



## **INTERCARRIER COMPENSATION**

### **Tandem Rate**

**ISSUE III.5 This issue is common to AT&T and WorldCom.**

**Where the geographic coverage of an AT&T switch is comparable to that of a Verizon tandem, should AT&T and Verizon receive comparable reciprocal compensation for terminating the other parties' traffic?**

Witness: Robert Kirchberger  
Attorney: Michael McRae, Stephen Garavito, Teresa Marrero

#### **AT&T's Position:**

Yes. Consistent with the Commission's rules, when AT&T's switches provide the same geographical coverage as Verizon's tandems, the tandem rate should apply to traffic terminated to those AT&T switches.

#### **Proposed Remedy:**

Section 5.7 of AT&T's proposed agreement set forth contract terms and conditions that are necessary and appropriate concerning compensation rates when AT&T's switch centers provide the same geographical coverage as Verizon's tandems.

#### **Verizon's Position:**

Verizon recognizes that the tandem switching rate is higher than the end office rate because of the additional switching and transport costs involved. While AT&T may interconnect directly at a Verizon end office switch and thereby avoid this higher tandem charge, Verizon does not always have this identical option. For example, when the

AT&T switch performs both tandem and end office functions and serves the same geographic scope as a Verizon tandem, AT&T is entitled to receive the tandem switching rate element for ILEC traffic delivered to that switch. Verizon seeks “comparable interconnection choices” so it can control its own costs by “bypassing the tandem rates” of AT&T and other CLECs.

Verizon maintains that AT&T should be required to demonstrate actual functional and geographic comparability for each of its switches, and that AT&T should not receive tandem switching rates unless each AT&T switch actually serves a geographically dispersed customer base and mixed types of customers. Moreover, Verizon proposes that even if AT&T demonstrates that its switch meets the tandem criteria, the Commission should adopt an average rate for termination of Verizon traffic at a CLEC switch where the CLEC employs a single tier interconnection structure. Verizon suggests that this modification would provide comparable treatment to Verizon and AT&T.

**Relevant Authorities:**

47 C.F.R. § 51.711(a)(3).

Arbitration Decision, *Focal Commission Corporation of Illinois Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company, d/b/a Ameritech Illinois*, Case No. 00-0027 (May 8, 2000).

First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499, 16042 (rel. August 8, 1996).

*ITC DeltaCom/Verizon Arbitration* proceeding before the North Carolina Utilities Commission, Recommended Arbitration Order, Docket No. P-500, Sub 10, (April 20, 2000).

*Petition of MediaOne Telecommunications of Michigan, Inc. for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Michigan, Michigan Public Service Commission, Case No. U-12198, Opinion and Order (March 3, 2000).*

*Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996, Arbitration Award, Public Utility Commission of Texas (July 2000).*

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

Verizon should pay the tandem interconnection rate when it terminates traffic at an AT&T switch. AT&T's switch provides tandem functionality in that, like Verizon's tandem, it aggregates a variety of traffic across a wide geographic area comparable to the area served by Verizon's tandems-with-subtending-end-offices arrangements. At the same time, AT&T's centrally-located switch provides AT&T's customers with the same end-office switching functionality that Verizon's end-office switches provide to its customers. Thus, the geographic area covered by each AT&T switch is comparable to the area covered by Verizon's tandem switches and the subtending end offices.

The Commission has ruled that when a CLEC switch provides similar geographic scope as an ILEC's tandem, the rate treatment must be the equivalent. In Paragraph 1090 of the *Local Competition Order*, the Commission explained:

We find that the "additional costs" incurred by a LEC when transporting and terminating a call that originated on a competing carrier's network are likely to vary depending on whether tandem switching is involved. We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's

tandem switch. *Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate.*<sup>71</sup>

The Commission's principal focus in its regulation is on geographic scope, not the functionality of the switch. The regulations promulgated in conjunction with the *Local Competition Order* provide "[w]here the switch of a carrier other than an incumbent LEC serves a geographic 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 rate."<sup>72</sup>

AT&T, however, is able to demonstrate that its switches satisfy *both* the geographic and functionality criteria.<sup>73</sup> First, AT&T's switches provide equivalent geographic coverage to Verizon's tandems. In fact, an AT&T switch may serve the entire LATA in which it is located – a larger geographic area than that served by Verizon's tandems. Second, each of AT&T's switches acts as an access tandem routing the preponderance of interLATA traffic directly to the applicable interexchange carrier.

