

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of AT&T Communications of)	CC Docket No. 00-251
Virginia, Inc., Pursuant to Section 252(e)(5))	
of the Communications Act for Preemption)	
of the Jurisdiction of the Virginia)	
Corporation Commission Regarding)	
Interconnection Disputes with Verizon)	
Virginia, Inc.)	
)	

PETITION FOR RECONSIDERATION

Pursuant to section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, AT&T Communications of Virginia, Inc. (“AT&T”) hereby petitions for reconsideration of certain determinations in the Commission’s Memorandum Opinion and Order (“Order”) released July 17, 2002.¹ Specifically, AT&T asks that the Wireline Competition Bureau reconsider and hold that the §§ 251(a)(1) and 251(c)(2)(A) of the Act require Verizon to allow AT&T to use Verizon’s local tandems to interconnect indirectly with third-party carriers, *i.e.*, the Act requires incumbent LECs to provide tandem transit. In addition, the Bureau should hold that any compensation Verizon receives for the provision of tandem transit is governed by § 252(d)(1) and must be based on TELRIC.

¹ *Petition of WorldCom, et al., Memorandum Opinion and Order*, CC Docket Nos. 00-218, 00-249, 00-251, DA 02-1731 (rel. Jul. 17, 2002) (“*Virginia Arbitration Order*” or “*Order*”).

I. Background

Under AT&T's existing tandem transit arrangements with Verizon, AT&T's subscribers send traffic to, and receive traffic from, customers served by third-party carriers. This traffic is sent and received via Verizon's local tandems, and Verizon is compensated by receipt of appropriate TELRIC-based tandem switching and transport charges. Verizon did not challenge these arrangements in the arbitration, so long as the volume of traffic sent by AT&T to any third-party carrier via a Verizon tandem did not exceed a DS-1 level, and the Bureau approved these existing tandem transit arrangements in its *Order*. The Bureau held, however, that when AT&T receives notification from Verizon that AT&T's traffic volume exceeds the DS-1 level,² AT&T must "exercise its best efforts to enter into a reciprocal telephone exchange service traffic arrangement with the relevant carrier, for the purpose of seeking direct interconnection." *Order*, ¶ 116. Moreover, once Verizon provides such notice, it may impose non-TELRIC-based trunk port and billing charges on AT&T for the tandem transit it provides "during the time that AT&T negotiates with the other carrier." *Id.*

The Bureau's determination was premised on its concern that it did not want to require Verizon to provide tandem transit "at TELRIC rates without limitation" where "the Commission has not had occasion to determine whether incumbent LECs have a duty to provide tandem transit service under [§ 251(c)(2)]." *Id.*, ¶ 117. The Bureau therefore "decline[d], on delegated authority, to determine for the first time that Verizon has a section 251(c)(2) duty to provide transit service at TELRIC rates." *Id.* AT&T

² The Bureau modified Verizon's proposed language specifying the measurement of the DS-1 threshold so that it is now defined as 200,000 combined minutes of use for any consecutive three months. *Order*, fn. 384.

respectfully submits, however, that where, as here, the Bureau is tasked with ensuring the interconnection agreement's compliance with the Act and the Commission's implementing regulations, the Bureau must exercise its authority to hold that §§ 251(a)(1) and 251(c)(2)(A) of the Act require Verizon to provide tandem transit at TELRIC rates.

II. The Act Requires Verizon to Provide Tandem Transit.

Section 251(c)(2)(A) requires incumbent LECs – among other things – to interconnect with requesting carriers for “the transmission and routing of telephone exchange service and exchange access.” Nothing in the plain language of the statute limits this duty solely to traffic between the incumbent LEC and the requesting carrier. Moreover, § 251(a)(1) provides CLECs the right to interconnect indirectly with the facilities and equipment of other carriers. As the Commission held in the *Local Competition First Report and Order*, “indirect interconnection (*e.g.*, two non-incumbent LECs interconnecting with an incumbent LEC's network) satisfies a telecommunications carrier's duty to interconnect pursuant to section 251(a).”³ Properly read together, §§ 251(c)(2)(a) and 251(a)(1) make clear that incumbent LECS must provide tandem transit to CLECs.

