III. INTERCARRIER COMPENSATION

Issue I-5 (Implementation Of The ISP Remand Order)

A. WorldCom's Proposed Contract Language Effectively Implements The ISP Remand Order And Should Be Included In The Interconnection Agreement.

The interconnection agreement should contain a section that implements the ISP Remand Order. WorldCom's proposed language accomplishes this task, and provides the detail that is necessary for the parties to implement the Order on an ongoing basis. Specifically, WorldCom's proposed Section x 1) establishes the prerequisites Verizon must meet to invoke the new inter-carrier compensation regime (subsection x.3); 2) establishes a mechanism for calculating the 3:1 ratio of originating to terminating traffic established in the ISP Remand Order (subsection x.4); and 3) codifies the rate caps established in the ISP Remand Order (subsection x.5). Because the ISP Remand Order is being appealed to the D.C. Circuit, subsection x.6 contains a reservation of rights clause that permits either party to void section x in the event the ISP Remand Order is reversed, vacated, or remanded in whole or in part. Including this provision is appropriate because and all parties should retain their rights in the event the ISP Remand Order is overturned.

The first two subsections of WorldCom's proposed language simply codify certain terms that are included in the ISP Remand Order, and should not be controversial. Section x.1 establishes that the contract terms are intended to implement the ISP Remand Order and that the terms used in this section have the same meanings as set forth in the ISP Remand Order. Section x.2 implements the distinction between ISP-bound traffic and section 251(b)(5) traffic that the ISP Remand Order establishes.

WorldCom's proposed section x.3 makes clear that, consistent with the ISP Remand Order, Verizon cannot avail itself of the terms of that order until it has satisfied certain conditions. The first two terms set forth in Section x.3 memorialize the prerequisites set forth in the ISP Remand Order, and require Verizon to request that ISP-bound Traffic be treated at the rates specified in the ISP Remand Order, to offer to exchange all traffic subject to the reciprocal compensation provisions of section 251(b)(5) with LECs, CLECs, and CMRS providers, at the information access rates. While Verizon asserts that as a factual matter it has satisfied these conditions, the conditions should nonetheless be included in the Interconnection Agreement because they are a part of the obligations imposed on Verizon by the ISP Remand Order. Moreover, Verizon's "offer," by letter, to exchange all traffic subject to the reciprocal compensation provisions of section 251(b)(5) with LECs, CLECs, and CMRS providers at information access rates is not memorialized in any legally enforceable document, such as a filing with the Virginia SCC. Tr. 10/11/01 at 1682-84 (Ball, WorldCom). Accordingly, it could be rescinded unilaterally at any time.

Amounts due under the prior regime should be paid in full before Verizon can avail itself of the new pricing scheme established by the Commission, and the Commission should therefore adopt the third term proposed in Section x.3, which requires Verizon to pay all past due amounts for termination of ISP-bound traffic prior to issuance of the ISP Remand Order. Before the Order was issued, there were two categories of traffic, local and toll, and many state commissions, including the VSCC,

had determined that ISP-bound traffic was local traffic.[37] Thus ISP-bound traffic was subject to reciprocal compensation in Virginia prior to entry of the Order. The ISP Remand Order changed the law by creating a third category of traffic, information access traffic, and substituting a new rate for the previously applicable rate. However, the ISP Remand Order did not change the status of ISP bound calls made before its issuance. Therefore, Verizon should be required to settle those past due amounts before taking advantage of the new pricing scheme established by the Commission. In addition, WorldCom's proposed contract language will aid in the enforcement of contract terms for collection of funds due for termination of ISP-bound traffic, which has historically been difficult, time-consuming, and expensive, Tr. 10/11/01 at 1833-1834 (Ball, WorldCom); unless this term is included in the interconnection agreement, there would be no good mechanism available for settlement of amounts past due. In sum, WorldCom's proposed contract language is a reasonable enforcement tool in light of the protracted litigation that this issue has spawned.

The inclusion of WorldCom's proposed section x.3 should not generate additional litigation regarding the amounts that are past due because there is no real dispute over how much is owed for termination of ISP-bound traffic. The Virginia Commission previously determined that all ISP-bound traffic is subject to reciprocal compensation, and there is no dispute concerning the reciprocal compensation rates that the VSCC set.

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[37] The Virginia State Corporation Commission found that calls to an ISP were local calls in Petition of Cox Virginia Telecom, Inc., No. PUC-970069, Final Order (VSCC, Oct. 24, 1997). "Calls that are placed to a local ISP are dialed by using the traditional local-service, seven-digit dialing sequence. Local service provides the termination of such calls at the ISP, and any transmission beyond that point presents a new consideration of service(s) involved. The presence of CLECs does not alter the nature of this traffic. Final Order at 2.

