6. BAC received NCC's requesr on April 14, 2000, and responded to it on the same day, by sending a copy of BAC's current template ICA for its southern states and suggested the template as the model for interconnection in West Virginia. VZ Cross Exam. Exh. 3. In addition. the April 14, 2000, letter enclosed a "Customer Profile Form," to be returned to BAC's Account Team. and an "Information Request Form," to be returned to BAC's Acting Director, Negotiations and Policy – Telecom Industry Services.

7. On July 5, 2000, NCC sent a letter to BAC's Director, Interconnection Policy and Planning, requesting to opt-in to the ICA between Verizon-WV and MCIm. NCC Exh. 3A, p. 2.

8. The Commission previously approved the MCIm ICA in 1998. "Commission Order," MCImetro Access, Case No. 97-1210-T-PC (Jan. 13, 1998). The MCIm ICA has served as a model agreement in West Virginia, being opted into by at least 14 competitive local exchange camers (CLECs). Staff Br., Appendix A.

9. On August 18,2000,NCC sent a completed Customer Profile Form and Information Request Form, previously provided with BAC's **April** 14, 2000, letter, back to BAC's Account Team. NCC Exh. 3A, p. 3. This form was either incomplete or misplaced and NCC re-sent this information on a number of occasions thereafter. Tr. I, at 51.

10. During August and into early September, 2000, Verizon's legal department conducted a review of NCC's business operations in California, specifically NCC's purported provision of service to chat lines. Tr. II, 57-58, 69-72.

11 Verizon's investigation of NCC's business operations in California were driven by Verizon's concern that NCC might be engaged in a scheme to reap reciprocal compensation from ILECs by serving customers with large terminating traffic imbalances. Tr. II, at 69.

12. Venzon did not act upon NCC's request to opt inro the MCIm ICA in West Virginia while its legal department's investigation was ongoing. Tr. II, at 72.

13. Verizon-WV never communicated its concerns about NCC's operations in California to tbe company. Tr. 37-38, 52.

14. From August 6 - 24,2000, Verizon's operating companies: including Verizon-WV, were the subject of a labor strike. *Tr. II*, at 75. **All** but *one* of the individuals involved in the investigation of NCC were involved, to varying degrees, in strike duty. VZ Post Hearing Exh. (filed Nov. 1, 2002).

15. On September 6, 2000, Verizon sent an adoption letter for NCC to execute. formally agreeing to be bound by the terms and conditions of the MCImetro ICA. NCC Exh. 3B, pp. 2-5.

16. Among other things, Verizon-WV's September 6, 2000, letter stated: "[NCC's] adoption of the MCIm agreement arbitrated Terms shall become effective upon the date of filing of this letter with the Commission (which filing Verizon will promptly make upon receipt of an original of this adoption letter countersigned by [NCC]) . . .". NCC Exh. 3B, p. 3.

17. On September 22, 2000, NCC sent a letter to Venzon enclosing 2 copies of the adoption letter provided by Venzon and executed by NCC's president, Todd Lesser. NCC Exh. 3B, p. 1. NCC requested rhat Venzon "file [the adoption letter] with the Public Service Commission of West Virginia as soon as possible". NCC Exh. 3B, p. 1.

18. On January 19,2001, Verizon-WV filed a joint petition for approval of NCC's opt-in to the MCIm ICA with the Commission for approval; pursuant to Sections 251 and 252 of the .Act, as well as W. Va. Code § 24-2-12. Tr. II, at 73; Staff Ex. 1, p. 11; Case No. 01-0167-P-PC.

19. The Commission approved NCC's opt-in to the MCIm **IC4** approximately 30 days later. "Commission Order." Verizon-WV, Case No. 01-0167-T-PC (Feb. 15, 2001).

EFFORTS TO ESTABLISH PHYSICAL INTERCOWNECTION

20. After NCC had executed its adoption letter, agreeing to be bound by the terms of the MCIm ICA, but before the agreement had been filed with the Commission. NCC sought to establish a physical point of interconnection with Verizon-WV.

21. During an initial, December 20, 2000, telephone conversation between Ms. McKernan and Mr. Lesser, Ms. McKeman asked NCC to [provide a Customer Profile Form and to submit an "outline" of its requirements in West Virginia. Tr. II, at 211. In addition. Ms. McKernan referred Mr. Lesser to Verizon's CLEC Handbook on the company's website. Tr. II., at 211-212

22. NCC desired to interconnect with Verizon at a loop facility -- specifically an OC-3 multiplexer (MUX) -- located in the basement of 405 Capitol Street (405 MUX), because an Internet Service Provider. Kanawha Valley Internet, then being served by Venzon over

this facility, wished to become a customer of NCC and offered its capacity on the facility to NCC. The 405 MUX was pan of Verizon-WV's network and served Verizon end-users (i.e., customers) located in 405 Capitol Street.

23. An OC-3 can provide multiplexing/demultiplexing for up to three DS-3s. A DS-3 in turn can hold 28 T1s.

24. In January, 2001. the 405 MUX had one full DS-3 of space capacity available, and one DS-3 had only been partially used. NCC Ex. 1, at 12-13; Tr., Vol. III, 153-155.

25. NCC first sought to interconnect at the 305 Capitol MUX by submitting "access service rcquesrs" (ASRs) for 2 T-1 trunks to this facility. Tr. I, at 57-58 (Lesser); NCC Exh. E. NCC repeated this request in a January 17,2001, email to NCC's account manager with Verizon, Dianne McKernan. Tr. I, at 58: NCC Exh. 3C-005.

26. NCC repeated its request for 2 T-1s yet again in a January 22, 2001, email to Ms. McKernan. Tr. 1, at 58; NCC Exh. 3C-007. NCC explained that it needed 2 T-1s in order to activate NXX codes that had been assigned to it by the North American Numbering Plan Administrator (NANPA).