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71 First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499, 16042 (rel. August 8, 1996) (emphasis supplied).

72 47 C.F.R. § 51.711(a)(3).

73 The primary function of a tandem switch is the aggregation of traffic between customers calling outside their immediate exchange. The Verizon network is comprised of a large number of end offices each serving a relatively small area. Rather than connect every end office to every other end office, Verizon routes certain traffic to tandem switches which serve groups of end offices. Thus, a call from a Verizon customer to someone in another rate center often will travel to a tandem switch that has a connection to the end office switch serving the called customer. Under the Verizon network architecture, the tandem switches aggregate traffic to be sent to other switches. Under AT&T's network architecture, AT&T's switches also perform a substantial amount of traffic aggregation and, therefore, are performing the primary function of a tandem switch.

Third, AT&T typically has direct trunking to each Verizon tandem in the LATA so that intraLATA traffic between any AT&T customer and any Verizon customer may be completed without transiting multiple AT&T switches or multiple Verizon tandems.

Fourth, AT&T's switches perform both end office and tandem switch functions. Tandem switches generally aggregate traffic from a number of end office switches for purposes of passing that traffic to other offices for termination elsewhere on the network. The tandem switch is also used for aggregation and processing of operator services traffic, routing traffic that is to be transferred between the trunk groups of two separate carriers, and measuring and recording traffic detail for billing. While Verizon employs two separate switches to accomplish these tandem and end office functions, AT&T's switches perform all of these functions within the same switch. Thus, not only is AT&T able to meet the geographic requirements of 47 C.F.R. §51.711(a)(3), but it is also meeting functionality considerations.

AT&T's position that its switches are comparable to Verizon's tandem switches is supported by the rulings of other state commissions. For example, the Michigan Public Service Commission, in its arbitration decision of the MediaOne/Ameritech Interconnection Agreement, provides useful guidance on this issue.<sup>74</sup> In the *MediaOne* case, the arbitration panel concluded that MediaOne had failed to demonstrate that its network currently serves a geographic area comparable to Verizon's.<sup>75</sup> The Commission

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<sup>74</sup> *Petition of MediaOne Telecommunications of Michigan, Inc. for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Michigan*, Michigan Public Service Commission, Case No. U-12198, Opinion and Order (March 3, 2000) ("*MediaOne*").

<sup>75</sup> *MediaOne* at 15.

reversed the panel's decision. Pointing to Paragraph 1090 of the FCC's *Local Competition Order*, the Commission noted that to establish that a competitive carrier's switches serve a geographic area comparable to that served by the ILEC's tandem switches, (a) the competitive carrier's network need not serve exactly the same area as that served by the ILEC and (b) the competitive carrier's network technology need not operate precisely in the same manner as the ILEC's network technology, if it provides the same or equivalent functionality.<sup>76</sup> The Commission concluded that MediaOne's SONET network did serve an area comparable to that served by Verizon and did provide equivalent functionality:

After reviewing the facts presented to the arbitration panel, the Commission is persuaded that the area served by MediaOne's SONET network is comparable to that served by Ameritech Michigan's tandem switch. In so finding, the Commission is aware that MediaOne does not yet have the same number of customers or locations of customers that the incumbent currently has. Yet the Commission is persuaded that MediaOne's switch is serving a geographic area that is broad enough to be considered comparable to an Ameritech Michigan tandem. MediaOne is currently licensed and holding itself out as a telecommunications provider in 42 communities in Southeast Michigan. In its orders licensing MediaOne to serve, the Commission held that MediaOne was capable of providing service to every person within the licensed areas. In the Commission's view, MediaOne sufficiently demonstrated that it serves a geographic area comparable to an Ameritech Michigan tandem.

*Id.*

The rationale is equally true in Virginia. The areas that AT&T reaches with its Virginia switches are comparable to what Verizon serves with its tandems and subtending end offices. And, even if CLECs do not have the same number of customers or locations of

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<sup>76</sup> *MediaOne* at 18.

customers as Verizon, this is not relevant to the issue, as the Michigan Commission found in the *MediaOne* decision.