Thus, the disputed issue regarding past-due bills is whether Verizon owes WorldCom an amount equal to the product of local traffic volumes (including ISP traffic) times the reciprocal compensation rate (WorldCom's position), or whether nothing is due because ISP calls were not subject to reciprocal compensation (Verizon's position). There are no "dueling dollar values" over past due amounts.[38]

The ICA should also identify the rates that the parties may charge for section 251(b)(5) traffic and ISP-bound traffic, and the Commission should therefore order inclusion of WorldCom's proposed sections x.3.1 and x.3.2. The rate caps established in the ISP Remand Order apply to the WorldCom-Verizon-VA interconnection agreement because the VSCC has not established rates for ISP-bound traffic. Verizon's witnesses have acknowledged that Verizon has no objection to the inclusion of such rates in the ICA, see Tr. 10/11/01 at 1865 (Pitterle, Verizon), and WorldCom's language should be adopted.

The Commission should also order inclusion of WorldCom's proposed Sections x.4, x.4.1 and x.4.2, which establish procedures for implementing the 3:1 ratio established in the ISP Remand Order.[39] Specifically, those sections provide that WorldCom traffic originated over interconnection trunks, as well as WorldCom traffic that originates over the UNE-P, shall be included in the calculation of total minutes.

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[38] Verizon's position is set forth in its Answer to the Complaint filed by Starpower with the FCC. (Starpower had opted into both the MFS and MCI ICAs with Verizon and has filed an enforcement complaint. Tr. 1838). Verizon asserts in its Answer that it was not bound to pay any reciprocal compensation for ISP-bound traffic under the MFS and MCI ICAs adopted by Starpower. Answer of Verizon Virginia Inc., December 27, 2000, In re Starpower v. Verizon, File No. EB-00-MD-20.

[39] To the extent that the proposed language does not include an explicit statement making clear that the 3:1 ratio is a rebuttable presumption, WorldCom does not object to adding language which makes this clear. Tr. 10/11/01 at 1690 (Ball, WorldCom).

Given that WorldCom pays compensation to Verizon for terminating either type of traffic, WorldCom should be entitled to collect compensation when it uses either method to terminate calls to its customers. See Tr. 10/11/01 at 1853-1854 (Ball, WorldCom). Indeed, Verizon has agreed that UNE-P traffic should be included for purposes of the 3:1 ratio calculation. See id. at 1854-1855 (Pitterle, Verizon). In sum, there is no difference between these types of traffic for compensation purposes, and both should be included in the reciprocal compensation regime.

The Commission should also order the inclusion of WorldCom's proposed Section x.5, which implements the ISP Remand Order's cap on the number of minutes for which WorldCom may receive the information access rates. See ISP Remand Order ¶ 78; Tr. 10/11/01 at 1694-1695 (Ball, WorldCom). Specifically, WorldCom's proposed language provides that during the year 2001 the information access rates shall be billed by MCIm to Verizon on ISP-bound traffic for MOU only up to, on an annualized basis, the number of ISP-bound minutes originated on Verizon's network and delivered by MCIm during the first quarter of 2001, plus a ten percent growth factor. Under WorldCom's proposed language, the information access rates for ISP-bound Traffic exchanged during the year 2002 shall be billed by MCIm to Verizon for MOU only up to a ceiling equal to the number of ISP-bound minutes originated on Verizon's network and delivered by MCIm for the year 2001, plus a ten percent growth factor. Verizon has indicated that it does not object to the inclusion of contract language that establishes the minutes of ISP-bound traffic that are eligible for compensation at the rates set forth in the ISP Remand Order, see Tr. 10/11/01 at 1869-1871 (Pitterle, Verizon), and the Commission should therefore order inclusion of WorldCom's proposed language.

The Commission should also order the inclusion of WorldCom's proposed section x.6, which sets forth the rules which will apply if the ISP Remand Order is modified by judicial or other action. Specifically, that section provides that if the Order is reversed, vacated, etc., the ISP-bound traffic shall be deemed § 251(b)(5) traffic and that the compensation that would have been due for the traffic as § 251(b)(5) traffic shall be due. The section also provides for the prospective exchange of such traffic as 251(b)(5) traffic in the event of judicial or other modification of the ISP Remand Order.

