

Issue III.2 Should transit services be priced at TELRIC, regardless of the level of traffic exchanged between AT&T and other carriers?

Since Transit Service is the provision of indirect interconnection by the ILEC, and since the ILEC has an obligation to provide interconnection at TELRIC-based costs pursuant to § 252(d) of the Act, it follows that Verizon has the obligation to provide Transit Service to AT&T at TELRIC-based rates. This pricing standard should apply regardless of either the level of traffic, or the time frames over which the ILEC carries the traffic during the term of the Interconnection Agreement.⁵⁸

Verizon asserts that it should be allowed to charge AT&T market based (read “access”) rates once the level of transit traffic goes above the DS-1 level because, in its view, it has no legal obligation to provide this service.⁵⁹ It even claims that the Commission reached a similar conclusion in *TRS Wireless LLC v U.S. West Communications, Inc.*⁶⁰ But that case is not on point and does not support Verizon’s position. The discussion in the footnote Verizon cites relates to whether § 51.703(b) of the Commission’s reciprocal compensation regulations, which “affords carriers the right not to pay for delivery of local traffic originated by the other carrier” applied to transit traffic, so that the originating carrier of a transit call could avoid paying the transiting carrier any charges for delivery of its traffic. The Commission stated that § 51.703(b) did not apply to transiting traffic and therefore carriers are required to pay the transiting

⁵⁷ 47 C.F.R. § 51.703 (a) provides: “each LEC shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any *requesting* telecommunications carrier.” (Emphasis supplied).

⁵⁸ Verizon Initial Brief at NA-37-39.

⁵⁹ Verizon Initial Brief at NA-37.

⁶⁰ *Id.* at 38.

carrier for the transit traffic. However, the Commission did not hold, as Verizon asserts, that transit service is not an interconnection service subject to UNE pricing. Since AT&T agrees to pay Verizon its Transit Service Rate for transiting traffic, AT&T's position is fully consistent with this case.

Issue III.3 Meet Point Interconnection Should the selection of a fiber meet point method of interconnection (jointly engineered and operated as a SONET ring) be at AT&T's discretion or be subject to the mutual agreement of the parties?

I. The law grants AT&T the right to request any method of technically feasible interconnection – including meet point interconnection — without Verizon's concurrence.

AT&T's proposed process for meet point interconnection is consistent with AT&T's right to utilize that form of interconnection, yet recognizes the need for consensus on items such as routing, facility size and equipment to be used.⁶¹ Verizon's attacks on meet point interconnection are wholly unfounded.⁶²

Verizon asserts in its brief that AT&T's contract language is inconsistent with its testimony because, in Verizon's opinion, the contract language does not provide that the parties share the maintenance costs of the mid-span facilities.⁶³ Therefore, Verizon concludes, "AT&T do[es] not have a financial incentive to choose a mutually beneficial

⁶¹ Specifically, § 1.6.4 of AT&T's Schedule 4, Part B identifies a process for the Parties to agree to the various implementation issues, and invokes the ICA's dispute resolution provisions if they cannot agree.

⁶² Verizon's proposal, as will be explained in the following section, does not provide for any process or time frames within which to agree to the various mid-span terms and conditions. Instead the language is completely open ended in nature stating that Mid-span meets are expressly conditioned upon the Parties reaching prior agreement on all the terms and conditions. *See*, Verizon Proposed Contract § 4.3. There is no requirement to have a meeting within any time frame from the date such interconnection is requested, no requirement to agree or to proceed to dispute resolution within any given time frame.

⁶³ Verizon Initial Brief at NA-43.

point to locate the mid-span meet.”⁶⁴ Verizon is incorrect, for two reasons. First, Mr. Talbott clarified on rebuttal that *the costs of construction would be shared, but that each party would be responsible for the maintenance of the facility on their side of the splice point.*⁶⁵ This fact, however, does not suggest that Verizon will be required to engage in unreasonable build-out activities. As AT&T’s witness Mr. Talbott explained, AT&T is willing to bear half of the construction costs of the facilities, regardless of the location of the splice point, so it is in AT&T’s interest to designate a facility span that is a reasonable distance and not prohibitively expensive.⁶⁶ Second, AT&T’s proposal is fully consistent with Verizon’s rights under the Act. The FCC has made it clear that ILECs are required to adapt their facilities to accommodate interconnection,⁶⁷ but only to the extent that a build-out amounts to a “reasonable accommodation of interconnection.”⁶⁸ Thus, Verizon can reject any requested build-out that exceeds that standard.⁶⁹ But that right does not empower Verizon to reject any proposal it wants, which is exactly what Verizon’s “mutual agreement” language would allow it to do.

⁶⁴ Verizon Initial Brief at NA-44.

⁶⁵ Tr. at 1462.

⁶⁶ Tr. at 1041-42, 1050.

⁶⁷ *Local Competition Order* at ¶ 202.

⁶⁸ *Id.* at ¶ 553.

