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January 29, 2003

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Application by Verizon Maryland, Verizon Washington, DC and Verizon West Virginia for Authorization To Provide In-Region, InterLATA Services in States of Maryland, Washington, DC and West Virginia, WC Docket No. 02-384

Dear Ms. Dortch:

At the request of Staff, Verizon provides this information regarding Starpower's claim that Verizon's Model Interconnection Agreements in Maryland, the District, and West Virginia contain provisions that improperly exclude reciprocal compensation for virtual foreign exchange ("virtual FX") traffic. As demonstrated below, virtual FX traffic is not local traffic, and therefore the payment of reciprocal compensation for such traffic is not relevant under the checklist pursuant to the Commission's established precedent.

1. Virtual FX is a service that CLECs provide by assigning a customer physically located in one rate center (often near the CLEC's switch) a phone number that is associated with a distant rate center, thereby enabling callers in the distant rate center to reach the CLEC's customer without incurring the toll charges that would normally apply. See Virginia Arbitration Order ¶ 287. In contrast to the traditional FX service that Verizon provides, where the customer pays a special charge to use Verizon's facilities to transport traffic from the rate center associated with the assigned telephone number to the rate center where the customer is located, virtual FX service does not involve the deployment or use of any CLEC facilities between the two rate centers. See id. Rather, CLECs have exploited virtual FX service in order to place most of the burden and expense of transporting the calls on the ILEC. Moreover, CLECs have not only have failed to compensate ILECs for originating and transporting these toll calls, but also have attempted to charge ILECs reciprocal compensation. The CLEC is able to avoid paying appropriate charges because when the ILEC switch in the distant rate center receives a call to a number with an NXX code associated with the originating local calling area, it is programmed not to bill toll or access charges for that call, even if the call is in fact not being delivered within that rate center. Only CLECs have the information necessary to bill inter-carrier compensation for these calls accurately.

2. By definition, the virtual FX calls for which Starpower is seeking reciprocal compensation are interexchange or toll calls – *i.e.*, they originate in one local calling area and are delivered to a customer in another, and Verizon would be entitled to collect toll charges on such calls but for the CLEC’s number assignment practices. By the same token, where Verizon originates interexchange calls on behalf of a customer of another carrier (*i.e.*, the CLEC’s virtual FX customer), it is entitled to access charges. Indeed, the Commission has already resolved the question of appropriate inter-carrier compensation for such calls (albeit in the interLATA, interexchange context) — access charges apply, even when the number dialed has the appearance of a local number to the calling party. See AT&T Corp. v. Bell Atlantic-Pennsylvania, 14 FCC Rcd 556, ¶¶ 80-82 (1998); see also Mountain Communications, Inc. v. Qwest Communications International, Inc., Order on Review, File No. EB-00-MD-017, FCC 02-220 (FCC rel. July 25, 2002) (upholding Enforcement Bureau’s determination that an incumbent LEC is entitled to charge for transport facilities that it provides to deliver traffic to a distant calling area in connection with an interconnecting carrier’s wide area calling service).

3. Because virtual FX traffic is non-local access traffic, an ILEC has no obligation to pay reciprocal compensation for this traffic pursuant to 47 U.S.C. § 251(b)(5). See Local Competition Order ¶ 1034; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, 16 FCC Rcd 9151, ¶ 37 (2001), remanded, WorldCom, Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002). This is the conclusion reached by the overwhelming majority of state commissions that have considered this issue.¹ And, under the section 271 checklist, the only relevant question is whether a Bell company is providing “[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2),” 47 U.S.C. § 271 (c)(2)(B)(xiii), which simply sets out the standard for determining compliance “with section 251(b)(5),” *id.* § 252(d)(2)(A). Thus, in the analogous situation involving Internet-bound traffic, the Commission has held that, because such traffic is not subject to §251(b)(5), “whether a BOC pays reciprocal compensation for Internet-bound traffic ‘is not relevant to compliance with checklist item 13.’” New Jersey Order ¶ 160; see Georgia/Louisiana Order ¶ 272;

¹ See, e.g., Petition of Global NAPs, Inc. for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New England, Inc., d/b/a Verizon Vermont, Final Order, Vermont Public Service Commission, Docket No. 6742 at 21-14 (Dec. 26, 2002); Petition of Global NAPs, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts f/k/a New England Telephone & Telegraph Co. d/b/a Bell Atlantic-Massachusetts, Decision and Order, Massachusetts D.T.E. 02-45 at 35-36 (Dec. 12, 2002); In re: Arbitration of the Interconnection Agreement Between Global NAPs and Verizon Rhode Island, Arbitration Decision, State of Rhode Island and Providence Plantation Public Utilities Commission, Docket No. 3437 at 24 (rel. Oct. 16, 2002); Order on Arbitration, Petition of US LEC of South Carolina Inc. for Arbitration, Order No. 2002-619, Docket No. 2002-181-C (S.C. PSC Aug. 30, 2002); Arbitration Decision, Level 3 Communications, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 To Establish an Interconnection Agreement with Illinois Bell Telephone Co. d/b/a Ameritech Illinois, 2000 Ill. PUC LEXIS 676, at *19-*20 (Ill. Commerce Comm’n Aug. 30, 2000); Arbitration Award, Proceeding To Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996, Docket No. 21982, at 17 (Tex. Pub. Util. Comm’n July 12, 2000).

