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Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW - Lobby
Designated Counter TW-A325
Washington, DC **20554**

Re: CC Docket No. 01-92
Comments of the Allied Personal Communications Industry Association o California ("Allied") In Response to Notice of Proposed Rulemaking ("Interconnect NPRM")

Dear Ms. Salas:

Enclosed please find an original and five (5) copies of the above-referenced Comments. Please file the original and four copies of the document and return a filed-stamped copy to us in the enclosed ***UPS*** package.

Thank you, in advance, for your assistance. Please call me immediately should you have any questions.

Sincerely,

Leander M. Bryant
Assistant to David M. Wilson

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Enclosures

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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	

COMMENTS OF THE ALLIED PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION OF CALIFORNIA ("ALLIED") IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING ("INTERCONNECT NPRM")

I.

INTRODUCTION

Allied is a trade association which for more than forty years has represented the interests of paging carriers in the state of California. Membership includes nearly all of such carriers.

Allied takes a particular interest in interconnect matters, having fought on the state level first to establish the co-carrier status of the radiotelephone industry, and thereafter to vindicate CMRS carriers' rights to interconnection on fair and non-discriminatory terms with incumbent local exchange carriers ("ILECs"). Most recently, Allied supported the paging position in a precedent-setting arbitration between Cook Telecom and Pacific Bell. After nearly five years of contested proceedings, this arbitration – the first of its kind – resulted in a Ninth Circuit Decision affirming the right of paging carriers to transport and termination compensation, and fixing that compensation in conformity with a TELRIC cost study. Pacific Bell v. Cook Telecom. Inc., 197 F3d 1236 (9th Circuit 1999). To Allied's knowledge, the Cook Decision remains the only instance in the country where a paging carrier has demonstrated its additional costs of terminating land-to-pager traffic, and has secured both regulatory and judicial confirmation of the result.[1]

Since the Cook arbitration, paging carriers have, not without difficulty, obtained interconnection agreements with most major ILECs. Their networks have been redesigned to comply with these agreements and to respond to concerns that prior interconnection arrangements were inefficient. Now, however, the NPRM proposes to entirely reverse current law on transport and termination compensation, and to mandate "bill and keep" irrespective of whether traffic originated and costs incurred by each carrier are in balance. If adopted in its current form, the proposal would violate Sections 251-52 of the Act, and would create a variety of new and more severe problems than those which may mark the current regime. Foremost among these problems would be (a) new forms of uneconomic arbitrage, and (b) inefficient interconnection architecture.

These comments will demonstrate that:

1. Sections 251-52 of the Act require the originating carrier to pay for the transport and termination of its customers' calls.

2. Section 332 of the Act empowers the Commission to mandate bill and keep, but only where termination costs are de minimis, and/or are in reasonable balance.

3. Where there is an imbalance in the costs incurred by interconnecting carriers, mandatory bill and keep would result in uneconomic arbitrage and inefficient networks.

4. Network efficiency and fair competition require that carriers be able to assign different rating and routing points to their NXXs.

[1] Other Commissions have concluded, without adopting specific cost studies, that the additional costs of terminating land-to-pager calls are at least as great as the costs of terminating land-to-land voice calls. e.g. Washington Arbitrator's Report and Decision, Washington Utilities and Transportation Commission Dkt. UT-990300 (July 1, 1999).

II.

SECTIONS 251-52 OF THE ACT REQUIRE THE ORIGINATING CARRIER TO PAY FOR THE TRANSPORT AND TRANSPORTATION OF ITS CUSTOMERS' CALLS

In its First Report and Order in CC Dkts. **96-98** and **95-185** ("First **R&O"),** this Commission considered arguments to the effect that "bill and keep" ought to be mandated irrespective of whether traffic between carriers was in balance. Id. at Paragraphs **1096** et seq. The Commission found, properly, that the Act permits no such blanket rule. The reasoning was simple: the Act requires that **all** ILECs "establish reciprocal compensation arrangements for the transport and termination of telecommunications". Section **251**(b)(5). In determining whether or not an agreement negotiated under Section **251**(b)(5) complies with this requirement, the state commission **must** find that the terms and conditions of the agreement "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier". The "costs" to be recovered by the terminating carrier ought to be determined "on the basis of a reasonable approximation of the additional costs of terminating such calls". The Commission properly concluded from all this that where traffic and costs are not balanced, "bill and keep" provides no adequate way for the terminating carrier to recover its "additional costs". For this reason, the First R&O declined to adopt a mandatory, across-the-board bill and keep **regime.**[2]