27. On January 15, 2001, Ms. McKernan sent an email to NCC indicating that she understood that NCC had submitted ASRs for West Virginia and noting that NCC had still not provided, as agreed. an outline of NCC's requirements as a CLEC *in the* srate. NCC Exh. 3C-001. Ms. McKernan asked for additioinal information relative to NCC's Cusromer Profile Form and indicated that "[Verizon] cannot begin to process your request without this information". McKernan also referred NCC to the website for the forecasting portion of Verizon's CLEC Handbook. Id.

28. NCC's responded via email on January 15. 2001. NCC Exh. 3C-003. NCC's response was curt and simply indicated that NCC expected Venzon to turn up the interconnecrion trunks. NCC Exh. 3C-003.

29. On January 17. 2001, Mr. Lesser and Ms. McKernan exchanged additional email. Ms. McKeman initiated the email, among other things, advising NCC that she would be its account manager throughout the Venzon system. NCC Exh. 3C-004. Ms. McKeman advised NCC that "there are certain requirements CLECs *are* obligated to complete for Verizon *to* provide service," noting the CLEC Handbook's website and that "trunking forecasts must be submitted and a pre-ASR meeting/conference call must be held to begin this interconnection process". NCC Exh. 3C-002. Finally, Ms. McKeman advised that a

conference call to discuss the companies' requirements to esrablish connectivity had been scheduled for January 24, 2001. Id.

30 In her January 17, 2001. email, Ms. McKernan also indicated that she still had not received an outline of NCC's requirements as a CLEC, noting that such outline "should specify the LATAs in which your [sic] interested in interconnecting". NCC Exh. 3C-003. Ms. McKernan provided, again. the website for the forecasting portion of Venzon's CLEC Handbook and attached a bunking template for NCC to complete and return. Id.

31. In response to Ms. McKernan's January 17, 7001, email, NCC advised that. due to the company being in jeopardy of losing its NXX codes, "[NCC] can'tgo completely by the handbook". NCC Exh. 3C-005. With regard to NCC's failure to provide an email outlining its requirements, NCC advised that it placed a "minimal orderjust to preserve the prefixes" and further that:

> [For your information]: the data will be as follows for the next six months as we build our local infrastructure.
> A DS3 (28 T1's) to CHTNWVLE26T.
> One T1 to each ofthe other tandems in Charleston [LATA].

Id: Tr. I, at 54, 57. In response to Ms. McKernan's request for a completed forecast, Mr. Lesser indicated that "I will do it". NCC Exh. 3C-005.

32. Another series of email exchanges occurred on January 22,2001. NCC Exh. 3C-00;.

33. In the initial email, Ms. McKernan asked Mr. Lesser to call her the following day, *to* discuss NCC's intentions regarding interconnection. Ms. McKernan also reiterated that she had not received any answers to her requests for information -- i.e., completed forecast forms, inrerconnection outline and diagram. NCC Exh. 3C-007. Finally, Ms. McKeman advised that "it is the CLEC's responsibility to familiarize itself with [Verizon's] CLEC handbook and all the requirements involved to become a CLEC in the Venzon east territory". Id.

34. In response, NCC, among other things, repeated its position that: Venzon had unreasonably delayed rhe interconnection process, that NCC needed its minimal order for T-1s processed. and that NCC "can't give forecasts, an interconnection outline and or a diagram until [it finds] out from Venzon what it will agree to. . . .". NCC Exh. 3C-007.

35. On January 24. 2001, as scheduled, a conference call between NCC and Verizon was held to discuss, among other things, interconnection arrangements between the 7 companies. The parties io the conference call were: Todd Lesser and David Klein – NCC; Dianne McKeman, Cynthia Robinson and Joseph DiMarino – Verizon Services Corporation employees. Tr. I at 190-91; Tr. II at 238. Ms. Robinson participated as the inrerconnection manager and Mr. Marino participated as the interconnection technical adviser. Tr. II, at 238.

36. During the January 24, 2001, conference, NCC reiterated its request to interconnect with Verizon at the 405 MUX, as well as its need to have a minimal number of T-1s activated. Tr. .I, at 56-53; Tr. II, at 220-221; NCC Exh. 3F, ¶5. Mr. Lesser advised Verizon that there was sufficient capacity on the 405 MUX to accommodate NCC's trunking needs. Tr. I. at 56-58; Tr II, at 220-221. It is not clear whether Verizon rejected NCC's request outright at the conclusion of the January 24, 2001, conference call. Compare Tr. II, at 220-222, with NCC Exh. 3F; ¶5.

37. On January 25, 2001, NCC provided additional infomation in response *to* Verizon's requests made during the conference call. NCC Exh. 3C-008. NCC provided the 6 NXX prefixes assigned to it, as well as the CLLI for its switch, the location of its proposed co-location [sic], and a circuit identification code for 1 of the DS3s on the 405 MUX. NCC Exh. 3C-008. NCC indicated that it did not have the CLLI Code for the 405 MUX itself. NCC indicated that it would need 33 T-1s during the next six months – 28 T-Is for interconnection to Verizon's subtending access tandem in Charleston, and 5 T-1s for interconnection to Verizon's other access tandems in the Charieston LATA. Tr. 54, 57; NCC Exh. 3C-005.