Similarly, the North Carolina Commission found that CLECs can establish comparable functionality without duplicating the ILECs network. The Commission, in deciding an Arbitration between ITC DeltaCom and Verizon, explained:

After careful and extensive review of the FCC's Rule 51.711 and the attendant discussion in Paragraph 1090, the Commission believes that the language in the FCC's Order clearly contemplates that exact duplication of the ILEC's network architecture is not necessary in order for the CLP to be eligible to receive reciprocal compensation at the tandem switching rate.<sup>77</sup>

Likewise, the Illinois Commerce Commission (“ICC”) found in an arbitration decision that a CLEC, Focal Communications, was entitled to the tandem interconnection rate.<sup>78</sup> The ICC considered evidence that “Focal’s switch performs the aggregation function from multiple [Ameritech] end offices and other trunk groups onto facilities for the delivery to the Focal customer.”<sup>79</sup> The ICC concluded that:

The FCC, in utilizing a “functionality” test, was obviously addressing the disparity between the modern CLEC fiber option/SONET ring system and the hub and spoke architecture

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<sup>77</sup> *ITC DeltaCom/Verizon Arbitration* proceeding before the North Carolina Utilities Commission (Recommended Arbitration Order, Docket No. P-500, Sub 10, dated April 20, 2000) at 25.

<sup>78</sup> *Focal Communications Corporation of Illinois Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company, d/b/a Ameritech Illinois*, Arbitration Decision, Case No. 00-0027 (May 8, 2000).

<sup>79</sup> *Id.* at 6. In summarizing the evidence provided by Focal, the Commission explained that “for the vast majority of traffic, it is Focal’s switch that performs the traffic aggregation for traffic originating from Ameritech’s end offices, not the Ameritech tandem switch.” *Id.* at 6

utilized by most ILECs.

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Here, the evidence is that Focal's network architecture performs in a *functionally equivalent* manner to Ameritech's. The conclusion that must be drawn is that Focal is entitled to be compensated for the additional costs of terminating local calls from Ameritech customers at Ameritech's tandem rate.<sup>80</sup>

In sum, the unequivocal language in § 51.711 of the FCC rules requires that a CLEC receive a tandem switching rate if it can demonstrate that its switch provides comparable geographic coverage to the ILEC's tandem. As demonstrated above, AT&T's switches in Virginia provide not only the similar geographic coverage, but also the same functionality. Accordingly, the Commission should order that AT&T be compensated at the tandem rate for terminating Verizon traffic delivered to AT&T's switching centers.

**Other Proceedings:**

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

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<sup>80</sup> *Id.* at 7 (emphasis supplied).

## ISP Reciprocal Compensation

ISSUE I.5 This issue is shared by AT&T, Cox and WorldCom.

**Should AT&T receive reciprocal compensation for terminating traffic from Verizon end users to AT&T customers who are internet service providers (“ISPs”)?**

Witness: Robert Kirchberger

Attorney: Michael McRae, Stephen Garavito, Teresa Marrero

### General Principles:

- *The law does not distinguish traffic based upon whether or not it is bound for an ISP.*
- *Therefore, for the purpose of reciprocal compensation, ISP-bound traffic is local traffic for which reciprocal compensation is due.*

### AT&T’s Position:

The SCC’s long-standing policy of treating ISP-bound traffic as subject to reciprocal compensation should be affirmed and continued by the Commission in this arbitration.<sup>81</sup> Recent regulatory and judicial decisions do not limit the authority of a state regulatory commission – or in this case, the Commission substituting for the state commission – to continue such a policy. Providing for payment of reciprocal compensation was sound policy when approved by the Virginia State Corporation Commission and continues to promote competition. Thus, there is no reason to rule other

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<sup>81</sup> AT&T is aware that on April 19, 2001, the Commission’s announced “the adoption of new rules to clarify the proper intercarrier compensation for telecommunications traffic delivered to Internet service providers (ISPs).” News Release, “Federal Communications Commission Resolves Carrier Compensation Rules for Internet Traffic” (April 19, 2001). AT&T realizes that this Order, which has not yet been generally released to the public, may impact parties’ positions on this issue. Once the Order is available, AT&T will supplement or modify its statements as appropriate.

than to affirm the precedent providing for reciprocal compensation when the customer is an internet service provider.

**Proposed Remedy:**

Section 5.7 of AT&T's proposed agreement set forth contract terms and conditions that are necessary and appropriate concerning reciprocal compensation on ISP-bound traffic.