Both of these provisions clearly identify the parties' rights in the event that the ISP Remand Order is judicially modified, and eliminate the uncertainty that would otherwise result if that situation arises. WorldCom's recent experiences with Verizon highlight the necessity of eliminating ambiguity in this context. As explained by WorldCom's witnesses, Verizon has previously refused to pay amounts due for termination of ISP-bound traffic, and WorldCom fears that Verizon will engage in similar tactics and stop paying any compensation for ISP-bound traffic if the ISP Remand Order is stayed or remanded. Tr. 10/11/01 at 1842-1844 (Ball, WorldCom). Thus, unless the interconnection agreement contains a provision that describes the compensation scheme to be applied if the ISP Remand Order is reversed, WorldCom may again be forced to carry a large uncollectible on its books. Tr. 10/11/01 at 1842-1844 (Ball, WorldCom). In sum, the Commission should order inclusion of WorldCom's proposed language to prevent the protracted disputes and litigation that would develop if the agreement fails to

establish a regime that will govern if the ISP Remand Order is judicially modified.[40]

Similarly, the Commission should adopt the portion of WorldCom's proposed language that provides for retroactive application of the reciprocal compensation rates in the event of judicial action reversing the ISP Remand Order. Interconnection agreements typically contain provisions that require that the agreement's rates be replaced by new rates established by the Commission, and such provisions sometimes give the new rates retroactive application.[41] WorldCom's proposed language is similar to this type of retroactive true-up, and is consistent with other contract terms that establish the retroactive application of new rates in the event of a change in law.

B. Verizon's Proposed Contract Language Should Be Rejected Because It Fails To Provide Adequate Detail And Is Not Consistent With The ISP Remand Order.

At the outset, Verizon's proposed language should be rejected because it does little more than simply refer to the ISP Remand Order, and does not provide the level of clarity and detail that appears in WorldCom's proposed language. For example, Verizon's proposed language fails to specify the rates that will be charged, or to identify a method for calculating the 3:1 traffic ratio. See Tr. 10/11/01 at 1765 (Pitterle, Verizon). In contrast, WorldCom's proposed language provides the detailed terms discussed above.

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[40] The interconnection agreement's general change of law provision will not adequately address this situation because it requires negotiation of new contract terms and Verizon would have no incentive to negotiate terms that would require it to begin paying reciprocal compensation for ISP-bound traffic.

[41] See, e.g., Items 15(a), (b) & (d) of Attachment I, Table 1 (the pricing table) of the current Interconnection Agreement between MCI and Bell Atlantic-Virginia. WorldCom Request for Arbitration, Exh. D-Interconnection Agreement Governing Current Relations).

Moreover, Verizon's proposed contract language defines essential terms in a manner that is inconsistent with the terms of the ISP Remand Order and/or unclear. For example, Verizon's proposed language uses the terms "internet traffic" and "measured internet traffic," but defines the two terms differently. Although Verizon indicates that the focus of its proposal should be on "measured internet traffic," Tr. 10/11/01 at 1736-1739 (Pitterle, Verizon), the use of such similar terms generates confusion. Verizon's definition of "internet traffic" is broader than the ISP Remand Order's definition of ISP-bound traffic. Moreover, Verizon's proposed definition of "measured internet service" as traffic delivered to a "customer or an Internet Service Provider" conflicts with the ISP Remand Order's focus on ISP-Bound traffic. To eliminate this tension, if Verizon's language were accepted the Commission should delete the reference to "customer." See Tr. 10/11/01 at 1740-1741, 1784 (Pitterle, Verizon) (stating that Verizon would not object to the deletion of this reference).

Further, Verizon's proposed language may improperly exclude information access traffic that is not ISP-bound traffic from the category of traffic eligible for reciprocal compensation. As explained in connection with Issue IV-35, traffic to other enhanced service providers that has traditionally been treated as local should continue to receive reciprocal compensation. See Issue IV-35, supra. Excluding this traffic would create a new limitation on reciprocal compensation that was not anticipated in the ISP Remand Order.[42] Tr. 10/11/01 at 1699-1702 (Ball, WorldCom).

[42] In addition, Verizon has proposed language that is not relevant to the implementation of the ISP Remand Order, but instead addresses wholly separate matters such as traffic measurement, billing, and points of interconnection. The decision regarding what language is appropriate to implement the ISP Remand Order should not be confused by inclusion of unrelated language under the same heading.

Issue I-6 (Rating of Calls Based Upon NPA-NXXs/FX Service)

The interconnection agreement should provide that, consistent with historic practice, a call's status as "local" will be determined by referring to the NPA-NXXs of the calling and called numbers. This principle should apply in the context of foreign exchange ("FX") service, which is a service pursuant to which a carrier effectively extends the local calling area of subscribers by assigning an NPA/NXX in the desired exchange to a customer that may be physically located outside the rate center to which the NPA/NXX is homed.[43] A party terminating such FX traffic should receive reciprocal compensation from the originating carrier if the NPA/NXX Codes indicate that the call is local.[44] The Commission should reject Verizon's proposal that the traditional method of determining the jurisdiction of calls by comparing the NPA-NXXs of the calling and called parties be replaced with an unspecified method involving the comparison of the physical locations of the calling and called party. As explained below, treatment of FX

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[43] Foreign Exchange ("FX") Service is a telecommunications service that has been available for years and is simply a response to customer demand for dial tone in an exchange separate from the customer's physical location. Users of FX service desire to establish a local business presence in an area beyond their physical location, and have typically determined that the ability to be reached via a local call is an integral component of that business presence .