⁶⁹ Moreover, all parties essentially agreed that it is not appropriate to designate a particular build-out distance as reasonable, since the reasonableness of the build-out would depend on all the individual circumstances of the specific mid-span involved. *See* AT&T Initial Brief at 43, n. 149. Despite Verizon’s assertion to the contrary (*See* Verizon Initial Brief at NA-44.), this position is also consistent with ¶ 553 of the *Local Competition Order*. That is, if Verizon does not agree with AT&T that a particular request amounts to a reasonable accommodation of interconnection, it can

Issue III.3.a Should Mid-Span Fiber Meet facilities be established within 120 days from the initial mid-span implementation meeting?

Because Verizon has no incentives to implement meet point arrangements for its competitors, the agreement needs to include firm interconnection activation dates for meet point interconnection. AT&T proposes that mid-span meet facilities be activated no later than one hundred twenty (120) days from the initial mid-span implementation meeting which is to take place within ten (10) days from the date Verizon receives AT&T's response to Verizon's mid-span questionnaire.⁷⁰ If exceptional circumstances prevent Verizon from meeting its deadlines, Verizon can seek a waiver from the state commission.⁷¹

A firm deadline will help ensure that Verizon follows through on its § 251(c)(2)(D) obligation. AT&T cannot finalize or implement its plans unless it knows with certainty when its interconnection will be operational.⁷²

take that request to the state commission and request a determination that Verizon is not required to comply with AT&T's request.

⁷⁰ AT&T Exh. 1B, Schedule 4 § 1.6.4. Verizon complains that AT&T's proposal requires Verizon to implement mid-span meets within 120 days from the "moment AT&T informs Verizon VA that AT&T would like a mid-span meet", and thus Verizon has no time to work out the specific technical and operational details. Verizon Initial Brief at NA-45. Verizon misunderstands AT&T's contract language. The fact is that the language provides that prior to the implementation meeting, where the parties are to work out and agree to the technical details, AT&T must provide Verizon with a complete and accurate mid-span questionnaire. *See* Schedule 4 Part B, Section 1.6. This questionnaire provides Verizon with the specific details of AT&T's request prior to the implementation meeting so that Verizon can be prepared to discuss and resolve the details at the meeting. *See* Petition at 51. In addition, the parties can agree, or Verizon can request, a stay of the timeframe if the circumstances require. AT&T Initial Brief at NA-4, n. 153.

⁷¹ AT&T Exh. 1B, Sch. IV § 1.6.4.

⁷² As AT&T's witness Mr. Schell testified, in the past meet point interconnection lost favor within AT&T because AT&T was not able to obtain any assurance that it could be implemented within a specific time frame. A specific implementation deadline will restore its utility. Tr. at 1456.

AT&T's request for a deadline is not extraordinary. The imposition of time frames for other forms of interconnection, such as collocation, are commonplace, and recognize the need for certainty when a carrier is planning and growing its network.

Verizon, not surprisingly, opposes specific time frames, and instead proposes that the parties negotiate Memorandum of Understanding (MOU) for every mid-span fiber meet.⁷³ That, however, is nothing more than a prescription for delay. As such, Verizon's open-ended process amounts to an unreasonable condition of interconnection pursuant to § 251(c)(2)(D) which should be rejected.

Issue III.4 Forecasting Should AT&T be required to forecast Verizon's originating traffic and also provide for its traffic, detailed demand forecasts for UNEs, resale and interconnection?

- I. **It is unnecessary for AT&T to be required to forecast Verizon's originating traffic when its traffic with Verizon is reasonably in balance [III-4].⁷⁴**

AT&T and Verizon have agreed to deploy network interconnection facilities that use one-way trunks.⁷⁵ This means that each party will be making interconnection decisions for its originating traffic. It also means, quite obviously, that each party will be in the best position to forecast its volume of traffic to be delivered on its interconnection network.⁷⁶ As discussed in AT&T's brief, several commissions support this view.⁷⁷

Verizon, however, proposes that AT&T provide not only its estimate of AT&T-originating minutes of traffic, but that it also forecast an estimate of *Verizon's* originating

⁷³ Verizon Exh. 4 at 27.

⁷⁴ Part of Issue III-4 (Issue III-4a: penalties for inaccurate forecasts and VII-2: demand management forecasts) has been resolved by AT&T and Verizon.

⁷⁵ AT&T Initial Brief at 47.

⁷⁶ *Id.*

minutes of use.⁷⁸ That proposal turns logic on its head. Verizon is much better positioned to estimate its own originating traffic. Indeed, the only circumstance where the CLEC is in a better position to forecast Verizon's traffic is when the CLEC is specifically targeting customers with high inbound traffic requirements. To accommodate Verizon's stated concern in this regard, AT&T offered a compromise proposal that to the extent that traffic exchanged between the parties is reasonably in balance (*i.e.*, an inbound-outbound ratio of 3 to 1 or less), each party would forecast its own traffic. If traffic is out of balance, (*i.e.*, an inbound-outbound ratio greater than 3 to 1), then the Party terminating the larger share of traffic would forecast *both* inbound and outbound traffic.⁷⁹

Verizon has rejected this proposal, stating that the compromise proposal does not adequately address Verizon's need for a forecast because traffic spikes could occur within the three to one ratio.⁸⁰ Verizon's assertion is without merit. If traffic is relatively in balance—that is, under the three to one ratio—then Verizon should have no problem forecasting its traffic. The New York Commission inherently agreed with this premise when it adopted AT&T's compromise proposal in New York.⁸¹ This Commission should

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Id.