**Verizon's Position:**

Verizon acknowledges that the State Corporation Commission ("SCC") previously held that all ISP-bound traffic is subject to reciprocal compensation.<sup>82</sup> Yet, because the SCC has since declined jurisdiction on this issue in response to complaints by Cox and Starpower, Verizon now considers this issue in a "state of flux." Verizon states that it will not voluntarily agree to pay reciprocal compensation rates for ISP-bound traffic because it believes that such traffic is not "local" traffic, and therefore not eligible for reciprocal compensation treatment. And, Verizon argues, even if it were required to compensate AT&T for terminating ISP-bound traffic, that rates for doing so should be reduced to reflect what it believes to be the much lower costs of terminating interstate ISP-bound traffic.

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<sup>82</sup> *Petition of Cox Virginia Telcom, Inc., for enforcement of interconnection agreement with Bell Atlantic-Virginia, Inc. and arbitration award for reciprocal compensation for the termination of local calls to Internet service providers, Case No. PUC970069, Final Order, (Oct. 24, 1997).*

**Relevant Authorities:**

47 U.S.C. §§ 51.701(a) 154(43);

47 U.S.C. § 251(b)(5).

47 C.F.R. § 51.701(a).

*In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order 11 FCC Rcd 15499 (rel. Aug. 8, 1996).

*In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, and Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, FCC 99-38 (rel. Feb. 26, 1999 (“*Declaratory Ruling*”).

*Petition of Cox Virginia Telcom, Inc., for enforcement of interconnection agreement with Bell Atlantic-Virginia, Inc. and arbitration award for reciprocal compensation for the termination of local calls to Internet service providers*, Case No. PUC970069, Final Order, (Oct. 24, 1997).

*Petition of Starpower Communications, LLC, For Declaratory Judgment Interpreting Interconnection Agreement with GTE South, Inc.*, Case No. PUC990023 and *Cox Virginia Telcom, Inc. v. GTE South Inc. (for enforcement of interconnection agreement for reciprocal compensation for the termination of local calls to Internet Service Providers)*, Case No. PUC990046, Final Order, (Jan. 24, 2000).

*Bell Atlantic Telephone Companies v. Federal Communications Comm'n*, 206 F.3d 1 (D.C. Cir. 2000).

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

The SCC’s long-standing policy of treating ISP-bound traffic as subject to reciprocal compensation should be affirmed by the Commission in this arbitration.

When this issue was first before the SCC in a 1997 dispute between Verizon (then known

as *f/k/a* Bell Atlantic) and Cox Communications,<sup>83</sup> the SCC unequivocally ruled that reciprocal compensation was payable for terminating ISP-bound traffic. Although the SCC has since declined jurisdiction over this type of dispute as a result of the Commission's *Declaratory Ruling*<sup>84</sup>, the Commission has not modified its position on the underlying substantive issue.<sup>85</sup> Moreover, recent regulatory and judicial activity concerning the appropriate treatment of ISP-bound traffic does not circumscribe the State Corporation Commission's – or in this case, the Commission's – authority to require the payment of reciprocal compensation to a carrier terminating such traffic.<sup>86</sup>

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83 *Petition of Cox Virginia Telcom, Inc., for enforcement of interconnection agreement with Bell Atlantic-Virginia, Inc. and arbitration award for reciprocal compensation for the termination of local calls to Internet service providers*, Case No. PUC970069, Final Order, (Oct. 24, 1997).

84 In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, FCC 99-38, adopted February 25, 1999, released February 26, 1999 (“*Declaratory Ruling*”), ¶ 18.

85 In considering petitions of Starpower and Cox against Verizon-South (then known as GTE) for the enforcement of their respective interconnection agreements on the payment of reciprocal compensation on ISP-bound traffic, the SCC declined to take jurisdiction. See *Petition of Starpower Communications, LLC, For Declaratory Judgment Interpreting Interconnection Agreement with GTE South, Inc.*, Case No. PUC990023 and *Cox Virginia Telcom, Inc. v. GTE South Inc. (for enforcement of interconnection agreement for reciprocal compensation for the termination of local calls to Internet Service Providers)*, Case No. PUC990046, Final Order (Jan. 24, 2000). The Commission subsequently granted Starpower and Cox’ petitions for preemption of the SCC’s jurisdiction.