[2] **At Paragraph 1112 of the First R&O, the Commission states:**

> **Section 252(d)(2)(A)I) provides that to be just and reasonable, reciprocal compensation 'provide for the mutual and reciprocal recovery by each carrier of costs associated with transport and termination.' In general, we find that carriers incur costs in terminating traffic that are not de minimis, and consequently, bill and keep arrangements that lack any provisions for compensation do not provide for recovery of costs.**

This does not mean that "bill and keep" is barred in all cases. On the contrary, the Act at Section 252(d)(B) states that Section 252(d) (quoted above) "shall not be construed ... to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery, such as bill and keep arrangements". Accordingly, the First R&O found that parties may voluntarily agree to "bill and keep", and indeed that they may be incented to do so. First **R&O** at Paragraph **1113.** There are also circumstances in which a state Commission may impose "bill and keep" **as** a default rule to be applied in the absence of an agreement by the parties. Such circumstances include those in which traffic is in rough balance and neither party has rebutted the presumption in favor of symmetrical costs. **Id**. at Paragraph **1111.**

At the time of the First R&O, two-way cellular and PCS services were not able to demonstrate such balance, and/or lack of symmetry. Today, however, these services may have evolved to the point where "bill and keep" is appropriate. In many instances, 30% or more of cellular calls are land-originated. While a **70:30** ratio would not alone constitute "substantially offsetting obligations", recent FCC and court decisions have found that on a per-call basis cellular and two-way PCS carriers may be entitled to higher transport/termination compensation than has previously been recognized by many ILECs. For example, this Commission has reaffirmed the entitlement of cellular carriers to compensation at rates which are symmetrical with the tandem interconnect rate charged by ILECs for mobile-to-land calls. See Paragraph 105 of NPRM, and **47** C.F.R. **§ 51.71**1(a)(3). The NPRM also confirms that CMRS termination and transport costs should include the traffic-sensitive costs of equipment located outside of the mobile telephone switching office, e.g., **at** remote cell sites. See NPRM paragraph **104** and the letter from Thomas J. Sugrue and Dorothy Atwood to Charles McKee, Senior Attorney, Sprint PCS, dated May 9,

2001. Taken together, these changes in facts and law may support a finding that costs incurred by terminating two-way CMRS providers are in rough balance with those incurred by terminating ILECs. Such a finding would be entirely consistent with the First R&O, Paragraphs 1111-1112.

But none of these circumstantial changes is applicable to paging. Paging – even so called "two-way" paging – is one-way in nature. In all cases, the party initiating the communication is an ILEC customer who may be billed by his/her carrier for placing the call.[3] While the paging customer also benefits from the transaction, the fundamental choice remains with the calling party, just as it does in the landline-to-landline context. Nor are paging compensation rates subject to the symmetricality presumption of 47 C.F.R. § 51.711(a)(b); on the contrary, paging carriers must prove their own TELRIC. In short, the First Report and Order got it right. Where, as in paging, traffic is entirely land-originated, and there is no showing of offsettable costs (as described in Section 252(d)2)(B)), compensation must be paid to the terminating carrier under Sections 251(b) and 252(d)(2). To mandate "bill and keep" would be unlawful in such circumstances.[4]

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[3] Current "two-way" paging technology permits the end user to send messages from the pager via radio links to the paging switch from which the messages may be routed to the internet by direct connection to an ISP. Alternatively, a telephone subscriber may retrieve a pager-generated message by originating a call to the paging switch. In none of these cases is the ILEC required to terminate a pager-originated call.

[4] Also to be considered is the impact of this Commission's recent Order relating to termination compensation for ISP-bound calls. *See* Order on Demand and Report and Order in CC Dkts. 96-98 and 99-68 (rel. April 27,2001) ("ISP R&O"). In sharply reducing the rates to be charged in terminating ISP calls, and in requiring that the same rates be offered by the ILECs to carriers originating voice traffic, this Commission has advanced the day when the difference between the "additional costs" of transporting and terminating land-to-cellular and cellular-to-land calls may be considered de minimis.

III.

SECTION 332 (c) OF THE ACT EMPOWERS THE COMMISSION TO MANDATE A **UNIFORM** BILL ***AND*** KEEP **REGIME** FOR CMRS/ILEC INTERCONNECTION, **BUT ONLY** WHERE TERMINATION COSTS ARE DE MINIMIS **AND/OR** IN REASONABLE **BALANCE.**

The First R&O (at paragraphs 89 et seq.) also addressed the question of the interrelationship between Section **332** (c) and Section **251-52** of the Act, Various alternative views had been offered by commenting parties ranging from:

- The view that Section **332** (c) has been entirely superseded by Sections **251-52,**

to

- The view that Sections **25 1-52** apply only to non-CMRS providers, with the regime for CMRS/ILEC interconnection being governed exclusively by Section **332** (c).