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Verizon Initial Brief at NA-48-49.

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AT&T Exh. 13 at 3.

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Verizon Initial Brief at NA-50.

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Order, *Joint Petition of AT&T Communications of New York, Inc., TCG New York, Inc., and ACC Telecommunications Corp. Pursuant to Section 252 (b) of the Telecommunications Act of 1996 for Arbitration to establish an Interconnection Agreement with Verizon New York, Inc.*, Case 01-C-0095 at 42 (July 30, 2001). Verizon suggests that the New York Carrier to Carrier Collaborative somehow mandates CLECs to provide Verizon with forecasts of Verizon's originating traffic. Verizon Initial NA Brief at 48. This is not true. The New York Collaborative guidelines, which have not been approved by any regulatory body, focus on specific performance objectives that Verizon has agreed to meet under certain circumstances. Tr. at 1488. Moreover, the guidelines

do the same.

Issue III.4.b Should Verizon have the unilateral ability to terminate trunk groups to AT&T if Verizon determines that the trunks groups are underutilized?

AT&T proposes cooperation on trunk capacity issues. Specifically, AT&T proposes that if Verizon sends AT&T an Access Service Request (“ASR”) requesting to disconnect an underutilized trunk group, Verizon should wait for a Firm Order Confirmation (“FOC”) from AT&T indicating that such a disconnection is appropriate before it disconnects the trunks in question.⁸² Moreover, AT&T has agreed to provide Verizon with either a FOC, agreeing to Verizon’s request to disconnect trunks, or a phone call explaining why the disconnection is unwarranted, within 10 days from the receipt of the ASR.⁸³ With this commitment, Verizon will be provided with a timely response to its request.

Verizon, on the other hand, seeks authority to unilaterally terminate its outbound trunks (those which carry traffic to AT&T) when it believes those trunk groups are “underutilized.”⁸⁴ It would disconnect trunks even if AT&T specifically indicates it still has a need for those trunks.⁸⁵ This type of unilateral action is contrary to industry

specifically state that they do not supersede any current or future interconnection agreements. Cox Exh. 18 at 8.

⁸² AT&T Initial Brief at 52.

⁸³ Tr. at 1572; AT&T Exh. 3 at 84.

⁸⁴ Verizon Initial Brief at NA 52.

⁸⁵ *Id.*

standards, adds uncertainty to AT&T's rollout plans, and could negatively impact current customers.⁸⁶

Verizon argues that because AT&T has no incentive to agree to disconnect trunks, Verizon needs unilateral control over the disconnect process to avoid inefficient use of its capacity.⁸⁷ Verizon also argues that it needs this control in order to address call blocking concerns.⁸⁸

Verizon is wrong that AT&T has no incentive to agree to disconnect underutilized trunks. Unused trunks also tie up space on AT&T's facilities. AT&T has the same incentives as Verizon to make efficient use of its plant.

With respect to Verizon's call blocking concerns, AT&T's proposal actually provides Verizon with protection in this regard since AT&T will let Verizon know if it expects additional traffic which will appropriately utilize existing trunks.⁸⁹

Verizon offered no evidence on the record that AT&T has in the past been unreasonable and refused to agree to disconnect underutilized trunks groups. The Commission should reject Verizon's bid for unilateral control over trunk disconnection and instead adopt AT&T's language. AT&T's proposal is consistent with good network management practices, OBF guidelines, the promotion of competition and continued service to customers.⁹⁰

⁸⁶ AT&T Initial Brief at 50.

⁸⁷ Verizon Initial Brief at NA 52.

⁸⁸ *Id.* at 52, 53.

⁸⁹ AT&T Initial Brief at 51, n. 178.

⁹⁰ *Id.* at 50.

Issue V.1 *Competitive Tandem Service* Should Verizon be permitted to place restrictions on UNEs so as to preclude AT&T from providing competitive tandem services?

Issue V.8 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?

I. AT&T's proposed contract language providing for competitive access service should be included in the interconnection agreement.

AT&T's proposed contract language permitting it to use the unbundled switching element to provide a competitive exchange access service is fully consistent with the law and would promote much needed facilities-based competition for access services.

Verizon's claims to the contrary⁹¹ fundamentally misconstrue both the nature of AT&T's proposal and the governing law.

In essence, Verizon is attempting to impose unlawful restrictions on the services that AT&T may offer using the unbundled switching element. § 251(c)(3) unequivocally states that a requesting carrier may obtain access to unbundled network elements to provide any "telecommunications service." The Commission made clear in the *Local Competition Order* that "section 251(c)(3) permits interexchange carriers and all other requesting telecommunications carriers to purchase unbundled elements for the purpose of offering exchange access services."⁹² Indeed, the Commission found that this conclusion is "compelled by the plain language of the Act."⁹³ Moreover, the Commission found that § 251 clearly barred incumbent LECs from charging access rates

⁹¹ Verizon Initial Brief at IC-31-37.