86 The Act imposes a duty on local exchange carriers “to establish reciprocal compensation arrangements for the transport and termination of telecommunications.” 47 U.S.C. § 251(b)(5). The reciprocal compensation rate should reflect the economically efficient forward-looking costs associated with terminating traffic. See *I/M/O Implementation of the Local Compensation Provision in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order 11 FCC Rcd 15499 (rel. Aug. 8, 1996)(“*Local Competition Order*”) at ¶ 672, 1027.

The SCC's policy of treating ISP-bound traffic as subject to reciprocal compensation is well supported. In its *Local Competition Order*, the Commission adopted a rule that construed the reciprocal compensation requirements of § 251(b)(5) to be applicable only to the transport and termination of "local" calls.<sup>87</sup> Initially, virtually all carriers treated ISP-bound traffic as being subject to reciprocal compensation arrangements. Only after Verizon and other ILECs realized that this arrangement resulted in unexpected net payments to some CLECs, did they object. Eventually the disputes over the payment of reciprocal compensation on ISP-bound traffic reached numerous state commissions and the Commission.

In 1997, Verizon began unilaterally to withhold reciprocal compensation payments from CLECs despite having valid interconnection agreements requiring such payments. In response to a petition filed by Cox Communications, the SCC found that "calls to ISPs as described in the Cox petition constitute local traffic under the terms of the agreement between Cox and [Bell Atlantic-Virginia, Inc.] and that the companies are entitled to reciprocal compensation for the termination of this type of call."<sup>88</sup> Among other things, the SCC noted that "[c]alls that are placed to a local ISP are dialed by using

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<sup>87</sup> 47 C.F.R. § 51.701(a). AT&T has recently challenged the interpretation that traffic must be "local" under the Act for reciprocal compensation arrangements to apply. See Comments of AT&T Corp., *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68 (July 21, 2000) at 12-14. The Act itself requires that cost-based reciprocal compensation apply to all "telecommunications," which would include ISP-bound traffic, not merely "local" traffic. See 47 U.S.C. §§ 154(43) and 251(b)(5).

<sup>88</sup> *Petition of Cox Virginia Telcom, Inc., for enforcement of interconnection agreement with Bell Atlantic-Virginia, Inc. and arbitration award for reciprocal compensation for the termination of local calls to Internet service providers*, Case No. PUC970069, Final Order, (Oct. 24, 1997). AT&T was an intervenor in that state proceeding.

the traditional local-service, seven-digit dialing sequence.”<sup>89</sup> This has been the only decision on the merits of this issue by the SCC; the decision has not been disturbed on appeal or subsequently modified by the SCC.

The rulings by other state commissions on this same issue were strikingly consistent: all of the nearly 30 states addressing the issue prior to February 1999 found ISP-bound traffic subject to reciprocal compensation arrangements. These state decisions were made in all types of cases, including contract complaints, arbitrations and generic cost proceedings.

In its February 29, 1999 *Declaratory Ruling*, the Commission found that ISP-bound traffic is jurisdictionally interstate and, therefore, not “local” within the meaning of its regulations.<sup>90</sup> Under the Commission’s view, reciprocal compensation for ISP-bound traffic was not “mandated” under the Act. Instead, the Commission gave the states the discretion to determine whether reciprocal compensation should be paid on ISP-bound traffic.

The Commission’s decision does not limit a state commission’s authority to require reciprocal compensation for a carrier incurring the cost of terminating ISP-bound traffic. To the contrary, the Commission found that state commissions possessed the authority to order the payment of reciprocal compensation for ISP-bound traffic when interpreting previously executed interconnection agreements or when addressing the issue

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<sup>89</sup> *Id.* at 2.

<sup>90</sup> In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, FCC 99-38, 14 FCC Rcd 3689, Feb. 29, 1999 (“*Declaratory Ruling*”), ¶ 18.

in interconnection arbitrations in the absence of a contrary federal rule.<sup>91</sup> Indeed, the Commission recognized that state commissions have “no choice but to establish an inter-carrier compensation mechanism and to decide whether and under what circumstances to require the payment of reciprocal compensation.”<sup>92</sup> The Commission explained that while it has not yet adopted a federal rule to govern inter-carrier compensation, the “policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation, suggest that such compensation is due for that traffic.”<sup>93</sup> Since the Declaratory Ruling, well over 20 states have ordered reciprocal compensation for such traffic consistent with the Commission’s rules establishing that ISP-bound traffic is to be regulated as local traffic for the purposes of reciprocal compensation rather than as traditional interstate access.<sup>94</sup>