The First R&O also referred to various in-between positions, one of which was that Section **332** (c) **only** authorizes the FCC to respond to issues of physical interconnection, while issues relating to interconnection rates are to be decided by the states under Sections **25 1-52.** Others argued precisely the opposite, ***i.e.***, that the proscription of state regulation of "rates charged by" CMRS providers was, effectively, a bar to state regulation of rates charged for interconnection by landline carriers.

Ultimately, the First R & O found that ***both*** Sections **25 1-52** and Section **332** (c) furnish independent bases for the Commission's jurisdiction over CMRS/ILEC interconnection terms. The Commission declined to define the precise extent of its jurisdiction under the two alternatives. See First **R&O** at Sections **1016 - 1023.** Instead, the Commission chose to emphasize that all relevant sections of the Act **(201,251,252** and **332)** "are designed to achieve the common goal of establishing interconnection and ensuring interconnection on terms and conditions that are just, reasonable and fair, It is consistent with the broad authority of these provisions to hold that we may apply Sections **251** and **252** to LEC/CMRS interconnection." Id. at **1023.**

Allied anticipates that these old arguments will now be revisited. Those favoring mandatory bill and keep will urge the Commission to find that Sections **251-52** (including especially the requirement for transport and termination compensation) were not intended to include CMRS providers, which instead are governed exclusively by Sections **201** and **332** (c). Others, who oppose any form of mandatory bill and keep may urge that the question is governed exclusively by Sections 251-52 and that the states have primary jurisdiction to determine whether, if at all, bill and keep is appropriate. This argument would be consistent with the current version **of 47** C.F.R. § 51.713(b).[5]

The better view, consisting with the usual standards of statutory interpretation, is that absent an express provision, or a direct conflict in terms, Sections **251-52** should not be held to have superseded Section **332** (c). Instead the **1996** Act supplements previous legislation. **This**

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be substantivelv inconsistent With Sections **251-52.** Such an approach avoids the possibility **of** materially different interconnection rules for one technology as opposed to another. It is also the only approach which conforms to the law. Thus:

- As found by the Eighth Circuit at notes **21** and **39** of Iowa Utilities Board v. **FCC, 120 F.** 3d at **753,** Section **332** (c) continues to be in force, and constitutes an independent ground

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[5] **Allied notes the appeals by the National Association of Regulatory Utilities Commissioners** and **at least** two **states (including California) challenging the Commission's ISP Order, and in a NARUC resolution questioning the jurisdiction of the FCC to establish a "federal unified compensation regime".** See **Telecommunications Reports, July 23, 2002, at Page 5.**

for the Commission to issue rules "of special concern to CMRS providers". Also, consistent with Iowa Utilities Board (which in this respect has not been overruled or changed), areas of "special concern" to CMRS include default pricing, TELRIC methodology, and bill and keep.

Nonetheless, the FCC's rulemaking authority under Section 332 (c) does not go so far as to permit the Commission to ignore the mandates of Sections 25 1 – 52. This is because the 1996 amendments to the Act post-date Section 332(c), and clearly apply to **all** telecommunications carriers. "Telecommunications Carriers" are defined statutorily to include CMRS providers, both one way and two way. 47 U.S.C. §§ 3(27)(44), 251a); 332(d). The latter was affirmed by the Ninth Circuit in Pacific Bell v. Cook Telecom. Inc., supra.

Put succinctly, the First R&O, the Eighth Circuit, and the Ninth Circuit have already determined – correctly – the interface between Sections 251-52 and Sections 332 (c). Any alternative explanation, i.e., either that the Commission has no added jurisdiction thanks to Section 332 (c), or contrariwise, that the Commission is empowered entirely to ignore the termination compensation rule of Section 251(b), would lead to legal error and practical chaos.

While the Commission's pre-existing rules had provided termination compensation for CMRS providers, the passage of the 1996 amendments to the Communications Act elevated this rule to a statutory entitlement. In other words, this Commission, while it may previously have had the power to alter or eliminate Section 20.1 1(b) of its rules, may not now eliminate the mutual compensation requirement unless there is a substantial offsetting of reciprocal obligations, as described in Section 252(d)(2)(B)(i). See Airtouch Cellular v. Pacific Bell, Memorandum, Opinion and Order in FCC 01-194 (July 6, 2001)[6].