38. A second conference call regarding NCC's interconnection request was held on January 31, 2001. Tr. 11, at 280-81. The participants on this call were the same as those who participated on the January 24,2001, call. During the January 31,2001, conference call, Verizon advised NCC that it could not interconnect at the 305 MUX. Tr. II, at 221-222

39. NCC ultimately accepted Venzon's construction of a dedicated entrance facility in February or by March I, 2001. NCC Exh. 3F, ¶6

40. On or about March I, 2001, NCC completed the trunking template previously provided by Ms. McKeman on January 17, 2001, and submitted it to Verizon. VZ Exh. 4A, at 5 & Exhibit A. In the spreadsheet provided to Verizon, NCC indicated its 2-year trunking needs as follows: 3 DS-3s and 24 DS-I s (the equivalent of 108 DS-1/T-1s) by the end of

the 3d Quarter, 2001; and 7 DS-3s and 5 DS-1s (the equivalent of 201 DS-1/T-1s) by the end of 2002. VZ Exh. 4A, at 5 & Exhibit A. NCC admits that this forecast was "inflated". NCC Esh. 1, at 10. It represented more than a 300% increase over the January estimate fo 33 T-1s.

41. On March 14, 1001, Verizon forwarded a schedule for the installation of the OC-12 MUX. dedicatedentrance facility *to* NCC. NCC Exh. 3C-012; NCC Exh. 1, at 9. Verizon estimated a "Ready for Service" date of July 10, 2001. NCC Exh. 3C-012. The same day, NCC requested an earlier completion date. NCC Exh. 3C-013; NCC Exh. 1, at 9-10. Lerizon rehsed. NCC Exh. 3C-014; NCC Exh. 1, at 10.

42. On July 2, 2001, Ms. McKernan advised NCC that the "next step of interconnection is to have a pre-ASR conference call to begin the ASR process". NCC Exh. 3C-010; NCC Esh. 3C-016: NCC Exh. 1, *at* 10-11. Ms. McKernan further advised that NCC needed to complete the trunk forecast template, noting that such forecast was to have been returned to Verizon before it started working on the entrance facility but that Ms. McKernan never received it. NCC Exh. 3C-010

43. Mr. Lesserresponded to Verizon's July 2.2001, email on the same day.. Mr. Lesser expressed confusion over the "pre-ASR conference call," indicating that he thought that this was the conference call held between the companies on January 24,2001. NCC Exh. 3C-010. Mr. Lesser also indicated that he sent the requested forecast *to* Verizon previously, and that was the basis for Verizon's decision regarding sizing the MUX for the dedicated entrance facility. YCC Exh. 3C-010 to -011. in addition, Mr. Lesser asked Verizon to estimate when NCC's interconnection trunks would be activated. Id.

44. On July 6, 2001, Ms. McKernan sent an email to Mr. Lesser, asking that he "not put [Verizon] in the position of postponing the [pre-ASR] call because you have not provided the Trunk Forecast Template". NCC Exh. 3C-015. Ms. McKernan indicated that, as pointed out in her July 2. 2001, email, this forecast was a requirement for interconnection. Id.

45. In response, also on July 6, 2001, Mr. Lesser emailed Ms. McKeman expressing that he "did not know what all Verizon's new requirements will be until we have this pre-ASR meeting" and that since he did not "know the timeframe that any trunks can be turned up, [he did] not know what *the* forecast will be". NCC Exh. 3C-015. In that email, Mr. Lesser indicated that "we only want to pet one two-way T1's [sic] to the Charleston tandem. Ideally, I would like to get 12 two-way T1's from the tandem, but I don't want this to turn inro a big project and delay the installation any more". Id.

46. In another July 6.1001. email from Ms. McKernan to Mr. Lesser, Venzon advised chat a pre-ASR conference cail had been scheduled for July 10,2001, and that, "due to the nature and tone of your recent correspondence, any action on your part that is interpreted as abusive or offensive [will give] cause for Verizon to terminate the call" and reschedule it for July 23, 2001, when Venzon's attorney would be available. NCC Exh. 3C-017; NCC Exh. 3C-019. Ms McKernan also provided information in response to an earlier request by NCC. See NCC Exh. 3C-017 to-018. Ms. McKernan provided the "ACTL" for the OC-12 MUX being installed by Verizon, indicated that any "new installation" is a majorproject and requires project negotiation and intervals, and that augments of 7 or fewer T-1s to existing trunk groups are nor projects. Id. With regard to Mr Lesser's request for a date he could expect to have 1 T-1 in service, Ms. McKernan advised that this would be addressed at the Julv 10, 2001, conferznce call. Id.

47. On July 9, 2001, Ms. McKernan emailed Mr. Lesser regarding his concern about being able to provide an exact forecast. Ms. McKernan advised that "I realize you can not provide an exact forecast at this time" and that the forecast is a "snapshot of [NCC's trunking] requirements. not Venzon's". NCC Exh. ?IC-020. Ms. McKeman suggested that NCC use its "best case scenario" to complete the template by putting "the information you wrote in your message on the Template", Further, Ms. McKernan explained that the template is Verizon's tool to "size [NCC's] network, and a guide for our interoffice planning" that must be in Venzon's records before it proceeds with a pre-ASR call. Id. Finally, Ms. McKeman requested that the forecast template provided *on* July 2, 2001, be returned by WCC by close of business on July 9, 2001. Id.

48. On July 9, 2001, NCC submitted the completed trunk template to Venzon, as requested by Ms. McKernan, and apparently on the template provided to NCC in her July 2. 2001. email. NCC Exh. 3C-022; NCC Exh. 3R.

49. In this forecast. NCC indicated that it would need incoming trunks only, sufficient to provision the following number of voice-grade lines (DSOs): from 504 *to* 1,224 DS0s during the course of the current year, 1,224 DS0s thereafter for the next 2 years. Id.

50. A T-1 *is equivalent* to 24 DS0s. There are 28 T-1s (also known as DS1s) in a DS3. In other words, at the end of its first year of operations, NCC forecast that it would need 51 T-1s to accommodate its traffic needs. or 1 DS3 and 23 T-1s. NCC Exh. 3R.