[44] The parties' obligation to pay reciprocal compensation on these calls may be limited to non-ISP customers as defined by the FCC in the ISP Remand Order. See ISP Remand Order ¶¶ 3-8. The FCC has established an interim compensation mechanism for such ISP calls. See id. ¶¶ 3-8. The issue of a permanent compensation mechanism for such ISP-bound traffic will be considered as part of the rulemaking the FCC initiated on April 27, 2001 regarding development of a unified intercarrier compensation regime. See Intercarrier Compensation NPRM. Thus, the amount of traffic affected by this issue may have been narrowed by the FCC's recent ruling regarding ISP-bound traffic.

traffic as "local" is consistent with industry precedent and practice, and the failure to treat CLEC-provided FX as local, paired with the local treatment of Verizon's FX service, will eliminate competition for FX service.

A. Standard Industry Practice, And Verizon's Practice, Classifies Calls To FX Customers As Local.

Standard industry practice establishes the fact that FX traffic is local. When a carrier provides retail FX service, NPA/NXXs are assigned to end users located outside the local calling area of the rate center with which the NPA/NXX has been associated, and the jurisdiction (i.e., local vs. toll) of traffic delivered from the foreign exchange to the FX customer is determined as if the end user were physically located in the foreign exchange. That is, the jurisdiction of the call is determined by comparing the rate centers associated with called and calling party's NPA/NXXs, not the physical location of the customers. See WorldCom Exh. 3, Direct Test. of D. Grieco and G. Ball at 54. If this comparison identifies the call as toll, it is treated as toll. If the comparison identifies the call as local, it is treated as local. This method of determining jurisdiction and the applicability of toll charges is used throughout the industry today, id. at 56, and is the traditional method of making this determination. Not a single state has implemented a different method of distinguishing between local and toll traffic,[45] and every carrier in the country, including Verizon, adheres to this standard procedure. See WorldCom Exh. 15, Rebuttal Test. of D. Grieco and G. Ball at 24-25.

Verizon's proposal that FX traffic be treated as toll traffic is also inconsistent with its own practice of categorizing the traffic as local. Verizon's FX service offering for

[45] During the hearings, Verizon could not identify a state in which calls are rated on anything other than NPA-NXXs. See Tr. 10/11/01 at 1885 (Pitterle, Verizon).

Virginia is found in the Verizon Virginia, Inc. Local Exchange Services Tariff, S.C.C. VA. No. 202, at Section 4.a. In that tariff, Verizon defines its own FX service as "exchange service furnished from one exchange to a location in another exchange ..." Notably, Verizon does not list its FX service in its access or long distance tariffs.[46] When a Verizon customer calls a Verizon FX customer, the calling party does not pay a toll charge; the customer pays the flat local rate. The call is rated based upon the NPA/NXXs. See Tr. 10/11/01 at 1828-29 (Pitterle, Verizon).

Moreover, Verizon's proposal to treat calls from its customers to WorldCom's FX customers as toll traffic is a departure from its own method of determining jurisdiction. Verizon's Long Distance Services Tariff, S.C.C. Va. No. 209, Section 2A, Part C(1) Verizon provides that "rates for service between points are based on the airline mileage between rate centers" (emphasis added). The applicable rate centers (and the associated distances) are determined by reference to the NPA-NXXs assigned to the called and calling parties, not the physical location of the customer. That is, Verizon does not look at the street addresses (i.e., physical location) of the customers involved in a particular call, but instead looks at the NPA-NXXs, identifies the rate centers to which the calling and called NPA-NXXs are associated, and, if those rate centers are not within the local calling area of each other, calculates mileage based on the V&H coordinates associated with the rate centers. WorldCom Exh. 15, Rebuttal Test. of D. Grieco and G. Ball at 28.

Indeed, this comparison of NPA-NXXs allows Verizon to treat its own FX traffic as local, because if Verizon made its jurisdictional determination based on the physical location of the calling and called parties, it would have to segregate its own FX traffic

[46] The VSCC has approved that service offering.

from all of its toll traffic in order to avoid billing toll charges. This is clearly not Verizon's practice, and WorldCom believes that calls originated from WorldCom end users to Verizon assigned FX numbers are not only treated by WorldCom as local, but that Verizon bills WorldCom for reciprocal compensation for the transport and termination associated with such FX calls.[47] Id. at 28-29.