IV.

WHERE THERE IS AN IMBALANCE IN THE COSTS INCURRED BY INTERCONNECTING CARRIERS, MANDATORY BILL AND KEEP WOULD RESULT IN UNECONOMIC ARBITRAGE AND INEFFICIENT NETWORKS

The NPRM is rightly concerned with eliminating one source of arbitrage, i.e., the arbitrage which comes about when symmetrical termination compensation exceeds the actual costs incurred by the terminating carrier, See ***NPRM*** at paragraphs 72, et seq. The NPRM should be just as concerned lest the total abolition of termination compensation lead to other equally pernicious forms of arbitrage.

At the outset, it is necessary to reemphasize that there have been no serious accusations of arbitrage in the relationship between paging carriers and the ILECs. See NPRM at paragraph ***65.*** Nor have early ILEC fears of "gold-plated" paging networks been borne out. The reasons are obvious: paging carriers are unable to claim the symmetrical rates that this Commission has made available to other terminating carriers. First R & O at paragraphs 1092 and 1093. Instead they must prove their own additional costs on a TELRIC basis. This means that termination compensation rates are, if anything, significantly lower than the costs actually incurred by them.

[6] None of this means that carriers may not voluntarily negotiate a "bill and keep" arrangement where traffic is out of balance. Metrocall, for example, has entered into post-1996 agreements which exchange that carrier's ***rights*** to termination compensation for certain ILEC concessions with regard to inter-company transport. But there is all the **difference** in the world between mandatory and optional bill and **keep** regimes.

Put simply, when compensation levels are at or below actual costs, the terminating carrier is not motivated to arbitrage its functions.[7]

The danger in a bill and keep regime is arbitrage by the originating carrier. Mandatory "bill and keep" arrangements shift costs that have traditionally been borne by the originating carrier and recovered by it from its own customers, and transfer them to the terminating carrier. While such a result may be defensible where the cost shifts are in both directions, it cannot be justified where traffic, and the costs of terminating it, are not in balance. Just as excessive termination compensation may have distorted the conduct of terminating carriers vis a vis ISP traffic, so would originating carriers benefit unfairly if they had no obligation to reimburse terminating carriers, and the terminating carrier had no corresponding offsets. In such a case, business plans would center on the origination of calls, and would avoid having to undertake termination functions. Examples are telemarketing and dial-out services. See First R&O at Section 1112. In the case of short messaging services, the competitive advantage would be shifted by regulatory fiat to the two-way broadband carrier whose termination costs would be offset by savings on mobile originated calls. The one-way carrier would be left with its costs, and no offsetting savings. Put in other words, the Commission in a mandatory bill and keep regime would find itself in the precise reverse of the situation which led to the ISP Order. Rather than an arbitrage benefit for terminating carriers, "bill and keep" would confer an unearned benefit on originating carriers. Entities (like paging companies), without substantial originating traffic, would be at a measurable disadvantage.

[7] **The evidence in Cook Telecom v. Pacific Bell was that Cook's fully allocated *costs* exceed $.02/page, and that Pacific avoids $.005/call in *costs* when Cook terminates its calls on a Type 2 basis. Cook's termination compensation entitlement, measured by TELRIC, and excluding variable transmitter-related *costs*, was held to be $.00179/call. Clearly, with termination compensation falling *so* far short of actual costs incurred by the paging carrier, and avoided by the ILEC, there is no motivation to overbuild the paging network, or to design it uneconomically.**

There are also forms of technical arbitrage. Under current rules the originating carrier is responsible for delivering its calls to the terminating carrier and must reimburse the terminating carrier for added costs incurred for transport and termination. Under current rules, therefore, the originator is motivated to maximize the efficiency of its call delivery systems. 47 C.F.R. 51.703(b). In a "bill and keep" regime, the originating carrier would no longer be obligated to reimburse the terminating carrier, and instead would be motivated to revert to less efficient systems which shift transport responsibilities to terminating carriers. While Note 145 of the NPRM alludes to the issue, far too little attention is paid to the games people play when somebody else must foot the bill. Paging carriers are in a unique position to testify that:

– Prior to the 1996 Act, and despite the clear direction of FCC Regulations, the paging carriers bore all costs of transporting and terminating ILEC-originated calls. This being the case, ILECs were not motivated to minimize these costs. The ILECs rejected requests for termination compensation.[8] They resisted requests for Type 2 interconnection, and forced paging carriers to establish multiple points of presence ("POPs"). Circuits were required to every end office where Type 1 numbers were homed, and, where Type 2 was available, to every tandem in the relevant LATA. Because the paging carriers paid for these facilities, there was no constraint on these demands for additional POPs, and no incentive for the ILECs to develop more efficient interconnection modes. Indeed, because the ILECs charged access (<u>not</u> TELRIC) rates for entrance facilities, including high mileage charges, they were affirmatively motivated to insist on

[8] **The First Report and Order contains multiple references to ILEC stonewalling in the face of CMRS demands for greater efficiency.** ***See*** **paragraphs 1030, 1084. The Commission's recent decision in <u>AirTouch v. Pacific Bell</u> finds that Pacific knowingly ignored the provisions of 47 C.F.R. 20.11, which is the pre-Act requirement that transport and termination compensation be borne by the originating carrier.** ***See*** **Memorandum Opinion and Order released July 6, 2001 in FCC Dkt. 01-194.**

multiple and often unnecessary transport facilities. Paging carriers were forced in turn to maintain satellite switches in many locations simply in order to mitigate transport expenses.

- Following the 1996 Act, the ILECs were for the first time obligated to pay their own transport and termination costs. Quite suddenly, there was an emphasis on network efficiency and efforts to encourage Type 2 interconnection, the use of Single Points of Presence ("SPOPs") and virtual rating centers. The ILECs tacitly admitted what had long been obvious: where they already had networks in place, shared transport was more efficient and less expensive than dedicated links. The paging carriers for their part began to consolidate their switches, and use less expensive, high capacity interconnection facilities.'

As the Commission's NPRM threatens to move paging into "bill and keep", some ILECs have already begun to revert to their pre-1996 attitudes. The current Verizon "model" paging agreement, designed for use in all GTE, Bell Atlantic, and " E X territories would require the construction – at the paging carrier's expense – of dedicated transport facilities to end offices in all rate center areas served by the paging carrier. The rates proposed by Verizon for dedicated transport are not TELRIC, but are the same access rates which the Commission's First

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[9] GTE's nationwide paging interconnection model, which was accepted by most carriers in the relevant jurisdictions, paid termination compensation of $5 per Type I trunk and $20 per Type 2 trunk. This was an admitted effort to incent paging carriers to abandon less efficient Type 1 interconnection models.

The use of virtual rate centers was also applauded by the ILECs as a means of avoiding excessive transport costs. In LATAs like Los Angeles, with literally hundreds of rote centers, the ILECs, once they were faced with the possibility of having to pay for the facilities, were disinclined to encourage a spider web of Type 1 interconnection links. Instead, they welcomed schemes whereby all paging traffic would be funneled over shared transport facilities to a single Type 2 POP (usually a tandem location). Paging NXXs, though being routed to this single POP, were rated to different end office V and Hs so that landline customers would continue to get local call treatment for calls to paging units. As further explained at Section V below, ILEC acceptance and encouragement of virtual rate centers only diminished when certain CLECs adopted the concept in order to create pseudo-FEX and intraLATA 800 services in direct competition with the ILECs.

Report and Order rejected. See First R & O, Sections 620, 1054[10]. In other words, the model proposed by the NPRM, like that of Verizon, would not only shift transport costs to the terminating carrier, but would turn those functions into a significant profit center for the ILEC."

V.

THE COMMISSION SHOULD CONTINUE CURRENT PRACTICES REGARDING THE RATING AND ROUTING OF CALLS TO TYPE 2 NXXs

On August 2, 2001, Verizon noticed the termination of its negotiated interconnection agreements with paging carriers in California. The "model" agreement now proposed by Verizon to these carriers is very similar to the "model" designed for cellular and PCS providers, in that it would require CMRS carriers to establish physical interconnections to each and every rate center established by them in Verizon territory. The net result would be that instead of exchanging traffic at a mutually agreed tandem location in each LATA, the CMRS carrier would be forced to pick up land originated calls, and deliver mobile originated calls at multiple locations. The required physical facilities would be billed at access tariff (not TELRIC) rates and would be paid for exclusively by the CMRS provider even where they are used to carry calls originated by the ILEC.

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[10] To Allied's knowledge Qwest is the only ILEC which furnishes dedicated transport (albeit over limited distances) to CMRS providers at UNE rates.

[11] ILEC attitudes on network architecture questions are subject to change. Prior to their consolidation, Bell Atlantic and GTE were relatively progressive in their dealings with paging carriers, and offered agreements which minimized dedicated transport costs. Qwest, in contrast, was particularly recalcitrant and required that unnecessary end office POPs be established even in Type 2 interconnection situations.