The United States Court of Appeals for the D.C. Circuit’s decision last year did not affect the ability of the states to impose reciprocal compensation on ISP-bound traffic. Although the D.C. Circuit vacated the Commission’s application of the jurisdictional analysis in its *Declaratory Ruling* to the issue of compensation for ISP-

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91 *Declaratory Ruling*, ¶¶ 22, 25. According to the Commission: Even where parties to interconnection agreements do not voluntarily agree on an inter-carrier compensation mechanism for ISP-bound traffic, state commissions nonetheless may determine in their arbitration proceedings at this point that reciprocal compensation should be paid for this traffic. *Id.* ¶ 25.

92 *Id.*

93 *Id.*

94 Only a handful of states have refused to order reciprocal compensation on ISP-bound traffic.

bound traffic, the court left intact the right of state commissions to determine how ISP-bound traffic should be compensated.<sup>95</sup>

Moreover, the Commission has always *treated* ISP-bound traffic, notwithstanding its interstate character, as “local” for all purposes relevant here. Indeed, because ISP-bound traffic is treated as local for almost every other purpose, including tariffing, rate setting and separations, treating jurisdictionally interstate information services as “local” for reciprocal compensation purposes is merely the logical extension of, and entirely consistent with, Commission precedent dating back to 1983 and continuing through decisions implementing the Act.

ISP-bound calls are “sent-paid” – *i.e.*, the LEC serving the originating end user gets paid by the end user to carry the call all the way to its destination (here, the ISP). When two carriers collaborate to provide that call, the second carrier does some of the work for which the first carrier has been paid, and therefore must be compensated for that work by the first carrier. In the absence of the CLEC, the incumbent LEC would have to incur the expense itself to carry the call to the ISP; the CLEC is therefore performing a service for the incumbent that allows the incumbent to fulfill its contract with its end-

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<sup>95</sup> *Bell Atlantic Telephone Companies v. Federal Communications Comm'n*, 206 F.3d 1 (D.C. Cir. 2000). In this decision, the Court did not question – and effectively endorsed – the FCC’s determination that ISP-bound traffic is jurisdictionally interstate. However, the Court noted that this established only that “a call is in the interstate jurisdiction” and, therefore, cannot be subjected to state commission regulation under state law. As the Court stated, it by no means follows that the ISP-bound traffic is not subject to section 251(b)(5)’s *federal* standards for the payment of cost-based inter-carrier compensation. *Id.* at 5. The Court held that the Commission had not explained why “it made sense in terms of the statute or the [Commission’s] own regulations” to exclude ISP-bound calls from federal reciprocal compensation merely because they are jurisdictionally interstate. *Id.* at 8.

user. Like calls that are concededly “local,” the incumbent owes reciprocal compensation to the CLEC in that situation.

Regulators *could* structure the ISP-bound calling situation as either an access charge regime or a dial-up regime. Since the Commission has chosen to exempt ISPs from access charges, it is the incumbent LEC that has the relationship with the customer and must pay compensation to carriers that complete calls for that customer.

In sum, the SCC was correct when it determined in the Cox dispute that ISP-bound traffic was subject to reciprocal compensation. The SCC has not changed or altered this policy, nor has any judicial decision affected this holding. Indeed, the Commission has expounded at length as to how a decision of this nature is strictly in the hands of the state commissions. Accordingly, AT&T submits that the SCC’s previous determination that reciprocal compensation is due on ISP-bound traffic should be applied in the instant arbitration.<sup>96</sup>

**Other Proceedings:**

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

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<sup>96</sup> If the Commission, in this arbitration, adopts a position that ISP-bound traffic is *not* eligible for reciprocal compensation, whether based on legal or policy reasons, it must nevertheless adopt an intercarrier termination rate that reflects the costs of terminating ISP-bound traffic. Failure to adopt a rate would effectively set zero as the compensation rate. A zero rate would be grossly inequitable, inconsistent with law and would result in an unjustified Verizon windfall. Thus, the Commission must determine a cost-based rate to cover the cost of terminating such traffic. Because the cost of terminating ISP-bound traffic is the same as the cost of terminating other circuit-switched calls, the local termination rate adopted by the Commission in this arbitration should be applicable to ISP-bound traffic.