⁹² *Local Competition Order* at ¶ 356.

when unbundled elements were being used to provide exchange access services, because the Act mandates cost-based rates for unbundled elements (§ 252(d)) and because “[w]hen interexchange carriers purchase unbundled elements from incumbents, they are not purchasing exchange access ‘services.’”⁹⁴ Thus, the Act and the Commission’s orders leave no doubt that AT&T may obtain unbundled elements at TELRIC rates to provide exchange access services to other IXCs.⁹⁵ Unless the Commission has formally placed restrictions on the use of an unbundled element in a rulemaking proceeding, as it has with loop-transport combinations, requesting carriers may use an unbundled element to offer any telecommunications service.

Section 251(g) is not to the contrary. That section provides simply that incumbent LECs must continue to provide access services “with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation)” that applied under any consent decree or Commission rule in effect at the time of enactment of the 1996 Act, until superceded by the Commission.⁹⁶ But as the Commission has made clear, § 251(g) “*does not apply* to the exchange access ‘services’ requesting carriers may provide themselves or others after purchasing unbundled elements.”⁹⁷ As the Commission explained, “[r]ather, the primary purpose of section 251(g) is to preserve the right of interexchange carriers to order and receive exchange

⁹³ *Id.*

⁹⁴ *Id.* at ¶ 358.

⁹⁵ As if to drive the point home, the Commission further noted that “where new entrants purchase access to unbundled network elements to provide exchange access services, whether or not they are also offering toll services through such elements, the new entrant may assess exchange access charges to IXCs originating or terminating toll calls on those elements.” *Local Competition Order* at ¶ 363 n.772.

⁹⁶ 47 U.S.C. § 251(g)

access services if such carriers elect not to obtain exchange access through their own facilities or by means of unbundled elements purchased from an incumbent.”⁹⁸ Section 251(g) simply has no bearing on an incumbent LEC’s independent obligation to provide unbundled network elements, which may be used to provide any “telecommunications service” (including exchange access services).⁹⁹

Nor did the Eighth Circuit question these conclusions in *Comptel* – a decision in which the Court did not vacate the *Local Competition Order* in any respect.¹⁰⁰ Indeed, one of the issues in *Comptel* was the validity of the Commission’s interim rule requiring incumbent LECs to assess certain access charges in conjunction with the purchase of unbundled switching during a brief transitional period. The Court expressly found that such a deviation from cost-based rates for unbundled elements would “appear to be reversible,” but it upheld the rule solely because of its transitional nature, the very brief period of the transition, and the Commission’s asserted need to protect universal service until the new Section 254 could be implemented in June 1997.¹⁰¹ This analysis if anything confirms that new entrants are entitled to TELRIC rates for unbundled elements when they are used to provide exchange access services.

⁹⁷ *Local Competition Order* ¶ 362 (Emphasis added)

⁹⁸ *Id.*

⁹⁹ Verizon’s reliance on the Commission’s interpretation of Section 251(g) in the *ISP Remand Order* is similarly misplaced. Even if Section 251(g) acts as a “carve out” with respect to the reciprocal compensation obligations of Section 251(b)(5) – a question which is currently before the D.C. Circuit on review of the *ISP Remand Order* – the Commission has contended that Section 251(g) does not act as a carve out with respect to Section 251(c)(3). See *WorldCom v. FCC*, No. 01-1218, Brief of Respondent FCC, p. 33 (filed Sept. 27, 2001) (access services governed by Section 251(g) and unbundled elements governed by Section 251(c)(3) are distinct offerings).

¹⁰⁰ See *Competitive Telecommunications Ass’n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) (“*Comptel*”).

¹⁰¹ See *Comptel*, 117 F.3d at 1074.

Verizon's claims, if adopted, would turn the *Local Competition Order* on its head. Verizon repeatedly argues that AT&T does not "need" unbundled switching to provide competitive access services, because AT&T can already obtain switched services from Verizon's tariffed interstate access offerings.¹⁰² In other words, Verizon's standard is that if something is available as an access service, one cannot obtain that function as an unbundled element. That is of course the precise opposite of the standard established in the *Local Competition Order* – *i.e.*, that the availability of an access service is irrelevant to whether a new entrant may use unbundled elements to provide exchange access services.¹⁰³

Verizon's further assertions that AT&T's proposal would be inconsistent with the market-based approach to access reform are as ironic as they are wrong.¹⁰⁴ The foundation of the Commission's market-based approach is the fact that new entrants can obtain and use unbundled network elements to offer access services in competition with the incumbents.¹⁰⁵ AT&T's proposed competitive tandem service, provided in part through cost-based unbundled elements, is precisely the sort of competitive offering that Congress envisioned when it enacted §251 and that the Commission envisioned when it adopted the market-based approach to access reform.¹⁰⁶

¹⁰² Verizon Initial Brief at IC-33.

¹⁰³ *Local Competition Order* at ¶¶ 356-62.

¹⁰⁴ Verizon Initial Brief at IC-35.

¹⁰⁵ *See, e.g., Access Reform Order* at ¶¶ 269, 337.