In recent months, Verizon and Qwest have switched positions. Verizon's model agreement insists on multiple POPs and high-priced interconnect facilities. Qwest, in contrast, has entered into interconnection agreements with paging carriers which encourage an SPOP ("single point of presence") architecture, and which price many interconnect facilities at TELRIC rather than access rates. In a "bill and keep" regime, of course, Qwest's incentive to improve the efficiency of its delivery systems would be considerably diminished, while Verizon's motivation to shift costs to paging would be accentuated.

Figure 1 illustrates the type 2 interconnect architecture that has evolved since 1996:

Figure 1: Current **Type 2 Architecture**

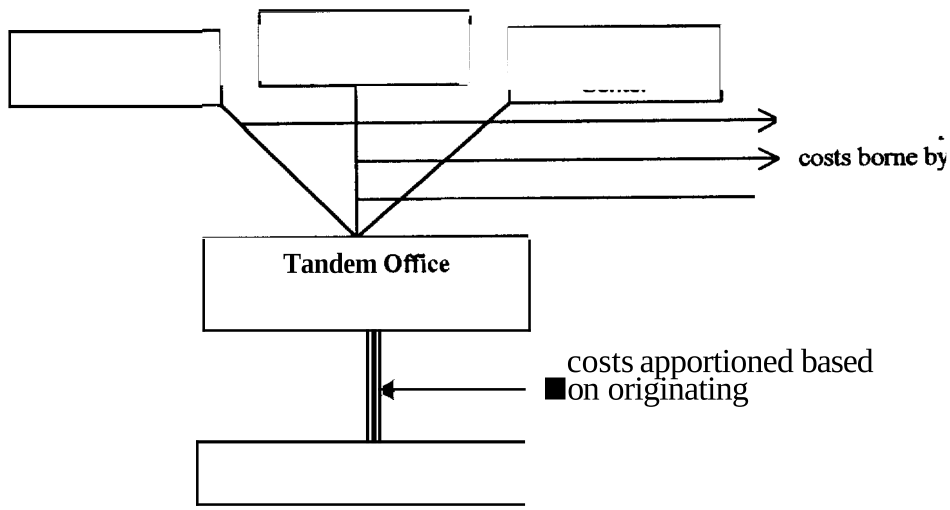
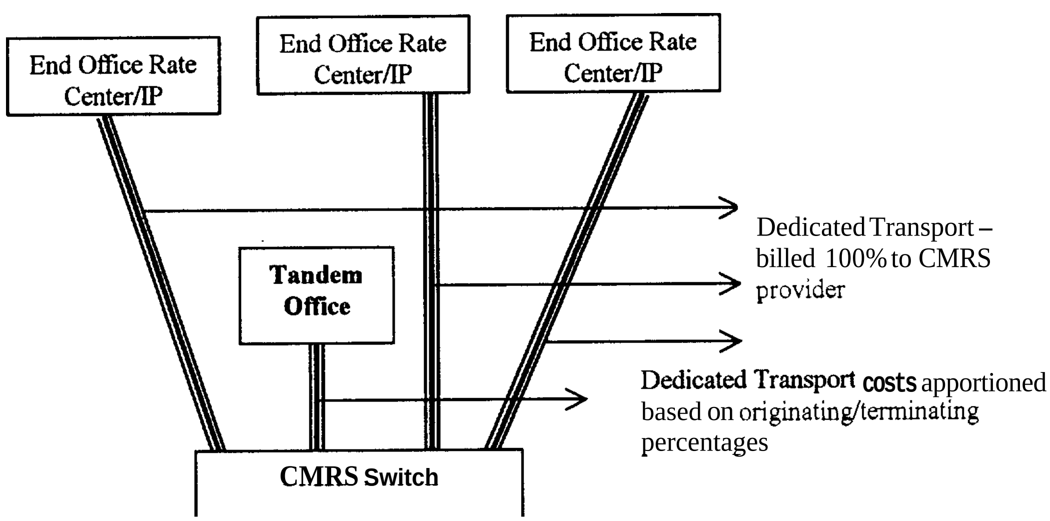


Figure 2 illustrates the "model" which Verizon would now impose:

Figure 2: **Verizon Type 2 Model**



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The Verizon Model Agreement presents the most recent example of ILEC attempts to limit the flexibility of CMRS providers in designating the rating and routing flexibility of interconnecting carriers. Whereas existing practice allows calls to a particular NXX to be routed to an agreed common meeting point, thus minimizing dedicated transport costs, the Verizon model would require dedicated transport to every rating point designated by an interconnecting carrier. Adding to the injury is Verizon's demand that the added transport be paid for by the interconnecting carrier even where the new links are used exclusively to carry Verizon-originated calls.

