State Commission for a waiver from that deadline in appropriate circumstances.

ISSUE V.2 This is an issue exclusive to AT&T.

Interconnection Transport

What is the appropriate rate for Verizon to charge AT&T for transport purchased by AT&T for purposes of interconnection – the UNE transport rate or the carrier access rate?

Attorney: IV Mellups/Ellen Schmidt
Witness: Dave Talbott

AT&T's Position:

AT&T is clearly entitled to UNE Inter Office Dedicated Transport Rates rather than access rates for purposes of interconnection.

Proposed Remedy:

Section 4.0 *et. seq.* of the attached proposed contract sets forth the contract terms and conditions necessary to support AT&T's position on this issue.

Verizon's Position:

Verizon proposes to charge AT&T access rates for any interconnection facilities its leases to AT&T for purposes of interconnection that do not terminate at a collocation arrangement at the applicable serving wire center.

Relevant Authorities:

Act, ¶¶ 251(c)(3); 252(d)(1).

Local Competition Order, ¶ 439 *et seq.*

UNE Remand Order ¶¶ 321, 332.

First Report and Order, Access Charge Reform, 12 FCC Rcd 15982, ¶¶ 258-84. (1996)

AT&T v. Iowa Utils. Bd., 119 S.Ct. 721 (1999).

Order, MediaOneTelecommunications of Massachusetts, Petition for Arbitration of Interconnection Rates, Terms, and Conditions with New England Telephone and Telegraph Company d/b/a/ Bell Atlantic-Massachusetts, Inc. v. Bell Atlantic, D.T.E. 99-42/43-A, (March 15, 2001).

Explanation of AT&T's Position, Including Discussion of Relevant Precedent:

As noted in the discussion of interconnection in Issue Number I.1, AT&T pointed out that it could implement interconnection by either self provisioning facilities, leasing facilities from third parties, or leasing facilities from Verizon. It is AT&T's position that if it decides to lease interconnection facilities from Verizon in order to deliver its traffic to its designated POI, those facilities should be priced at UNE Inter-Office Transport Rates. This position is fully supported by the law.

Under § 251(c)(3) of the Act, an ILEC such as Verizon has the "duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory...." AT&T is without doubt a "telecommunications carrier"; the local exchange service that AT&T seeks to interconnect with Verizon is indisputably "a telecommunications service"; and Verizon does not even allege that access to the requested transport is not "technically feasible."

Moreover, the FCC ruled long ago that ILECs “must provide interoffice transmission facilities on an unbundled basis to requesting carriers.”⁶⁵

More recently, in the *UNE Remand Order*, the FCC reiterated that ILEC’s must provide access to unbundled dedicated transport as well as shared interoffice transport.⁶⁶

With respect to this obligation the FCC stated:

Although the record indicates that competitive LECs have deployed transport facilities along certain point to point routes, the record also demonstrated that self provisioned transport, or transport from non-incumbent LEC sources is not sufficiently available as a practical economic or operational matter to warrant exclusion of interoffice transport from an incumbent LECs unbundling obligations at this time.

UNE Remand Order at ¶321.

Thus, AT&T is within its rights to request that Verizon provide it with interoffice facilities to deliver its traffic to the designated POI.

With respect to pricing, the Act clearly requires that CLECs be able to interconnect with and use the ILEC’s network at prices based upon the cost of providing interconnection or network elements.⁶⁷ Despite this clarity, Verizon claims that it can charge AT&T *access rates* for any facilities AT&T may lease for purposes of interconnection that do not terminate at a collocation arrangement the applicable Verizon serving wire center. Verizon’s access rates exceed the economic costs of providing transport facilities. Indeed, the FCC has recognized that access charges are not based on

65 First Report and Order, CC Docket No. 96-98, (Aug. 8,1996), at ¶ 439 *et seq.*

66 *UNE Remand Order* at ¶ 332.

67 47 U.S.C. ¶252(d)(1).

forward looking economic cost but are generally well above economic cost.⁶⁸ Thus, Verizon's proposal to charge above cost access rates to carry and complete AT&T's local traffic is illegal on its face.