There are sound policy and public interest reasons justifying such transit tandem interconnection. Use of the incumbent LEC's local tandem is essential to CLECs' ability to exchange traffic with smaller LECs (*e.g.*, small independent companies, rural companies, wireless companies, and other CLECs) where direct interconnection of facilities is commercially impractical. Even aside from the commercial impracticability

³ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (“*Local Competition First Report and Order*”), ¶ 997.

of such direct interconnection, the time and expense required to negotiate (if possible) interconnection agreements with a myriad of smaller carriers would by itself significantly impede the development of local competition and would do so unnecessarily.⁴ Given Verizon's size and the reach of its network, it is a certainty that Verizon already will have such arrangements in place.

If CLECs are not able to use the incumbent LECs' existing local tandems to transmit calls to – and receive calls from – carriers already receiving ILEC traffic through those tandems, the CLECs' customers will be unable to deliver calls to or receive calls from customers served by those small carriers. This inability to provide a complete calling package would place CLECs at an additional competitive disadvantage to the incumbents and would further delay the deployment of facilities-based local competition. Such a result clearly was not intended by Congress when it passed the 1996 Act in order to bring the benefits of local exchange competition to all Americans.

The Act's mandate for tandem transit is further evidenced by the fact that CLECs could, absent incumbent LEC intransigence, accomplish the same result – and incumbent LECs would be held to the same obligation – by ordering a tandem switching/transport UNE combination to deliver traffic via the incumbent LEC's tandem to the third-party carrier. As the *Order* notes, CLECs have the right to access UNEs – including tandem

⁴ The financial and operational effect of implementing direct interconnection would be substantial. Today carriers that are indirectly interconnected exchange transit traffic on a bill and keep basis without executing an interconnection agreement in order to route traffic efficiently and to reduce administrative costs. The direct interconnection requirement will require those carriers to enter into interconnection agreements and resolve a broad range of issues, such as: one-way versus two-way trunking, billing and recording, signaling, and allocation of interconnection expenses between the parties. All of these issues will have to be negotiated between the

switching and interoffice transport UNEs – to provide telecommunications services, “including local exchange service involving the exchange of traffic with third-party carriers.”⁵

Verizon’s principal argument in favor of its DS-1 tandem transit cap was that such restrictions were necessary to address tandem exhaustion problems.⁶ However, the Bureau properly concluded that “Verizon has not shown that competitive LECs are responsible for the exhaustion of its tandems in Virginia.” *Order*, ¶ 89. Indeed, “[t]he record indicates that competitive LECs already move their traffic onto direct end office trunks as their traffic volumes increase.” *Id.*, ¶ 88. In short, even if Verizon’s tandem exhaust concerns could override the plain language of the Act, Verizon failed to produce compelling evidence justifying its concerns.

The Bureau nevertheless declined to decide whether § 251(c)(2) mandates incumbent LEC provision of tandem transit because the Commission had not yet ruled on this issue. This deference is misplaced here. In an arbitration conducted by the Commission pursuant to § 252(e)(5), the Act requires the Commission to assume the responsibility of the state commission and act in its place. Sections 252(c)(1) and 252(e)(2)(B) require a state commission – and the Commission, when acting in the place

parties – a not insignificant task, especially where, as with CLECs and CMRS providers, there is no right to compel arbitration. AT&T Exh. 3 at 57.

⁵ *Id.*, ¶ 121. Although CLECs have the legal right to access UNEs to achieve the same result as tandem transit, incumbent LECs have established that they will use any new opportunity to impose additional expense, inconvenience and delay on CLECs and their customers. Incumbent LECs, for example, have continually hindered the ability of CLECs to convert special access circuits to UNEs, despite CLECs’ clear right to do so. *See* Declaration of Alice Marie Carroll and Cynthia S. Rhodes, filed on April 5, 2001, with AT&T’s Comments in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98.