**ISSUE V.8 This issue is exclusive to AT&T.**

**Should the contract terms relating to the Parties' joint provision of terminating meet point traffic to an IXC customer be reciprocal, regardless of which Party provides the tandem switching function? Put another way, should the contract terms make clear that AT&T and Verizon are peer local exchange carriers and should not bill one another for meet point traffic?**

Witness: Dave Talbott  
Attorney: IV Mellups/Ellen Schmidt

**AT&T's Position:**

Yes. The contract terms relating to the Parties' provision of terminating meet point traffic should be reciprocal, regardless of which Party provides the tandem switching function.<sup>97</sup>

**Proposed Remedy:**

Section 6.0 *et. seq.* sets forth the contract terms and conditions necessary to support AT&T's position on this issue.

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<sup>97</sup> Meet point traffic billing involves calls sent to or received from a local exchange customer of one party that is connected to an interexchange carrier that is in turn connected to the other party's access tandem. Accordingly, meet point billing traffic is jointly provided by AT&T and Verizon as cooperating LECs. For purposes of this issue, terminating meet point billing traffic is the traffic from an interexchange carrier destined to the local exchange customer of one party that is connected through the other party's tandem.

**Verizon Position:**

Verizon refuses to agree to reciprocal terms for the provision of terminating meet point traffic. Verizon proposes that when the IXC is interconnected to Verizon's tandem, the Parties will not bill each other, and the access revenues associated with that traffic will be shared between the Parties. When AT&T delivers that same type of traffic to Verizon for termination, however, Verizon proposes to charge AT&T access rates and not share any of the access revenues with AT&T. In addition, Verizon claims that the Interconnection Agreement is not the appropriate place to decide this issue. This issue, Verizon claims, should be examined in the context of a plenary proceeding relating to the restructuring of Switched Exchange Access rates.

**Relevant Authorities:**

*Act*, § 251 (c)(2).

*Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*"), ¶¶ 186, 191.

47 U.S.C. §§ (16) & (47).

*First Report and Order, Access Charge Reform*, 12 FCC Rcd 15982 (1996) ¶¶ 258-284.

Order Approving Revised Arbitration Award, *AT&T Communications of the Southwest, Inc., Petition for Arbitration with Southwestern Bell Telephone Company*, Dkt., No. PUD 2000000587/Order No. 449960, at 2-3 (March 14, 2001).

Decision of Arbitration Panel, *AT&T Communication's of Michigan Inc., and TCG Detroit's Petition for Arbitration*, Case No. U-12465 at 12 (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(Nov. 20, 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).

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

AT&T has the right, as do all CLECs, to obtain interconnection pursuant to § 251(c)(2) of the Act to provide local exchange *and exchange access* services.

Exchange access service is the offering of access to telephone exchange services<sup>98</sup> or facilities for the purposes of origination or termination of telephone toll services. The FCC has specifically found that “providers of competitive access services are eligible to receive interconnection pursuant to Section 251(c)(2).”<sup>99</sup>

Consistent with this right, AT&T proposes interconnection terms and conditions that will enable AT&T to offer a competing terminating exchange access tandem service to IXCs, and the potential to offer a competing originating exchange access tandem

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<sup>98</sup> 47 U.S.C. § 153(16). Telephone exchange service is (A) “service within a telephone exchange, or within a connected system of exchanges within the same exchange area operated to furnish ...intercommunicating service of the character ordinarily furnished by a single exchange and which is covered by the exchange service charges, or (B) comparable service provided through a system of switches, transmission equipment or other facilities. 47 U.S.C. § 153 (47).

<sup>99</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (“*Local Competition Order*”), ¶ 186.

service once technical issues are resolved. AT&T proposes that the terms and conditions for the joint provision of exchange access should be the same for both parties, regardless of which party provides the tandem switching function for the IXC.