The NPRM at paragraph 115 describes the issue as one of "virtual central office codes" and notes allegations of abuse by certain CLECs. The NPRM cites an order by the Maine PUC of June 30,2000 calling Brooks Fiber to task for its use of virtual rating points as a device to impose excessive transport and/or termination compensation obligations on the ILECs.[12]

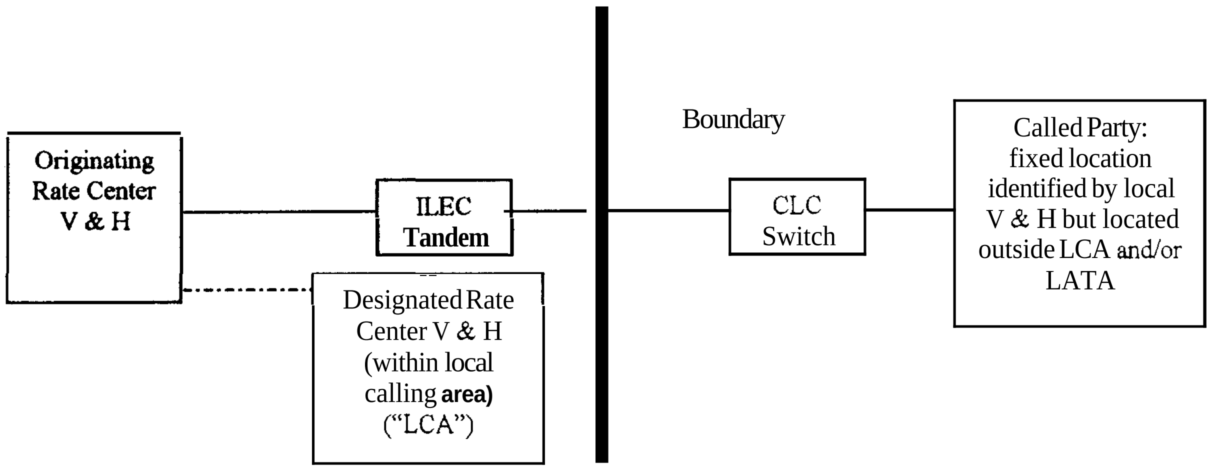
There is a clear difference between the alleged abuses of "virtual rate centers" described by the Maine Commission and their use by CMRS providers as a matter of network efficiency. In Maine, Brooks Fiber had obtained Type 2 NXXs, and had assigned them to fixed stations located well outside of the local calling area to which the codes were rated. Calls by ILEC customers to these numbers were not only rated as "local" but were classified as "local traffic" for purposes of termination compensation. The Maine Commission found that Brooks was not actually providing exchange service and that it was therefore ineligible for the codes. In a similar California case, cited by the Maine regulators, a CLC had assigned multiple numbers to customers physically

[12] See "Order [etc.]" dated June 30,2000 in Maine PUC Dockets 98-758 and 99-593 regarding New England Fiber Communications d/b/a Brooks Fiber and especially the Maine Commission's discussion of the "FX-like" service described by the California PUC in its Decision 99-09-029.

located well outside of the originating local calling area. ILEC-originated calls were thus treated as local both for purposes of billing to local customers and for purposes of termination compensation under the Act.

In essence, the Maine and California cases may be described as efforts by CLCs to convert interexchange to "local" calls, thereby and therefore exempting such calls from the access charge regime that would otherwise apply. Thus:

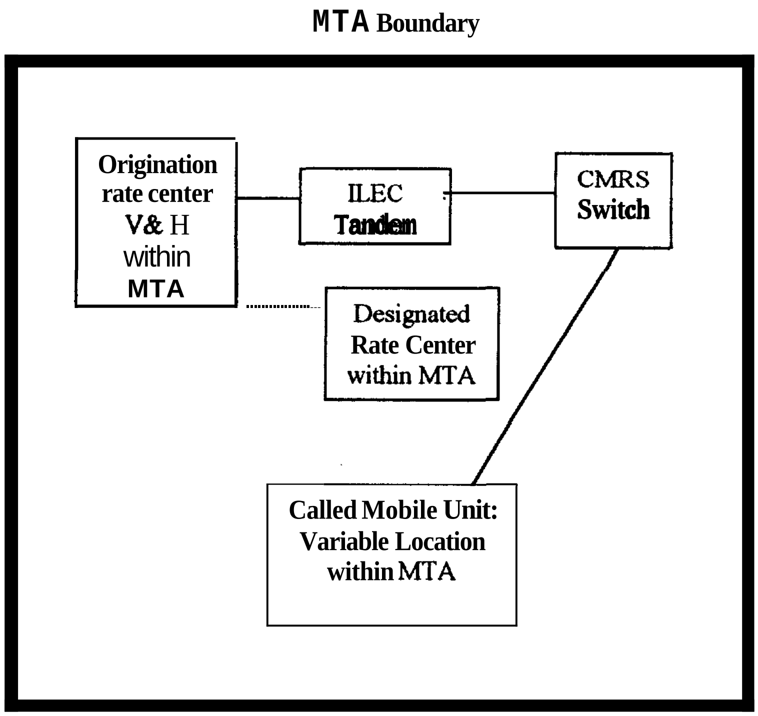
Figure 3: **Brooks Fiber and Similar Models**



CMRS carriers use their relative flexibility in rating and routing in a much different way. A mobile customer by definition does not have a fixed location. Yet the customer requires a telephone number which must be rated and routed to specific V and H coordinates designated by the carrier to which the code is assigned. The rate center is customarily located in the end user's own community of interest. The routing point is, necessarily, the location of the CMRS switch, or a nearby ILEC tandem connected to that switch.

And while the physical location of the mobile unit will vary, few calls are originated and terminated in different MTAs, and where they are terminated elsewhere, they are considered non-local for purposes of the Act. Nor have mobile carriers devised "pseudo" FX or 800 offerings utilizing multiple number assignments to a single customer unit. Thus:

Figure 4: CMRS Model



A variety of statutory and contractual provisions protects against abuse by CMRS carriers of their current rating and routing flexibility. For example, most current interconnect agreements require connections to each tandem in the LATA. In virtually all cases rating and routing points, though they may be separated, must remain in the same LATA. Some agreements also include negotiated limits on the distance within a LATA over which an ILEC is obligated to transport land-originated calls. Allied knows (in the case of California) and strongly suspects (in the case of Maine) that ILEC grievances stem in large part from nothing more than their failure to draft necessary contractual protections.

Allied strongly urges the Commission not to fall into a familiar trap, i.e., it should not in solving a particular abuse, create other, and worse problems. More specifically, it should not limit the rating and routing freedom now enjoyed by competitors. It is in the very nature of competition that competitors must establish rate centers roughly equivalent to those of the established LEC. If this were not the case, calls by ILEC customers to a competitor's numbers would often be charged by the ILECs to their customers at toll rates, while calls between ILEC customers with similarly rated numbers would be billed as local.

It is also inherent in a competitive environment that many calls are not delivered to the called rate center. Rather, the originating carrier should route the call by the shortest and most efficient route to the nearest point of presence point established by the terminating carrier. The latter then takes the call to the called customer. In some cases the actual transport distance for the originating ILEC will be less than it charges to its customer (i.e. less than the distance between the rating points of the calling and called numbers); in other cases the distance will be greater. The actual cost to the ILEC when the distance is greater is de minimis, given that the distance-sensitive TELRIC costs for shared transport are so low. In contrast, the savings to the ILEC (i.e., in avoiding the cost of the terminating switching exercise) is significant.

ILEC attempts to ban virtual rate centers and to require that CMRS and other interconnecting carriers duplicate ILEC transport networks is technically inefficient, expensive and violative of the spirit and letter of the Act. Moreover, these attempts are designed to "cure" alleged abuses for which CMRS carriers bear no responsibility and for which the ILECs themselves are largely to blame. Because some ILEC interconnect agreements are so poorly worded and have allowed a few carriers to abuse the concept of virtual rate centers does not mean the concept should be abolished, especially where it is essential to fair competition,

VI.

CONCLUSION

The Commission should reaffirm its earlier findings that "bill and keep" may be mandated under the Act only where mutual obligations substantially offset each other. The Commission also should reiterate earlier findings that interconnect facilities provided by the ILECs should be priced at TELRIC, and that Type **2** interconnection should continue to be made available without any requirement (absent mutual agreement) that remote POPs be established at end office locations. The existing practice of separating the rating and routing points of Type **2 NXXs** should be endorsed, with abuses by CLECs being dealt with by negotiations or arbitration pursuant to the Act, or, as in the case of Brooks Fiber, by ad hoc proceedings.

Respectfully Submitted,

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