⁶ Verizon Initial Brief at NA-35.

of a state commission – to ensure that an arbitrated interconnection agreement complies with § 251, the Commission’s implementing regulations, and the standards set forth in § 252(d). And, because the Bureau was acting in the place of the Commission, the Bureau was compelled by the Act to ensure that the interconnection agreement so complied. The fact that the Commission may not have yet ruled on a particular issue does not mean that the Bureau may choose not to rule where the Act requires it to do so.⁷ Indeed, by declining to rule on this issue, the Bureau has blessed the imposition of arbitrary and inflated non-TELRIC rates for tandem transit once transit traffic reaches an arbitrary volume threshold – a result that conflicts with the plain language of the Act. Consistent with its authority and responsibility under the Act, the Bureau should confirm now that Verizon is required to provide tandem transit at TELRIC rates.

III. Verizon Must Provide Tandem Transit at TELRIC Rates.

Because tandem transit is included in the interconnection ILECs are required to provide “at forward-looking cost under the Commission’s rules implementing section 251(c)(2),”⁸ the Act requires that it be priced at TELRIC rates. This conclusion is buttressed by the fact – as shown above – that CLECs could order a UNE combination of

⁷ In analogous situations, federal courts in diversity cases must apply state law even if it requires them to predict how the state supreme court would decide a state law question. *Nationwide Mutual Ins. Co. v. Powell*, 292 F.3d 201, 203 (4th Cir. 2002) (“we must apply South Carolina law and predict how the South Carolina Supreme Court would decide this issue”); *Doe v. Doe*, 973 F.2d 237, 240 (4th Cir. 1992) (“Our function in this diversity case is to predict what the Supreme Court of North Carolina would decide”). See *Wright & Miller*, 19 Fed. Prac. & Proc., Juris. 2d, § 4507 (2002) (each federal court . . . functions as a proxy for the entire state court system, and therefore must apply the substantive law that it conscientiously believes would have been applied in the state court system In other words, the federal court must determine issues of state law as it believes the highest court of the state would determine them”)

⁸ *Order*, ¶ 117.

tandem switching and transport at TELRIC-based rates to achieve the same result. It would serve little purpose other than to frustrate competitive facilities-based local competition (and to introduce a new arena for incumbent LEC intransigence and mischief), to permit incumbent LECs to force competitors to order such UNE combinations to replace existing arrangements that provide the same capabilities and functions. The Bureau should confirm that the receipt of TELRIC-based tandem switching and transport charges fully compensates incumbent LECs for the provision of tandem transit.

Verizon implicitly agrees that TELRIC-based tandem switching and transport rates fully compensate it for its provision of tandem transit because those rates comprise the Tandem Switching Charge that it applies to all tandem transit, and which would continue to be its sole compensation for traffic below the DS-1 threshold. Thus, Verizon would impose its additional non-TELRIC-based trunk port and billing charges only after traffic volume exceeds the DS-1 level. Because, as demonstrated above, Verizon is required by § 251(c)(2) to provide tandem transit, these non-TELRIC charges are not permitted by the Act and the Bureau should so hold on reconsideration. The only remaining legitimate costs associated with tandem transit are those Verizon may pay the third-party terminating carrier, and AT&T has agreed to reimburse Verizon for any such charges.⁹

⁹ It is common industry practice today for parties that are indirectly interconnected to exchange transit traffic on a bill and keep basis. This practice avoids the unnecessary administrative burdens of negotiating agreements.

CONCLUSION

For all of the reasons set forth above, and in AT&T's prior submissions in this proceeding, the Commission should grant this petition for reconsideration and hold that Verizon is required by the Act to provide tandem transit at TELRIC rates.

Respectfully submitted,

AT&T CORP.

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CERTIFICATE OF SERVICE

I, Karen Kotula, hereby certify that on this 16th day of August, 2002, a copy of the Petition for Reconsideration of AT&T Communications of Virginia, Inc. was served on the persons listed below by causing a copy to be placed in the United States Mail, postage prepaid, addressed as follows:

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