Verizon's proposal is also impractical. Verizon has admitted that it knows of no readily available information that tells a carrier the physical location of a calling or called party. Tr. 10/11/01 at 1812-15 (Pitterle, Verizon). Verizon's billing system does not identify each physical service location belonging to a single retail customer. Tr. 10/03/01 at 115 (Gilligan, Verizon). There is therefore no reason to believe that carriers could readily obtain the information on which Verizon proposes to rely.

Further, Verizon's proposal should be rejected because it attempts to apply access charges outside the context in which they are typically assessed. As this Commission has recognized:

> Access charges were developed to address a situation in which three carriers – typically, the originating LEC, the IXC, and the terminating LEC – collaborate to complete a long-distance call. As a general matter, in the access charge regime, the long-distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service. By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call.

Local Competition Order ¶ 1034. As described above, FX traffic involves calls originating on the local network of one LEC and terminating on the local network of

[47] Verizon treats its intraLATA calls to Cox from Verizon's FX customers as local or toll based on the originating and terminating NXXs.

another LEC. Therefore, FX service does not involve an IXC at all, and instead involves two carriers collaborating to complete a local call. It would therefore be inappropriate to subject such calls to access charges.

In sum, WorldCom's proposal ensures that the historical method of determining jurisdiction remains consistent among all parties, whereas Verizon's proposal establishes a new, unique method for its CLEC competitors while allowing Verizon to continue with the standard methodology. CLECs and ILECs actively compete for customers for FX service, and CLECs can only offer a competitive alternative to the Verizon FX service offerings if the traffic associated with CLEC FX service is classified as "local" just as Verizon classifies its own FX traffic as local. WorldCom Exh. 3, Direct Test. of D. Grieco and G. Ball at 54-55.[48] The Commission should therefore adopt WorldCom's proposed contract language.

B. Verizon's Proposal To Impose Access Charges On WorldCom For Calls To WorldCom FX Customers And To Deny Reciprocal Compensation For Such Calls Will Eliminate Competition For Verizon's FX Service.

The Commission should also reject Verizon's proposal because it is anticompetitive. If Verizon's approach were adopted, Verizon would bill originating switched access charges on calls to WorldCom FX customers, which, from the calling

[48] When a Verizon customer calls a Verizon FX customer, the call is rated as a local call. Tr. 10/11/01 at 1890 (Pitterle, Verizon).

party's perspective, are local.[49] This would raise the CLEC's cost of providing FX service to a level that would effectively eliminate the CLEC's ability to offer FX service in competition with Verizon, and thereby limits the choices available to consumers. Thus if Verizon were permitted to characterize WorldCom's FX service as toll traffic and to apply switched access charges, such above-cost pricing ultimately would make the offering of competitive alternatives by CLECs infeasible.

Verizon's proposal to deny WorldCom reciprocal compensation for terminating calls to its FX customers makes it even more financially infeasible for CLECs to offer FX service, and would limit Verizon's end users to Verizon's FX service. As the California Commission has recognized:

> The rating of a call, therefore, should be consistently determined based upon the designated NXX prefix. Abandoning the linkage between NXX prefix and rate center designation could undermine the ability of customers to discern whether a given NXX prefix will result in toll charges or not. Likewise, the service expectations of the called party (i.e., ISPs) would be undermined by imposing toll charges on such calls since customers of the ISPs would be precluded from reaching them through a local call.

Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, Rulemaking 95-04-043 at 26 (California Pub. Util. Comm'n, Sept. 2, 1999) ("California Order"). That is, applying access charges to FX offerings from CLECs distorts the way in which a CLEC can make a competitive FX offering

[49] Verizon proposes to charge originating access to WorldCom because Verizon views FX service as "toll-like." Yet, Verizon will not pay terminating access to WorldCom for calls terminating to WorldCom's FX customers. Tr. 10/11/01 at 1897 (Pitterle, Verizon). Of course, Verizon also does not want to pay reciprocal compensation for these calls. Thus, Verizon wants WorldCom to terminate calls from Verizon customers to WorldCom FX customers free of charge, without any call termination compensation whatever.

available and, as described above, would in fact eliminate competition for this increasingly important service.