51. On July 20, 2001, Ms. McKeman apparently called Mr. Lesser and left a message for him to call her to discuss a delay in installation of the interconnection trunks. Ms. McKernan advised, in her message. that Venzon was "experiencing aproblem with the turn-

up of the entrance facility, and that the trunk installation due date of [July 25, 2001] was in jeopardy?

52. Ms. McKernan set this forth in a July 26, *2001,* email. NCC Exh. 3C-023. In her email. Ms. McKernan further advised NCC that, although "the trunking due dare has been pushed out 30 days," Venzon anticipated that rhe installation would actually be completed before August 25. 2001. Id. Ms. McKeman indicated that she would call Mr. Lesser the next day and that she hoped to "be in a position to provide you with a realistic date". Id.

54. That same day, July 26, 2001, Mr. Lesser sent an email response to Ms. McKeman. In his response. Mr. Lesser advised that "there is plenty of other fiber in [405 Capitol] that could be used for the one T1 circuit I am requesting'' or that Venzon could use the "original CFA I provided on the retail DS3 for interconnection". NCC Exh. 3C-023.

55. In another email, likewise written on July 26.2001, Mr. Lesser advised that he had not received Ms. McKernan's phone message of July 20, 2001, and expressed frustration with further delay in installing the interconnection *trunks.* NCC Exh. 3C-025.

56. On July 27. 2001. Ms. McKernan sent an email to Mr. Lesser, to follow up her earlier voice message. Ms. McKernan forwarded email from Verizon's technical personnel regarding the OCI2/OC3 turn-up for NCC, and advised thar "all efforts *are* being made *to* get [NCC] service as quickly as possible." and that Verizon is working with a July 30, 2001, commitment but would work to "to get at least one trunk up today". NCC Exh. 3C-027 to -029.

57. Later on July 27, 2001, Ms. McKernan sent another email to Mr. Lesser advising that Venzon was unable to complete NCC's Charleston T-1 until July 30, 2001, due to extenuating circumstances. YCC Exh. 3C-010. Ms. McKeman advised Mr. Lesser that NCC had 3 options: (I) extend its demarc to NCC's suite, connect the T-1 there to by-pass the MUX, andredesign the circuit later to terminate on NCC's MUX; (2) wait until July 30, 2001, for a Verizon technician to extend the circuit, *test* and turn-up; *or* (3) have all 6 T-1 circuits installed on NCC's OC12 MUX by the close of business on July 31, 2001. Id.

58. NCC apparently chose option 3 and communicated this to Ms. McKernan. VZ Exh. 4A, at 23.

59. Among other things, Ms. McKernan email between NCC and Venzon, NCC indisared that, in addition to its initial need for 2 T-1s, NCC's requirements for the next 6 months were 33 DS-1s -- 28 DS-1s, or a DS-3, *to* Verizon's Charleston tandem switch, and

5 more T-1s to each of the other tandems in the Charleston LATA. Tr. II. at 213-14 (McKernan); NCC Exh. *C-005.*

60. NCC's first request to interconnect with Verizon-WV was made on January 17, 2001. before NCC's ICA with Verizon-WV had been approved. Tr. 55-56 (Lesser);NCC Exh. 3E; NCC Exh. 3C-007. At that time, NCC requested 2 T-1s from Verizon-WV in order to turn up service to some of its NXX codes. Tr. I, at 56; NCC Exh. 3C-007.

61 Verizon-WV charactenzed NCC's March 1, 2001, trunking forecast as a "traffic capacity'' forecast, as distinguished from an A Location/Z Location trunk forecast. Tr. III, at 173.

67. NCC provided a second trunking forecast on July 9, 2001, this time providing an A/Z Location forecast of the trunks it would need. NCC forecast its trunking requirements to be no more than 51 T-1 equivalents by the end of 2002. Tr. I, at 62-63.

63 The companies' ICA did not require a 2-year trunking forecast to be provided by NCC in order to proceed with interconnection negotiations. Tr. III, at 174-76; VZ Exh. 4B, at Section 4.1.1.1 & 4.1.1.2.

64. The companies' ICA did not prohibitthe type ofinterconnection requested by NCC. Tr. II, at 155-158; Tr. III, at 177-178; see MCIm ICA, compare Section IV ("Interconnection") with Section V ("Collocation").

65. In connection with interconnection negotiations with NCC, the account manager assigned to NCC by Venzon – Dianne McKernan – referred NCC to the CLEC Handbook for guidance, exclusively. Ms. McKernan did not rely on, or refer to, NCC's ICA with Verizon-WV in any of the negotiations with NCC regarding interconnection. Venzon's CLEC I-landbook did not require a 2-year trunking forecast to be provided by NCC. Verizon's CLEC Handbookdid not prohibit the type of interconnection requested by NCC. Staff Br., .Appendix B.

66. The interconnection NCC sought was technically feasible. Tr., Vol. III, 82. Interconnection actually did rake place at the facility initially requested by NCC at the end of July 2001. Staff Ex. 1, p. 6.

VERIZON'S POLICY REGARDING INTERCONNECTION

67. Evidence of Verizon's policy is contained in numerous emails to NCC regarding its interconnection requests in Wesr Virginia, Illinois and New York, in which C'enzon states – unequivocally – the NCC cannot interconnect at loop facilities. NCC Exhs. 3C-009, 3C-033 and 3C-031.

68. Internal emails within Verizon, from Ms. McKernan to interconnection support staff, regarding Venzon's interconnection "policy" was produced during this proceeding.. NCC Exh. 3C-035; NCC Exh. 3C-034; NCC Exh. 3C-033.

69. Ms. McKernan claims that she mistakenly used the "term" policy in her emails to Mr. Lesser, and to other Verizon employees. Tr. II, at 223. Ms. McKernan claims that she initiated the use of the term, in order to make it sound more "important" to Mr. Lesser. Tr. II, at 223, 235.