Verizon's rationale for its position is that the requirement to price transport at UNE rates does not apply because Verizon is providing "an end-to-end service" where Verizon is responsible for all aspects of the service. This argument appears to be simply a variant of the discredited argument that the UNE-P need not be provided by ILECs because the Act requires a CLEC to combine UNEs with its own facilities, an argument roundly rejected by the Supreme Court.⁶⁹ There is simply no law or public policy that would support Verizon's position that it can charge AT&T access rates for transport purchased by AT&T for purposes of interconnection. AT&T is entitled under the law to lease facilities from Verizon for purposes of interconnection at UNE interoffice transport rates.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

⁶⁸ *First Report and Order, Access Charge Reform*, 12 FCC Rcd 15982, ¶¶ 258-84 (1996).

⁶⁹ *AT&T v. Iowa Utils. Bd.*, 119 S.Ct. 721 (1999). Verizon made a similar argument, which was rejected by the Massachusetts Department, in Order, *MediaOneTelecommunications of Massachusetts, Petition for Arbitration of Interconnection Rates, Terms, and Conditions with New England Telephone and Telegraph Company d/b/a/ Bell Atlantic-Massachusetts, Inc. v. Bell Atlantic*, D.T.E. 99-42/43-A, (March 15, 2001). In that case Verizon claimed that the dedicated transport facilities it leased to AT&T Broadband (formerly MediaOne Telecommunications of Massachusetts, Inc.) between the terminating point of a mid-span meet facility located at a Verizon tandem, and Verizon's other tandems should be priced at access rates, because, among other things, it was providing an "end to end access service". The Massachusetts Department rejected the

ISSUE III.4 This issue is common to AT&T and WorldCom.

Forecasting

Should AT&T be required to forecast Verizon's originating traffic and also provide for its traffic, detailed demand forecasts for UNEs, resale and interconnection?

SUB-ISSUE III.4.A.

Should Verizon be allowed to penalize AT&T in the event AT&T's trunk forecasts subsequently prove to be overstated?

SUB-ISSUE III.4.B

Should Verizon have the unilateral ability to terminate trunk groups to AT&T if Verizon determines that the trunks groups are underutilized?

Attorney: IV Mellups/Ellen Schmidt
Witness: Dave Talbott

AT&T's Position:

No. AT&T should not be required to provide forecasts for Verizon's originating traffic. The exchange of forecasts should be reciprocal with Verizon providing the forecasts for its own traffic. Nor should AT&T be required to provide for its traffic, detailed demand forecasts for UNEs, resale and interconnection. Rather, AT&T will provide summary forecasts of its traffic in order to provide Verizon with the information needed for network planning circumstances. The Parties have agreed to use one-way trunks to exchange local and inter-LATA toll traffic and two-way trunks for inter-exchange traffic (meet point billing trunks). AT&T agrees that it will provide forecasts to Verizon for the two-way interexchange trunks, but AT&T asserts that each company is

argument and found that the facilities were inter-office facilities that should be priced at

in the best position to forecast its own originating traffic from its own one-way local and intraLATA toll trunks.

Proposed Remedy:

Section 10.3 sets forth the contract terms and conditions necessary to support AT&T's position on this matter.

Verizon's Position:

Verizon proposes that AT&T provide detailed traffic forecast for UNE's Resale and interconnection requirements. In addition, it proposes that AT&T forecast its own traffic requirements as well as Verizon's requirements.

Relevant Authorities:

Act, § 251(c)(2)(D).

Decision of Arbitration Panel, *AT&T Communication's of Michigan Inc., and TCG Detroit's Petition for Arbitration*, Case No. U-12465 at 18 (Oct. 18, 2000) (The Michigan Public Service Commission affirmed this portion of the Arbitration Panel by Order dated November 20, 2000).

Order, *AT&T Communications of Indiana TCG Indianapolis, Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Cause No. 40571-INT-03 at 112-113 (Nov. 20, 2000).

Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between two AT&T subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)*, O5-MA-120 at 115-116 (Oct. 12, 2000).

UNE rather than access rates.

Arbitration Panel Report, *Petition of AT&T Communications, Inc. For Arbitration of Interconnection Rates Terms and Conditions with Ameritech, Ohio*, Case No. 1188-TP-ARB at 76 (March 19, 2001).

Explanation of AT&T's Position, Including Discussion of Relevant Authorities:

The information that Verizon seeks on a mandatory basis – AT&T's forecasted UNE, resale and interconnection requirements by wire center – is clearly competitively sensitive because it signals to Verizon the direction, location and nature of AT&T's future plans to compete against Verizon. The mandatory provision of such detailed competitively sensitive information, even though protected in the agreement by confidentiality provisions, should only be required in those instances where it is absolutely essential for network management and planning purposes.