C. CLEC FX Service Does Not Impose Transport Costs On Verizon.

Verizon's assertion that a CLEC's offering of FX service burdens Verizon with added transport costs is incorrect. Whether the call from the Verizon customer is to an FX customer of WorldCom, or any other local WorldCom customer, Verizon's responsibility is the same: to deliver traffic originating on its network to the point of interconnection (POI) with the CLEC network. Moreover, the CLEC provides the facility linking the FX customer to the CLEC switch, and Verizon's network is not the only one that provides transport for FX traffic.[50] See Tr. 10/11/01 at 1899-1900 (Schell, AT&T); Tr. 10/11/01 at 1893 (Pitterle, Verizon). Therefore, WorldCom FX service generates the same costs that are involved with the delivery of any other local traffic to the POI(s).[51]

The following example illustrates the similarity of the cost of FX traffic and other local traffic. If a customer located in the same rate center as the Washington, D.C. switch

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[50] The WorldCom local network in Virginia is served by two switches. One is located in Washington, D.C. and the other in Reston, VA. WorldCom has established two POIs in Virginia to which Verizon delivers traffic destined for the WorldCom local switches. One POI is located in Arlington, Virginia, and the other in Winchester, Virginia. The switch in Washington, D.C. is interconnected with both of these POIs, and the Reston switch is interconnected with the Arlington POI.

[51] Of course, Verizon may lose revenue if a customer who would have purchased its FX service purchases WorldCom's instead. This is a natural consequence of competition. Verizon's argument that it charges its FX customers for transport from their home central office to the foreign central office because this is how it provisions FX service is not relevant. Verizon will lose this revenue because it faces a competing FX service. The relevant issue is not how Verizon charges for its FX service but how it charges for calls to its FX customers. As noted above, Verizon treats these calls as local calls, and it should treat calls to WorldCom's FX customers in the same fashion.

wants a foreign presence in the Leesburg rate center, WorldCom would provide the customer a telephone number from an NPA-NXX that is assigned to the Leesburg rate center. WorldCom Exh. 15, Rebuttal Test. of D. Grieco and G. Ball at 29-30. Once established, a call placed by a Verizon customer located in the Leesburg rate center to the FX telephone number would be routed by Verizon to the Winchester POI. The distance, based on the V & H coordinates, from the Leesburg rate center to the Winchester POI would be approximately 36 miles. See id. Once Verizon delivers the call to the Winchester POI, its network responsibility is over and the call is then routed onto the WorldCom transport network. See id. The distance from the Winchester POI to the Washington, D.C. switch is approximately 69 miles. WorldCom is transporting this call almost twice the distance as Verizon. Further, if this were not an FX call and the called party were actually located in the Leesburg rate center, Verizon would deliver that call to the same Winchester POI and incur the same transport costs. This example demonstrates that Verizon does not incur excessive transport costs for FX traffic, and such traffic imposes no "additional" burden on Verizon.

In sum, because WorldCom's proposal maintains the current method of determining jurisdiction by comparison of the NPA-NXXs associated with the call, the average transport distance being experienced by Verizon will not change,[52] and Verizon's unsubstantiated claim of a tremendous "transport burden" entirely lacks merit. Id.

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[52] Based on July 2001 traffic and the current points of interconnection that have been established between the Verizon and WorldCom networks for exchange of Virginia local traffic, on average Verizon is transporting traffic approximately 10 miles, calculated based on the V&H coordinates associated with each of the rate centers from which Verizon customers originate local calls to WorldCom customers and the V&H coordinates of the two points of interconnection in Virginia.

D. CLEC FX Service Does Not Cause Verizon To Lose Toll Revenue and CLEC FX Service Need Not Be Provisioned Using Verizon-Provided Dedicated Facilities.

Verizon's assertion that it is losing toll revenues by not being able to bill its originating customers toll rates for calls to CLEC FX numbers is also incorrect. The very point of FX service is to provide end users a local calling number for a particular business, and there is no reason to assume that this traffic would exist if it required a toll call. If the originating caller wants to call a local number for the service he seeks, it is likely that the customer would simply find a vendor with a local number and place that call rather than dial a toll number (which would allow Verizon to bill its toll charges). Moreover, when a Verizon customer calls a Verizon FX customer, the call is rated as a local call. Tr. 10/11/01 at 1890 (Pitterle, Verizon). Verizon is not losing toll revenues.

The Commission should also reject Verizon's proposal that CLECs be required to purchase a private line from Verizon in order to provide FX service, just as Verizon's retail customers do. At the outset, this proposal is nothing more than a suggestion that Verizon's FX revenue be maintained at its current level by forcing CLECs to replace each dollar of FX revenue Verizon loses to a competitor. Like the Efficient Component Pricing Rule, which the Commission emphatically rejected in the context of setting prices for UNEs in the Local Competition Order (¶¶ 708-711), Verizon's proposal freezes FX rates at their current level and insulates the Verizon service from competitive pressure. Verizon's proposal that CLECs must buy a dedicated line from Verizon is also inapplicable to CLEC network architecture because the dedicated line runs between two Verizon switches, but CLECs typically serve an area with only one switch. Tr. 10/11/01 at 1888, 1907-08 (Schell, AT&T).