70. Ms. McKernan's testimony is at odds with the evidence. It appears that Ms. McKernan first used the term "policy" in internal email to Ms. Thompson -- not in order to give Mr. Lesser a sense ofthe term's importance when with him. NCC Exh. 3C-035.

71. At no time during these internal Verizon email exchanges did any of the participants – including at least 3 technical support persons within Verizon -- object to use of the term "policy".

72. Other evidence in the record suggests that Ms. McKernan was not mistaken in using the term "policy" to describe Venzon's position regarding NCC's interconnection requests. In Maryland. Ms. McKernan filed an affidavit in which she states, unequivocally, that Verizon's technical support advised NCC that "Verizon uses only dedicated entrance facilities" for interconnecrion. NCC Exh. F, ¶5.

73. Verizon's CLEC Handbook that at least implies *that* Venzon requires trunking forecasts from new entrants seeking to interconnect, at least 6 months in advance of trunk activation, in order to design and build the necessary entrance facilities.

74. Verizon's Checklist Declaration in suppon of its petition for a Section 271 determination by the Commission in Case No. 02-0809-T-P, likewise suggests that the requirement of dedicated entrance facilities is a Verizon policy. In the Declaration, Verizon states:

> Forecasts of CLEC demand for local interconnection trunking are an integral part of the interconnection process in West Virginia. The process calls for

> CLECs to project *trunk* requirements six months in advance fo the first forecasted trunk service date. This six-month lead-rime allows Venzon WV to plan. engineer and construct trunk network switching infrastructure in anticipation of aggregated *trunk* demands.

Checklist Declaration, Case No. 02-0809-T-P, ¶43 (filed June 11, 2002).

75. There was also testimony of Venzon's witness panel in the Maryland proceeding involving Core Communications. NCC Exh. K, at 24-27; Tr. III, at 124-130, 140-147. In that testimony, as Mr. Albert admits – the Verizon witnesses (employees of Verizon Sen ices Corp., just like Mr. Albert), use the present tense to state that Venzon MD does not interconnect at loop facilities.

76. Ms. McKernan's first retraction ofthe term "policy" came in a September 23,2002, email to NCC regarding interconnection in New York. NCC Exh. 3C-048. Ms. McKernan's email *was* sent *just* 3 days after her prepared direct testimony was filed in this proceeding. See Venzon Exh. 2.

77. Ms. McKernan also attempted to explain that Mr. Bartholornew was confused by her use of the term "policy-" and that he thought she was referring to "putting an interconnection trunk on an actual UNE type of retail service". Tr. II, at 285-286. Verizon failed to produce Mr. Bartholomew to testify regarding his misunderstanding of Ms. McKernan's phraseology.

78. Mr. Albert testified that Venzon's engineers make their interconnection determinations on a case by case basis and that this proves there is no corporate policy. Verizon Exh. 4A, at 2. Mr. Albert admitted that he does not establish corporate policy for network engineering w i t h Venzon. Moreover. there are few written policies in Verizon's engineering department. Tr. III, at 191-192. Furthermore, Mr. Albert admitted that the technical support personnel who apparently advised NCC that Verizon would not interconnect at loop facilities. in both Illinois and West Virginia, do not report to him. Tr. III. at 183-184.

HARM TO NCC

79. NCC entered the Wesr Virginia market to provide service to an Internet service provider (ISP) – Kanawha Valley Internet – that had become dissatisfied with its service from Verizon. Tr. I, at 57-58.

80. The issue of whether and how much reciprocal compensation NCC would have earned if it had been able to interconnect in January 2001; goes to the degree of harm -- not the issue whether NCC was harmed.

81. There is no question that YCC was seeking, without success; to commence operations in West Virginia for over a year, and that it took this long to opt in to a standard ICA and get interconnected with Verizon's network.

82. Verizon does nor dispute NCC's claim that it had at least I customer, a large ISP, that it has nor billed for quite some time because it has been unable to provide service to rhat ISP. Tr. I, 118-119. 123. Similarly, Verizon does not dispute NCC's claim that it lost a medical services provider with 500 lines to another carrier – namely Verizon – when it could not obtain service from NCC. NCC Exh. 3C-015.

83. NCC would have at least earned some revenue in West Virginia had NCC gotten an ICA executed, filed and approved promptly, as Verizon itself suggested should have been the case: and had NCC established interconnected at *the* 405 MUX in short order – as was clearly feasible.

ROUTING 555 CALLS

85. Under the ATIS (industry standard) guidelines, 555 numbers may be treated as local calls or access calls. The decision is left to the discretion of state commissions. NCC Ex. 3N; NCC Ex. 5, at 23: NCC Ex 6, at 4-5.

86. Verizon advertises an "Enhanced ISDN-PRI Hubbing Service on its web site. NCC Ex 5, *at* 24. With this service. Verizon can offer one LATA-wide number to Internet service providers using 555 numbers and callers are only charged for local calls.

87. Verizon's Enhanced ISDN-PRI Hubbing service is tariffed as IntelliLinQ service, a local service offering. Staff Cross Exh. 3. Verizon, by tariff, treats 555 (as well as 500) service as local service. Staff Cross Exh. 3 & 4; Tr. III, at 41-44, 52-54.

88. Verizon's tariff also makes it clear rhat calls to either 500 or 555 numbers using IntelliLinQ Enhanced ISDN PRI service can only be made within the LATA. Staff Cross Exh. 3. In other words, a Verizon customer can dial a 555 number assigned either to Verizon or another Verizon customer, and that call will be treated as local as long as it originates and terminates within the same LATA.

89. Verizon-WV asserts that it "should not be required to haul NCC's 555 traffic for free" as the basis for asserting that the Commission should direct that such traffic be routed over interexchange access *trunks*. This assertion is based on the fact that Verizon-WV may have to *transport* calls all the way *from* Lewisburg, back *to* Charleston, *just* to *deliver* those calls to an NCC customer wirh a 555 number located in Charleston. This is no different than the manner in which ordinary local traffic is handled.