¹⁰⁶ AT&T will offer its competitive access service to each Verizon end office where AT&T has established a direct connection, either through an AT&T collocation arrangement, a third party collocation arrangement or via UNE dedicated transport. AT&T will configure its local network switches to tandem route the IXC traffic via direct end office Feature Group D trunks ordered from Verizon between the applicable Verizon end offices and the subscribing AT&T switch. AT&T will either provide the facilities between these two switches or lease the facilities from

Indeed, permitting AT&T to use unbundled end office switching to provide competitive tandem access services would create powerful incentives to build out switching and transport facilities. Under AT&T's proposal, AT&T would provide tandem switching through its own switch, and it would carry the traffic to end offices over its own interoffice transport facilities. AT&T would need unbundled switching only at the end office. Permitting AT&T to fill out this predominantly facilities-based offering with cost-based unbundled switching, rather than using Verizon's interstate access services at heavily inflated rates, would allow AT&T to provide a competitive alternative, as well as provide a concomitant increase in the incentive to continue building facilities. Such arrangements are necessary to make the Commission's market-based approach to access reform a reality, in addition to creating the incentives necessary for carriers to build sorely needed facilities-based alternatives to the incumbents' access services.¹⁰⁷

Finally, Verizon's contention that AT&T's proposed contract language is beyond the proper scope of an interconnection agreement, merely because the services at issue are limited to exchange access services sold to IXCs (instead of traditional "local"

third parties or from Verizon. AT&T will agree to pay Verizon for the end office switching and any dedicated transport, as applicable, which Verizon provides. See AT&T Brief 55-56. Although AT&T has indicated that it does not intend to provide this service to itself, but only to IXCs (ATT Exh. 4 at 113), AT&T would agree to include language in the Agreement that limits the use of the functions provided by Verizon to AT&T for this competitive access service to the provision of service to other carriers only.

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The predominantly facilities-based nature of AT&T's proposed service sharply distinguishes it from the situation envisioned in the *Local Competition Reconsideration Order*, 11 FCC Rcd. 13042, ¶¶ 10-13 (1996). There, the Commission was concerned that interexchange carriers could bypass the switched access regime altogether simply by purchasing unbundled switching, and therefore it clarified that, as a general matter, a carrier purchasing unbundled switching was obligated to provide all services for the end-user line, both local and interexchange. *Id.* By contrast, allowing AT&T to purchase unbundled switching solely to fill in what is a predominantly facilities-based service would promote much-needed facilities-based competition and would be strongly in the public interest.

services), is meritless.¹⁰⁸ To the contrary, the Commission clearly contemplated in the *Local Competition Order* that the state commissions (or here, the Commission itself), in the context of interconnection agreements, would establish the rates and terms for unbundled elements that are used to provide access services.¹⁰⁹ Indeed, the Commission expressly rejected arguments that such arrangements would cede control over interstate access charges to the states, on the grounds that carriers purchasing unbundled elements are purchasing a product that is distinct from access services.¹¹⁰ Under the plain terms of the Act, the rates, terms, and conditions for the use of unbundled elements to provide *any* service could only be determined in the context of an interconnection agreement, negotiated and arbitrated pursuant to Section 252.¹¹¹

Because AT&T's proposal is fully within the proper scope of this interconnection agreement, the agreement should include AT&T's proposed language concerning competitive access service. As AT&T explained in its initial brief, its proposed competitive access service involves the mirror image of meet point traffic routed between an IXC and a LEC through Verizon's tandem switch.¹¹² Verizon is willing to include meet point traffic terms in the Agreement when its tandem is being used to establish connections between AT&T's local exchange customers and the IXC's network. Thus, it

¹⁰⁸ See Verizon Initial Brief at IC-31.

¹⁰⁹ *Local Competition Order* at ¶ 358.

¹¹⁰ *Id.*

¹¹¹ See 47 U.S.C. § 252(a)-(d).

¹¹² AT&T Initial Brief at 52. AT&T is willing to modify language to address Verizon's concerns that AT&T's contract language does not adequately address the technical concerns it raised regarding the loss of CIC code billing detail when originating traffic is switched via two tandems. Verizon Brief IC-35. Specifically, AT&T will agree to clarify the language so it is clear that it will not utilize Verizon's tandems for traffic originating on its network, unless it becomes technically feasible at some point during the term of the Agreement.

has no basis for refusing to include parallel language in the Agreement that will enable AT&T to offer the same service.¹¹³

Issue V.2 Interconnection Transport What is the appropriate rate for Verizon to charge AT&T for transport purchased by AT&T for purposes of interconnection – the UNE transport rate or the carrier access rate?

Not surprisingly, Verizon cites no law for its proposition that AT&T cannot purchase transport at UNE rates unless the transport interconnects at a collocation arrangement. Rather, Verizon simply alleges that its position is “consistent with and supportive of Verizon’s VGRIP proposal.”¹¹⁴ This is bootstrapping at its worst. Verizon cannot support one illegal proposal by referencing another.

AT&T, on the other hand, has demonstrated that Verizon’s position contradicts the FCC’s definition of unbundled dedicated UNE InterOffice facilities (IOF) and violates its obligation to provide access to UNEs without collocation.¹¹⁵ AT&T has also demonstrated that its request to purchase transport from Verizon for the purposes of interconnection does not amount to a request for a UNE combination.¹¹⁶ Thus, the Commission needs to confirm that Verizon is prohibited from charging access rates for interconnection facilities.

¹¹³ *Id.* at 53.

¹¹⁴ Verizon Initial Brief NA-56.

¹¹⁵ AT&T Initial Brief at 59-61.

¹¹⁶ *Id.* at 62-63.

Issue V.16 Should AT&T have a reciprocal duty to provide transit services to Verizon?