Finally, Verizon's proposal conflicts with the Act's goal of encouraging the introduction of new, innovative methods of providing service by new entrants, because it straitjackets CLECs into provisioning service in the same manner as Verizon does. From a customer's perspective, the essence of FX service is to offer the customer a local presence in a remote location, and how that is done is irrelevant. As the California Commission recognized:

> For purposes of considering the issue of call rating, it is not necessary to deliberate at length over whether Pac-West's service conforms to some particular definition of "foreign exchange service" based upon specific provisioning arrangements. Although the Pac West form of service differs from certain other forms of foreign exchange service in how it is provisioned, the ultimate end-user expectation remains the same, namely to achieve a local presence within an exchange other than where the customer resides. From the end-use customer's perspective, Pac-West's service is a competitive alternative to other forms of foreign exchange service."

Order Instituting Rulemaking on the Commission's Own Motion Into Competition For Local Exchange Service Rulemaking 95-04-043, No. 99-09-029, (Cal. Pub.Util. Comm'n, Sept. 2, 1999).

In sum, call jurisdiction should be based on the NPA-NXXs of the calling and called parties and not on the physical location of the parties – and this standard should apply to all traffic, including FX traffic. WorldCom Exh. 15, Rebuttal Test. of D. Grieco and G. Ball at 33-36.

Issue III-5 (WorldCom's Entitlement To The Tandem Reciprocal Compensation Rate)

The Act and this Commission's regulations make plain that rates for reciprocal compensation must be symmetrical and that where 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 CLEC should charge the incumbent LEC's tandem rate. See 47 C.F.R. § 51.711(a). Accordingly, Verizon must pay reciprocal compensation at the tandem interconnection rate to WorldCom because WorldCom's switches providing service in Virginia serve a geographic area comparable to that served by Verizon tandem switches.[53] The contract terms proposed by WorldCom accurately reflect these legal requirements and should be included in the ICA.

Section 251(b)(5) of the Act imposes on each local exchange carrier "[t]he duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." The FCC concluded in Paragraph 1085 of the Local Competition Order that the ILECs' reciprocal compensation rates should be adopted as the "presumptive proxy" for the CLECs' rates – in other words, the rates were required to be the same. The only exception to this rule arises when a CLEC establishes that its transport and termination costs are higher than those of the ILEC. Local Competition Order ¶ 1089; 47 C.F.R. § 51.711(b). Specifically, "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." Local Competition Order ¶ 1090; see also 47

[53] Verizon's witness did not dispute that WorldCom's switches satisfy the geographic comparability test set forth in the Commission's Rules. Tr. 10/10/01 at 1605-06 (D'Amico, Verizon).

C.F.R. § 51.711(a)(3) ("Where 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.").

The geographic comparability rule was adopted without exception or qualification. Indeed, the FCC recently rejected ILECs' assertion that Rule 51.711 establishes a two-prong test for entitlement to compensation at the tandem interconnection rate. Intercarrier Compensation NPRM ¶ 105. The FCC noted that: "Although there has been some confusion stemming from additional language in the text of the Local Competition Order regarding functional equivalency [¶ 1090], section 51.711(3) is clear in requiring only a geographic area test. Therefore we confirm that a carrier demonstrating that its switch serves 'a geographic area comparable to that served by the incumbent LEC's tandem switch' is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network." Intercarrier Compensation NPRM ¶ 105 (emphasis added). Consistent with these regulations, WorldCom is entitled to the tandem interconnection rate for terminations of local telecommunications traffic on its network because WorldCom's switches serving Virginia serve a geographic area comparable to the area served by Verizon's tandems.

Although WorldCom's local network has a substantially different architecture than the Verizon network, it provides, for interconnection purposes, the same capabilities and overall functionality. WorldCom Exh. 3, Direct Test. of D. Grieco and G. Ball at 75. ILEC networks, developed over many decades, employ an architecture characterized by a large number of switches within a hierarchical system, with relatively short copper based

subscriber loops. See id. By contrast, WorldCom's local network employs state-of-the-art equipment and design principles based on the technology available today, particularly optical fiber rings utilizing SONET transmission. See id. In general, using this transmission based architecture allows WorldCom to access a much larger geographic area from a single switch than does the ILEC switch in the traditional copper based architecture. See id. WorldCom's switches serve 11 Virginia rate centers which are also served by the ILEC with its tandem and subtending end office architecture. Specifically, in providing service to the Virginia rate centers in LATA 236, Verizon uses approximately 12 local/access tandems and 62 end office switches to serve the same rate centers that WorldCom serves using just 2 switches. See id. WorldCom is able to serve such large geographic areas via its extensive transport network, and bears the costs of that owned network. Thus, each one of WorldCom's switches in the Washington area serves an area that is at the very least comparable to if not greater than the service area of any of the 12 tandem switches used by Verizon in serving the same Virginia rate centers. See id.