90. In the Commission's decision arbitrating unresolved issues relating to what became the MCIm ICA, the Commission rejecting Verizon-WV's arguments that MCIm should be required to establish points of interconnection (POIs) at each tandem in a LATA. "Commission Order," MCIm Access, Case No. 97-1210-T-PC (Jan. 13. 1998), at 9-10. The Commission concluded thar the Act does not allow ILECs to impose additional interconnection costs and obligations on CLECs, by forcing them to interconnect at more than one POI in a LATA. Id.

91. The Commission's decision in MCIm Access was incorporated in the MCIm ICA, opted into by NCC. MCIm ICA, Attachment IV, Section 1.2.

92. Under the Commission's ruling in the MCIm arbitration, and in accordance with its ICA, NCC can pick one POI within the Charleston LATA, and thereby require Verizon-WV to haul its customers' traffic from anywhere within the Charleston LATA to that one POI, for termination on NCC's network. For local traffic not bound for the Internet, Verizon-WV would also have to pay NCC to terminate its customers' local calls to NCC customers.

93. CLECs with only one POI, must pay correspondingly higher termination charges when their customers call Verizon customers. For example, if an NCC cusromer in Lewisburg sought to complete a local call to a Verizon-WV customer in Lewisburg, NCC would have to haul the call all the way back to its Charleston POI, either over its own trunks or more likely *trunks* that it leases from Verizon-WV, and then pay Verizon-WV *to* terminate rhat call – at the higher, access tandem rate.

94. A call from a Verizon-WV customer to an NCC customer with a 555 number is really no different than a local call to an NCC customer without a 555 number. Verizon-WV will sbll have to haul the call to NCC's POI (in Charleston) in order *to* have it completed. And Verizon-WV will still have to pay NCC to terminate the call -- except where the call is to an ISP. "Order on Remand and Report and Order." I/M/O implementation of the local competition orovisions in the Telecommunications Act of 1996. CC Docket No. 96-98, FCC 01-131 (rel. April 27, 2001); ¶¶78-79 (Intermarried Compensation Order).

95. In the case of a 555 call to an ISP, although Verizon-WV may have to transport calls from its Lewisburg customer to NCC's Charleston POI, it will not have to pay NCC any terminating charges to complete the call, if the holder of NCC's 555 number is an ISP.

96. If NCC's 555 number is an ISP, Venzon's argument that traffic to thatnumbermust be carried on interconnection access trunks imposes a double cost on NCC, and a significant windfall for Verizon-WV. First; NCC is not going to be paid any reciprocal compensation for terminating the Verizon-WV customer's call to its ISP -- despite the fact that NCC has real casts associated wirh terminating such calls. And second, NCC is going to have to pay Verizon-WV 10 haul such calls over its interexchange trunks.

97. Verizon-WV's position, if allowed to remain in effect by the Commission, virtually ensures that no CLEC will be able to offer a service that competes with Verizon's IntelliLinQ service for ISPs.

MIGRATING NCC'S FACILITIES FROM THE 405 MUX

98. Verizon-WV agreed to provision 6 trunks on the 405 MUX for NCC as an interim measure, in order to allow NCC to activate its NXX codes. VZ Exh. 4A, at 23. NCC agreed to migrate those bunks after its dedicated entrance faciliry had been constructed and the trunks to that facility activated. Id.

99. The dedicated entrance facility has been constructed and the trunks to it activated for some time now. Verizon-WV has asked that NCC make arrangements *to* allow the hunks to be migrated to the dedicated entrance facility. in accordance with the interim arrangement, but NCC has refused to do so.

100 There are no techcal or senice-related reasons the migration cannot be accomplished. Tr. II, at 12-14.

THE CERTIFICATE APPLICATIONS

101. Other than NCC's protest to the Verizon-ES and Verizon-LD's certificate applications, no-one protested the issuance of a certificate to either carrier with the public comment or protest period following publication of the notice of filing.

102. NCC's protest was intended to be considered in the context of Verizon-WV's pending petition. in Case No. 02-0809-T-P, for a Commission determination that the

company has satisfied the Act's 14-point checklist, thereby enabling Venzon to seek in-state, interLATA operating authority from the FCC. & 47 U.S.C. § 271.

103. The Commission granted NCC's petition to intervene in Case No. 02-0809-T-P, and caused a copy of the record in Case No. 02-0254-T-C to be lodged in the Section 271 proceeding.

104 NCC's protest to the applications filed by Verizon-ES and Venzon-LD have been rendered moor

105. the certificate applicants have demonstrated that they have the requisite technical, managerial and financial qualifications to provide resold interexchange telecommunications service as public utilities in West Virginia. Moreover, Staffnotes that NCC, for all intents and purposes, withdrew its protests to the certificate applications in order to intervene in the Verizon-WV Section 271 proceeding in Case No. 02-0809-T-P.

STAFF'S PROPOSED CONCLUSIONS OF LAW

BACKGROUND

PROPOSED CONCLUSIONS OF LAW

1. In seeking to open the local exchange telecommunications market to competition, Congress intended to encourage new entrants, with new services and new ideas about how to provide those services, to enter the local market -- with the idea that this would be good for consumers. AT&T v. Iowa Utilities Board, 525 U.S. 366, 371, 119 S.Ct. 721, 726 (1999).

2. As the complainant, NCC has the burden of proof to establish, a preponderance of the evidence, that Verizon-WV violated the Act, FCC regulations implementing the Act, or applicable state law, including the Commission's orders and regulations. Lester v. Flanagan, 113 S.E.2d 145 (W. Va. 1960); Prettyman v. Hopkins Motor Co., 81 S.E.2d 78 (W. Va. 1954).