AT&T refers the Commission to its arguments set forth in its Initial Brief at 34-5. Verizon's brief raised no new arguments, so no further response is required.

Issue VII.I Should AT&T be allowed to circumvent over a year's worth of negotiations by inserting language on Network Architecture issues that was never discussed by the Parties?

I. AT&T has the right to submit revised language reflecting its position during negotiation and litigation on Network Architecture issues. [Issue VII-1.]

Verizon is simply wrong to claim that AT&T changed its position on network architecture issues. AT&T has always been of the view that each party is in the best position to determine the point of interconnection for its own originating traffic as long as the originating party was willing to pay for transport to reach that point of interconnection. AT&T proposed (and Verizon concurred) that each party would utilize one-way trunks, allowing each party to independently choose the point of interconnection that best serves its needs. These principles have always dictated AT&T's negotiation proposals, and were always the focus of each discussion on network architecture between the parties over the many months during which the interconnection agreement was negotiated. The modified language AT&T presented to Verizon is entirely consistent with these principles.¹¹⁷

As an accommodation to Verizon, AT&T tried to negotiate language that included Verizon's "interconnection point" ("IP") terminology (a term which never appears in the

¹¹⁷ AT&T Exh. 3 at 119.

Act; *see* discussion of Issue I-1, *supra* and VII.3, *infra*) without violating basic interconnection principles. However, it became clear the parties could not agree on fundamental issues and AT&T proposed language that tracked more closely with the Act.¹¹⁸ Indeed, the fact that AT&T's language more closely tracks the Commission's rules on network architecture, as well as with the Act, is the very reason it should be adopted in this proceeding.¹¹⁹

Verizon's initial brief it raises for the first time a concern with an issue that the Parties have already agreed upon, arguing that AT&T is attempting to circumvent the Virginia State Corporation Commission's historical treatment of intrastate toll traffic through the application of the term "ESIT" in AT&T's proposed interconnection agreement.¹²⁰ It further suggests that AT&T's use of the term ESIT would undermine the 2 PIC regimes where the end users choose an intraLATA toll provider, and possibly run afoul of the FCC's and Virginia rules against slamming.¹²¹

Aside from being tardy, Verizon's complaints have no merit. Mr. Talbott testified that ESIT traffic refers to local and intraLATA toll traffic.¹²² AT&T and Verizon have agreed to carry both local and toll traffic on the same trunks. Verizon's proposed contract language reflects this agreement.¹²³ Moreover, both parties agreed to apply a percent local usage factor (PLU) to those trunks that will determine the percentage of

¹¹⁸ *Id.* at 120.

¹¹⁹ AT&T Initial Brief at 66-70.

¹²⁰ Verizon Initial Brief NA-23.

¹²¹ *Id.*

¹²² Tr. at 975. It was an oversight that AT&T's language did not include this definition. AT&T will agree to include a definition of ESIT stating that "ESIT traffic is local and intraLATA toll traffic."

¹²³ Verizon Agreement § 4.1.1.

reciprocal compensation vs. access charges that is due the terminating carriers. Verizon's proposed contract language reflects this agreement as well.¹²⁴ Thus, the treatment of toll traffic is consistent with §251(b)(5) of the Act, Virginia's treatment of intrastate toll traffic, as well as the agreement of the parties.

Finally, there are no slamming implications. Both parties have agreed that access toll connecting trunks (also referred to in AT&T's proposed contract language as meet point billing trunks) will carry the traffic to the end users' chosen intraLATA toll provider.¹²⁵ When an AT&T end user chooses an intraLATA toll provider other than AT&T, that choice will be implemented by sending that traffic over the access toll connecting trunks to its chosen provider. When a Verizon end user chooses an intraLATA toll provider other than Verizon, that choice will be implemented by sending that traffic to the toll service provider over exchange access trunks ordered by that provider.

Issue VII-3 How Should the Parties Define "Interconnection Points" ("IP") and "Points of Interconnection" ("POI")?

The POI issue is covered comprehensively in AT&T's Initial Brief as part of its discussion of Issue I-1.¹²⁶ The only point AT&T will address on reply is Verizon's inaccurate assertion that AT&T has somehow indirectly, through its contract language or testimony, agreed to embrace Verizon's distinction between the POI and IP.¹²⁷ There is

¹²⁴ *Id.* at § 5.6.7; Tr. at 1619.

¹²⁵ *See* Verizon Agreement § 6.2.2.

¹²⁶ *See* AT&T Initial Brief at 4-14.

¹²⁷ Verizon Initial Brief at NA-20-21.

simply no merit to that claim.