Verizon has attempted to avoid these legal requirements by raising several arguments that would impose additional limitations on the Commission's geographic comparability rule. Specifically, Verizon has asserted that: "If a CLEC's network and services are such that its costs are lower, the CLEC's compensation should be lower;" "[I]f interconnection is such that CLEC traffic is not routed through a tandem, then the CLEC should not receive a tandem-switched rate;" "CLECs should be required to demonstrate actual functional and geographic comparability for each of their switches, and should not receive tandem switching rates unless each switch actually serves a

geographically disperse customer base." (emphasis added). None of these limitations has any basis in the Commission's rules, and Verizon's position should therefore be rejected.

Verizon's assertion that CLECs should not receive reciprocal compensation at parity with Verizon if a CLEC's costs are lower than Verizon's cannot be reconciled within this Commission's rules. The Local Competition Order clearly provides that the ILEC's reciprocal compensation rates should be adopted as the "presumptive proxy" for the CLEC's rates, unless a CLEC establishes that its transport and termination costs are higher than those of the ILEC. Local Competition Order ¶ 1085. Indeed, the FCC anticipated that a CLEC's costs might be lower than the costs of the ILEC, and noted that "CLECs would have the correct incentives to minimize their costs because their termination revenues would not vary directly with changes in their costs." Id. ¶ 1086. Therefore, contrary to Verizon's assertion, a CLEC's costs have no bearing on the level of reciprocal compensation that is appropriate for a CLEC's transport and termination activities.

Verizon's attempt to limit CLECs' ability to receive the tandem rate traffic routed through a tandem is equally without merit. A CLEC is not required to deploy a tandem network architecture with subtending end offices in order to qualify for tandem level reciprocal compensation. Indeed, the FCC has recognized that CLECs most likely will not be deploying the same network architecture as the ILECs, and in Rule 51.711(a)(3) simply refers to "the switch" of a CLEC, rather than focusing on a specific architecture or referencing a "tandem switch." 47 C.F.R. § 51.711(a)(3). This provision would not be necessary if the FCC intended to require CLECs to deploy a tandem with subtending end

offices. Verizon's attempt to impose this requirement would not encourage new entrants to deploy the most efficient network and is inconsistent with the rule.

Verizon's position that a CLEC's switch must perform tandem switch functions and serve a geographically comparable area in order to be compensated at the tandem level is also inconsistent with the Commission's rules.[54] FCC Rule 51.711 requires that a CLEC be compensated at the tandem rate level if its switch serves a geographic area comparable to that served by the ILEC's tandem switch, and a functionality test is appropriate only in the event that a CLEC's switch does not serve a geographically comparable area. And, even in that context, the FCC has directed state commissions to "consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch." Local Competition Order ¶ 1090 (emphasis added).

Verizon's assertion that a CLEC switch must serve a geographically dispersed customer base in order to qualify for tandem rates adds yet another requirement that is not part of the Commission's rules. Again, Section 51.711(a)(3) requires that the CLEC's switch serve "a geographic area comparable to the incumbent LEC's tandem switch," and does not require the CLEC to have a "geographically dispersed customer base." A review of a CLEC's customer base may provide insight into its marketing and sales success, but does not demonstrate the service area of a CLEC's switch. WorldCom Exh. 15, Rebuttal Test. of D. Grieco and G. Ball at 49.

[54] Although Veriozn did urge a functionality test in pre-filed testimony, at the hearing Verizon acknowledged that the standard to be applied is geographic coverage. Tr. 10/10/01 at 1600 (D'Amico, Verizon).

The geographic area served by a CLEC's switch is a function of the network utilized by the CLEC, and a review of the rate centers the CLEC has opened by activating associated NPA-NXXs which are served by the CLEC's switch indicates the "reach" of that network. If a CLEC has established network facilities and opened NPA/NXXs that allow end users within rate centers to originate and terminate local exchange service, such rate centers are within the physical or geographic reach of the CLEC's network regardless of the number or location of customers the CLEC has been able to attract. Id. Moreover, it is inappropriate to judge the "reach" of the network by reference to the customer base because a CLEC must make an investment in its network prior to being able to serve customers. See WorldCom Exh. 15, Rebuttal Test. of D. Grieco and G. Ball at 51.

In sum, the current rules do not contain any of the limitations that Verizon has proposed. WorldCom's switches in Virginia serve a geographic area comparable to that served by Verizon's tandem switches, and WorldCom should therefore be compensated at the tandem rate. Thus, the Commission should adopt WorldCom's proposed contract language.