3 Once NCC establishes a prima facie case that Verizon has violated either federal or stare law, the burden of proof shifts to Venzon to rebut NCC's case. Flanagan, 113 S.E.2d at 89. This requires Venzon to come forward evidence of its own that, likewise by a preponderance of the evidence; rebuts any showing made by NCC

INTERCONNECTION NEGOTIATIONS

4. Section 251(b)(1) of the Act obligates Venzon to negotiate in good faith with requesting camers (i.e., CLECs) the particular terms and conditions of agreements to fulfill its obligations under Sections 251(b) and (c) of the Act. 47 U.S.C§ 251(b)(1).

5. Pursuant to Section 252(i) ofthe Act, this includes the duty to make available to any other telecommunications carriers, "any interconnection, service, or network element" provided for in an agreement approved by a state commission, "upon the same terms and conditions as *those* provide in the agreement". 47 U.S.C. § 252(i).

6. Under Section 252(b)(5) of the Act, "the refusal of any other party to the negotiation to participate further in the negotiations . . . shall *be considered* a *failure* to negotiate in good faith". 47 U.S.C§.252(b)(5).

7. Verizon's obligation *to* participate in interconnection negotiations, including negotiations to opt into an approved agreement, were expanded upon by the FCC, which further defined "refusal to negotiate" in rules promulgated in August 1996.. The FCC's rule provides:

> An incumbent LEC shall make available *without unreasonable delay* to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a parry that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement.

47 C.F.R. § 52.809(a) (emphasis added)

8. An ILEC, such as Venzon, violates Section 252(i), and therefore Section 251(b)(5), if it unreasonably delays to make availabie, -- upon the same rates, terms and conditions -- interconnection, service or network element arrangements contained in any agreement, to any carrier exercising its rights under Section 252(i) of the Act.

9. The obligation to negotiate in good faith is also a requirement of West Virginia law. The Commission amended its Rules and Regulations for the Government of Teleuhone Utilities, 150 C.S.R. Series 6 (Telephone Rules), shortly after NCC submitted its request to opt inro the MClm ICA to Venzon. "Commission Order," General Order 187.16(Aug. 11, 2000). The amendments became effective on October 10, 2000, after NCC had executed rhe adoption letter opting in to the MCIm ICA but before the agreement had been filed with the Commission.

10. The Commission's Telephone Rules adopt, wholesale, the provisions of the Act imposing obligations on ILECs to negotiate, in good faith, agreements implementing their duties under Sections 251(b) and (c)(1)-(5) of the Act. The Teleuhone Rules likewise made it clear that the refusal of a **party** to participate further in interconnection negotiations is a violation of the duty to negotiate in good faith. See C.S.R. §§ 150-6-15.3, generally, and 15.4.a., in particular.

11. It took over 9 months – from July 5, 2000, to January 19, 2001 – to negotiate, execute and file the ICA opted into with the Commission for approval. This was entirely too long and the majority of the deiay was attributable to Verizon's willful, or at best, unreasonably negligent, delay.

An ILEC's refusal to negotiate further, if only for a time, is a violation of Sections 252(b)(5) & (i), as well as 47 C.F.R.§ 52.809(a), even if an ICA is ultimately executed after negotiations resume. See Bell Atlantic - DE, 77 F.Supp.2d 492, 503-04 (D. Del. 1999). Unilaterally holding up a request to opt in to a Commission approved ICA while the ILEC investigates a CLEC's legal business pracrices is unreasonable.

Verizon's unilateral decision to halt the interconnection negotiation process while it investigated NCC was an unlawful refusal to negotiate with NCC, in violation of Section 252(b)(5) of the Act.

The and the Commission previously limited reciprocal compensation for Internet-bound telecommunications traffic. Nowhere did the FCC or the Commission suggest that it was illegal: or a "fraudulent scheme," for a CLEC to provide service to ISPs for purposes of reaping compensation as a result of traffic imbalances that result from Internet calls, up to the limits allowed by the agencies.

Nowhere has eirher agency suggested that other types of arrangements that could lead to unbalances in carriers' terminating traffic were illegal or fraudulent.

The Act does not empower Verizon to unilaterally refuse to participate in further interconnection negotiations, while it mulls the morality or legality of a CLEC's business plan.

Setting aside the issue of the 4-week delay occasioned by Verizon's review of NCC's operations, Verizon still violated Section 252(b)(5) of the Act by unreasonably delaying the filing of NCC's ICA *after* its execution.

Verizon nowhere explains why it took *it* another *3 months* -- from September 29, 2000, when Verizon received NCC's executed adoption letter -- to January 19. 2001, when Venzon finally tiled NCC's IC4 for Commission approval.

12. Verizon-WV unreasonably, and unlawfully, delayed *negotiating, executing* and filing for approval NCC's ICA, in violation of 47 U.S.C§§ 252(b)(5) & (i), 47 C.F.R. § 52.809(a) and Teleuhone Rule 15.4.a.

ESTABLISHING *PHYSICAL INTERCONNECTION*

13. Section 251(c)(2) of the Act governs Verizon-WV's obligations regarding interconnecting its network with another carrier. That section of the Act provides:

14. In addition to the duties contained in [Section 251(b)], each [ILEC] has the following duties:

* * *

(2j Interconnection – The duty to provide: for the facilities and equipment of any requesting telecommunications carrier, interconnecrion with the [ILEC's] network –

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the [ILEC's] network;

(Cj that is at least equal in quality to that provided by the [ILEC] to itself or to any subsidiary, affiliate, or any other *party to* which the carrier provides interconnection; and

(D) on rates; terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions ofthe [ICA] and the requirements of [Sections 251 and 252 of the Act].