It is AT&T's position that the detailed information that Verizon seeks is not essential for its network planning purposes and thus its proposed requirement amounts to an unreasonable term and condition of interconnection in violation of § 251(c)(2)(D) of the Act. For example, the facilities required to service AT&T's demand for UNEs are the same facilities required to service AT&T's demand for total service resale. AT&T is willing to provide information necessary for Verizon's network planning purposes in a more summary fashion, but is not willing to provide it in the detail sought by Verizon.

It is also unreasonable to expect AT&T to prepare forecasts for Verizon's traffic. AT&T is seeking an interconnection architecture with Verizon that uses one-way trunks. This proposal is based upon AT&T's belief that the originating party is in the best position to manage its own traffic and its own network without unnecessary influence or interference by the other Party, as would be required under a two-way trunking

architecture. It naturally follows, since each originating Party will be designing its own interconnection network (*i.e.*, determining the most efficient routing of its traffic irrespective of the other Party's interconnection network design), the originating Party is in the best position to forecast the volume of traffic expected on the routes it has included in the design of its interconnection network. In fact, the terminating Party may not even have knowledge of interconnection network changes (*i.e.*, alternative routing) being considered by the originating Party. Significant forecasting errors are more likely to occur if the party without that knowledge is compelled to forecast traffic volumes. Thus, the reciprocal exchange of forecasts is necessary for the efficient planning and design of network interconnection and it is inappropriate and unreasonable to place the burden solely on AT&T.⁷⁰

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

⁷⁰ Several Commissions have agreed that the ILEC should forecast its own traffic when one-way trunks are involved. Decision of Arbitration Panel, *AT&T Communication's of Michigan Inc., and TCG Detroit's Petition for Arbitration*, Case No. U-12465 at 18 (Oct. 18, 2000)(The Michigan Public Service Commission affirmed this portion of the Arbitration Panel by Order dated November 20, 2000), issue 69, 70; Order, *AT&T Communications of Indiana TCG Indianapolis, Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Cause No. 40571-INT-03 at 112-113 (Nov. 20, 2000); Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between two AT&T subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)*, O5-MA-120 at 115-116 (Oct. 12, 2000); Arbitration Panel Report, *Petition of AT&T Communications, Inc. For Arbitration of Interconnection Rates Terms and Conditions with Ameritech, Ohio*, Case No. 1188-TP-ARB at 76 (March 19, 2001).

SUB-ISSUE III.4.A. This issue is common to AT&T and WorldCom.

Should Verizon be allowed to penalize AT&T in the event AT&T's trunk forecasts subsequently prove to be overstated?

Witness: Dave Talbott
Attorney: IV Mellups/Ellen Schmidt

AT&T's Position:

No. Verizon should not be allowed to penalize AT&T in the event AT&T's trunk forecasts subsequently prove to be overstated. Rather, AT&T proposes that forecasts be non-binding and that both Parties bear the risks associated with forecasts that prove to be inaccurate, despite a good faith forecasting effort.

Proposed Remedy:

Section 10.3 sets forth the contract terms and conditions necessary to support AT&T's position on this issue.

Verizon's Position:

Verizon proposes to penalize AT&T when AT&T's trunk forecasts are overstated.

Relevant Authorities:

Act, § 251(c)(2)(D).

Explanation of AT&T's Position, Including Discussion of Relevant Precedent:

AT&T commits to making a good faith forecast of trunking requirements based on reasonable engineering criteria for network trunking. However, traffic forecasting is never an exact science, and forecasts can either over- or under-shoot actual results, despite a party's good faith reasonable effort. This is especially true given the evolving nature of AT&T's local market entry initiatives and the long lead times (two-years) associated with traffic forecasts.

The difficulty in forecasting AT&T's trunking requirements is further complicated by the fact that Verizon itself is in a position to affect AT&T's ability to meet its forecasts. For example, certain Verizon actions can limit AT&T's ability to acquire new customers, such as Verizon's poor performance in processing orders. Under such circumstances, Verizon could cause an otherwise reasonably accurate forecast to be inaccurate. Because of this interdependency between forecasts and Verizon's actions, Verizon could in fact benefit (receive penalty amounts and retain customers) as a result of its own poor performance or anti-competitive actions, if Verizon's proposal is approved. Thus, Verizon has the ability to control the degree to which it can assess penalties on AT&T for inaccurate forecasts.