Contrary to Verizon's argument, nothing in AT&T's language in Schedule 4, Part A § 1.5 amounts to a affirmation of Verizon's position on this issue:

Each Party shall compensate the terminating Party under the terms of this Agreement for any transport that is used to carry ESIT between the POI and a distant switch serving the terminating end user. Such transport shall be either Dedicated Transport or Common Transport pursuant to the interconnection methods elected by the originating party, subject to the terms of Part B”

This language is designed to reflect the FCC's reciprocal compensation rule 51.701(c) that states:

For purposes of this subpart, transport is the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than the incumbent LEC.¹²⁸

Thus, AT&T's language tracks Rule 51.701(c), which in turn reflects the fact that the POI is the location referenced in §251(c)(2) where the transport portion of reciprocal compensation begins.¹²⁹ Verizon, however, wants to uses its creation, the “IP,” rather than the POI, as the point where reciprocal compensation begins, in order to give it the discretion to move the IP closer to its customer; even though the POI is fixed in another location. As addressed exhaustively in AT&T's initial brief (issue I.1), nothing in the Act or the Commission's rules gives Verizon the right to interfere with CLECs' right to

¹²⁸ Although the term interconnection point is used in this regulation, as AT&T explained in its initial brief, the terms POI and IP are used interchangeably in the FCC orders and the Act without distinction. All the references, including this one, reflect the point of interconnection (POI) referenced in 251(c)(2) of the Act. AT&T Initial Brief at 12-14.

¹²⁹ Rule 51.701(d) defines the termination portion of reciprocal compensation as “switching of local telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.”

select the point of interconnection. Verizon's use of the term "IP" would do just that, and would cause CLECs to incur substantial additional costs beyond what the Act requires.

AT&T's position, and not Verizon's, is consistent with the law.¹³⁰

Issue VII-4 If AT&T fails to establish an Interconnection Point in accordance with the terms of the interconnection agreement, what reciprocal compensation rates and/or inter-carrier compensation rates should Verizon pay AT&T?

Verizon's brief raises no new arguments. AT&T refers the Commission to its arguments set forth in its Initial Brief at 71-72.

Issue VII-5 When AT&T offers a limited number of IPs, should AT&T be permitted to charge Verizon distance-sensitive charges if Verizon purchases transport to an AT&T IP?

Verizon's brief raises no new arguments. AT&T refers the Commission to its arguments set forth in its Initial Brief at 73.

Issue VII.6 Should Verizon be forced to offer interconnection facilities and hubbing at central offices other than those intermediate hub locations identified in the NECA 4 tariff?

- I. **AT&T has the right to interconnect using a DS-3 interface at any technically feasible point and should not be limited to locations designated by Verizon in its NECA 4 Tariff [Issue VII-6].**

Verizon asserts that AT&T and other CLECs can use DS-3 interconnection only at the intermediate and terminus hub locations listed in Verizon's NECA 4 tariff ("NECA

¹³⁰

The transcript citations of Mr. Talbott's testimony referenced by Verizon in its Initial Brief at 20-21, also simply describe the fact that the POI is the location where reciprocal compensation begins.

4 Locations”).¹³¹ AT&T, however, has demonstrated that Verizon’s proposal violates its right to designate the location of its POI, denies AT&T the right to interconnect efficiently and is being made to increase Verizon’s revenues rather than enhance network efficiency.¹³²

Verizon asserts, incorrectly, that its position is consistent with the way an IXC orders multiplexed DS-3 facilities and is supported by the *Local Competition Order*.¹³³ But the section of the *Local Competition Order* Verizon cites relates to a discussion of UNE obligations associated with inter-office facilities – not a discussion of Verizon’s interconnection obligations. Specifically, the FCC was responding to requests that it specify additional transport components as UNEs and require ILECs to unbundled digital cross connect systems (“DCS”)¹³⁴ used to disaggregate traffic from IXCs to individual circuits.¹³⁵ The FCC’s response stated that:

In addition, as a condition of offering unbundled interoffice facilities, we require incumbent LECs to provide requesting carriers with access to digital cross-connect system (DCS) functionality. A DCS aggregates and disaggregates high speed traffic between IXCs’ POPs and incumbent LECs’ switching offices, thereby facilitating the use of cost efficient, high speed interoffice facilities. AT&T notes that the BOCs, GTE and other large LECs currently make DCS facilities available for the termination of interexchange traffic. We find that the use of DCS functionality could facilitate competitors’ deployment of high-speed interoffice facilities between their own networks and LECs’ switching offices. Therefore, we require incumbent LECs to offer DCS capabilities in the same manner that they offer such capabilities to IXCs that purchase transport services.¹³⁶

¹³¹ Verizon Initial Brief at NA 54.

¹³² AT&T Initial Brief at NA 74-76.

¹³³ *Id.*

¹³⁴ A DCS combines the functions of a multiplexer and a manual (physical) cross connect. *See* AT&T Exh. 8 at 38.

¹³⁵ *Local Competition Order* at ¶ 443.

¹³⁶ *Id.* at ¶ 444.

Thus, the obligations to provide access to DCS functionalities is required “as a condition” of offering UNE IOF. It represents an ILEC’s *minimum* obligation – it is not a limitation on an ILEC’s obligation. Also, as stated above, this is a discussion of UNE IOF access obligations - not interconnection obligations.