47 U.S.C. § 251(c)(2)(A) - (D)

15. Section251(c)(2)'s requirements are incorporated in the FCC's rules implementing the Act. See 47 C.F.R§.51.305.

16. With respect to interconnection, the FCC defined 6 points in an ILEC's network where interconnection is deemed to be technically feasible. The FCC concluded:

> We also note that the points of access to unbundled elements . . . discussed below may also serve as points of interconnection (i.e., points in the network that may serve as places where potential competitors may wish to exchange traffic with the incumbent LEC other than for purposes of gaining access to unbundled elements), and thus we incorporate those points by reference here. . . . [W]e have identified a minimum list of technically feasible interconnection points: (1j the line-side of a local switch; (2) the trunk-side of a local switch: (3) rhe trunk interconnection points for a tandem switch:

(4) central office cross-connect points; (5) out-of-band signaling transfer points; and (6) the points of access to unbundled elements.

"First Report and Order." I/M/O Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98; FCC 96-325 (Rel. Aug. 8, 1996), at ¶212 (Local Competition 1st R&O); see 47 C.F.R. § 51.305..

17. The 405 MUX fits one or more of the 6 designated points where CLECs may interconnect with an ILEC's network, namely "points of access to UNEs," as well as "the line of the local switch."

18 Interconnection ar the 405 MUX was technically feasible when requested by NCC in Januarv 2001

19. NCC was not obligated to provide the trunking forecasts demanded by Venzon, either by law or by its 1C.4.

20. NCC provided sufficient information to Venzon at the time of its interconnection request to allow the company to go forward with implementing interconnection at the 405 MUX

21. To the extent Verizon required NCC to "prove" that there was sufficient capacity on the 405 MUX to accommodate its interconnection request, it violated the FCC's rules regarding interconnection. NCC provided nearly all the information required in an "A Location/Z Location" trunking forecast in its January 17, 2001, and January 25, 2001, initial, 6-month trunking estimate.

22. Any information that NCC did not provide was in Verizon's possession and was readily ascertainable by Verizon. The FCC clearly places the burden on Verizon (the ILEC) to provide NCC (the CLEC) with general information regarding its network.

23. In its August 8, 1996, order: establishing rules governing local competition, the FCC wrote, with respect to interconnection:

> Incumbent LECs possess the infomation necessary to assess the technical feasibility of interconnecting to particular LEC facilities. Further, *incumbent LECs have a duty to make available to requesting carriers general informaiion indicating the location and iechnical characteristics of incumbent LEC network facilities. Without access to such information,*

competing carriers would be unable to make rational network deployment decisions and could be forced to make inefficient use of their own and incumbent LEC facilities, with anticompetitive effects.

Local Competition 1st R&O. ¶205

24. In any event: the evidence demonsuates that Verizon rejected NCC's request to interconnect at the 405 MUX without any of the forecasting information it requested.

25. Lerizon violated its obligations under Section 251(c)(2) of the Act and 47 C.F.R. § 51.305, as well as Teleuhone Rule 15.2.a, by refusing to interconnect at any technically feasible point requested by NCC.

VERIZON'S INTERCONNECTION POLICY

26. The weight of the evidence establishes that Verizon has a policy, or at least practice, pursuant to which Verizon will not interconnect with CLECs at loop facilities, even where technically feasible.

27. Venzon's policy or practice violates its obligations under Sections 251 and 252 of the Act, the FCC's regulations, as well as W. Va. Code § 24-2-7(a) and Telephone Rule 15.2.a.

28. Venzon should be directed to immediately cease applying any such policy and interconnect in a manner consistent with its obligations under the Act.

29 Verizon should be directed henceforth to comply with its obligations to interconnect at technically feasible points, in accordance with its obligations under Sections 251 and 252 of the Act, and the Commission's rules, or be subject to penalties under Chapter 24 of the W. Va. Code.

HARM TO NCC

30. The Commission cannot award damages, even if those damages were calculable. See Dierkes v. Wheeling Power Company, Case No, 93-0917-E-C (Feb. 8, 1994); see also Carter v. Willis, 117 S.E.2d 594 (W.Va. 1960).

31 The Commission should take into account the harm NCC has suffered in attempting to enter the local marker in Wesr Virginia in fashioning appropriate relief.

ROUTING 555 CALLS

32. Lenzon should be directed to transport 555 calls to CLEC ISPs over local interconnection trunks, until further order of the Commission.

33. Verizon's refusal to route 555 calls to CLECs over interconnection minks discriminates against CLECs seeking to provide the same service Venzon-WV does.

MIGRATING NCC'S FACILITIES FROM THE 405 MUX

34. Verizon's actions elaborated upon in this proceeding do not excuse YCC from carrying out its agreement in July 2001.

35. NCC should therefore be directed to assist Verizon-WV in migrating the trunks within a reasonable time period.

36. Thirty days should be sufficient in order to allow arrangements for the migration to be made

THE CERTIFICATE APPLICATIONS

37. Verizon-ES and Venzon-LD have demonstrated that they have the requisite technical, managerial and financial qualifications to provide resold interexchange telecommunications service as public utilities in West Virginia.

38. NCC withdrew its protests to the certificate applications in order to intervene in the Verizon-WV Section 271 proceeding in Case No. 02-0809-T-P.

39. The final recommendations set forth in the Utilities Division's July 24, 2002, internal memorandum. attached to Staffs Brief as Appendix D shall be adopted.

Respectfully submitted. this 26th day of November, 2002

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CERTIFICATE OF SERVICE

I, PATRICK W. PEARLMAN. Sraff Counsel €orthe Public Service Commission of West Virginia, hereby certify that I have served a copy of the foregoing "Commission Staff s Proposed Findings of Fact and Conclusions of Law" upon all parties of record by First Class United States Mail. postage prepaid this 26th day of November, 2002

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