Verizon's proposal for penalties in the event of over-estimating trunking demand also could adversely affect services to customers. Adoption of Verizon's proposal will create an incentive for AT&T to be excessively conservative in order to avoid the penalties. If the number of trunks turns out to be inadequate for the number of calls in the busy period, services will be adversely affected by blocked calls.

Finally, when Verizon's proposal for penalties is considered in conjunction with

its proposal that AT&T forecast Verizon's traffic (Issue III.4), its position becomes even more unacceptable. If AT&T is compelled to forecast Verizon's traffic in addition to its own traffic, and AT&T provides an inaccurate forecast because of the lack of knowledge of the Verizon network and marketing efforts, then a penalty would be assessed to AT&T. Such a result is absurd.

For the above reasons, the imposition of penalties in the event of inaccurate forecasting is both contrary to the public interest and is an unreasonable condition imposed upon interconnection in violation of § 251(c)(2)(D) of the Act.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

Should Verizon have the unilateral ability to terminate trunk groups to AT&T if Verizon determines that the trunks groups are underutilized?

Witness: Dave Talbott
Attorney: IV Mellups/Ellen Schmidt

AT&T's Position:

Consistent with good network planning practices, and the promotion of competition, Verizon should not have the unilateral ability to terminate trunks groups to AT&T based upon its determination that the trunk groups are underutilized. Rather, trunk groups should only be terminated based upon a mutual agreement between the parties.

Proposed Remedy:

Section 10.3 sets forth the contract terms and conditions which reflect AT&T's position.

Verizon's Position:

Verizon proposes that it have the unilateral ability to terminate trunk groups based solely on its determination that the trunk groups are underutilized.

Relevant Authorities:

Act, § 251(c)(2)(D).

Explanation of AT&T's Position, Including Discussions of Relevant Authority:

In addition to proposing to penalize AT&T for overforecasting trunking needs (as described in Issue III.4.A), Verizon also proposes that it be empowered to unilaterally terminate trunk groups for its traffic to AT&T if, in Verizon's opinion, the trunk groups are underutilized. AT&T opposes such a proposal as an unreasonable term and condition of interconnection in violation of § 251(c)(2)(D) of the Act.

Trunk servicing (the establishment of new trunk groups and adding or re-arranging trunks on existing trunk groups) is inherently a mutual activity. Because trunk groups exist on both parties' switches, one party cannot alter a trunk group without the other party making a corresponding change. Failure to do so creates unnecessary maintenance issues, stranding of plant and additional friction in the business relationship. Verizon's proposal could also result in customer affecting call disruption. For example, If Verizon decided to terminate trunks at the same time that AT&T begins to serve a large business customer, AT&T's new customer could be unable to receive calls from Verizon customers. As note din connection with Issue III.4.A, traffic forecasting is never an exact science. Sometimes forecasted customers are added later than expected, and sometimes new traffic comes in spurts as large customers are added. Under such a scenario, the likelihood is that the customer would blame AT&T, as the new service provider, for the problem. And even in circumstances where the customer is sophisticated enough to understand that Verizon, not AT&T, has caused the problem, the problem still has a severe dampening impact on competition. So long as Verizon serves the bulk of the local exchange market, customers will be reluctant to subscribe to CLEC services if they

believe Verizon customers may have difficulty placing calls to them, irrespective of whether they perceive the CLEC or Verizon to be the cause of the problem.

These negative results can be avoided very simply by adopting AT&T's proposal which requires that trunking decisions be made on a mutual basis. Such a proposal is reasonable and fair and does not adversely affect either party or the public. As long as the parties' respective trunk provisioning centers stay in regular contact to share information and views on proposed trunk servicing activities, there will not be any surprises. Verizon has said that it requires this provision not for AT&T, but for other CLECs that may opt into the AT&T agreement but which do not have the size or the inclination to establish cooperative trunk servicing procedures. This is pure speculation. AT&T should not suffer the possibility of substantial harm to its network and its reputation merely on the basis of the possible future actions or inactions of a carrier that is not even a party to the agreement. In any case, Verizon can protect itself from this possibility by simply enforcing the mutual agreement provisions with the third party.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.