Specifically, AT&T plans to offer IXCs an exchange access service in which AT&T will carry the IXCs' traffic from one point on AT&T's network and deliver it to multiple Verizon end offices, or the applicable Verizon tandem, if an end office connection is not available for termination to the designated end users.<sup>100</sup> Verizon, provides this service to IXCs as well, and would deliver IXC traffic to AT&T at the appropriate AT&T switch for termination. When the IXC is interconnected to Verizon's tandem, AT&T and Verizon have agreed to the terms and conditions that would be applicable to such joint provisioning. For example, the Parties have agreed not to bill each other, and to allocate the access revenues associated with that traffic with Verizon based on the MECAB/MECOD guidelines<sup>101</sup>. In turn, AT&T proposes that when it delivers that same type of traffic to Verizon for termination, the parties should not bill

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<sup>100</sup> Thus it is the IXC, not the end user customers that are collectively AT&T's and Verizon's customer collectively for purposes of this traffic. The IXC takes this service pursuant to AT&T's and Verizon's access tariffs. However, it is both carriers' end users that are receiving the traffic as a result of the interconnection between AT&T and Verizon.

<sup>101</sup> The MECAB is a document prepared by the Billing Committee of the OBF. The MECAB document, published by Bellcore as Special Report SR-BDS-000983 or its successors, contains the recommended guidelines for the billing of an Exchange Access Service provided by two or more Local Exchange Carriers, or by one Local Exchange Carrier in two or more states, within a single LATA. The MECOD is a document developed by the Ordering/Provisioning Committee of the OBF. The MECOD document, published by Bellcore as Special Report SR STS-002643 (and SRBDS 00983) or its successors, establishes recommended guidelines for processing orders for Exchange Access Service that is to be provided by two or more LECs.

each other and to allocate the access revenues with AT&T in accordance with the same guidelines.

Verizon refuses to agree to this proposal. Instead of agreeing to share the access revenues received from the IXC, Verizon proposes instead to charge AT&T access rates when AT&T provides the tandem switching function for the IXC.

Verizon's proposal is clearly an attempt to foreclose any competition for competitive exchange access services by requiring that AT&T purchase this type of interconnection out of Verizon's exchange access tariff. This proposal is a violation of Verizon's interconnection obligations set forth in the Act. Section 251(c)(2) specifically requires the ILEC to provide interconnection for the provision of exchange access services; and such interconnection must be provided on just, reasonable, and non-discriminatory terms and conditions.<sup>102</sup> Moreover, CLEC's have the right to implement

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<sup>102</sup> Some Commissions have found, consistent with Verizon's assertion, that since the traffic involved is not local traffic, it should not be addressed in an interconnection agreement. These decisions, however, ignore the language of the Act that specifically indicates that interconnection must be provided pursuant to § 251(c)(2) for the provision of exchange access service. See, Decision of Arbitration Panel, *AT&T Communication's of Michigan Inc., and TCG Detroit's Petition for Arbitration*, Case No. U-12465 (Oct. 18, 2000) at 12 (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 (Nov. 20, 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). The California Commission, however, refused to limit the language related to meet point trunk arrangements to only those instances where Pacific Bell was the tandem service provider. It urged the parties to explore the feasibility of AT&T providing exchange access to third parties. *Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company*

interconnection via the negotiation and arbitration of interconnection agreements. Thus, AT&T has the right to propose that the terms for interconnection related to the provision of the exchange access service as described above, be set forth in its interconnection agreement. AT&T's proposal simply places both carriers on an equal footing so that competition in the exchange access market has a chance to develop, consistent with the intent of the Act.<sup>103</sup> The fact is that both carriers are providing the exact same service to the IXC when they provide the tandem switching function, and both carriers are providing the exact same service to one another by delivering the IXC traffic via their facilities to the other party for termination. Verizon's proposal is preventing AT&T from achieving comparable network efficiencies.<sup>104</sup> Its refusal to agree to reciprocal terms amounts to an unfair, unreasonable and discriminatory condition of interconnection and must be rejected.

**Other Proceedings:**

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

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*Pursuant to Section 252(b) of the Telecommunications Act of 1996, Dkt. No. 00-01-022, at 477-478 (CA PUC Aug. 3, 2000).*

<sup>103</sup> AT&T's proposal is also consistent with the FCC's access reform policies. The FCC acknowledged that access charges are not based on forward looking costs, but decided not to prescribe cost based access charges. Rather, the FCC indicated that it was relying on competition to drive access rate levels toward cost. *Access Charge Reform Order*, ¶¶ 258-84. Such competition cannot develop, however, if ILECs refuse, as Verizon has done in this case, to agree to nondiscriminatory interconnection terms for the provision of exchange access services.

<sup>104</sup> Moreover, AT&T's proposal provides AT&T with an incentive to build out its network and thus is consistent with promoting the development of facilities-based competition.