Moreover, AT&T is asking that Verizon provide multiplexing at any end office, not DCS capabilities specifically. As acknowledged in AT&T’s initial brief, multiplexing may be accomplished using either a 3X1 DCS or 3X1 multiplexers.¹³⁷ AT&T does not expect Verizon to establish DCS equipment in locations where it does not already exist. Rather, AT&T simply requests that Verizon provide multiplexing at its wire center locations using whatever type of equipment is available at that particular location. Verizon, for its part, has some type of 3X1 multiplexing equipment available at each Verizon serving wire center in Virginia.¹³⁸ Verizon it has not identified any technical reason why it cannot use that equipment to provide interconnection at the non-NECA 4 Locations.¹³⁹

Verizon’s position, therefore, violates both its obligation to interconnect at any technically feasible point,¹⁴⁰ and its obligations to allow the requesting carrier to choose any technically feasible method of interconnection.¹⁴¹

¹³⁷ AT&T Initial Brief at 75.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ § 251 (c)(2)(B) of the Act obligates Verizon to allow interconnection at any technically feasible point. As noted above, Verizon has not demonstrated that AT&T’s request is not technically feasible. Moreover, even if Verizon must adapt its facilities slightly at the non-NECA 4 locations to accommodate AT&T’s request, it is required to do so. On this point the FCC stated that : “[I]nterconnecting or providing access to a LEC network element may be feasible at a particular point even if such interconnection or access requires a novel use of, or some modification to,

incumbent LEC equipment. This interpretation is consistent with the fact that incumbent LEC networks were not designed to accommodate third-party interconnection or use of network elements at all or even most points within the network. ***If incumbent LECs were not required, at least to some extent, to adapt their facilities to interconnection or use by other carriers, the purposes of sections 251(c)(2) and 251(c)(3) would often be frustrated. For example, Congress intended to obligate the incumbent to accommodate the new entrant's network architecture by requiring the incumbent to provide interconnection "for the facilities and equipment" of the new entrant. Consistent with that intent, the incumbent must accept the novel use of, and modification to, its network facilities to accommodate the interconnector or to provide access to unbundled elements.*** *Local Competition Order* at ¶ 202 (emphasis added).

¹⁴¹

The right to require interconnection at any technically feasible point also includes the right to require any technically feasible method of interconnection. The FCC made this clear in the *Local Competition Order* when it stated: “We conclude that under Sections 251(c)(2) and 251(c)(3) any requesting carrier may choose any method of technically feasible interconnection or access to unbundled network elements at a particular point. Section 251(c)(2) imposes an interconnection duty at any technically feasible point; it does not limit that duty to a specific method of interconnection or access to unbundled network elements.” *Local Competition Order* at ¶ 549.

INTERCARRIER COMPENSATION ISSUES

ISSUE I.5 *ISP INTERCARRIER COMPENSATION* What are the appropriate terms and conditions to comprehensively implement the Commission's *ISP Remand Order*?

I-5(a) How should Verizon and AT&T calculate whether traffic exceeds a 3:1 ratio of terminating to originating traffic?

I-5(b) How should Verizon and AT&T implement the rate caps for the ISP-bound traffic?

I-5(c) How should Verizon and AT&T calculate the growth cap on the total number of compensable ISP-bound traffic minutes?

I-5(d) How should the parties implement a Verizon offer to exchange all traffic subject to section 251(b)(5) at the rate mandated by the FCC for terminating ISP-bound traffic?

*I-5(e) What mechanism should the parties utilize to implement, in an expeditious fashion, changes resulting from any successful legal appeals of the Commission's *ISP Remand Order*?*

AT&T's opening brief explained the legal and policy arguments to adopt its proposed mechanisms for calculating the amount of ISP-bound traffic under the Commission's 3:1 ratio; determining appropriate growth caps and rate caps; implementing any Verizon offer to offer exchange all traffic subject to section 251(b)(5) at the rate mandated by the FCC for terminating ISP-bound traffic; and adopting changes resulting from successful legal appeals of the *ISP Remand Order*. That brief anticipated and addressed Verizon's arguments, and there is no need to repeat the arguments here. On the issue of "growth caps"¹⁴² for compensable ISP-bound traffic, however, Verizon has so fundamentally misinterpreted the Commission's *ISP Remand Order* that a response is warranted.

AT&T proposes the following language based on Paragraph 78 of the *ISP Remand*

Order:

For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes under that agreement during the first quarter of 2001, plus a ten percent growth factor.¹⁴³

This language sets a growth cap based on the number of ISP-bound minutes for Verizon and AT&T based on the Commission's own definition of ISP-bound traffic (*i.e.*, traffic in excess of a 3:1 ratio).

Verizon, however, objects to AT&T's proposal on the ground that it somehow "rewrites the Commission's growth caps."¹⁴⁴ Verizon proposes, instead, inserting the one additional clause highlighted below:

For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes **for which that LEC was entitled to compensation** under that agreement during the first quarter of 2001, plus a ten percent growth factor.¹⁴⁵

With that phrase -- "for which the LEC was entitled to compensation" -- Verizon is holding out hope that it can avoid paying any compensation on ISP-bound traffic under the new Commission rate methodology. Indeed, Verizon freely acknowledges that the number of compensable minutes in the first quarter "remains a point of dispute between

¹⁴² Growth caps, as defined in the *ISP Remand Order*, set an upper limit on the number of minutes of ISP-bound traffic that eligible for compensation. *ISP Remand Order* at ¶ 78.

¹⁴³ AT&T proposed contract, § 2.3. WorldCom proposes the same language on growth caps. WorldCom proposed contract, § x.5.

¹⁴⁴ Verizon Initial Brief at IC-9.

¹⁴⁵ Verizon Initial Brief at IC-9.