Pennsylvania Order ¶ 119; Connecticut Order ¶ 67; Massachusetts Order ¶ 215; Kansas/Oklahoma Order ¶ 251; see also Virginia Order ¶ 193. The same conclusion therefore applies here.

4. Contrary to Starpower's claims, the Virginia Arbitration Order did not conclude that the Act requires Verizon to pay reciprocal compensation for virtual FX calls. In fact, the Virginia Arbitration Order did not address the question whether Verizon had an underlying legal obligation to provide reciprocal compensation for virtual FX calls. Instead, that order merely held that, in the absence, on the record then before the Commission's staff, of a better way to distinguishing between local and toll calls on the record then before the Commission's staff, it was more appropriate to use a mechanism that relied on the NPA-NXX codes associated with those calls, rather than the geographic end points of those calls as Verizon had proposed. See Virginia Arbitration Order ¶ 301. The Commission's staff acknowledged, however, that the mechanism it favored could facilitate CLEC's efforts to collect improperly reciprocal compensation for virtual FX traffic and that Verizon should therefore be permitted to demonstrate to state commissions such "abuses of NPA-NXX allocations." Id. ¶ 303. Of course, by doing so, it also necessarily recognized that the appropriate determinant of whether reciprocal compensation applied is, in fact, the actual geographic end point, since the "abuse" that was of concern was the assignment of NPA-NXX codes in such a way as to disguise the real end points of the call. Moreover, the aspect of the Commission staff's decision that concluded there was not a better way of distinguishing the actual end points of calls in a virtual FX call is currently subject to a petition for reconsideration. In reality, there are better ways to distinguish the actual end points, based on traffic studies and the use of appropriate factors, which are the same basic methods that parties already routinely use to address similar issues under their interconnection agreements. Indeed, the overwhelmingly majority of state commissions that have addressed the issue have concluded precisely that.²

² See cites in preceding footnote as well as: Order on Reciprocal Compensation, Investigation into Appropriate Methods To Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996, Docket No. 000075-TP, Order No. PSC-02-1248-FOF-TP, at 31 (Fla. Pub. Serv. Comm'n Sept. 10, 2002); Order on Arbitration, Petition of Adelpia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, Docket No. 2000-516-C, Order No. 2001-045, at 7 (S.C. Pub. Serv. Comm'n Jan. 16, 2001); Interim Order of Arbitration Award, Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket No. 99-00948, at 42-44 (Tenn. Reg. Auth. June 25, 2001); Final Order, Generic Proceeding of Point of Interconnection and Virtual FX Issues, Docket No. 13542-U, at 10-12 (Ga. Pub. Serv. Comm'n July 23, 2001); Arbitration Order, Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc., for Compulsory Arbitration of Unresolved Issues With Southwestern Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, Case No. TO-2001-455, at 44 (Mo. Pub. Serv. Comm'n June 7, 2001); Arbitration Award, Petition of Global NAPs Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 To Establish an Interconnection Agreement with Verizon North Inc., Case No. 02-876-TP-ARB, at 10 (Ohio Pub. Util. Comm'n Sept. 5, 2002); Order Adopting Revised Arbitration Decision, Petition of Pac-West Telecomm, Inc. for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Nevada Bell, Docket Nos. 98-10015 & 99-1007, 1999 Nev. PUC LEXIS 57, at *41, ¶ 64 (Nev. Pub. Utils. Comm'n Apr. 12, 1999).

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5. In any event, in addition to being meritless because the Commission's staff has previously recognized that the actual geographic end points are an appropriate determinant of whether reciprocal compensation applies, Starpower's claims at most raise new "interpretative disputes concerning the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve per se violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding." Pennsylvania Order ¶ 92 Kansas/Oklahoma Order ¶ 19 (same). Thus, consistent with this precedent, there is no need for the Commission to address Starpower's claim in this proceeding. And that is all the more true given that those claims do not raise a checklist issue.

Please let me know if you have any questions. The twenty-page limit does not apply as set forth in DA 02-3511.

Sincerely,



cc: G. Cohen
G. Gooke
G. Remondino
V. Schlesinger